

Advisory Opinion 2026-04

Issued on April 2, 2026, by

The West Virginia Ethics Commission

Opinion Sought

A **County Planning Commission** asks whether its members who own property adjacent to the site of a proposed solar power plant may participate in zoning matters affecting the proposed project.

Facts Relied Upon by the Commission

The Requester asks whether its members, who own property adjacent to a proposed utility scale solar wholesale power generation project, may participate in and vote on matters associated with amending the county's zoning ordinance to further permit this use; by serving on the solar subcommittee, or by reviewing rezoning applications. The Requester's current zoning ordinance permits wholesale renewable energy production facilities (also known as utility-scale or industrial-scale facilities) only in industrial zones. The county planning commission is considering zoning amendments to address renewable energy production of all sizes and types in all zones, including allowing utility scale projects in agriculture zones.¹

The planning commission anticipates that a utility-scale solar developer will submit an application for a wholesale renewable energy production facility. The solar developer has leased around 3,000 acres of private property for the project from eight (8) property owners. The expected solar panel coverage area could exceed 1,000 to 1,500 acres and encompass all existing zoning districts.

The proposed solar power project's location is adjacent to land owned by 150 private property owners. Of these parcels, approximately 75 are small residential subdivision lots, and the remaining 75 are primarily used for residential and agricultural purposes.

¹ The Planning Commission will not entertain the possibility of rezoning the farmland to industrial to allow for this use.

The planning commission consists of 12 members who are appointed by the county commission. The Requester states that the planning commission has formed a zoning subcommittee to draft the proposed zoning amendments. The subcommittee makes ordinance revision recommendations to the planning commission that then must also be approved by the county commission.

A planning commissioner, identified here as Commissioner A, owns 58-acres of farmland and operates a storage business on two parcels of land, measuring 3.46 and eight (8) acres, all of which are situated adjacent to the solar project. He asserts that the storage business (on the 11.46 acres) would not be impacted by the proposed changes in zoning. The planning commissioner farms the land and raises cattle on the 58 acres. The county's zoning administrator provided detailed parcel maps showing the property boundaries and acreage of the adjacent owners.² The zoning administrator is also aware of the general use of the properties. The zoning administrator believes that Commissioner A is in a class of at least eight similarly-situated, adjacent property owners.

Another planning commissioner, identified here as Commissioner B, owns a farm of around 95 acres adjacent to the solar project. He raises cattle, sheep, and poultry on his farm. The zoning administrator believes Commissioner B is also in a class of at least eight similarly-situated, adjacent property owners.

Good neighbor agreement

In addition to being an adjacent property owner, Commissioner B was the recipient of an offer from the solar project's developer. This offer is referred to as a "good neighbor agreement." The agreement contains "non-interference" and "non-disparagement" clauses³ and offers a series of payments over time totalling \$25,000.

² The detailed parcel maps are not attached to this Opinion for confidentiality reasons as the Commission is required by law to keep the identity of the requester confidential. See W. Va. Code § [6B-2-3\(a\)](#).

³ The agreement states, "2. Non-interference. Landowner agrees not to interfere with Company's permitting, development, construction, operation, and maintenance of the Renewable Energy Project, including but not limited to, Company's efforts to complete

In exchange, the agreement calls for property owners to not interfere with the company's efforts to obtain land use permits and approvals or disparage the project and to keep the agreement confidential. This offer was presented to some but not all landowners in the immediate proximity of the proposed project. The planning commissioner states that he has not and will not sign the good neighbor agreement.

Provisions Relied Upon by the Commission

W. Va. Code § 6B-1-2(c) provides, in relevant part:

The Legislature finds that the state government and its many public bodies and local governments have many part-time public officials and public employees serving in elected and appointed capacities; and that certain conflicts of interest are inherent in part-time service and do not, in every instance, disqualify a public official or public employee from the responsibility of voting or deciding a matter; however, when such conflict becomes personal to a particular public official or public employee, such person should seek to be excused from voting, recused from deciding, or otherwise relieved from the obligation of acting as a public representative charged with deciding or acting on a matter.

W. Va. Code § 6B-2-5(b)(1) provides, in relevant part:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under

or obtain, as applicable, any land use permits and approvals, building permits, zoning variances, subdivision requirements, environmental impact reviews, taxation agreements, or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Renewable Energy Project. 3. Non-disparagement. Landowner agrees not to disparage Company or the Renewable Energy Project in any way or to take any action, whether written or oral, that is reasonably likely to harm, delay or otherwise adversely impact the Renewable Energy Project.”

this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

W. Va. Code § 6B-2-5(j) provides, in relevant part:

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class....

(2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or....

W. Va. Code § 6B-2-5(j)(3) provides, in relevant part:

For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the

period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall be reflected in the meeting minutes.

Advisory Opinion

Planning commission members must be “qualified by knowledge and experience in matters pertaining to the development of the county” and “must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, farming, government and other relevant disciplines. W. Va. Code § 8A-2-4(b)(2) and (d). Given the required credentials of planning commission members, situations may arise where a member may be financially affected by the official actions of the planning commission and its subcommittees. Such is the case today.

Public officials, generally, may not vote on or participate in a matter in which they have more than a limited financial interest. W. Va. Code § 6B-2-5(j)(1)(A). Planning Commissioners A and B, as adjacent property owners, presumably have financial interests in the development of the proposed solar energy development project.⁴ Recusal from voting, however, is not mandated in every situation in which a member’s financial interests are affected.

