

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2022-21

Approved: June 28, 2022

**Re: Diane Harrison**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Jamestown Planning Commission, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits her from participating in Planning Commission discussions and voting relative to a proposed plan to develop affordable housing units in the Town of Jamestown, given that authorized representatives of the Conanicut Island Land Trust, a private organization for which the Petitioner previously performed paid work but currently provides volunteer services, are expected to provide comment on the proposed plan during public hearings of the Planning Commission.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Jamestown Planning Commission, a municipal appointed position, is not prohibited by the Code of Ethics from participating in Planning Commission discussions and voting relative to a proposed plan to develop affordable housing units in the Town of Jamestown, notwithstanding that authorized representatives of the Conanicut Island Land Trust, a private organization for which the Petitioner has previously performed paid work but currently provides volunteer services, are expected to provide comment on the proposed plan during public hearings of the Planning Commission.

The Petitioner is a member of the Town of Jamestown (“Town” or “Jamestown”) Planning Commission (“Planning Commission”), having been appointed to serve in that capacity by the Jamestown Town Council in February 2022. The Petitioner states that the Planning Commission is composed of seven members who vote on a variety of Town planning issues, including affordable housing, public facilities planning, environmental conservation, and community and economic development.

The Petitioner represents that there is currently pending before the Planning Commission a proposal by Church Community Housing Corporation (“CCHC”), a nonprofit developer based in Newport, for the development of affordable housing units on Carr Lane in Jamestown on property that is currently owned by the Town and has an intended use for conservation and/or affordable housing (“subject property” or “Carr Lane”). The Petitioner further represents that the subject property is located in a watershed area, which means that the land feeds into the reservoir and is therefore considered environmentally fragile. The Petitioner explains that watershed areas in Jamestown allow for one home to be located per five acres of land. She further explains that the

subject property currently contains one single-family home located on 6.3 acres. The Petitioner states that the CCHC has proposed preserving five acres of the subject property, and selling the existing home at market value in order to fund the construction of two additional single-family homes on the subject property, resulting in the location of three single-family homes on 1.3 acres, at least two of which would be designated as affordable housing. She adds that the CCHC would be required to seek approval for numerous variances in order to achieve this.

The Petitioner states that she learned by reading an article in the local newspaper that the Conanicut Island Land Trust (“Land Trust”) is opposed to the proposed development of affordable housing on the subject property. The Land Trust is a private nonprofit organization that promotes the preservation of natural resources in Jamestown.<sup>1</sup> The Petitioner further states that, while she is not now, nor has she ever been, a member of the Land Trust, she has assisted the Land Trust with the creation of an annual appeal mailer since 2016. She explains that the appeal mailers are intended to raise money for the Land Trust and that they are mailed each year to approximately two thousand people, including current Land Trust members being asked to renew their membership and to a number of Jamestown residents in an effort to solicit donations. The Petitioner states that, from 2016 through 2019, she billed the Land Trust at a discounted rate for her graphic design of the appeal mailers; whereas, from 2020 through the present, she has donated her graphic design services to the Land Trust. The Petitioner represents that she intends to continue to volunteer her services to assist the Land Trust with that organization’s annual fundraising efforts.

The Petitioner anticipates that an authorized representative of the Land Trust will appear before the Planning Commission in the near future to offer public comment on the proposed development of affordable housing on Carr Lane. She explains that the Land Trust is not an abutter to the subject property; nor did the Land Trust receive any notices from the Town regarding any hearings associated with the proposed project. The Petitioner adds that the Land Trust is involved only in its capacity as an organization concerned with the impact of the proposed project on the Town’s watershed, which is consistent with the Land Trust’s mission. It is in the context of these representations that the Petitioner seeks guidance from the Ethics Commission regarding whether the Code of Ethics prohibits her from participating in Planning Commission discussions and voting relative to the proposed plan to develop affordable housing units on Carr Lane.

