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Received February 27, 2023
Westwood Town Clerk

December 23, 2022

Hon. Robert R. Gotti
Chair of the Westwood Select Board
580 High Street
Westwood, MA 02090

Re: Conflict of Interest –Participating in Hale Reservation
Conservation Land Matters – Response to State Ethics
Commission’s December 7, 2022 Correspondence

Dear Chairman Gotti,

As you will recall, on November 8, 2022, per your request, we provided a legal opinion as to whether you, in your capacity as Chair of the Select Board (“Board”), would violate the Commonwealth’s Conflict of Interest Law, G.L. c. 268A, by participating in the Board’s consideration of whether to approve a proposed Conservation Restriction designating the majority of the so-called “Hale Reservation” as conservation land. We opined that by doing so you would violate section 19(a) by participating in a particular matter in which you have a financial interest, unless, that is, you met the so-called “general policy” exception under subsection (b)(3). That exception allows an individual to participate in determinations of general policy when the municipal employee’s financial interest is shared with a substantial segment of the population of the municipality. A “substantial segment” means “generally 10% or more of the [Town’s] population.” We then examined whether the Conservation Restriction would affect the real values of property held by a substantial segment of the Town’s population and calculated the number of affected properties. That analysis resulted in a determination that approximately 17% of the residential property owners in Town would be affected.

The State Ethics Commission (“SEC”) responded to that opinion on December 7, 2022. While the SEC generally agreed with our analysis, it advised that “in order to meet the requirements of the exemption under § 19(b)(3), Mr. Gotti would need to demonstrate that at least 10% of the *population* of Westwood (as determined by the most recent federal census) held the same kind of financial interest in the designation of Hale Reservation as conservation land.” (emphasis in original). We have, therefore, revisited our analysis in light of the SEC’s comment letter.

Using the 2020 US Census data, we determined that the Town’s population is 16,266 which is divided among three Census Tracts. A copy of the Census Tract Map is attached (Exhibit 1). We overlaid that information with the map we had created identifying the affected neighborhood. As you will recall, we had identified the affected neighborhood by identifying the abutters, abutters to abutters and the neighborhood(s) closest to the Hale Reservation with direct foot or vehicle access, and asserted that all owners of property within this neighborhood would experience some financial impact as they too would all be affected by the restriction, or lack thereof, upon the Hale Reservation. A copy of that map is included hereto as well

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(Exhibit 2). Although none of the three Census Tracts align exactly with the affected neighborhood map, Census Tract 4122 includes most of the mapped area. A small portion of Census Tract 4121 is also included. We also incorporated the US Census population density figures in Census Tract 4122 to estimate the population in the mapped area based on the Town's ArcGIS system. The population density in Census Tract 4122 is 861.6 persons per square mile. The affected neighborhood is approximately 3.07 square miles. Accordingly, the estimated population within the affected neighborhood is 2,645 or approximately 16.26% of the Town's population. If we were to use the population density for Census Tract 4121, which is 1,878.5 persons per square mile, there would be an estimated population of 5,767 or approximately 35%. Using the population density for Census Tract 4122 is therefore the more conservative approach and results in an estimated 16.26% of the Town's population living in the affected neighborhood – which is nearly the same percentage we obtained when looking at the percentage of affected residential properties, i.e. 17%. Lastly, if we overlay the Census Tract Blocks upon the affected neighborhood, we can calculate a population of 3,148 within the affected neighborhood which results in approximately 19.35% of the Town's population.¹ The Census Tract Block map is attached (Exhibit 3) and the data is included in the attached spreadsheet (Exhibit 4). In other words, however viewed, it appears clear that significantly more than 10% of the Town's population comprises the homeowners within the affected neighborhood.

As the SEC stated in its December 7, 2022 letter, “Mr. Gotti could comply with § 19(b)(3) if he can demonstrate that at least 10% of the population of Westwood owned a home in the surrounding neighborhood of Hale Reservation.” Here, our best data indicates that approximately 17% of the Town's residential properties are in the affected neighborhood and approximately 16.26% of the Town's population comprises the homeowners there. Accordingly, it appears that the best available data indicates that the G.L. c. 268A, § 19(b)(3) exception applies in this context and that we can demonstrate that “at least 10% of the population of Westwood owns a home in the affected neighborhood.”

We are providing this revised opinion along with the referenced materials to the State Ethics Commission in accordance with 930 CMR 1.03(3). As you know, this an advisory opinion issued by a town counsel under G.L. c. 268A, § 22 and, ultimately, the authority to determine whether the foregoing conduct violates the Conflict of Interest Law resides with the State Ethics Commission, who provide such legal opinions on a case-by-case basis. In accordance with G.L. c.268A, § 22 and 930 CMR 1.03(3), I have filed a copy of this opinion with the Town Clerk and the State Ethics Commission. The Commission may respond within 30 days of receipt of this opinion in accordance with 930 CMR 1.03(2) & (3).

Very truly yours,



Brian Winner

Enc.

cc: Town Clerk
State Ethics Commission

¹ We eliminated one Census Block (Block #1010) which contains a large age-restricted multi-family rental property that could not be counted towards the population of homeowners.