

# RHODE ISLAND ETHICS COMMISSION

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## Advisory Opinion No. 2023-14

Approved: March 7, 2023

**Re: John Preiss**

### **QUESTION PRESENTED:**

The Petitioner, a member of the Coventry Planning Commission, a municipal appointed position, requests an advisory opinion regarding whether the Code of Ethics prohibits him from participating in Planning Commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property, given that: 1) the development would be located on land that is in close proximity to the Petitioner's personal residence; and 2) representatives of a private neighborhood association to which the Petitioner belongs are expected to appear before the Planning Commission to provide public comment about the development.

### **RESPONSE:**

It is the opinion of the Rhode Island Ethics Commission that the Petitioner, a member of the Coventry Planning Commission, a municipal appointed position, is not prohibited by the Code of Ethics from participating in Planning Commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property, notwithstanding that: 1) the development would be located on land that is in close proximity to the Petitioner's personal residence; and 2) representatives of a private neighborhood association to which the Petitioner belongs are expected to appear before the Planning Commission to provide public comment about the development.

The Petitioner is a member of the Coventry Planning Commission ("Planning Commission"), having been appointed to that position by the Coventry Town Council in July 2022.<sup>1</sup> He states that several months ago the Planning Commission engaged in a Preliminary Review Hearing relative to an applicant's petition for approval of the construction of residential condominium units with an affordable housing component ("development"). The Petitioner explains that the purpose of the Preliminary Review Hearing was to introduce the proposed development to the residents of the Town of Coventry. He adds that abutters to the land on which the development would be built were sent letters notifying them of the Preliminary Review Hearing. The Petitioner states that his residence is located approximately a half-mile from the land on which the development would be located, that he is not an abutter, and that he did not receive a letter. He further states that he will not otherwise be financially impacted by the proposed development, explaining that its access road would be a state main road and that the development's fire access would not be a registered road

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<sup>1</sup> In his private capacity, the Petitioner is employed by the Rhode Island Department of Transportation as a State Bridge Engineer.

or one that is anywhere in close proximity to his residence. The Petitioner represents that he has no financial interest in the proposed development and has no business, financial, or familial relationship with any of the abutters.

The Petitioner informs that the applicant seeking to construct the development has petitioned the Coventry Zoning Board for a variance that would allow for a commercial/residential mixed-use of the subject property, which is currently zoned for commercial/special use. He states that, regardless of the outcome before the Zoning Board, the applicant will likely soon petition the Planning Commission relative to the proposed development.<sup>2</sup>

The Petitioner represents that he is a member of the Wood Estates Residents Association (“WERA”), a private neighborhood organization which the Petitioner describes as a vocal opponent of the proposed development. He further represents that WERA was formerly a Homeowners Association, but now is a volunteer organization for the neighborhood of people who own property on Lake Tiogue. The Petitioner states that he is a dues-paying member of WERA, but does not attend its meetings. He adds that his membership dues entitle him to use of a local dock, boat launch, beach and outing area, and access to events such as barbeques, hayrides, and a Fourth of July parade and fireworks. The Petitioner states that WERA does have officers, but that he is not one of them. The Petitioner further states that, because he is a member of WERA, he recently received an email invitation from that organization to participate in a virtual meeting at which the applicant for the proposed development would be present to discuss the proposed development. He represents that, prior to the official start of the virtual meeting, he advised the organizers of the meeting that he would not be taking part because he wants to limit his participation in the matter to his role as a member of the Planning Commission. He adds that he then asked the organizers not to contact him again regarding this matter. It is in the context of these representations that the Petitioner seeks advice from the Ethics Commission regarding whether the Code of Ethics prohibits him from participating in Planning Commission discussions and decision-making relative to the proposed development.

Under the Code of Ethics, a public official may not participate in any matter in which he has an interest, financial or otherwise, which is in substantial conflict with the proper discharge of his duties in the public interest. R.I. Gen. Laws § 36-14-5(a). A conflict of interest exists if a public official has reason to believe or expect that he, his family member, his business associate, or his employer will derive a direct monetary gain or suffer a direct monetary loss by reason of his official activity. Section 36-14-7(a). The Code of Ethics also prohibits a public official from using his public office, or confidential information received through his public office, to obtain financial gain for himself, his family member, his business associate, or any business by which he is employed or which he represents. Section 36-14-5(d). Finally, under Commission Regulation 520-RICR-00-00-1.2.1 Additional Circumstances Warranting Recusal (36-14-5002) (“Regulation 1.2.1”), a public official must recuse from participation in any matter if his business associate appears or presents evidence or arguments before the public official’s state or municipal agency.

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<sup>2</sup> The Petitioner states that, because the proposed development includes a plan for low-income housing, in the event that the Zoning Board does not issue a favorable decision to the applicant, the applicant would likely appeal to the Planning Commission. Alternatively, if the applicant’s petition for commercial/residential mixed-use zoning is approved by the Zoning Board, the applicant would then have to appear before the Planning Commission to ensure that the applicant’s plans meet all zoning regulations.

A business associate is defined as “a person joined together with another person to achieve a common financial objective.” Section 36-14-2(3). A person is defined as “an individual or a business entity.” Section 36-14-2(7).

