



SHELTER ISLAND BOARD OF ETHICS

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Board of Ethics Opinion

30 March 2022

Re: Eklund/Opinion 1-2022

Question Presented:

Does a member of a Town Committee, who holds a mortgage on a property, have to recuse themselves on an issue in front of that Committee regarding that property?

Facts:

James Eklund has disclosed that he holds a mortgage on Ram's Head Inn (RHI), a commercial property which he and his wife sold last year to a new owner. Mr. Eklund is a member of the Shelter Island Waterways Management Advisory Council. The WMAC is currently considering a dock application in connection with the Ram's Head Inn. By email dated March 15, 2022, Mr. Eklund asked the Board of Ethics for an opinion on whether there is a conflict of interest regarding his position on the WMAC and his ability to vote in this matter.

Code:

Shelter Island Town Code Chapter 8, entitled "Ethics, Code of"

§ 8-1 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

TOWN Any board, commission, district, council or other agency, department or unit of the government of the Town of Shelter Island.

TOWN EMPLOYEE Any officer or employee of the Town of Shelter Island, whether paid or unpaid, whether serving a full-time, part-time or advisory capacity.

§ 8-2 Conflicts of interest

No Town employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest.

§ 8-3 Standards of Behavior

(F) Each Town employee shall abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

Analysis:

As a member of the WMAC, Mr. Eklund is a town employee. The Town Code makes clear that the same conflict-of-interest rules apply to all volunteer, unpaid advisory committee members as they do to full-time salaried municipal employees,

Mr. Eklund's disclosure of a holding a private mortgage on the Ram's Head Inn provides sufficient basis for us to find that he does have a significant private financial interest in matters related to Ram's Head Inn. The private financial interest potentially conflicts with his fiduciary duties as a public official on the WMAC in applications related to Ram's Head Inn.

We could ask for more information related to any involvement Mr. Eklund has had with the new owners – and Mr. Eklund has offered to furnish more information – but we assess it is not required in this instance. The mortgage disclosure alone is sufficient, in our opinion, to meet the threshold. The Town Code does not require any finding of actual misconduct but only of potential conflicting interest grounded in these facts.

We believe Mr. Eklund's disclosure of a private financial interest and his request to us for an advisory opinion represents the proper and ethical actions by him under these circumstances.

Conclusion:

In the unanimous opinion of the Board, Mr. Eklund has a potentially conflicting private financial interest and needs to disclose, recuse and abstain in WMAC deliberations concerning the Ram's Head Inn. Disclosure, recusal and abstention are the ethical actions to resolve this conflicting interest as long as Mr. Eklund is a town employee as a member of the WMAC. That is, disclosing his relevant private financial interests related to RHI as fully as possible to the WMAC; recusing himself from any role on the WMAC related to RHI; and abstaining from voting relating to RHI.

This goes beyond merely abstaining in a final vote. As the Office of the New York State Comptroller wrote in a 2021 report on this subject:

“Recusal and abstention occur when a municipal officer or employee does not participate in any decision or official action. Participating in a decision or official action includes, but is not limited to, any form of pre-decisional communications (including e-mails), informal or formal discussions, and voting on the matter.”

Thus, we find Mr. Eklund should leave the room (or Zoom room) entirely when RHI permit action is being discussed and refrain from any formal or informal contacts with other WMAC members on that subject.

These rules perhaps have not always been clear to Shelter Island Town advisory committee members. Solid conflict-of-interest and ethics principles for public officials will help increase public confidence in the integrity of their work and protect against unjustified attacks on people who are doing their best to follow the rules.

Please be guided accordingly.



Duff Wilson (Chair)

Michael DeSanctis

Deborah Grayson

Date: 3/30/22