

JUDICIAL REVIEW COUNCIL

IN RE: HON. HOWARD F. ZOARSKI

APRIL 17, 1991

MEMORANDUM OF DECISION

UNDERLYING PROCEEDINGS:

On or about July 25, 1990, the Judicial Review Council received a complaint concerning the Honorable Howard F. Zoarski, a Judge of the Superior Court for the State of Connecticut. (See Council's Exhibit A.)

This complaint was filed by Attorney Roy H. Erwin, which in essence, alleged that Judge Zoarski acted improperly in hearing and deciding a case entitled Weatherly v. Town Plan and Zoning Commission of the Town of Fairfield, et al, Docket No. CV 88 0248618S Judicial District of Fairfield at Bridgeport.

The Judicial Review Council found probable cause to believe that Judge Zoarski had acted improperly and filed the following charges against him, to wit:

CHARGE I:

The Judicial Review Council alleges that Howard F. Zoarski, a judge of the Superior Court, engaged in conduct constituting a wilful violation of Canon 3C(1)(c) of the Code of Judicial Conduct and charges that:

On or about July 18, 1989, the respondent failed to disqualify himself in the case of Weatherly v. Town Plan and Zoning Commission of the Town of Fairfield, et al, No. CV 88 02486185 Judicial District of Fairfield at Bridgeport, when his impartiality might reasonably be questioned since he and his spouse had an interest that could be substantially affected by the outcome of the proceeding.

CHARGE II:

The Judicial Review Council alleges that Howard F. Zoarski, a judge of the Superior Court, engaged in conduct constituting conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute and charges that:

FIRST COUNT:

On or about July 18, 1989, the respondent failed to disqualify himself in a case Weatherly v. Town Plan and Zoning Commission of the Town of Fairfield, et al, No. CV 88 0248618S Judicial District of

Fairfield at Bridgeport, when his impartiality might reasonably be questioned since he and his spouse had an interest that could be substantially affected by the outcome of the proceeding.

SECOND COUNT:

On or about May 25, 1990, the respondent filed a second subdivision application with the Town of Branford Planning and Zoning Commission, identical to one that had been previously denied seeking approval of a subdivision lot fronting on a town street that was not of appropriate width. The first subdivision application filed by respondent had been denied on May 22, 1989, because the applicant had failed to provide for a proper widening of the street in violation of a zoning provision of the Branford Zoning regulations. The Weatherly case in the Town of Fairfield involved a similar zoning regulation and the respondent in deciding the Fairfield case held the application of the similar zoning regulation in Fairfield illegal. When he filed his second application with the Town of Branford, his attorney on his behalf, cited the Fairfield decision, decided by respondent, as authority for the respondent's claim that the Branford regulation was also illegal. (See Council's Exhibit B.)

The Judicial Review Council, pursuant to its statutory mandate, conducted a public hearing on December 20, 1990; January 25, 1991; and April 11, 1991, wherein Judge Howard F. Zoarski appeared with counsel, testimony was received and Council's Exhibits A through K were entered and respondent's Exhibits 1 through 18 were entered as of record appears.

Based upon a clear and convincing standard of proof, the Council reaches the following Finding of Facts and Conclusion, to wit:

FINDING OF FACTS:

The respondent resides in the Town of Branford, State of Connecticut, and he and his spouse, Elizabeth H. Zoarski, own property located at 10 Pleasant Point Road, Branford, Connecticut 06405.

The respondent's property abuts Pleasant Point Road.

On or about March 13, 1989, the respondent filed with the planning and zoning commission of the Town of Branford an application for approval of a two-lot subdivision of his property located at 10 Pleasant Point Road, which property abuts an existing town street.

The Town of Branford, pursuant to its Subdivision Regulation 4.3.12 entitled, "Existing Streets", sought to have the respondent dedicate to the Town of Branford a ten-foot strip of his property abutting Pleasant Point Road, in order for the Town of Branford to widen Pleasant Point Road at some unspecified time in the future.

The respondent filed two maps with his application for approval, namely, subdivision map dated March 13, 1989, revised March 22, 1989 and a site development plan dated March 13, 1989 and again revised March 22, 1989. Both maps delineate a portion of the respondent's property to be conveyed to the Town of Branford. (See Council's Exhibit E.)

On or about May 4, 1989, the respondent filed with the Branford Planning and Zoning Commission a memorandum, prepared by himself, wherein he claims that the Town of Branford's existing street regulation is invalid.

Sometime between May 4, 1989, and May 18, 1989, the respondent discussed with the Branford Town Attorney his opinion that the Branford "existing street" regulation is invalid and did withdraw his offer to convey a ten-foot strip of property to the Town of Branford.

