

**MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION**

April 20, 2010

The Rhode Island Ethics Commission held its 8th meeting of 2010 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, April 20, 2010, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

Barbara R. Binder, Chair Frederick K. Butler*

Ross Cheit, Vice Chair Edward A. Magro

James V. Murray Mark B. Heffner

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt and Esme DeVault; and Commission Investigators Steven T. Cross and Gary V. Petrarca.

At 9:00 a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held on April 6, 2010. Upon motion made by Commissioner Magro and

duly seconded by Chair Binder, it was unanimously

VOTED: To approve minutes of the Open Session held on April 6, 2010.

ABSTENTIONS: James V. Murray and Ross Cheit.

The next order of business was that of 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 Greg Yalanis, RA, an alternate member of the Newport Zoning Board of Review. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was present.

***Commissioner Butler arrived at 9:03 a.m.**

In response to Commissioner Cheit, the Petitioner confirmed that the storefront has not been rented or leased in twelve or thirteen years. Commissioner Cheit commented that he did not understand the urgency of the situation. The Petitioner agreed that he could, in theory, just wait until he is no longer on the Board. However, he indicated that this is perfectly usable space in a community with a need for artisan or boutique type spaces. He informed that it had not been his priority for a number of years, as he had been distracted

with renovations and then moved out of the property three years ago. He stated that he has been approached a number of times over the years for rental of the space. He further informed that he is thinking of perhaps putting his own office in the space.

Commissioner Cheit noted the 150 years of prior use of the property, but he questioned whether it was the case that the property would fall into disrepair. The Petitioner represented that he would maintain it as empty space and it would remain unused while he is on the Board. In response to Commissioner Cheit, the Petitioner advised that he knew when he bought the house, prior to his appointment to the Board, that he would need a waiver regarding the property. Commissioner Cheit asked why there is a hardship. Staff Attorney DeVault stated that it is the Staff's opinion that the Petitioner ought to be able to use the space in some way. She noted that two of the three possible uses require him to go before the Zoning Board. She indicated that the third option is costly and difficult to accomplish structurally.

Commissioner Cheit expressed that it would seem more like a hardship if the space had not been left vacant for twelve years. Chair Binder noted that circumstances change over time. In response to Commissioner Heffner, the Petitioner clarified that the Town Planner had seemed shocked, and a bit critical of him, that he had not come to them sooner regarding the property, as he recognized that it is an empty store front in a great area. He confirmed that he is under no obligation to use the space. In response to Commissioner Heffner,

the Petitioner stated that he was appointed to the Board in January 2009. He advised that, when he submitted his application to the Town, the Assistant Solicitor told him that he would need to come to the Ethics Commission. He stated that, after speaking with Staff Attorney DeVault, he learned that he could not merely hire an attorney to represent himself before the Board to avoid the conflict.

In response to Commissioner Cheit, Staff Attorney DeVault clarified that the reference in the draft opinion to property falling into disrepair relates to the facts of a previously issued opinion. Commissioner Cheit expressed that, while he does not see any urgency here, he understands that the Petitioner cannot put this space to any use. Upon motion made by Commissioner Butler and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Greg Yalanis, RA, an alternate member of the Newport Zoning Board of Review.

At 9:18 a.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2)

and (4), to wit:

a.) Motion to approve minutes of Executive Session held on April 6, 2010.

**b.) In re: Brenda K. Gaynor,
Complaint No. 2001-32**

**c.) In re: Aisha W. Abdullah-Odiase,
Complaint Nos. 2001-34 & NF2002-1**

d.) Motion to return to Open Session.

At 9:20 a.m., the Commission returned to Open Session. The next order of business was a motion to seal minutes of the Executive Session held on April 20, 2010. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To seal minutes of the Executive Session held on April 20, 2010.

Chair Binder reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on April 6, 2010, by unanimous vote; and 2) received updates on the Gaynor and Abdullah-Odiase matters.

