



## BURGESS AND COMMISSIONERS OF MIDDLETOWN

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### Ethics Commission

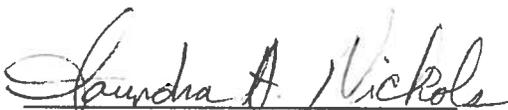
### Advisory Opinion 15-01

The Ethics Commission, pursuant to the Middletown Public Ethics Ordinance, Title 4 of the Middletown Municipal Code, convened on October 27, 2015 to hear a request for an advisory opinion. A member of the Middletown Planning Commission has requested an opinion as to whether his actions of submitting an application to the Middletown Board of Appeals for a variance with request to his own property, as well as testifying in furtherance of that application, constitutes a conflict of interest.

Section 4.16.060 of the Ethics Ordinance addresses representation by a current official or employee before a Town Board or Commission. However, this section is not relevant to the question presented here because Section 4.16.060 concerns representation by an official or employee "for contingent compensation". The subject Planning Commission member was not representing a party for contingent compensation; the Commission member was representing himself with respect to an application for his own property. Therefore, he may represent himself before the Board of Appeals. Prohibiting an official who serves on a Town Board of Commission from presenting an application for his own property would certainly have a chilling effect on the availability of qualified individuals to serve on the Town's Boards and Commissions.

Section 4.16.070 prohibits an official or employee from intentionally using the prestige of his office or his public position for private gain. However, the mere action of the Planning Commission member submitting an application concerning his own property and testifying before the Board of Appeals does not constitute using the "prestige of office or public position for private gain". In addition, there has been no evidence presented that he used the "prestige of his office" to obtain preferential treatment from the Board of Appeals.

In conclusion, the Ethics Ordinance does not prohibit a member of the Planning Commission from submitting an application with respect to his own property and testifying in furtherance of that application before the Board of Appeals.

  
Sandra A. Nickols, Chair

11/2/15  
Date