

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

January 9, 2007

The Rhode Island Ethics Commission held its 1st meeting of 2007 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, January 9, 2007, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair James C. Segovis

**Barbara Binder, Vice Chair Frederick K. ButlerGeorge E. Weavill, Jr.,
Secretary* Ross Cheit**

Richard E. Kirby

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason M. Gramitt and Dianne Leyden; and Commission Investigators Steven T. Cross, Peter J. Mancini and Michael Douglas.

At approximately 9:14 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session

held on December 12, 2006. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, it was unanimously

VOTED: To approve the minutes of the Open Session held on December 12, 2006.

* Commissioner Weavill arrived at approximately 9:17 a.m.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Guy Asadorian, Jr., an East Greenwich Planning Board member. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present with his attorney, Wayne M. Kezerian. In response to Commissioner Weavill, the petitioner informed that the Planning Board has 7 members, in addition to 2 alternates, and his recusal would not create a problem. He advised that he purchased the property after his appointment. In response to Commissioner Kirby, he indicated that he has not closed on the property, as the sale is contingent on approval of the master plan. Commissioner Kirby noted that there is the future potential for an eleven lot subdivision, which he could pursue after he is off the Board for one year. The petitioner replied that he does not have plans to do so. Commissioner Weavill stated

that by then it would be an administrative subdivision of the property.

In response to Commissioner Weavill, the petitioner informed that his private employ relates to investments, mergers and acquisitions. Commissioner Weavill voiced his concern regarding issues relating to variances for an addition to the road, sidewalks and dead-ending of utilities, all of which would require appearances before the Board as a major development. The petitioner replied that he did not anticipate any problems and suggested there would be 5, 6 or 7 issues before the Board. Attorney Kezerian advised that in the past the Board has not treated these issues as variances and has accepted the staff recommendation. Commissioner Weavill stated that he would expect there to be major infrastructure improvements involved with such a large parcel, requiring a number of appearances before the Board.

In response to Chair Lynch, the petitioner stated that the seller put the contingency for subdivision approval in the purchase and sales agreement. He represented that if he does not receive an opinion, the seller will not wait the one year period and he will lose the property. Commissioner Kirby noted that he could still purchase it as raw, undivided property. Upon motion made by Commissioner Butler and duly seconded by Commissioner Binder, there was further discussion.

Commissioner Weavill indicated that this was not a hardship situation

and involved a major development with many appearances before the Board. Commissioner Kirby stated that the issue is losing the land due to lack of capital, as a bank would lend money for financing if it were a two lot subdivision. Commissioner Cheit asked why members were not moved by the fact that both lots would be for primary residences. Commissioner Weavill stated that the other residence would not be for him and that he suspected this is the beginning stage of a mini-development. Commissioner Kirby noted that he may not be on the Board when and if any future development is proposed. Commissioner Weavill voiced his concern that it would be an administrative subdivision at that point.

Attorney Kezerian disputed that financing is the issue and emphasized that a brother and sister would be investing substantially in a lot and there would be no profit realized regarding the development of either's house. Commissioner Weavill commented on the potential for future profit. Attorney Kezerian clarified that at least half of the parcel cannot be subdivided due to wetlands issues. Upon the original motion, it was

VOTED: To issue an advisory opinion, attached hereto, Guy Asadorian, Jr., an East Greenwich Planning Board member.

AYES: James C. Segovis, Ross Cheit and Barbara Binder.

NOES: James Lynch, Sr., Richard E. Kirby, Frederick K. Butler and

George E. Weavill, Jr.

The advisory opinion did not issue due to a lack of five affirmative votes.

The next advisory opinion was that of A. Robert W. Burns, Deputy Tax Assessor for the City of Pawtucket. Staff Attorney Leyden presented the Commission Staff recommendation. The petitioner was present with his attorney, George Hovarth. Commissioner Weavill recused himself and sat in the audience. The petitioner advised that in his supervisory capacity he has no discretion over the evaluation of real estate. He stated that he would only be able to change a value at the Tax Assessor's direction. He indicated his belief that his situation is distinguishable from the prior opinion issued to a Field Clerk in the Burrillville Tax Assessor's Office. He related that all of the information is available online.

