

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No.2025-38

Approved: May 20, 2025

Re: Brian Thalmann, PE

QUESTION PRESENTED:

The Petitioner, an alternate member of the Smithfield Zoning Board of Review, a municipal appointed position, who in his private capacity is a professional engineer, requests an advisory opinion regarding whether he is prohibited by the Code of Ethics from participating in zoning board discussions and decision-making relative to an application for a dimensional variance allowing the applicant to construct a detached garage on property that is part of a subdivision, given that the Petitioner was the engineer for the subdivision.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, an alternate member of the Smithfield Zoning Board of Review, a municipal appointed position, who in his private capacity is a professional engineer, is not prohibited by the Code of Ethics from participating in zoning board discussions and decision-making relative to an application for a dimensional variance allowing the applicant to construct a detached garage on property that is part of a subdivision, notwithstanding that the Petitioner was the engineer for the subdivision.

The Petitioner is a member of the Smithfield Zoning Board of Review, having been appointed to that position by the Smithfield Town Council in December 2024. The Petitioner represents that he serves as a first alternate and, as such, he attends zoning board meetings and participates in discussions on matters presented before it. The Petitioner explains that he only participates in the zoning board's vote on a matter when an alternate is required in order to achieve a quorum.

The Petitioner states that before the zoning board is an application for a dimensional variance that would allow the applicant (homeowner) to construct a detached garage on his property. The Petitioner represents that the subject property is part of a subdivision comprised of approximately 32 or 33 single-family homes. The Petitioner states that he and the firm he previously owned were hired by the original owner (developer) to design

the subdivision. The Petitioner explains that he was the engineer in responsible charge and that his duties included, but were not limited to, designing the locations of the utilities, roadways, and drainage. The Petitioner represents that he completed the work for the developer in or about 2008, and that he was compensated for the services rendered with no outstanding balances remaining. The Petitioner states that he does not have any current business relationship with the developer nor does he have any existing or former business relationship with the homeowner. The Petitioner further states that no information that has been provided by the homeowner as part of the application package contains any plans that had been previously prepared by the Petitioner or his firm at the time, and that his previous work relative to the subdivision is not being challenged. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether, if called upon to do so in his capacity as an alternate member, he may participate in the zoning board's discussions and vote relative to the application for a dimensional variance.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, that is in substantial conflict with the proper discharge of his duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A public official will have an interest that is in substantial conflict with the proper discharge of his duties if it is reasonably foreseeable that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of the public official's activity, to the public official, any person within his family, his business associate, or any business by which he is employed or which he represents. R.I. Gen. Laws § 36-14-7(a). Additionally, § 36-14-5(d) prohibits a public official from using his position or confidential information received through his position 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 represents. Further, 520-RICR-00-00-1.2.1(A)(2) Additional Circumstances Warranting Recusal (36-14-5002) states that a public official must recuse himself from participation in his official capacity when his business associate or employer appears or presents evidence or arguments before his municipal agency. A business associate is defined as "a person joined together with another person to achieve a common financial objective." R.I. Gen. Laws § 36-14-2(3). A person is defined as "an individual or a business entity." § 36-14-2(7).

Here, the Petitioner represents that the applicant is not the Petitioner's current or former client. The Petitioner states that none of his plans relative to the development of the subdivision that were prepared for the developer are subject to the relief sought in the application. Therefore, the above-cited provisions of the Code of Ethics are inapplicable here. Accordingly, it is the opinion of the Ethics Commission that the Petitioner is not prohibited by the Code of Ethics from participating in zoning board discussions and/or voting relative to the application for dimensional variance discussed herein.

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, agency policy, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.

Code Citations:

§ 36-14-2(3)

§ 36-14-2(7)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Keywords:

Business Associate