MINUTES OF THE OPEN SESSION
OF THE RHODE ISLAND ETHICS COMMISSION

April 4, 2006

The Rhode Island Ethics Commission held its 7th meeting of 2006 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, April 4, 2006, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

James Lynch, Sr., Chair James C. Segovis
Barbara Binder, Vice Chair Frederick K. Butler*
George E. Weavill, Jr., Secretary Ross Cheit
Richard E. Kirby

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Staff Attorney/Education Coordinator; Staff Attorney Macall Robertson; and, Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:13 a.m., the Chair opened the meeting.

The first order of business was to approve the minutes of the Open Session held on March 21, 2006. Commissioner Segovis noted a correction to page five. Upon motion made by Commissioner Butler, duly seconded by Commissioner Segovis, it was

VOTED: To approve the minutes of the Open Session held on March 21, 2006, as corrected.

AYES: James Lynch, Sr., George E. Weavill, Jr., Richard E. Kirby, James C. Segovis, Frederick K. Butler, and Ross Cheit.

ABSTENTION: Barbara Binder.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

The first advisory opinion was that of Brian D. Ballou, Superintendent of Communications for the Town of South Kingstown. The petitioner was present. Staff Attorney Robertson presented the Commission Staff recommendation.

In response to Commissioner Cheit, Staff Attorney Robertson explained that if the petitioner were a business associate of a seminar attendee he would have to recuse from matters before him as

Superintendent that would financially impact his business associate. In response to Commissioner Cheit, the petitioner represented that he will not put himself in a position that would require him to recuse, although the State Fire Marshall could review a plan before the Town.

Commissioner Kirby stated that one-on-one training creates a pretty close business relationship. Staff Attorney Robertson reviewed the Code's definition of a business association and suggested that there would need to be more substantive contact. In response to Commissioner Kirby, the petitioner informed that his duties are to enforce the State Fire Code for the Town and that he reviews and approves fire alarm plans submitted to the Town. Commissioner Kirby expressed concern that there may be an appearance that the petitioner gives special treatment to plans submitted by individuals who attend his seminars. Staff Attorney Robertson pointed out that the petitioner already gives a free seminar on the Fire Code through the State Marshall's Office. The petitioner stated that there is a void in the community regarding understanding the State Fire Code and that Rhode Island has a more complicated code than other states.

Commissioner Segovis noted that the petitioner is teaching a seminar through his own company and is not being paid as a speaker by another entity. He inquired whether the Commission could require the petitioner to notify the Town Manager, his supervisor, as to which applicants attend his seminars. The petitioner informed that the applications are logged in upon receipt and that there is no priority of

review. Commissioner Kirby asked if there was a way to certify the attendees.

Staff Attorney Robertson reiterated the petitioner's representations that he would not use his position to promote his seminars and that he would use broad-based advertising. She noted that the petitioner may not be aware of whether or not a particular applicant has attended his seminars. The petitioner pointed out that his review of an application is very black and white as to whether it meets the Fire Code's requirements and that he cannot deviate from the Fire Code. Commissioner Cheit stated that the petitioner's lack of discretion is key.

Commissioner Segovis suggested that the petitioner inform the Town Manager of the persons who attend his paid seminars to allow for more transparency. Commissioner Cheit expressed his opinion that a four hour seminar did not appear to be a business association. Commissioner Binder stated that adding a notification layer to the opinion goes beyond what the Code of Ethics requires. Commissioner Segovis stated that he was thinking beyond this petitioner and setting up a structure for handling such situations given what transpired in the past regarding DEM. At the request of Commissioner Binder, Commissioner Segovis summarized the issues previously raised regarding DEM.

Upon motion made by Commissioner Binder to accept the Staff

recommendation, duly seconded by Commissioner Cheit, there was further discussion.

Commissioner Kirby stated his opinion that there is a business association, but noted that he would like for there to be a way for the petitioner to be able to teach these seminars. Commissioner Cheit responded that there is no common financial objective between the petitioner and his attendees. Commissioner Butler stated that it was unclear to him why an amendment to the opinion was needed as there is no business association and the petitioner can disclose that he taught a class to an attendee. He advised the petitioner to put such a disclosure on the record when one of his attendees comes before him.

