

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2025-22

Approved: March 25, 2025

Re: Charles R. Roberts

QUESTION PRESENTED:

The Petitioner, a member of the Middletown Town Council, a municipal elected position, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics, upon recusal as a town council member, from attending and speaking at public hearings before the town council relative to a proposed housing development to be located across the street from his personal residence.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Middletown Town Council, a municipal elected position, is not prohibited by the Code of Ethics, upon recusal as a town council member, from attending and speaking at public hearings before the town council relative to a proposed housing development to be located across the street from his personal residence.

The Petitioner is a member of the Middletown Town Council, having been elected to that position in November 2024. The Petitioner represents that there are several affordable housing projects that the town council is currently reviewing, one of which is located on Oliphant Lane (Oliphant project) where the former Oliphant School building is located. The Oliphant project is located directly across the street from the Petitioner's personal residence that he has owned since 2015. The Petitioner states that the Oliphant project is a mixed-use development with a proposed construction of 35 affordable housing units that are not age-restricted. The Petitioner represents that his personal residence is within the 200-foot radius of the Oliphant project property and that he has received abutters' notices relative to it.

The Petitioner further represents that the Oliphant project is regularly reviewed by the town council in conjunction with another affordable housing project proposed to be developed at the former Berkley Peckham School located at 650 Green End Avenue in Middletown (Berkley project). The Petitioner describes the Berkley project as a 22-unit senior affordable housing development that does not abut his personal residence. The Petitioner explains that the plans for the Oliphant and Berkley projects were reviewed individually

and approved by the planning board. However, for purposes of applying for funding from Rhode Island Housing, the two projects were presented together by the town. The Petitioner represents that Rhode Island Housing denied the town's application for funding of the projects due to the insufficient number of units and the high pricing of the units that were proposed.

The Petitioner explains that, in response to the denial of the application, the town council is expected to review and potentially vote on proposed new plans for both developments. He further explains that the town council is expected to conduct public hearings¹ with an opportunity for members of the public to comment on the matter. The Petitioner represents that, because the two projects will be reviewed together for purposes of funding, any discussions or decision-making by the town council as to the Berkley project will impact the Oliphant project, and vice versa. The Petitioner states that he plans to recuse, in his official capacity, from participating in town council discussions and decision-making relative to the two developments. However, given this set of facts, he seeks guidance from the Ethics Commission regarding whether he may attend the public hearings before the town council and speak as a member of the public relative to the developments.

Under the Code of Ethics, a public official 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 exists if a public official has reason to believe or expect that he, any person within his family, 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). The Code of Ethics also prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, any person within his family, his business associate, or any business by which he is employed or which he represents. § 36-14-5(d). Additionally, the Code of Ethics prohibits public official from representing himself or authorizing another person to appear on his behalf before a municipal agency of which he is a member, by which he is employed, or for which he is the appointing authority. § 36-14-5(e)(1); 520-RICR-00-00-1.1.4(A)(1) Representing Oneself or Others, Defined (36-14-5016).

In advisory opinions involving real property, the Ethics Commission has consistently applied a rebuttable presumption that a property owner will be financially impacted by official action concerning abutting property. *See, e.g.*, A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in discussions or votes concerning properties abutting their own properties, absent reliable evidence that their official actions

¹ The Petitioner notes that the town council is planning a special meeting on March 31, 2025, to review the new proposed plans for the two projects and to hear public comment.

would not affect the financial interests of the public officials, either positively or negatively. Here, as an abutter to the Oliphant project, and with no rebuttal to the presumption of financial impact, the Petitioner will be prohibited from participating in his official capacity in any town council discussions and decision-making relative to that project and/or the Berkley project, to the extent that the two projects are reviewed together. The Petitioner will also be prohibited from participating in town council discussions and decision-making regarding the Berkley project that will also impact the Oliphant project.

However, the Code of Ethics contains a public forum exception, which provides that a public official may publicly express his own viewpoints in a public forum on any matter of general public interest or on any matter which directly affects said individual, or his spouse, or dependent child. 520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003) (Regulation 1.2.3). In past advisory opinions, the Ethics Commission has advised public officials about their rights under the public forum exception. See, e.g., A.O. 2020-33 (opining that a member of the West Warwick Town Council could address the planning board, the zoning board, and/or the town council, upon recusal, during public hearings regarding a proposed development of property located across the street from his personal residence, provided that he did not receive access or priority not available to any other member of the public); A.O. 2019-41 (opining that a member of the Middletown Town Council could attend and speak at public hearings before the planning board and/or, potentially, the zoning board regarding a proposed development of property located across the street from her personal residence, provided the petitioner did not receive access or priority not available to any other member of the public); A.O. 2017-11 (opining that the Chairperson of the North Providence Historic District Commission (HDC) could address the HDC during its application review concerning a property abutting her residence, as long as the petitioner did not receive access or priority not available to any other member of the public).

Consistent with these prior advisory opinions, and pursuant to Regulation 1.2.3's public forum exception, it is the opinion of the Ethics Commission that the Petitioner, upon recusal in his official capacity from town council discussions and decision-making, may appear before and address the town council during a public comment period regarding the proposed developments, provided the Petitioner does not receive access or priority not available to any other member of the public. Recusal shall be consistent with the provisions of R.I. Gen. Laws § 36-14-6. The Petitioner is further cautioned that he may not use his public office or position as a town council member to in any way influence members of the town council.

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)

§ 36-14-5(e)

§ 36-14-6

§ 36-14-7(a)

520-RICR-00-00-1.1.4 Representing Oneself or Others, Defined (36-14-5016)

520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003)

Related Advisory Opinions:

A.O. 2020-33

A.O. 2019-41

A.O. 2017-11

A.O. 2012-4

A.O. 2007-18

A.O. 2006-37

A.O. 2005-16

Keywords:

Property Interest

Public Forum Exception