

STATE OF NEW YORK: COUNTY OF SUFFOLK  
SUFFOLK COUNTY BOARD OF ETHICS

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In the Matter of the Inquiry of  
[REDACTED] in capacity of  
Suffolk County Planning Commissioner  
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COUNTY BOARD OF ETHICS  
Advisory Opinion 2021-5  
May 5, 2021

**NOTICE: THIS ADVISORY OPINION IS SUBJECT TO REVISION OR WITHDRAWAL**

*Applications requesting its modification, clarification, or withdrawal must be made in accordance with Suffolk County Board of Ethics rules. Unless an application for the revision or withdrawal of an advisory opinion is timely received, it shall become final. Nothing shall prohibit the Suffolk County Board of Ethics, on its own motion, from reconsidering, revising or withdrawing an advisory opinion at any time.*

**Summary:** The Requestor, a member of the Suffolk County Planning Commission, has submitted an opinion request asking if he is required to recuse on an upcoming Planning Commissioner vote. The vote involves a reconsideration of the “7 lot subdivision of the Gyrodyne property in St. James.” The Requestor gave testimony in his personal capacity at the Town of Smithtown Planning Board. Upon review of the full advisory opinion request, inclusive of the Town of Smithtown public body minutes, by-laws, public records of the Suffolk County Planning Commission, the Board finds that recusal for the Requestor is required.

**Analyzed Laws and Rules:** The Laws of Suffolk County; 2021 Rules of Proceedings of the Suffolk County Planning Commission, Suffolk County Administrative Code XXX, SCBE and COIB Advisory Opinions; and Suffolk County Code Chapter 77, Chapter 77-3, 77-7, and the Suffolk County Board of Ethics Rules.

**Procedural History:** This request was received on 3/16/2021, the Board of Ethics voted and approved standing on 3/17/2021, fact finding concluded on 4/29/2021 and the Board determined by majority vote that there is an impermissible conflict of interest under the facts presented, requiring recusal.

**Opinion and Analysis:** The Requestor, a Suffolk County Planning Commissioner has submitted a request asking if he is required to recuse in upcoming votes before the Planning Commission regarding the, “7 lot subdivision of the Gyrodyne property in St James, NY, Town of Smithtown.” The Board determined that standing exists for this Advisory Opinion request due to the Requestor’s position as a Suffolk County Planning Commissioner, and within its jurisdiction as future conduct (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

In considering this inquiry, the Board employed the following three-step analysis to determine whether a prohibited conflict of interest would exist:

- a) Does the Requestor have standing to obtain an Advisory Opinion from the Suffolk County Board of Ethics?;
- b) Is the Requestor seeking advice on proposed future conduct?;
- c) Whether recusal in required?

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As applied to the above, the Board determined that standing exists for this Advisory Opinion request due to the Requestor's position as a prospective public servant, the request is on proposed future conduct, and recusal is required on the upcoming Planning Commission Vote. (*Suffolk County Administrative Code §A30-1, §A30-3, Suffolk County Code Chapter 77, §77-1*).

**Analyzed Laws and Rules:**

**§ 77-3. PROHIBITED CONDUCT.**

B. No public servant shall engage in any business, transaction or private employment, or have any financial or private interest which is in conflict with the proper discharge of his or her official duties.

C. No public servant shall use his or her official position or office, or take or fail to take any action, in a manner which he or she knows or has reason to know may result in a personal financial benefit to himself or herself, a person or firm associated with the public servant, a customer or client of the public servant or any person from whom the public servant has received a gift or any goods or services for less than fair market value, during the preceding 12 months.

**§ 77-7. RECUSAL AND DISCLOSURE.**

A. A public servant shall promptly recuse himself or herself from acting on any matter when acting on the matter, or failing to act on the matter, would constitute prohibited conduct under the Code of Ethics or would financially benefit the public servant, a person or firm associated with the public servant, a customer or client or any person from whom the public servant has received a gift, or any goods or services for less than market value in the preceding 12 months.

**2021 RULES OF PROCEEDINGS OF THE SUFFOLK COUNTY PLANNING COMMISSION**

**Pursuant to Section A14-2A of the Suffolk County Administrative Code**

Para. 20. **Commissioners' Public Comments** Commission members should not speak publicly about any specific project or potential project within the Commission's jurisdiction during the pendency of an application. Only the Chair of the Commission or a member designated by the Chair may speak officially on behalf of the Commission.

Para. 21. **Commissioners' Conversations With Private Applicants** To prevent any perceptions of impropriety, Commission members should not engage in any discussions with a private applicant or their representatives about a particular project within the Commission's jurisdiction during the pendency of the referral.

