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**Advisory Opinion
Wilton Council on Ethics
April 18, 2023**

Debra A. Bobbitt
TOWN CLERK

**Re: Conflict of Interest Question Concerning ARB/VDDAC Members Presenting
Projects Before P&Z**

Summary:

The Wilton Council on Ethics has been asked to review a request by a member of the Architectural Review Board and Village Design District Advisory Committee (ARB/VDDAC) as to whether members of the ARB/VDDAC acting solely as Owners Agent/Architect of Record may be prohibited from presenting their projects to the Planning & Zoning Commission (P&Z), on the basis of a conflict of interest. The Council on Ethics has determined that permitting presentations by the members of the ARB/VDDAC before P&Z on behalf of projects with which they are associated has the potential to create the appearance of a conflict of interest.

Rationale:

The Wilton Council on Ethics reviewed a request by a member of ARB/VDDAC as to whether "members of the ARB/VDDAC acting solely as Owners Agent/Architect of Record may be prohibited from presenting their projects to P&Z, on the basis of conflict of interest."

When reviewing whether a particular situation or practice creates a Conflict of Interest ("COI") the Council looks first to the Code of Ethics of the Town of Wilton ("Code"). Under the definitions in the Code, an "OFFICIAL" is any "person serving on any board..." and a "BOARD" is "Any board, committee, commission, council, authority, agency or other body of Town government..." Members of the ARB/VDDAC are covered by these definitions.

Sec. 3.3(B)(5) of the Code prohibits an Official from appearing (or acting in any material capacity) on behalf of private interests before any Board on which they serve. The Council was told by the individual requesting Council review that ARB/VDDAC members with project applications being reviewed by the ARB or VDDAC may not present before the ARB/VDDAC. Members with project applications before ARB/VDDAC recuse themselves from any discussion or votes matters before on ARB/VDDAC. Where possible, a staff member of the ARB/VDDAC member's firm may present the application and answer ARB/VDDAC questions.

P&Z has taken the position that the prohibition from presenting should also apply to ARB/VDDAC members who have projects before P&Z on the basis that an ARB/VDDAC member presenting to P&Z creates a Conflict of Interest. The question presented to the Council is whether the prohibition in the Code on presenting before "the Board on which they serve" should apply to ARB/VDDAC members with matters before P&Z, in order to avoid an actual or perceived Conflict of Interest.

Strictly speaking, the P&C and the ARB/VDDAC are different. The ARB/VDDAC has five members. The ARB members are nominated by P&Z and appointed by the Board of Selectman and also serve on, and as, the VDDAC (Zoning regulation 29-9k.2.b). The P&Z has seven members elected by the public. The ARB/VDDAC "serves in an advisory capacity only, ... charged with providing expert architectural guidance to applicants and design recommendations to the Planning and Zoning Commission in the review of certain commercial and non-commercial development applications." (Town of Wilton website: Village District Design Advisory Committee /Architectural Review Board.) Its recommendations to P&Z are "non-binding and advisory only." (Zoning regulation 29-9k.4.f) P&Z is a decision-making body, "responsible for overseeing land use and development activity within Wilton, ... making decisions based on established regulatory criteria." (Town of Wilton website: Planning & Zoning Commission.)

As decision makers, P&Z members fall under the Conflict of Interest rule of Sec. 7-148t of the Connecticut Code as it is "a municipal commission or board having any jurisdiction or exercising any power over any municipal land use or purchasing decisions." Sec. 7-148t parallels Wilton's Code as it prohibits covered members from appearing before or representing "any person, firm, corporation, or other entity in any matter pending before the commission or board." Sec. 7-148t doesn't strictly extend to the ARB/VDDAC because, as an advisory board, members of the ARB/VDDAC are not charged with exercising jurisdiction or power.

P&Z members are also prohibited from appearing by Sec. 8-11, which is even broader than Sec. 7-148t. Under Sec. 8-11, "no member of any zoning commission or board and no member of any zoning board of appeals or of any municipal agency exercising the powers of any zoning commission or board of appeals" may appear or represent an individual or entity on a pending matter before the board on which they sit and any agency exercising zoning or zoning appeals powers in the same municipality, whether or not they are a member of the board or commission hearing the matter. It's unclear whether Sec. 8-11 extends to the members of ARB/VDDAC since the ARB/VDDAC is not a zoning commission, board or municipal agency and it does not exercise "the powers of any zoning commission."

However, the Council does not look just at actual Conflicts of Interest. It also considers perceived Conflicts of Interest in meeting its charge of identifying conduct "incompatible with the proper discharge of duties in the public interest." In its definition of a Conflict of Interest, the Code of Ethics prohibits any official or employee from participating in any Town or board matter in which he or she has a financial interest or a personal interest. For this definition to apply, the official or employee must also have, "the authority ... to influence a decision or action by the Town or Board with respect to the matter."

The information provided to the Council indicates that members of the ARB/VDDAC do exercise influence. The P&Z can reject recommendations from the ARB/VDDAC, and it has occasionally done so. But the Zoning regulations require that the Commission "shall give due consideration" to reports of the VDDAC. The recommendations of the ARB/VDDAC are meant to reflect "expert architectural guidance." Under Zoning Regulations Section 29-9k.2.b, at least three members of the ARB are required to be a licensed architect, licensed landscape architect, or planner who is a member of the American Institute of Certified Planners, and the remaining members are to be selected on their competence in matters of design. For certain proposed developments, ARB/VDDAC review is automatic as is a second review if the plans are revised. The ARB encourages pre-application meetings. (Zoning regulation 29-9k.4.b) In some cases, the Town Planner sends potential applicants directly to ARB/VDDAC before moving the application to P&Z. In other words, the ARB wields influence with the public — giving guidance and constructive feedback to aid the reception an application will receive once it's filed with P&Z. Whether acting as the ARB or the VDDAC, the board wields influence with P&Z, sending it expert reports and recommendations.

In the Council's view, ARB/VDDAC's influence, potentially if presenting before P&Z, and actually with the public and P&Z when provided in the form of guidance, reports or recommendations, creates the perception of a conflict. Specifically, it is the Council's determination that permitting ARB/VDDAC members to present before P&Z risks creating the appearance that the ARB/VDDAC member is able to use their "position, or knowledge acquired through that position, which is not available to the general public, for the purpose of obtaining or furthering a financial interest or a personal interest." That is prohibited under Code section 3.3(B)(6).

In weighing the potential for an appearance of a Conflict of Interest, the Council was mindful of the need to avoid "discouraging participation in Town government by the talented and committed individuals on whose service the Town relies." The Council determined, however, that in this case, potential public perception of a conflict weighed more heavily than the possibility that qualified individuals with certain projects before the Town might be discouraged from serving on ARB/VDDAC.

Sources:

Town of Wilton, Code of Ethics: <https://www.wiltonct.org/home/links/code-ethics>

Zoning Regulations of the Town of Wilton, Connecticut, Sec. 29-J and 29-K:

<https://www.wiltonct.org/planning-zoning-department/pages/regulations-zoning-map-summaries-setbacksbulk-rqrmnts>

Connecticut General Statutes, 7-148t, 8-11 and 8-21:

<https://www.cga.ct.gov/current/pub/titles.htm>

Town Website: Village District Design Advisory Committee/Architectural Review Board,
Planning & Zoning Commission: <https://www.wiltonct.org/village-district-design-advisory-committee-architectural-review-board>

Submitted on behalf of the Council on Ethics

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Members:

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