

City of Bainbridge Island Ethics Board

Case # 2018-06

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Requested by Rasham Nassar

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This advisory opinion is issued under the authority granted to the Bainbridge Island Ethics Board, per Article III, Section F of the Ethics Program.

Discussion:

This advisory opinion has been written in response to a request for clarification on conflicts of interest. In this opinion we suggest the process for determining and disclosing a potential conflict of interest and lay out some guidelines around conflicts of interest for City Councilmembers and City Committee Members, with the understanding that every situation is different and that we continue to rely on the best judgment of individuals. Hence, this opinion offers a framework and not specific guidelines.

The intent behind conflict of interest disclosures is to ensure that a government body and the community it represents understands situations where an elected or appointed member faces potential personal benefit from actions or decisions made when acting in their official capacity. In reporting known or potential conflicts of interest, a member is allowing the governing body to understand and determine the extent of this risk. Such a process mitigates concerns the community may have around the intent of a decision and builds trust with the community the governing body represents. As stated in other advisory opinions, trust is hard to earn and easy to lose. Thus, the spirit of this framework is to help council and committee members err on the side of transparency and building trust.

At the core of a conflict of interest is the potential for personal benefit. Personal benefit can take many forms, but we generally associate it with monetary benefit which can be most easily identified. An example commonly cited would be a decision where a council or committee member benefits monetarily from an award for city business. Beyond this example, which shows clear direct benefit, one can point to other situations where benefit can come in the form of favorable treatment through a city regulation, zoning changes, or local improvement projects. In these examples, a council or committee member may benefit from a change that positively impacts the value of their property.

Bainbridge Island is a small community, and much of the work we entrust to our elected and appointed committees will involve decisions that impact everyone, hence it may be challenging to understand when there is a conflict of interest. Furthermore, decisions involving parts of the community or island often require participation and representation from affected citizens.

When determining whether a committee member should disclose a potential or apparent conflict of interest, the following criteria should be taken into consideration:

1. **Benefit:** Benefit, in the case of a conflict of interest, stems from the potential personal returns derived from a decision. Benefit may be seen as a potential incentive for an action. In the context of this framework, the expectation is that committee members

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are acting with the intent to represent the larger community, or the affected group, impartially and without the intent of personal benefit. So, the first question should be: could it appear that I have a potential benefit (monetary or otherwise) associated with the action at hand? If such a benefit can be defined, then look at:

- 2. Particularity:** As a community we all have a link to the island which does not require further clarification or declaration. However, in some cases the impact of the decision is closer to the decision-maker. When a policy decision benefits one or a small group of citizens, with less or no benefit going to the larger community, there is the potential for conflict of interest. This means that there is a further connection, such as in the case of a decision having a direct impact on a council or committee person's personal property, business, or locality which is narrower than the island and neighborhood they represent. Again, the benefit need not be monetary. Many decisions may appear to be related to a small group of people, but if there are no benefits to be derived from the action/decision, then there is likely not a conflict of interest.

This framework provides guidelines for those serving to use their judgment as to when to disclose a conflict of interest. Given that this is a small community, and many can draw some connection to a decision, a Council or Committee Member should look at how these criteria apply to their specific situation. A helpful tool is to consider the "appearance of a conflict" when considering a disclosure. Could the citizens of the island view a decision as having the appearance of a conflict?

Process:

The above may seem complicated and possibly difficult to apply. However, it is really rather simple. When in doubt, disclose promptly.

Consider your own situation and how it may be affected by the decision in which you are participating. Is your situation any different than any other citizen of the island? If there is any way, based on the conditions discussed above, in which the answer is "yes," then you should disclose this situation to the council or committee, explaining your circumstances. This disclosure must be done at the outset of a relevant discussion in order to serve the concerns about transparency. The option then is for the council or the committee to weigh in with whether they feel that your participation in the discussion and decision could be seen as bringing an unfair bias to the decision due to a conflict of interest (or even an appearance of a conflict). The council or the committee may choose to have you recuse yourself from the discussion and/or the vote. A key part of this process is to disclose, rather than to withhold and possibly taint the decision.

Specific Issues in this request for Advisory Opinion:

The key to understanding the situation in this request is found in the last paragraph immediately above. While the requestor posed the question in terms of owning private property with grandfathered non-conforming uses, critical area, wetland and stream buffers, and having active applications for new or after-the-fact building permits, that is NOT the issue in this case. Here, the situation is one of being in violation of land use codes and under enforcement orders, which is very different from most people on

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the island, and certainly different from other members of City Council. Further, minimizing the extent of violations worsens the visuals of the situation.

Additionally, it needs to be pointed out that this advisory opinion was deferred until the City Code Enforcement determination was issued, as the Ethics Board was aware that the request on its face did not address fully the matters on which the opinion would be based.

Advisory Opinion:

The way to deal with this issue would have been:

- to disclose the fact that there were anomalies being assessed by the City Code Enforcement Officer based on a citizen report,
- that these issues were likely significant,
- and that as a result, the City Councilmember should have **recused herself from voting** on matters of land use and zoning.

The matter of **ability to discuss** these land use and zoning issues would then have been determined after discussion and decision by the remaining members of the City Council. Uppermost in this process should have been their desire to uphold the fairness of decision-making, including the “appearance of fairness” which is the basis for the development of trust in the community.