No person subject to the Code of Ethics shall engage in any business, employment, transaction or professional activity which is in substantial conflict with the proper discharge of her duties or employment in the public interest. R.I. Gen. Laws § 36-14-5(a). A substantial conflict of interest exists if a public official has reason to believe or expect that she, any person within her family, her business associate, or any business by which she is employed or which she represents will derive a direct monetary gain or suffer a direct monetary loss by reason of her official activity. Section 36-14-7(a). Additionally, the Code of Ethics prohibits a public official from using her public office or confidential information received through her public office to obtain financial gain for herself, any person within her family, her business associate, or any business by which she is employed or which she represents. Section 36-14-5(d). A business associate is defined as “a person joined together with another person to achieve a common financial objective.” Section 36-14-2(3).

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<sup>1</sup> <https://conanicutlandtrust.org> (last visited on June 8, 2022).

Under the Code of Ethics, a public official must also recuse from participation in any matter where her business associate or employer, or a person authorized by her business associate or employer, appears or presents evidence or arguments before her municipal agency. Commission Regulation 520-RICR-00-00-1.2.1(A)(2) & (3) Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”).

The Ethics Commission has consistently required public officials to recuse themselves from consideration of matters under circumstances where the public official had an ongoing business relationship with an individual or entity that was appearing before his or her public body. See, e.g., A.O. 2016-45 (opining that a member of the Tiverton Planning Board (“Planning Board”) was prohibited from participating in Planning Board discussions and voting relative to a matter in which her business associate appeared as an expert witness, given that they had worked together professionally in the past on projects, often referred work and clients to each other, and would continue to refer work and clients to each other); A.O. 2005-64 (opining that a member of the Burrillville Redevelopment Agency (“Agency”) could not participate in discussions or votes on matters coming before the Agency regarding a nonprofit developer’s request for approval of a project, given that the petitioner was a partner in an accounting firm that provided accounting services to that developer on a continuing basis).

In determining whether a relationship between two parties constitutes an ongoing business association, the Ethics Commission examines, among other things, whether the parties are conducting ongoing business transactions, have outstanding accounts, and/or whether there exists an anticipated future relationship between the parties. See, e.g., AO 2010-16 (opining that a member of the East Greenwich Planning Board (“EGPB”) who in his private capacity was the publisher of a local news and information website, was required to recuse when a business associate appeared before the EGPB, specifically, if the business associate then-currently advertised on the petitioner’s website, had outstanding accounts, or when there was an anticipated future relationship between the parties).

However, in prior advisory opinions issued, the Ethics Commission has determined that public officials who made annual contributions and volunteered their services to private organizations, but who were neither officers nor members of the Board of Directors for those organizations, and who did not hold any type of leadership position that would have allowed them to affect the financial objectives of those organizations, were not business associates of those organizations. For example, in Advisory Opinion 2014-29, the Ethics Commission opined that a member of the North Smithfield Planning Board (“NSPB”), who was also a general, non-voting member of the North Smithfield Land Trust (“NSLT”), a private nonprofit entity, was not required by the Code of Ethics to recuse from participating in NSPB matters relating to the NSLT, notwithstanding that the petitioner made annual contributions and participated in a variety of volunteer activities for the NSLT, including property clean-up, trail clearing, fundraising, education, and attending NSLT meetings. The Ethics Commission determined that the petitioner’s status as a volunteer, member, and contributor to the NSLT did not constitute a business associate relationship as that term is defined in the Code of Ethics, because the petitioner did not hold a leadership position that would have allowed him to affect the financial objectives of the NSLT. See also A.O. 2008-35 (opining that a Tiverton Zoning Board (“TZB”) member’s general membership and annual contributions to the Tiverton Land Trust (“TLT”), a private nonprofit organization, did not constitute a business

associate relationship with the TLT and, thus, she was not required to recuse from TZB matters involving the TLT); A.O. 2002-4 (opining that a Burrillville Budget Board member could participate in the town's budgetary process relating to the Jesse M. Smith Memorial Library given that, as an unpaid volunteer, the petitioner was not a business associate of the library).