In response to Commissioner Kirby, the petitioner represented that an out of town company asked him if he would perform evaluations in Pawtucket. Commissioner Cheit noted that the opinion would be different if the evaluations would not be taking place in Pawtucket. The petitioner indicated that he did not know how much work would be involved outside of Pawtucket. Commissioner Kirby suggested that his supervisory role and access to records as the Deputy Assessor distinguishes his situation from the Burrillville opinion. In response to Commissioner Kirby, the petitioner informed that he is a

full time municipal employee and his research would be done after hours, accessing online records from home. Staff Attorney Leyden voiced her discomfort with the petitioner's access to the records during working hours.

Commissioner Binder commented that the petitioner's job description states that he supervises staff in real estate assessments. The petitioner replied that assessment is a broad term and he is not responsible for assessing value. In response to Commissioner Kirby, he advised that he would not step in if the Assessor's position became vacant and the job would have to be posted. Commissioner Kirby voiced his concern about the petitioner being called as a witness regarding the process or technique used for private evaluations as opposed to for the municipality. Attorney Hovarth represented that the evaluations have a disclaimer that they are only for residential purposes. He distinguished the prior Burrillville opinion and referenced an opinion issued to former Deputy Secretary of State Tabella. Commissioner Segovis concurred, but clarified that he would not have voted for that prior opinion. He stated that the public needs to come to the City without a potential for influence in the process and suggested that the petitioner could perform evaluations outside of Pawtucket.

Upon motion made by Commissioner Cheit and duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Robert W. Burns, Deputy Tax Assessor for the City of Pawtucket.

***Staff Attorney Leyden left the meeting.**

The next order of business was that of James P. Durkin, a member of the Narragansett Town Council. Staff Attorney Gramitt presented the Commission Staff recommendation. The petitioner was present. Staff Attorney Gramitt explained that the petitioner did participate in the appointments pursuant to the safe harbor letter. In response to Commissioner Kirby, the petitioner provided an explanation of possible ramifications of the homestead provision, which in some places raise non-owner occupied taxes and decrease taxes for owner occupied properties. He represented that Narragansett has about 50% non-owner occupied properties. He indicated that the proposal would likely pass through the committee and be brought to the Council, but noted that the legislature must grant permission to implement the exemption, which would then have to be voted upon in November. He expressed his belief that he should be allowed to participate in the Council's vote, also.

Chair Lynch and Commissioner Kirby advised the petitioner that he would have to return to the Commission for further guidance. Commissioner Cheit referenced a recent opinion to Representative Malik, but then distinguished that Representative Malik would have actually served on the committee, rather than appoint its members.

Commissioner Segovis stated that who is appointed to a committee determines how the issue is studied. In response, the petitioner advised that the Council advertised and received 18 applications. All applicants were interviewed and the Council appointed those with the most votes, 2 or 3 of which were unanimous. Commissioner Cheit stated that the issue is moot, since he already made the appointments under the safe harbor letter, but it is clear that he needs to return to the Commission. Commissioner Weavill reminded the petitioner that the Code prohibits participation in matters that would have either a financial benefit or detriment to him. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to James P. Durkin, a member of the Narragansett Town Council.

***The Commission took a brief recess at 10:16 a.m. and reconvened at 10:28 a.m.**

At approximately 10:30 a.m. the Chair began the Public Hearing on proposed Nepotism and Revolving Door Regulations. A stenographic transcript of the proceedings is available at the Commission Offices.

The first item noticed for hearing was Regulation 36-14-5005.1 Prohibited Activities- Nepotism. Staff Attorney Gramitt provided a summary of the proposed regulation and advised of potential

concerns relating to sections 5 and 6. Upon motion made by Commissioner Kirby and duly seconded by Commissioner Binder to omit section 5 from the draft proposal, there was discussion. After discussion, Commissioners Kirby and Binder amended their original motion to omit sections 5 and 6 from the proposal. Upon further discussion, Commissioners Kirby and Binder withdrew their motions.

The Commission heard testimony from Kernan King, on behalf of OCG, Christine Lopes, Executive Director of Common Cause and William Cauleron of Common Cause.

