

RHODE ISLAND ETHICS COMMISSION

Advisory Opinion No. 2026-9

Approved: April 14, 2026

Re: Lucien Benoit

QUESTION PRESENTED:

The Petitioner, a member of the North Smithfield Planning Board, a municipal appointed position, requests an advisory opinion regarding whether he is permitted by the Code of Ethics to attend and speak at public hearings before the planning board regarding the proposed subdivision and development of property that directly abuts his personal residence.

RESPONSE:

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the North Smithfield Planning Board, a municipal appointed position, is permitted by the Code of Ethics to attend and speak at public hearings before the planning board, regarding the proposed subdivision and development of property directly abutting his personal residence, based upon the application of 520-RICR-00-00-1.2.3 Public Forum Exceptions (36-14-7003) and subject to the conditions set forth herein.

The Petitioner is a member of the North Smithfield Planning Board, having been appointed to that position by the North Smithfield Town Council in 2022. He states that an application has been filed with the planning board for the approval of the subdivision and development of a parcel of land (property) directly abutting the Petitioner's personal residence, which he has owned since 1968.¹ The Petitioner notes that he has received an abutter's notice relative to the proposed subdivision and development of the property. He informs that a review of the application by the planning board is scheduled for mid-April and that he would like, upon recusal as a planning board member, to participate in the public hearing as a resident to offer his comments concerning traffic, drainage, and the health, safety, and welfare of his neighborhood associated with the proposed subdivision and development of the abutting property. The Petitioner anticipates that multiple hearings by the planning board would be required regarding this application and potential development. The Petitioner represents that he will recuse as a planning board member from the planning

¹ The Petitioner informs that the property that is the subject of the application is approximately 270 acres in size and it is proposed to be subdivided into 126 lots.

board's discussions and decision-making on the matter and that he would like only to participate in the public portion of the hearing as an abutting property owner, private citizen, and a town resident. Given this set of facts, the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics permits him to attend and speak at public hearings before the planning board regarding the proposed subdivision and development of the property.

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 official duties if he has reason to believe or expect that a "direct monetary gain" or a "direct monetary loss" will accrue, by virtue of his activity, to the official himself, 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 public office or confidential information received through his public office to obtain financial gain, other than that provided by law, for himself, his family member, his business associate, or any business by which he is employed or which he represents. The Code of Ethics also prohibits a 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)(a)-(c) Representing Oneself or Others, Defined (36-14-5016).

In matters 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. Therefore, as the Petitioner correctly anticipates, he is required by the Code of Ethics to recuse from official participation as a planning board member in all matters relating to the subdivision and development of the subject property.

However, the Code of Ethics contains a public forum exception that provides that there shall be no violation of the Code of Ethics "by virtue of any person publicly expressing 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). In past advisory opinions, the Ethics Commission has advised public officials about their rights under the public forum exception. See, e.g., A.O. 2019-41 (opining that a member of the Middletown Town Council could attend and speak at public hearings before the Middletown Planning Board and/or, potentially, the Middletown Zoning Board regarding the proposed development of property located across the street from her personal residence, provided that 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 could, upon recusal, attend and speak at a public hearing before the North Providence Historic District Commission regarding a proposed development of property that directly abutted her personal residence); A.O. 2003-15 (opining that a member of the Scituate Town Council could, upon recusal, attend and provide public comment at meetings of the zoning board regarding a special use permit application where he was an abutter, provided that he did not receive special access or priority not available to any other member of the public).

Here, based on the Petitioner's representations, and the prior advisory opinions interpreting the application of the public forum exception, it is the opinion of the Ethics Commission that the Petitioner may, pursuant to the public forum exception, appear before the planning board during the public comment portion of its hearings to offer his comments as a town resident concerning the proposed subdivision and development of the property that abuts the Petitioner's own residential property, provided that the Petitioner does not receive access or priority not available to any other member of the public. The Petitioner is further cautioned that he may not use his position in any way to influence members of the planning board regarding this matter. Nor is he allowed to use any confidential information received through his public office to obtain financial gain for himself, any person within his family, or his business associate. Finally, as he properly anticipated, the Petitioner is required to recuse from participation as a planning board member in the planning board's discussions and decision-making relative to this matter. All notices of recusal must be filed consistent with the provisions of R.I. Gen. Laws § 36-14-6.

This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. An advisory opinion rendered by the Commission, until amended or revoked by a majority vote of the Commission, is binding on the Commission in any subsequent proceedings concerning the person who requested the opinion and who acted in reliance on it in good faith, unless material facts were omitted or misstated by the person in the request for the opinion. 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 judicial or 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. 2019-41

A.O. 2017-11

A.O. 2012-4

A.O. 2007-18

A.O. 2006-37

A.O. 2003-15

Keywords:

Public Forum Exception

Property Interest

Recusal