Here, the Petitioner states that she has assisted the Land Trust with the creation of an annual mailer since 2016, has been doing so on a voluntary basis and without compensation since 2020, and that she intends to continue to volunteer her services to assist the Land Trust with that organization's annual fundraising efforts in the future. Consistent with the advisory opinions cited above, these representations by the Petitioner do not evidence that the Petitioner and the Land Trust are business associates under the Code of Ethics. Therefore, Regulation 1.2.1(A)(2) does not require the Petitioner to recuse herself from participating in matters before the Planning Commission when an authorized representative of the Land Trust appears to present evidence or arguments before the Planning Commission.

Even if the Petitioner were to be considered a business associate of the Land Trust, Regulation 1.2.1(B)(2) contains an exception whereby a person subject to the Code of Ethics is not required to recuse herself when her business associate or employer, or a person authorized by her business associate or employer to appear on behalf of her business associate or employer, is before her municipal agency during a period when public comment is allowed, to offer comment on a matter of general public interest, provided that all other members of the public have an equal opportunity to comment, and further provided that the business associate or employer is not otherwise a party or participant, and has no personal financial interest, in the matter under discussion. This exception focuses on unique situations, not otherwise contemplated by Regulation 1.2.1(A), where a public official's business associate or employer appears or presents evidence before the public official's agency on a matter in which the person appearing has no financial interest and is not otherwise a party or participant.

In Advisory Opinion 2021-6, the Ethics Commission opined that a member of the North Smithfield Planning Board was not prohibited by the Code of Ethics from participating in planning board discussions and voting relative to a particular solar project application, notwithstanding that representatives of the North Smithfield Heritage Association ("NSHA"), a private nonprofit organization for which the petitioner served as a member of the Board of Directors and its President had offered, and were likely to again offer, public comment on the application during public hearings of the planning board, provided that the requirements of Regulation 1.2.1(B)(2) were satisfied. See also A.O. 2015-34 (opining that a member of the Westerly Planning Board was not prohibited by the Code of Ethics from participating in the planning board's consideration of a major land development application, notwithstanding that the petitioner was a member of the Board of Directors of Greater North End Community Development, Inc. ("North End"), and that her fellow board members, or other representatives of that organization, were likely to provide comment during the public hearing for that application, under circumstances where the petitioner's business associates were not parties or participants in the application; did not own property within 200 feet of the perimeter of the subject property; and did not have any financial interest in the outcome of the application).

Here, the Petitioner represents that the Land Trust is not a party or participant in the proposed development of affordable housing on Carr Lane; is not an abutter to the subject property; and is involved only in its capacity as an organization concerned with the impact of the proposed project on the Town's watershed. Further, the appearance by the Land Trust or its authorized representative is anticipated during a period of public comment in which all members of the public will have an equal opportunity to comment. In summary, based on the Petitioner's representations, the applicable provisions of the Code of Ethics, and consistent with prior advisory opinions issued, it is the opinion of the Ethics Commission that the Petitioner is not required to recuse herself if the Conanicut Island Land Trust, or its authorized representative, appears before the Jamestown Planning Commission, because the Petitioner and the Land Trust are not business associates. Further, even if they were business associates, the appearance before the Planning Board by the Land Trust or its authorized representative would be during a period of public comment consistent with the provisions of Regulation 1.2.1(B)(2).

**This Advisory Opinion is strictly limited to the facts stated herein and relates only to the application of the Rhode Island Code of Ethics. Under the Code of Ethics, advisory opinions are based on the representations made by, or on behalf of, a public official or employee and are not adversarial or investigative proceedings. Finally, this Commission offers no opinion on the effect that any other statute, regulation, ordinance, constitutional provision, charter provision, or canon of professional ethics may have on this situation.**

Code Citations:

§ 36-14-2(3)

§ 36-14-5(a)

§ 36-14-5(d)

§ 36-14-7(a)

520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002)

Related Advisory Opinions:

A.O. 2021-6

A.O. 2016-45

A.O. 2015-34

A.O. 2014-29

A.O. 2010-16

A.O. 2008-35

A.O. 2005-64

A.O. 2002-4

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