* Commissioner Cheit left the meeting at 11:22 a.m. and informed that he would move to adopt Draft Regulation 5005.1 without the inclusion of sections 5 and 6.

* The Commission took a brief recess at 11:22 a.m. and reconvened at 11:28 a.m.

Upon motion made by Commissioner Binder and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To adopt Regulation 5005.1, with the exception of sections 5 and 6, and that the Commission finds that: there is a need for adoption, the regulation, as demonstrated in the record; there is no alternative approach among those considered that would be as

effective and less burdensome to affected private persons; the Commission has identified other state regulations which are overlapped or duplicated by the proposal and justified any overlap or duplication; and the proposal would not have a significant adverse economic impact on small businesses or any city or town.

The next item noticed for hearing was Regulation 36-14-5017 Prohibited Activities - Revolving Door, "Employment" Defined. Senior Staff Attorney D'Arezzo provided a summary of the proposal. There was no public testimony on the proposal. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To adopt Regulation 5017 and that the Commission finds that: there is a need for adoption, the regulation, as demonstrated in the record; there is no alternative approach among those considered that would be as effective and less burdensome to affected private persons; the Commission has identified other state regulations which are overlapped or duplicated by the proposal and justified any overlap or duplication; and the proposal would not have a significant adverse economic impact on small businesses or any city or town.

The next item noticed for hearing was Regulation 36-14-5018 Transition from State Employment. Senior Staff Attorney D'Arezzo provided a summary of the proposal.

There was no public testimony on the proposal. Upon motion made

by Commissioner Segovis and duly seconded by Commissioner Butler, it was unanimously

VOTED: To adopt Regulation 5018 and that the Commission finds that: there is a need for adoption, the regulation, as demonstrated in the record; there is no alternative approach among those considered that would be as effective and less burdensome to affected private persons; the Commission has identified other state regulations which are overlapped or duplicated by the proposal and justified any overlap or duplication; and the proposal would not have a significant adverse economic impact on small businesses or any city or town.

The last item noticed for hearing was Regulation 36-14-5007 Prohibition on State Employment. Senior Staff Attorney D'Arezzo provided a summary of the proposed amendment. The Commission heard testimony from Christine Lopes, Executive Director of Common Cause. Senior Staff Attorney D'Arezzo clarified that the proposal would not add independent contractors and consultants to the Code's jurisdiction, but would limit the ability of certain individuals already subject to the Code to have contracts with the state. Upon motion made by Commissioner Butler and duly seconded by Commissioner Binder, it was unanimously

VOTED: To amend Regulation 5007 and that the Commission finds that: there is a need for adoption, the regulation, as demonstrated in the record; there is no alternative approach among those considered

that would be as effective and less burdensome to affected private persons; the Commission has identified other state regulations which are overlapped or duplicated by the proposal and justified any overlap or duplication; and the proposal would not have a significant adverse economic impact on small businesses or any city or town.

At approximately 11:46 a.m., upon motion made by Commissioner Binder and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(4), to wit:

a.)Motion to approve minutes of Executive Session held on December 12, 2006.

At approximately 11:49 a.m. the Commission reconvened in Open Session. Chair Lynch reported that in Executive Session the Commission voted to approve minutes of the Executive Session held on December 12, 2006.

The next order of business was the Director's Report. Executive Director Willever informed that the investigative staff recently provided ethics training to the municipal police academy. He advised that he has contacted the new general officers and offered the Staff's services and training programs. He reported that there are ten

advisory opinions and six complaints pending.

Chair Lynch suggested that the Commission begin thinking of other regulatory actions it would like to consider and noted that the Governor previously submitted correspondence with some suggestions. Commissioner Segovis suggested that a new regulatory workshop schedule be established at the next meeting. Commissioners Kirby and Binder referenced the prior list of regulatory items for discussion. Chair Lynch asked the Staff to provide the list as time permits. Chair Lynch thanked Ms. Lopes and Mr. King for providing input on the regulations on behalf of Common Cause and OCG.

The next order of business was New Business. There being none, at approximately 11: 57 a.m., upon motion made by Commissioner Weavill and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary