

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No.2024-22

Approved: June 25, 2024

**Re: Scott Millar**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Exeter Planning Board, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics permits him to continue drafting proposed amendments and later participate in discussions and decision-making relative to the potential amendment of the Exeter Rural Residential Compound ordinance, given that the ordinance applies to his property.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Exeter Planning Board, a municipal appointed position, is permitted by the Code of Ethics to continue drafting proposed amendments and later to participate in discussions and decision-making relative to a possible amendment of the Exeter Rural Residential Compound ordinance, notwithstanding that the ordinance applies to his property.

The Petitioner is a member of the Exeter Planning Board, to which he was appointed by the Exeter Town Council in 2019. The Petitioner represents that during a recent review of the Exeter Comprehensive Plan, the planning board determined that the rural residential compound ordinance should be revised and updated by way of an amendment. The Petitioner states that, because he has experience drafting ordinances, and because the town's part-time planner did not have the availability to draft a proposed amendment, the Petitioner volunteered to draft a proposed amendment for the planning board to review. The Petitioner explains that, in Exeter, there currently can be only one dwelling unit per lot, unless the property is subdivided and developed according to either the compound ordinance or the conservation development ordinance. The Petitioner further explains that the existing compound ordinance, which has not been used in years, requires for a land development a density of no more than one dwelling unit per ten acres of land, which he notes is excessive. The Petitioner adds that the conservation development ordinance, on the other hand, allows a property owner to subdivide and develop his or her land to the maximum number of lots allowed according to the type of residential zone in which the property is located.<sup>1</sup> He explains that there are three types of residential zones in Exeter, all of which are considered rural, and each of which requires either two, four, or five acres of land for the construction of a

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<sup>1</sup> The Petitioner notes that the compound ordinance was created prior to the conservation development ordinance and property owners can use either ordinance to subdivide and develop their land.

home.<sup>2</sup> The Petitioner states that he has yet to develop a specific proposal, although he is currently considering two options, based on his research of the laws of other Rhode Island municipalities containing rural compound development requirements. The Petitioner represents that any potential amendment to the compound ordinance will apply in the same way and to the same extent to all properties located in the various residential zones. The Petitioner states that Exeter is primarily comprised of lots zoned for residential development and, although he does not know the exact number, he estimates that there are hundreds of lots that would be impacted by amendments to the compound ordinance.<sup>3</sup>

The Petitioner describes one option as an amendment to the compound ordinance that would require an increase by 50 percent of the current lot size necessary for the construction of a home in a particular residential zone. For example, if a particular residential zone currently requires four acres for the construction of a home, then the compound ordinance, as amended, would require six acres for the construction of a home in that particular zone. Another option would be to reduce by 50 percent the number of lots into which a parcel could be subdivided in a particular residential area. For example, if a resident owns 40 acres of land in a four-acre residential area, and is currently permitted to subdivide the land into ten four-acre lots, under the Petitioner's second option for amending the compound ordinance, the resident would be able to subdivide the lot into only five four-acre lots, thus decreasing the number of lots by 50 percent. The Petitioner represents that either option would apply in the same way and to the same degree to all lots in the different residential areas.

The Petitioner states that he and his spouse own and reside in a home on 43 acres of land located in a residential zone that requires four-acre home lots.<sup>4</sup> The Petitioner further states that under the existing compound ordinance he would be allowed to subdivide his land and build a compound with three more homes on his property. He represents that a resident in town has alleged that the Petitioner should not be participating in the amendment of the compound ordinance as the Petitioner's motive for doing so would be to increase the value of his own property by increasing the number of homes that he could build on it. The Petitioner counters that allegation by pointing out that an existing conservation development ordinance already allows him to create more lots on his property than the current compound ordinance or an amendment to it would allow. Thus, the Petitioner states that if he were to develop his land further, he would be able to use the existing conservation development ordinance to do so. The Petitioner further states that an amendment to the compound ordinance on its own would not increase the value of his property. More notably, the Petitioner represents that he and his spouse have no intention to sell or subdivide their property, nor have they previously submitted an application for the development of a compound on their property. Moreover, he notes that he and his spouse have submitted an application, which is currently pending, with the United States Department of Agriculture for the sale of the

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<sup>2</sup> The Petitioner explains that Exeter is considered a rural town and all properties in these three types of residential zones are considered rural.