Para. 22. **Recusal** If a Commission member intends to recuse himself or herself from the consideration of a matter, he or she should not discuss the merits of the matter with any fellow

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Commission member. While the Commission is deliberating regarding the matter that is the subject of the recusal, the Commission member should leave the Commission table and either sit in the audience or leave the room. A recusing member of the Commission shall fill out the recusal forms provided by the Suffolk County Board of Ethics.

**Documents Reviewed:**

- Advisory Opinion Submission and Facts Submitted
- January 8, 2020 Town of Smithtown Planning Board Public Body Minutes
- 2021 Rules Of Proceedings Of The Suffolk County Planning Commission
- Suffolk County Planning Commission Guidelines
- Suffolk County Department of Environmental Planning Staff Reports

On April 28, 2021, the Requestor advised to the Executive Director the additional facts by teleconference and further documentary submission. The Requestor advised that the original Planning Commission application is calendared for “Reconsideration” on May 5, 2021, due to a material change pursuant to the Planning Commission Guidelines and anticipated to be deemed a “new” project. The Requestor further advised that he was the Board member who made staff recommendations to the original 2017 project. The additional facts were confirmed by public record review through FOIL and the Suffolk County Planning Commission website.

**The Suffolk County Planning Commission Guidelines set forth in pertinent part:**

**“3.9 Reconsideration.** Any proposed action that was previously reviewed by the Planning Commission and on which a decision was rendered will not be reviewed again by the Commission unless requested by the referring agency and after the Commission by a majority vote of its members decides that:

- Material facts were omitted or material facts used to support its determination were erroneous or;
- There has been **a material change** in Federal, State or County policy which establishes a basis for reconsideration of the application”.

**January 8, 2020 Town of Smithtown Planning Board Public Body Minutes**

The pertinent testimony of the Requestor is reflected at pages 114-126 on the Environmental Impact Statement:

“[REDACTED]: Members of the Board, first off, I have a little bit of laryngitis. Thank God for microphones. My name is [REDACTED]..... The DEIS fails to take a hard look at these particular issues and the fact that we are getting a regional plant when Stony Brook Harbor is already under stress, and that the Subwatershed plants would be looking to reduce nitrogen, not add to it. So going to potentially 171,000 or maybe 342,000 gallons per day -- again, the 342,000 is an upper number that's not fully confirmed -- is a problem that you should be looking at. A hard look at the regional impact of adding sewage treatment -- of adding sewage flow needs

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to be performed. Again, the statistical data that's in the plan right now is focused basically upon Gyrodyne, which again is tolerable. They have the right to divide. Okay. There is no doubt about that, under governmental supervision, and they have possibly, you know, as an agreement with the Town of Smithtown and others, to put Lake Avenue into the mix. But you are starting to get numbers that have never been looked at, okay, and that are going to affect a water body that's shared by several other municipalities. And there is a transit zone over there. It's not like this thing is in isolation. So in that sense, a harder look needs to be taken. That is the job of the EIS at this point in time when you are starting to go into final. You have done the initial craft, and you are going to final; and I am advising you that there are some issues that need to be looked at. If I'm wrong on the 342, so be it. Nonetheless, it's 171,000 gallons. That is going to have an impact. We already see that. We have the maps. We know what potentially is happening. And, yes, an STP removes 90 percent of the nitrogen. You are still going to have the max loads. There is still a lot of nitrogen out there. Okay. And that's what you have to guard against, okay, with a water body that's already under stress”.

**OPINION**

The Board of Ethics determines that the Requestor spoke publicly about a project within the Planning Commission's jurisdiction with the knowledge and understanding that the project could come back to the Planning Commission. That same project is before the Planning Commission for reconsideration. Accordingly, based upon a review of the relevant provisions of the Code of Ethics, along with the Rules of Proceeding of the Suffolk County Planning Commission, recusal from the Suffolk County Planning Commission action on the project is required

**CONCLUSION**

Accordingly, the Board finds that pursuant to the Suffolk County Code, the requested future conduct, as described herein, does require recusal.

Pursuant to Suffolk County Board of Ethics Resolution 004/2013 passed on January 30, 2013, the requester shall have 15 business days from the time this Advisory Opinion has been rendered. (excluding Saturday, Sunday, or a legal holiday) to file a request for reconsideration supported by new material facts submitted to the Board.

The forgoing is the opinion of the Board.

Dated: May 5, 2021  
Hauppauge, New York

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Eric A. Kopp, Chairperson  
On Behalf of Suffolk County Board of Ethics