

The regular meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Chair Cline at 7:32 p.m., in Township Hall, Sergeantsville, New Jersey, with virtual meeting attendees.

PLEDGE OF ALLEGIANCE, suspended for virtual meeting

STATEMENT

Chair Cline read a statement noting that the requirements of the Open Public Meetings Act have been met.

ROLL CALL

Present: Emmons, Gilbreath, Kenyon, Manley, McAuliffe, Szwed, Warren, Cline

Absent: Fowler

Also present: Attorney Scott Miccio, Attorney Steve Goodell

MINUTES: May 14, 2020

The Board discussed the minutes, noting changes and typographical errors. It was moved by Member Manley to approve said minutes. Member Gilbreath seconded the motion. Said motion was approved by voice vote.

MEMORIALIZATIONS – none

APPLICATIONS

Roger and Holly Locandro, Block 41, Lot 1.10, being sought: approval for Phase Two Final Subdivision, with all other necessary permits, waivers, variances, and conditions that may arise in the course of the public hearing; as well as extension of time to exercise all variances, including variances for density and a two-family home, extensions of previous subdivision approvals, and any other extensions needed to complete the development.

There was a question concerning the applicability of Mr. Lanza to serve as attorney for the applicants. It was noted that Mr. Lanza serves as Labor Attorney for the Township and that his partner and son serves as the Township's prosecutor.

Before the advent of this discussion, Member Manley stated that Mr. Lanza has represented him in the past. Member Manley noted that it was for a real estate transaction begun in December, 2017; said transaction was in Mercer County. Member Manley noted that the matter was completed within about nine or ten months.

Mr. Wohl had no questions of Member Manley, nor did Mr. Lanza.

Member Manley stated that he will be impartial in making any decisions. Mr. Lanza stated that he does not object to Member Manley remaining on the Board for this application. Mr. Wohl did not object.

The Board began the discussion about the possible conflict of interest of Mr. Lanza representing the Locandros. As noted, Mr. Lanza is the labor attorney for the Township and his partner/son is the municipal prosecutor.

Attorney Goodell discussed the Rules of Professional Conduct (RPC). He noted that the opinion given by Mr. Wohl is derived from the old rules which stated that any appearance of impropriety was perceived to be a conflict of interest. He noted that this is no longer the controlling standard.

Attorney Goodell then discussed Professional Ethics, Opinion 697, 188 N.J. 549, 567-68(2006).

The Supreme Court of New Jersey held that "if the scope of an attorney's engagement by a government body is limited and not plenary", the attorney may not represent a private client before or against the governing body, but may represent "a private client before one of the boards, agencies, or municipal court of the municipality."

RPC section 1.7 was read into the record, with emphasis on the significant risk, "...unless there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer."

RPC section 1.8 was read into the record, "(k) A lawyer employed by a public entity, either as a lawyer or in some other role, shall not undertake the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client."

Mr. Wohl added an additional argument. He noted that this matter has been ongoing since 2007, with the grant of a use variance for density greater than permitted for the zone. Mr. Wohl stated that he has been present at almost all hearings for this application.

Chair Cline reminded everyone that the discussion is to pertain to the conflict of interest issue.

Mr. Wohl expressed his concern surrounding potential appeals. He noted that if Mr. Locandros case is appealed to Township Committee then there could be an issue of conflict of interest for Mr. Lanza to be the representative before the governing body.

There was a discussion about NJ Ethics Opinion 736 which is a more recent opinion (2019) with a case by case basis and analysis. It was further noted that this opinion is more about third parties as applied to the Rules of Professional Conduct.

Mr. Wohl stated that he has been questioning this application for years. He stated that he feels that this representation of Mr. Lanza for the Locandros is not in the best interest of the applicant, the Township, or the Board. He stated that in order to avoid controversy, Mr. Lanza should not represent the Locandros.

Mr. Lanza stated that it has been a privilege to represent the Locandros. He stated that he has handled the application from the beginning and finds that this continuity should not be a conflict.

Mr. Lanza stated that he is Labor Council for the Township. He stated that he is consulted for disciplinary matters and/or difficult personnel issues. He stated that the Locandros have no litigation before the Township at this time. He noted that there was one minor matter in 2019 which has been resolved. Mr. Lanza stated that his son is the municipal prosecutor dealing mostly with minor matters. He noted that the Locandros have not been involved in any prosecution matters. Mr. Lanza stated that his son/partner is a sitting freeholder. He noted that the County Planning Board has issued conditional approval for this project, with final details to be accomplished by the Locandros.

Mr. Lanza opined that in the past title alone was conflict under the "appearance of conflict" rule. He noted that an actual conflict must exist for conflict of interest to be brought into question. Mr. Lanza stated that there are no facts that would support any type of conflict of interest.

It was noted that no other Board member presented any information about a conflict of interest. Attorney Miccio stated that the Board Members have a responsibility to notify the Board of any personal conflicts.