#### Location of Proposed Development in Proximity to Petitioner’s Personal Residence

First, the Ethics Commission must ascertain whether the Petitioner will be financially impacted by the official action that is under consideration. In advisory opinions involving real property, the Ethics Commission has consistently applied a rebuttable presumption that a property owner will be financially impacted by official action concerning abutting property. See, e.g., A.O. 2012-4; A.O. 2007-18; A.O. 2006-37; A.O. 2005-16. Applying this presumption, the Ethics Commission has regularly opined that public officials may not participate in the discussion or vote on decisions concerning abutting property, absent reliable evidence that their official action would not affect the financial interests of the public official, either positively or negatively.

Just as the Ethics Commission has presumed a financial impact for abutting property, the Ethics Commission has applied the opposite presumption of no financial impact relative to property that is near, but not abutting, a subject property. See A.O. 2003-44 (opining that a member of the Cranston City Council could participate in the Safety Services and Licensing Committee’s consideration of a proposed license for the Krispy Kreme Donut franchise, notwithstanding that the proposed location was approximately 500 feet from his residence, in the absence of evidence indicating a reasonable foreseeability of financial impact); A.O. 2002-30 (opining that a Jamestown Town Council member could participate in the determination of the location for a highway garage, notwithstanding that two of the location options were 1000 and 900 feet away from her land).

Here, the Petitioner states that the property on which his personal residence is situated is located a half-mile from the property on which the proposed development would be constructed. Additionally, the Petitioner represents that he will not be financially impacted by the proposed development, has no financial interest in the proposed development, and has no business, financial, or familial relationship with any of the abutters to the proposed development. Accordingly, it is the opinion of the Ethics Commission that because the Petitioner is not an abutter and, therefore, there is no presumption of financial impact upon the Petitioner were he to participate in Planning Commission discussions and decision-making concerning the proposed development, and because the Petitioner represents that he will not otherwise be financially impacted, he may so participate.

#### Appearance Before the Planning Commission by Representatives of Private Organization of Which Petitioner is a Member

Next, the Ethics Commission must determine whether the anticipated appearance before the Planning Commission by representatives of a private neighborhood association to which the Petitioner belongs who wish to provide public comment about the proposed development would constitute a conflict of interest for the Petitioner, thereby requiring his recusal.

The Ethics Commission has consistently opined that persons are “business associates” of the entities for which they serve as either officers or members of the Board of Directors, or in some

other leadership position that permits them to affect the financial objectives of the organization. See, e.g., A.O. 2014-14 (opining that the Director of the Rhode Island Department of Environmental Management (“DEM”), who was also a Director of the Rhode Island Boy Scouts (“Boy Scouts”), was a business associate of the Boy Scouts and, therefore, was required to recuse from participating in any DEM decisions that would financially impact the Boy Scouts, as well as from any matters in which a Boy Scout representative appeared to represent the organization’s interests); A.O. 2012-28 (opining that a Tiverton Planning Board member, who was also a member of the Board of Directors of the Tiverton Yacht Club (“TYC”), was a business associate of the TYC and, therefore, was required to recuse from participating in the Planning Board’s consideration of a proposed amendment to the Tiverton Zoning Ordinance that was requested by the TYC).

In contrast, however, the Ethics Commission has generally held that mere membership in an organization, as opposed to the holding of a position as a director, officer, or other position of leadership, does not create a business association requiring recusal. See, e.g., A.O. 2013-26 (opining that a Newport City Council member was not prohibited from participating in City Council matters involving the Newport Yacht Club, notwithstanding that her husband was an individual member of the Yacht Club and paid annual dues to the Yacht Club, but was not an officer or member of the Yacht Club’s Board of Directors); A.O. 2009-39 (opining that a Barrington Town Planner’s general membership in the Bayside Family YMCA, where he did not serve in any leadership position, did not constitute a business associate relationship with the YMCA and, thus, he was permitted to participate in Barrington’s review of the YMCA’s development proposal and plans).

In the present matter, the Petitioner states that he is a dues-paying member of WERA, which entitles him to use of a local dock, boat launch, beach and outing area, and access to events such as barbecues, hayrides, and a Fourth of July parade and fireworks. The Petitioner further states, however, that he is not an officer of WERA. Accordingly, the Petitioner’s mere membership in WERA does not constitute a business associate relationship between the Petitioner and that organization or any of its officers under the Code of Ethics and, for that reason, the Petitioner is not prohibited from participating in Planning Commission discussions and decision-making when WERA representatives appear before the Planning Commission to provide public comment about the development.

In summary, and for all of the foregoing reasons, it is the opinion of the Ethics Commission that Petitioner is not prohibited by the Code of Ethics from participating in Planning Commission discussions and decision-making relative to a proposed plan for the mixed-use development of real property, notwithstanding that the development would be located on land that is in close proximity to the Petitioner’s personal residence and representatives of a private neighborhood association to which the Petitioner belongs are expected to appear before the Planning Commission to provide public comment about the development.

**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:

§ 36-14-5(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. 2014-14

A.O. 2013-26

A.O. 2012-28

A.O. 2012-4

A.O. 2009-39

A.O. 2007-18

A.O. 2006-37

A.O. 2005-16

A.O. 2003-44

A.O. 2002-30

Keywords:

Business Associate

Conflict of Interest