The next order of business was discussion regarding General Commission Advisory (GCA) Opinion No. 8- Architect Members of State and Local Historic Preservation Commissions Appearing before their Respective Agencies. Staff Attorney DeVault presented an overview of her memorandum and noted that she identified ten historic district commissions on which an historic architect serves. She informed that she recently spoke with a member of the Narragansett Historic District Commission who had previously served on the East Greenwich Historic District Commission. She advised that this individual questioned why the exception is so narrowly construed as to apply only to architects, when it could apply to other professionals working in the field, such as contractors dealing with historic renovations.

Staff Attorney DeVault indicated that it is the Staff's recommendation to withdraw the existing GCA 8 with the option of then adopting a new one, which would reference Regulation 5016. She informed that she has drafted a potential replacement. Chair Binder stated that she is not sure why historic architects would be different than virtually any other profession. Staff Attorney DeVault indicated that arguments in support of the original GCA had related to the fact that it involves a small pool of people and Providence, in particular, would be problematic. Chair Binder recalled a prior advisory opinion relating to an individual who designed wind turbines, a very specialized field, and stated that she did not believe that he had been allowed to appear before his own body.

Commissioner Magro recalled that last year a petitioner had represented that there were no other historic architects on Block Island. Chair Binder questioned why it should not be considered on a case-by-case basis. Staff Attorney DeVault indicated that Douglas Gilpin had made that point. Commissioner Cheit inquired if there is a need to have an architect on an historic district commission. Staff Attorney DeVault informed that Newport does not. Commissioner Cheit expressed that he could see the need for it if they need to have architects making decisions. In response to Chair Binder, Staff Attorney DeVault stated that Ted Sanderson, Executive Director of the State Historical Preservation and Heritage Commission, estimated that there are fifty or so historic architects in the state.

Chair Binder noted that a number of individuals represented that they have projects in the pipeline, but they likely would receive hardship exceptions if there is a change in the GCA. Commissioner Butler inquired if being an historic architect involves a sub-certification, a licensing process, or just holding one's self out as such. Staff Attorney DeVault referenced Mr. Sanderson's comment that there is no sub-certification, but there are federal standards. She stated that the individuals polled by Staff inquired how the Commission determines who is an historic architect. Staff Attorney DeVault indicated that she looked at how they held themselves out, as someone specializing in historic architecture.

Commissioner Butler suggested engaging in a case by case analysis and withdrawing GCA 8. He indicated that he does not believe it would result in a significant increase in advisory opinion requests. He expressed that he is troubled by the generalities of what constitutes an historic architect, particularly given that some historic district commissions function without them. He stated that, while he would like more information, he is inclined to withdraw the original GCA and adopt a substitute. Chair Binder asked that the issue be placed on the next agenda for further information and comments from those individuals who had expressed an interest, and a first vote to withdraw GCA 8.

The next order of business was a Legislative Update. Staff Attorney Gramitt advised that there is nothing to report, as the legislature is on break this week.

The next order of business was the Director's Report. Executive Director Willever advised that there are nine complaints and one advisory opinion pending. He reported that the 2009 Financial Statement is due by Friday, April 30th and that there will be a report on financial disclosure, including a statistical analysis, at a future meeting.

Commissioner Heffner asked Staff Attorney Gramitt to return to the podium, and he asked whether he had written to the members of the Senate Judiciary Committee, as previously instructed by the

Commission, to explain the Commission's absence from the Committee's hearing on Senate Bill 2051. Staff Attorney Gramitt confirmed that he had sent a letter as instructed and would provide Commissioner Heffner with a copy of the letter and a full listing of its recipients following the meeting.

The next order of business was New Business proposed for future Commission agendas. Chair Binder suggested that it would be a good idea for the Commission to have discussion regarding probable cause hearings and the information it receives. At 9:44 a.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Murray, it was unanimously

VOTED: To adjourn.

Respectfully submitted,

J. William W. Harsch

Secretary