Mr. Wohl stated that he continues to have a concern about this conflict because Delaware Township is a close-knit community.

Mr. Lanza acknowledged that the conflict issue came up after some documents had been submitted to Mr. Goodell.

Chair Cline asked Mr. Lanza how long he has been Labor Council, to which Mr. Lanza responded that it has been five to six years. Mr. Lanza further noted that there has been no relationship with the Locandros that could be construed to be a conflict of interest for the Township.

Member Kenyon stated that there appears to be no tainted conflict of interest. It was noted that contact was made with the Township Attorney and that he has no objections to this representation.

Attorney Miccio stated that if the Locandros had to appear before the Township Committee, Mr. Lanza could not represent them. It was noted that a variance appeal does go to the Township Committee. Per clarification from Attorney Miccio, a per say conflict is one by nature of one's position. He further noted that Mr. Lanza's representation could be of greater significance if there is an appeal.

Member Gilbreath made a motion to accept Mr. Lanza as the Locandros attorney. Member Warren seconded the motion that was followed by the board discussion.

Roll Call Vote

Aye: Emmons, Gilbreath, Kenyon, Manley, McAuliffe, Szwed, Warren, Cline

Nay: None

Absent: Fowler

There was a board discussion on the motion.

Member Kenyon stated that based on Mr. Lanza's testimony, Mr. Lanza has current limited representation of Delaware Township. She stated that it is clear to her that there is no per say conflict, based on Ethics Opinion 736. She agreed that prior to this opinion, there would have been a conflict. She opined that there could be potential conflict in the future.

Member Emmons stated that he was looking for a specific conflict, but did not hear one.

Member Manley had no comment.

Member Gilbreath stated that she sees none with the current situation.

Members McAuliffe and Szwed echoed Member Kenyon's opinion.

Chair Cline stated that with the change in the opinion, he sees no problem.

Member Warren stated that he understands the point that Mr. Wohl is making, but sees no conflict at this time.

Roll Call Vote

Aye: Emmons, Gilbreath, Kenyon, Manley, McAuliffe, Szwed, Warren, Cline

Nay: None

Absent: Fowler

The vote confirms that Mr. Lanza can represent the Locandro's.

There was a discussion about how to proceed with the application. Mr. Lanza stated that at this point the applicants wish to request adjournment to the next meeting.

It was noted that the Board has requested a discussion derived from case law concerning the time lapses/extensions on this application.

Mr. Lanza stated that neither the applicants' planner nor engineer is available for the next meeting.

Chair Cline stated that he would prefer the continuation on this application be a live meeting.

Mr. Lanza stated that the application is still in need of an LOI from NJ DEP. Mr. Lanza stated that the applicant’s environmental expert sees no significant change for the LOI.

It was noted that the deadline for the July meeting is today. It was noted that the September 10 seems to be the earliest date for continuation.

It was noted that the Locandros have been sworn in.

There was a discussion about notice for the September meeting with continuation being announced at this meeting. Administrative Officer Klink noted if it is to be a live/virtual combination, re-notice has to occur with the virtual meeting information to be provided. It was also noted that the building is still closed to the public and that anyone interested in viewing the documents would have to schedule an appointment.

It was noted that per the State’s rules on indoor gatherings, the room capacity would be about 30 people.

The Locandros agreed to an extension to the September 10 meeting. Chair Cline noted that the application has been extended to that time. It was also noted that the deadline is August 13 for any submissions for the September 10 meeting.

Chair Cline noted that members of the public will have time for opinions at the September 10 meeting.

Planning Board Update: Liaison Cline

Liaison Cline reported that there was no meeting in June for the Planning Board.

Correspondence

Upcoming applications: 4-10, dog kennel operation, scheduled for August 13, 2020
55-2, tennis school
43-20, oversized accessory building

Bill List

Bill List: Attorney Services – Parker McCay P.A.

Bill List: Legal Services – Parker McCay, P.A.

Zoning Board Matters, Line Item #113-215

Through April 30, 2020, #3114853 \$288.00

Member Gilbreath made a motion to approve payment of this voucher. Member Manley seconded the motion.

Roll Call Vote

Aye: Emmons, Gilbreath, Kenyon, Manley, McAuliffe, Warren, Cline

Concurs: Szwed

Nay: None

Absent: Fowler

Bill List: Legal Services – Parker McCay, P.A.

Escrow Charges

4/10, King/Hummeler, #3114852 \$32.00

41/1.10, Locandro, #3114854 \$48.00

Member Gilbreath made a motion to approve payment of these vouchers from their respective escrow accounts. Member Manley seconded the motion that was approved by voice vote.

Roll Call Vote

Aye: Emmons, Gilbreath, Kenyon, Manley, McAuliffe, Warren, Cline

Concurs: Szwed

Nay: None

Absent: Fowler

ADJOURNMENT: 9:12 p.m.

It was moved, seconded, and unanimously carried to adjourn at the noted time.

Respectfully submitted,

Kathleen E. Klink,
Administrative Officer, Secretary