Class Exception

W. Va. Code § 6B-2-5(j)(2)(A) provides a “class exception,” stating that a “public official may vote... [i]f the public official... [is] affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses.” The Ethics Act further states that “a class shall consist of not fewer than five similarly situated persons or businesses.” W. Va. Code § 6B-2-5(j)(2)(A).

The Commission has addressed the class exception in zoning matters in several past opinions. The Commission, in [Advisory Opinion 2017-19](#), determined that members of a

⁴ This presumption is based on the Ethics Commission’s general understanding of the typical controversial nature of the effect of zoning for renewable energy uses on adjacent property owners. The Commission is not making an affirmative finding on whether the solar development would have a financial impact on the private property owners.

planning commission's subcommittee responsible for drafting a sign ordinance could participate in and vote on a zoning ordinance based on the class exception. This ruling applied despite the fact that the members used signs for their businesses, which were situated both within and outside the area covered by the zoning ordinance. The Ethics Commission determined that the planning commissioners could still participate in the zoning matters, including serving on the subcommittee, despite their potentially affected business interests. This was permissible because they belonged to a class of at least five individuals.

Further, in [Advisory Opinion 2016-13](#), a city council member asked whether she could vote or otherwise participate in matters pertaining to the development of a hillside close to her neighborhood. The Requester stated that she was similarly situated to around 700 other homeowners. She was opposed to the proposed development of the land which she thought may cause the residents' properties to flood. The Ethics Commission found that the city council member did not have a unique interest in the development of the hilltop, but instead was a member of a class of 700 similarly situated homeowners. Therefore, the Commission held that the council member could vote on and otherwise fully participate in all matters that came before the City and its boards, commissions, and committees concerning the development and land use of the hilltop property. In [Advisory Opinion 2018-09](#), a city intended to purchase property in a neighborhood where a council member lives. The city proposed to use the property for a city park. The Commission held that the class exception applied to the city council member because he was one of 28 property owners who would be similarly affected by the city's purchase of property.

Therefore, the Commission will address whether the Planning Commission members in this request are entitled to the "class exception" provided in W. Va. Code § 6B-2-5(j)(2)(A), above. The Commission notes that it is basing its conclusions on the facts and opinions presented to it by the Planning Commission through its zoning administrator. The Commission is not adjudicating whether these facts are correct or if the opinions held by the zoning administrator are correct.

According to the zoning administrator, Planning Commissioners A and B are each part of a distinct group of eight adjacent property owners. These groups are visually represented on the detailed parcel maps. The land owned by each parcel owner is classified according to its acreage and usage.

The Ethics Commission finds that Commissioners A and B are part of a class of five or more similarly situated persons, based on its review of the detailed parcel maps and the planning administrator's assertions. Consequently, Commissioners A and B are authorized to participate in all planning commission and committee matters related to the solar development project.

Good neighbor agreement

In addition to being an adjacent property owner, Commissioner B was the recipient of a good neighbor agreement offer from the solar project's developer. The agreement calls for property owners to agree not to interfere with the developer's efforts to obtain land use permits and approvals, disparage the project, or disclose the agreement's terms.

The Ethics Act prohibits public officials from voting on or otherwise participating in a matter in which they, an immediate family member, or a business with which they or an immediate family member is associated, has a financial interest. W. Va. Code § 6B-2-5(j)(1)(A). Commissioner B maintains that he has refused and will continue to refuse the solar developer's offer. The Ethics Commission concludes that this unaccepted offer, by itself, is insufficient to establish a prohibited financial interest in the solar development project for Commissioner B. However, should Commissioner B later accept the good neighbor agreement, his prior participation in the zoning commission's or its solar subcommittee's zoning decisions would subject him to the private gain provision of the Ethics Act, at W. Va. Code § 6B-2-5(b)(1).

The Ethics Commission concludes that the solar developer's offer of a good neighbor agreement to Commissioner B does not constitute a prohibited financial interest, given that the Commissioner did not accept the offer.⁵

This Advisory Opinion is based upon the facts provided. If all material facts have not been provided, or if new facts arise, the Requester must contact the Ethics Commission for further advice as it may alter the analysis and render this Opinion invalid. This Advisory Opinion is limited to questions arising under the Ethics Act, W. Va. Code §§ 6B-1-1 through 6B-3-11 and does not purport to interpret other laws or rules.

In accordance with W. Va. Code § 6B-2-3, this Opinion has precedential effect and may be relied upon in good faith by public servants and other persons unless and until it is amended or revoked or the law is changed.

/s/ Robert J. Wolfe

Robert J. Wolfe, Chairperson
WV Ethics Commission

⁵ First, a public official who signs a private agreement that effectively curtails their public duties raises serious questions of private gain. This situation would, at a minimum, necessitate the official's recusal from the public duties they were elected or appointed to perform. Second, the confidentiality provisions could make it impossible for an official to recuse themselves from voting, as the terms prohibit the disclosure of even the agreement's existence. Finally, the combination of confidentiality constraints and non-disparagement language in this type of agreement could be exploited by a developer to intentionally manufacture a conflict of interest for a commission member, thereby disqualifying that member from participating in the relevant zoning matter.