Thereafter, on May 18, 1989, the Branford Planning and Zoning Commission, during its public hearing, denied the respondent's application for subdivision, noting that this proposed subdivision does not provide for proper widening of the right of way of the abutting street, as required by Section 4.3.12 of the Branford zoning regulations.

On June 1, 1989, the respondent appealed this subdivision denial to the Superior Court for the Judicial District of New Haven, which case was ultimately dismissed on or about November 1, 1989.

In the Spring of 1989, the Administrative Judge for the Judicial District of Fairfield (Thim, J.) assigned the case of Weatherly v. Town Plan and Zoning Commission of the Town of Fairfield, et al, to the respondent for a hearing and decision.

On July 18, 1989, the respondent, sitting in the Fairfield Judicial District Aheard the case of Weatherly v. Town Plan and Zoning Commission of Fairfield. This case involved a request to subdivide a residential piece of property into two lots. The property was located in the Town of Fairfield and the town had an "existing streets" regulation (2.1.10), which was very similar to the "existing streets" regulation in Branford.

On July 21, 1989, the respondent filed his memorandum of decision in Weatherly, holding Fairfield's "existing streets" regulation invalid.

Thereafter, the Town of Fairfield appealed the respondent's decision in Weatherly to the appellate court. The appellate court on July 26, 1990, released its Weatherly decision, wherein it reversed Judge Zoarski. (See Council's Exhibit H.)

In November of 1989, the respondent retained Attorney Donegan to represent him in a second subdivision application in Branford. The respondent forwarded to Attorney Donegan in January of 1990, a copy of his decision in Weatherly and informed Attorney Donegan that this case was on appeal.

On May 25, 1990, the respondent, through his attorney, filed with the Branford Planning and Zoning Commission, a second virtually identical subdivision application. The maps filed by the respondent with the second application did not show a ten-foot strip of land to be deeded to the Town of Branford.

On June 15, 1990, Attorney Donegan had a telephone discussion with Branford's counsel, Attorney Church, and informed him that the Superior Court decision in Weatherly supports the respondent's position that Branford Regulation 4.3.12 is illegal and invalid and consequently, no property must be deeded to the Town of Branford.

Again, on June 15, 1990, Attorney Donegan had a discussion with the respondent wherein it was decided that they would not go forward with the respondent's second subdivision application at this time, but instead would wait a couple of weeks for the appellate court's decision in Weatherly.

On July 26, 1990, after the appellate court's decision was released, the respondent did reach an agreement with the Branford Planning and Zoning Commission wherein on October 4, 1990, the respondent granted a ten-foot easement to the Town of Branford. (See Council's Exhibit F.)

CONCLUSION:

The Judicial Review Council concludes that by clear and convincing evidence.

I. The respondent, Honorable Howard F. Zoarski, is guilty of Charge I in that his conduct constitutes a wilful violation of Canon 3C(1)(c) of the Code of Judicial Conduct when on or about July 18, 1989, he failed to disqualify himself in the case Weatherly v. Town Plan and Zoning Commission of the Town of Fairfield, et al, No. CV 88 024836185 Judicial District of Fairfield at Bridgeport, since he and his spouse had an interest that could be substantially affected by the Outcome of the proceeding; and

II. The respondent, Honorable Howard F. Zoarski, is guilty of the First Count of Charge II, in that the respondent engaged in conduct constituting conduct prejudicial to the impartial and effective administration of justice which brings the judicial office in disrepute, when on or about July 18, 1989, he failed to disqualify himself in case Weatherly v. Town Plan and Zoning Commission of the Town of Fairfield, et al, No. CV 88 0248618S Judicial District of Fairfield at Bridgeport, when his impartiality might reasonably be questioned since he and his spouse had an interest that could be substantially affected by the outcome of the proceeding;and

III. The respondent, Honorable Howard F. Zoarski, is not guilty of the Second Count of Charge II in that there lacks clear and convincing evidence to support this charge.



The Judicial Review Council hereby recommends a public censure  
of Judge Howard F. Zoarski.

THE JUDICIAL REVIEW COUNCIL

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BY

Two handwritten signatures in black ink. The first signature is a cursive 'S' followed by 'W B'. The second signature is a cursive 'R' followed by 'S B'.

S. William Bromson, Chairman  
Rebecca S. Breed  
Michael J. Daly  
John Donnelly, M.D.  
G. Sarsfield Ford, J.  
James M. Higgins, J.  
Richard C. Lee  
Daniel J. Mahaney  
Howard J. Moraghan, J.