



**CITY OF RYE**  
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**CONFIDENTIAL ADVISORY OPINION**

To: Councilmembers William Henderson, Josh Nathan and Lori Fontanes

From: Board of Ethics Chairperson Beth Griffin Matthews and Members Edward B. Dunn and Edward J. Stein.

Date: February 13, 2023

Re: Joint Request for Confidential Advisory Opinion related to participation in council actions regarding the proposed tree moratorium

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Dear Councilmembers Henderson, Nathan and Fontanes,

We refer to your requests on February 8, 2023 (from Councilmember Henderson) and February 10, 2023 (from Councilmember Nathan) for advisory opinions and Councilmember Fontanes' verbal inquiry on February 10 shortly before the Board meeting. Due to the similarities between the questions raised and in the efficiency of time, we have asked for your consent to provide a single opinion to all of you. All three of you have consented. The threshold question asked is "Whether it is appropriate for a councilmember to attend and vote on actions pertaining to the proposed tree moratorium at the upcoming February 15, 2023, council meeting?"

On February 10, 2023, the fully constituted Board of Ethics convened. Both Greg Usry and Kristen Wilson, Esq. recused themselves as a voting member of the Board. In Attorney Wilson's stead, Mark W. Blanchard, Esq. sat in as limited special counsel to the Board.

While a detailed history is not necessary here, several events we believe are pertinent to our ultimate findings. The pertinent facts as we know them are summarized as follows:

- On Thursday February 2, 2023, Mayor Josh Cohn, presenting himself as a "resident" and therefore not in his Mayoral capacity, inquired with Christian Miller about the property located directly behind his home on Turf Avenue and what the City's regulations permitted regarding tree removal. The Mayor, again presenting himself as a resident, also spoke with Corporation Counsel Kristen Wilson about what, if anything, could be done to stop the

clear cutting of the Turf Avenue property. Corporation Counsel mentioned there is always the option of a moratorium or, for more immediate relief, one could seek a temporary restraining order in court. In response to questions from the Mayor regarding pursuing the option for enacting a moratorium, Corporation Counsel explained the timeframes that would be necessary to notice a special meeting and then schedule a public hearing prior to adoption. The Mayor, so informed, then indicated that he would have to hand this issue off to the Deputy Mayor as he would be directly impacted by any decisions and therefore stated his recusal.

- On the evening of Thursday February 2, 2023, Councilmembers Bill Henderson, Josh Nathan and Lori Fontanes received a text from another Councilmember asking for their availability to attend a Special City Council meeting to occur on Monday February 6, 2023 for the purposes of starting the process to pass an emergency moratorium on "clear cutting" of trees on property in former councilmember Emily Hurd's neighborhood. The Councilmember stated that Emily Hurd and their neighbors were "beside themselves as a developer is looking to chop down a whole lot" in their neighborhood.
- Shortly thereafter, Councilmembers Henderson, Nathan and Fontanes learned that the property where trees were to be chopped down on Turf Avenue abutted the Mayor's property.
- On Friday, all three inquiring councilmembers (Henderson, Nathan and Fontanes) contacted the Councilmember who had requested a Special City Council meeting and advised her that they were concerned about the appearance of impropriety, due to the fact that this type of tree clearing activity had been going on for years and now they were being asked to take the emergency step of calling a special meeting to hurriedly pass a moratorium to stop an action that could and would be seen by many as the Council taking special or extraordinary action that benefitted the Mayor personally.
- As of Friday, February 3, Councilmembers Henderson, Nathan and Fontanes all indicated that they would not be attending and understood that the Mayor was going to recuse himself due to the proximity to his property.
- On Friday, February 3, Corporation Counsel corresponded with the six councilmembers (not the Mayor) addressing the concerns regarding the appearance of a conflict raised by some councilmembers and the Code of Ethics. She also mentioned in an email that Mayor Cohn's complaint was the only complaint she had heard relating to the clear cutting of the Turf Avenue property, in contrast to the broader public outcry that led to the initiation of the legislative process in connection with other recently adopted moratoria.
- Shortly after Corporation Counsel's email, concerned residents began emailing City staff highlighting the purported concern for the Turf Avenue property.
- On Friday February 3, 2023, the Special Meeting was publicly noticed because three Councilmembers called for it.
- On Saturday February 4, 2023, many trees on the Turf Avenue lot were lawfully cut down.
- The emergency meeting took place on Monday February 6, 2023, with three Councilpersons and the Mayor attending; due to the events on February 4, the Mayor no longer believed he had an actual conflict or that there was an appearance of a conflict.



## **Findings and Advisory Opinion**

It is our conclusion that any action taken by any of the Councilmembers in furtherance of the tree moratorium at the February 15, 2023, meeting would be cloaked with an appearance of a conflict or an impression of impropriety that would violate Section 15-10(B) of the City's Code of Ethics, which states:

An officer or employee of the City shall not by his/her conduct give reasonable basis for the impression that any person can unduly influence him/her or improperly enjoy his/her favor in the performance of his/her official duties or that he/she is affected by the kinship, rank, position or influence of any party or person.

Although not raised as a question by Councilmembers Henderson, Nathan and Fontanes, we find that the actions taken by the City Council leading up to the emergency meeting on February 6, 2023, did violate Rye City Code Section 15-10(B), because it appears that the primary reason the emergency meeting was called was to protect the trees on Turf Avenue immediately adjacent to the Mayor's property. We find that the extraordinary rush to call the meeting gives a "reasonable basis for the impression" that the Councilmembers who attended and voted at the February 6 meeting were influenced to take such action because of the proximity to the Mayor's property and to protect the Mayor's property and therefore to provide an elected official with a personal benefit. Moreover, we do not find that the clear cutting of the Turf property erases or negates any conflict or appearance of a conflict going forward with respect to the timing of City Council action relating to a tree cutting moratorium.

As such, we do believe that under these circumstances, an elected official could vote "no" or "abstain" on any actions relating to the February 15 public hearing without violating the City's Code of Ethics. Accompanying the "no" vote or abstention, the elected official could explain that it is not the substantive issue regarding trees that given rise to concern, but rather, the extraordinarily expedited process that led to calling for this emergency meeting and the setting of the public hearing that are the basis for the declination to vote in favor of an otherwise worthy legislative action. To remove the potential cloud of impropriety yet advance the substantive issue, the Council could simply re-commence the process with a newly called hearing on either a moratorium or on the proposed amendments to City Code Chapter 187 ("Trees").

We believe that the above opinion encompasses the primary questions as it relates to the Code of Ethics that all three of you have raised. Councilmember Nathan raised additional questions that have been referred to the Corporation Counsel for a response as the Code of Ethics is not implicated.

Respectfully submitted,

/s/

Beth Griffin Matthews, Edward B. Dunn, Edward J. Stein