In response to Commissioner Cheit, the petitioner informed that there is an appeals process through the State Fire Marshall's Fire Safety Board of Review, although there have been no appeals in his 3 ½ years as Superintendent. In response to Commissioner Weavill, the petitioner stated that he cannot shut down a job for non-compliance, which he reports to the State Fire Marshall's Office. He informed that he is the lowest tier of Assistant Deputy Fire Marshall in the state and only reviews the fire alarm systems.

Upon the existing motion, duly seconded, it was

VOTED: To issue an advisory opinion, attached hereto, to Brian D.

Ballou, Superintendent of Communications for the Town of South Kingstown.

AYES: James Lynch, Sr., Barbara Binder, Frederick K. Butler, and Ross Cheit.

NOES: George E. Weavill, Jr., Richard E. Kirby, and James C. Segovis.

No opinion was issued for lack of five affirmative votes. Commissioner Segovis made a motion to amend the advisory opinion to require the petitioner to notify the Town Manager of the attendees of his paid seminars. Commissioner Binder seconded this motion.

Commissioner Kirby disagreed with the amendment as he believes a business association exists and that he would like to see business association more specifically defined. Commissioner Weavill suggested that the petitioner's advertisements for his seminars state that they are not open to persons with applications pending before the Town. Chair Lynch stated that he did not believe that an amendment was necessary, but that he will vote for it so that the petitioner can get an advisory opinion.

Staff Attorney Gramitt suggested having the petitioner represent that

he will notify the Town Manager of attendees who paid to attend his seminars, rather than amending the opinion to state that the Commission requires him to do so. Commissioner Binder expressed support for this suggestion and withdrew her second to the motion. Legal Counsel Managhan clarified that the petitioner must first make such representation.

Commissioner Segovis stated that he agrees that there is a business association here and that he is concerned about the precedent this opinion will set. He related that he will withdraw his motion if the petitioner makes such a representation. The petitioner represented that he will provide the Town Manager with a list of the names of the persons who paid to attend his seminars.

Upon motion made by Commissioner Segovis, duly seconded by Commissioner Binder, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Brian D. Ballou,
Superintendent of Communications for the Town of South Kingstown, as amended.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Richard
E. Kirby, James C. Segovis, Frederick K. Butler, and Ross Cheit.

The next advisory opinion was that of David Coutu, a member and Chair of the
Cumberland Planning Board. The petitioner and William DiLibero, the Director of the Cumberland Planning and Community Development Department, were present. Staff Attorney Robertson informed that this request was considered by the Commission at its last meeting and that an opinion was not issued for lack of five affirmative votes. Legal Counsel Managhan recommended that a motion be made to reconsider this request. Upon motion made by Commissioner Segovis, duly seconded by Commissioner Cheit, it was

VOTED: To reconsider the advisory opinion request, attached hereto, of David Coutu, a member and Chair of the Cumberland Planning Board.

AYES: James Lynch, Sr., Barbara Binder, James C. Segovis, Frederick K.
Butler, and Ross Cheit.

NOES: George E. Weavill, Jr.

RECUSAL: Richard E. Kirby.

Staff Attorney Robertson pointed out a correction to page 5 to change Planning "Commission" to Planning "Board." Mr. DiLibero informed the Commission that he requested reconsideration because

of the 4 to 1 vote. He stated that the Town Planner went on leave as of Monday and that the Town will not have a Town Planner without the petitioner's service. In response to Chair Lynch, Mr. DiLibero informed that since the last meeting the Town placed an ad in the Providence Journal for a consultant. He represented that such a consultant would likely seek a $90-100 hourly rate, which would exceed his budget.

In response to Commissioner Binder, Staff Attorney Robertson explained that the hardship exceptions to the revolving door provisions do not come into play since both Regulation 5006 and section 5(e) do not apply. Commissioner Binder asked the Commission why they are not voting for the opinion given that it does not violate the Code.