<sup>3</sup> The Petitioner represents that according to the town's 2024 Comprehensive Plan, there are 266 parcels of land that are ten acres or larger and enrolled in the farm, forest, and open space program, which is not under consideration in this advisory opinion. However, he notes that not all parcels of land greater than ten acres are enrolled in that program. Therefore, the parcels of land that are ten acres or larger are 266, at a minimum.

<sup>4</sup> The Petitioner explains that he has owned the property for 30 years.

development rights to their property in order to preserve the land as it currently is. The Petitioner states that, in light of the town resident's allegations, he has at this time ceased his involvement in the development of the amendments to the compound ordinance until he receives guidance from the Ethics Commission through the instant advisory opinion. Therefore, based on this set of facts, the Petitioner seeks advice from the Ethics Commission regarding whether the Code of Ethics allows him to continue drafting proposed amendments and participate in discussions and decision-making relative to the compound ordinance.

A person subject to the Code of Ethics may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest occurs if a public official has reason to believe or expect that he, or any person within his family, or his business associate, or any business by which he is employed or which he represents will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. R.I. Gen. Laws § 36-14-7(a). A public official has reason to believe or expect that a conflict of interest exists when it is "reasonably foreseeable," that is, when the probability is greater than "conceivably," but the conflict of interest need not be certain to occur. Commission Regulation 520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001). Additionally, § 36-14-5(d) of the Code of Ethics prohibits a public official from using his public office or confidential information received through his holding public office to obtain financial gain, other than that provided by law, for himself, any person within his family, his business associate, or any business by which he is employed or which he represents.

In order to determine whether the above provisions of the Code of Ethics are implicated, the Ethics Commission must ascertain whether, in this particular case, the Petitioner and his spouse would be directly financially impacted by the official action that is under consideration. If a direct financial impact, be it positive or negative, is not reasonably foreseeable, then the Petitioner is not required by these provisions of the Code of Ethics to recuse from participation in the drafting, discussion, or voting on the proposed amended compound ordinance.

In Advisory Opinion 2024-15, for example, the Ethics Commission opined that a state representative could participate in discussion and decision-making relative to proposed legislation that, if passed, would prohibit commercial motor trucks with a certain gross weight from traveling on Route 114A in East Providence between Pawtucket Avenue and the Massachusetts state line, also known as Pleasant Street, notwithstanding that her mother owned and resided in a home along the affected section of 114A. There, the Ethics Commission based its opinion on the fact that the ban on commercial trucks of that weight from traveling on Pleasant Street was not expected to directly impact the values of the properties on Pleasant Street, including that of the petitioner's mother. See also A.O. 2021-17 (opining that a member of the Rhode Island House of Representatives could participate in the general assembly's discussion and vote on legislation that would eliminate the cost of obtaining a criminal-records check required for employment with child care providers, notwithstanding that the petitioner owned a number of child care centers in Rhode Island and voluntarily reimbursed applicants for the cost of obtaining a criminal-records check because, notwithstanding the petitioner's choice to voluntarily reimburse applicants, the direct financial impact of the legislation would be upon the applicants rather than the child care centers at which they sought employment); A.O. 2019-25 (opining that a member of the Cranston City

Council could participate in city council discussion and voting relative to a proposed ordinance that would ban the use of plastic bags by Cranston business establishments, notwithstanding that the petitioner owned and operated a restaurant in Cranston, given the petitioner's representation that the proposed ordinance's ban on plastic bags would have no impact on his current operations).

Here, the Petitioner represents that amendments to the compound ordinance would have no direct financial impact on his property. He further represents that an existing conservation development ordinance allows him to maximize the development of his property, if he so wishes. However, the Petitioner states that he and his spouse have no intention to sell or subdivide their property, nor have they previously applied to develop a compound on their property. Finally, the Petitioner notes that he and his spouse have a pending application with the United States Department of Agriculture for the sale of the development rights to their property in order to preserve the land as is. Accordingly, based upon the Petitioner's representations, a review of the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner may continue drafting proposed amendments and participate in discussions and decision-making relative to the compound ordinance.

**This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.**

Code Citations:

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

520-RICR-00-00-1.1.5 Reasonable Foreseeability (36-14-7001)

Related Advisory Opinions:

A.O. 2024-15

A.O. 2021-17

A.O. 2019-25

Keywords:

Financial Interest