

City of Bainbridge Island Ethics Board

Case # 2019-02

Date Filed: 10 January 2019

Complainant: Bonnie McBryan

Advisory Opinion Issued: 21 May 2019

I. Questions Presented:

Ms. McBryan requests an advisory opinion on whether a Councilmember, formally notified of a specific land use violation, should recuse herself from voting on any issue substantively related to land use and its regulation. In this case, should a councilmember engage in City Council discussion and vote on the designation of Critical Areas, the regulation of Critical Areas, the costs of permitting in Critical Areas, and the penalties for non-compliance with our city's laws — during the period of time when the violation exists. Is there any concern about a councilmember adjudicating their own cause or special interest?

II. Jurisdiction:

The focus of Ms. McBryan's request for an advisory opinion centers on whether there is a conflict of interest. Article II of the Ethics Program addresses conflicts of interest. Under Article III.E of the Ethics Program, members of the public are limited in their ability to request advisory opinions from the Ethics Board regarding alleged Article II violations. Specifically, Article III.E specifies only two situations where a member of the public can request an advisory opinion:

- Any person may request an opinion from the Ethics Board as to whether their own behavior has violated or might in the future violate the Code of Ethics or shared values and principles.
- Any person may request an advisory opinion from the Ethics Board regarding operating policies of the City Council or Citizen Committees and Commissions in relation to the Code of Ethics.

Neither situation appears clearly to apply to Ms. McBryan's request.

In acknowledging that Article III.E of the Ethics Program contains some ambiguity in who may request an advisory opinion, and in the interest of providing guidance on the ethical concerns raised by Ms.

McBryan in her request, the Ethics Board has decided to, on its own initiative as allowed under Article III.E.5 of the Ethics Program, prepare and publish this advisory opinion responding to Ms. McBryan's request.

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III. Background:

This case centers around Councilmember Rasham Nassar and her property¹ on Bainbridge Island. While participating in discussions related to land use, the Councilmember was involved in a series of code violations regarding her property.

At the January 8, 2019 City Council meeting during a discussion of ethics matters, Nassar read into the record a statement regarding a violation on her property, and indicated she had requested on December 20, 2018, an advisory opinion of the Ethics Board related to her ability to vote on land use regulations given the constraints on her property by critical areas, wetlands and grandfathered uses on the property. [Case #2018-06] In that statement, Nassar indicated that she was working to obtain an after-the-fact building permit only “for repairs to the historic and unrecorded storage shed/well pumphouse located in the critical area buffer, work undertaken due to tree fall in the winter of 2014, completed in January of 2015.”

IV. Applicable Provisions of the Ethics Program:

Article II.D.1 of the City’s Ethics Program states the following:

Applications of Conflict of Interest

Except as permitted in subsection (b) below, an elected official or member of a City Committee or Commission shall not directly, or indirectly through a subordinate or fellow officer, official or employee, take any direct official action on a matter on behalf of the City if he or she, or a member of the immediate family:

- a. Has any substantial direct or indirect contractual employment related to the matter;
- b. Has other financial or private interest in that matter (which includes serving on a Board of Directors for any organization); or
- c. Is a party to a contract or the owner of an interest in real or personal property that would be significantly affected by the action.

V. Findings:

Was it a conflict of interest for Councilmember Nassar to participate in land use discussions? **No.**

Based on the documents provided to the Ethics Board, Councilmember Nassar: (a) does not have any substantial direct or indirect contractual employment related to the matter; (b) does not have other financial or private interests in the matter; and (c) is not a party to a contract or the owner of interest in real or personal property that would be significantly affected by the action. Admittedly, Councilmember

¹ The property is jointly owned by Nassar and Reily-Gibbons. Only Nassar’s name will be used in connection with this complaint.

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Nassar does own property which apparently is encumbered by wetlands. Wetlands are a frequent topic of land use regulation on Bainbridge Island. However, nothing in the votes or actual land use regulations appears to benefit Councilmember Nassar any more than any other landowner. Therefore, Councilmember Nassar's actions do not violate the rules outlined in the Ethics Program for determining whether a conflict of interest exists in this situation.

In reviewing the documents related to this situation, the Ethics Board discovered that there was another issue not raised in the initial request for an advisory opinion, namely a potential violation of Article I C. 1. b.

Ethics Principle

1. Obligations to the public

- b. transparency and honesty in all public statements and written communications.

Since 2018, the City of Bainbridge Island Code Enforcement Officer has been engaged with Councilmember Nassar related to developments on her property. From documents obtained through a public records request, it became apparent to the Ethics Board that Councilmember Nassar was aware of multiple land use questions relating to the property dating back to at least 2018. The concern is that on January 8, 2019, in a public statement from the dais, Councilmember Nassar indicated that she was working to obtain an after-the-fact building permit only "for repairs to the historic and unrecorded storage shed/well pumphouse located in the critical area buffer, work undertaken due to tree fall in the winter of 2014, completed in January of 2015."

Nassar's statement did not accurately reflect her situation. Therefore, the Ethics Board finds that Councilmember Nassar did not meet the principles of transparency and honesty found in the City's Ethics Principles, Article I C. 1. b.

VI. Conclusion

While Councilmember Nassar is found not to have violated Article II of the Ethics Code, related to a conflict of interest, the Ethics Board does find that the obligation of Article I was not followed. The Ethics Board finds this important because the efficacy of government and its ability to deliver on the needs of the community is founded in the trust that a community has in that body. Trust is hard to earn and very easy to lose. It can be difficult to define tightly what behavior reflects the Core Values, and we do not propose a static definition of this behavior, yet instead we look towards what promotes trust and what erodes it.