Commissioner Weavill voiced his opinion that the petitioner would become an ineffective member of the Board. He explained that the Board must consider developers' proposals, the Town's position, and the views of the public. He remarked that the planning process for most developers is two or three years from start to finish and that he believes the petitioner will have to recuse on all matters arising during his service as Town Planner that come before the Planning Board. He stated that the Town could hire outside consultants to perform this work and make overtime available.

Commissioner Binder inquired where such concerns are supported

by any authority in the Code of Ethics. Commissioner Weavill noted the prohibition against regular recusals and suggested that the petitioner could not be impartial as a Board member when considering matters he participated in as Town Planner. Commissioner Binder stated that whether or not the petitioner must recuse is a determination that he will have to make when he returns to the Board.

Staff Attorney Robertson pointed out that the Code of Ethics would require the petitioner to recuse from matters before the Board that would directly financially impact him or his business associates, not from matters with which he was involved as Town Planner. Commissioner Weavill expressed concerns about why the Town would want to create such a situation. In response to Commissioner Segovis, Mr. DiLibero informed that the Town Planner provides the Board with options and does not make recommendations to the Board.

Commissioner Butler made a motion to approve the opinion with the correction noted by staff. Commissioner Binder duly seconded the motion.

Commissioner Weavill stated that municipal planning departments are powerful and handle big and expensive projects, and their plan modifications can have large ramifications for developers. In response to Commissioner Binder, Commissioner Weavill stated that

the petitioner is being compensated by the Town for his service. In response to Commissioner Segovis, Mr. DiLibero expressed his opinion that the Planning Department's staff does not have discretion over the presentations it makes to the Planning Board. In response to Commissioners Kirby and Cheit, Senior Staff Attorney D'Arezzo explained why Regulation 5006 would apply in other hypothetical situations but does not bar the petitioner's service here.

Upon the existing motion, duly seconded, it was

VOTED: To issue an advisory opinion, attached hereto, to David Coutu, a member and Chair of the Cumberland Planning Board, as amended.

AYES: Barbara Binder, James C. Segovis, Frederick K. Butler, and Ross Cheit.

NOES: James Lynch, Sr. and George E. Weavill, Jr.

RECUSAL: Richard E. Kirby.

No opinion was issued for lack of five affirmative votes. At approximately 10:30 a.m., upon motion was made by Commissioner Butler, duly seconded by Commissioner

Weavill, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5 (a)(4), to wit:

a.) To approve the minutes of Executive Session held on March 21, 2006.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Richard E. Kirby, James C. Segovis, Frederick K. Butler, and Ross Cheit.

At approximately 10:47 a.m., the Commission returned to Open Session.

*** At approximately 10:47 a.m., Commissioner Butler left the meeting.**

Chair Lynch reported out that in Executive Session the Commission voted to approve the minutes of the Executive Session held on March 21, 2006.

The next order of business was discussion of Commission Regulations. Commissioner Binder reported that Subcommittee B is applying the revolving door provisions to municipalities. Chair Lynch reported that Subcommittee A will soon provide its proposal on nepotism to the full Commission. After discussion, by consensus,

the Commission agreed to review the proposals of both subcommittees at its May 16th meeting. After discussion, the Commission agreed that the agendas provide sufficient public notice of the Commission's consideration of proposals at this time as the Commission has not yet decided which proposals will go forward.

The next order of business was the Director's Report. Executive Director Willever reported the pending advisory opinions and complaints. He informed the Commission about the Commission's expanding education program and current activities of the Commission Staff regarding this program. At the Executive Director's request, Chair Lynch shared his recent experience on a panel hosted by Common Cause, "Conflict of Interest in America's Smallest State," specifically discussing who attended the panel, what he shared about the Commission, and the questions and feedback of attendees.

The next order of business was New Business. There was none.

At approximately 11:17 a.m., upon motion made by Commissioner Kirby, duly seconded by Commissioner Weavill, it was unanimously

VOTED: To adjourn the meeting.

AYES: James Lynch, Sr., Barbara Binder, George E. Weavill, Jr., Richard

E. Kirby, James C. Segovis, and Ross Cheit.

Respectfully submitted,

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George E. Weavill, Jr.

Secretary