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May 9, 2023

The Honorable Robert A. Ballard, Jr.
Presiding Judge, Civil Division
Superior Court
Somerset County Courthouse
20 North Bridge Street, Second Floor
Belvidere NJ 08876-1262

Re: Morrisette v. Town of Phillipsburg Town Council, WRN-L-000341-22:
Plaintiffs' Reply Brief On Fifth Count Of Complaint In Lieu Of Prerogative
Writs - Conflicts Of Interest

Dear Judge Ballard:

We represent the plaintiffs in this case. Please accept this letter brief in lieu of a more formal brief as our reply brief in this matter.¹ This is the second challenge to a large truck distribution warehouse proposed for the last undeveloped waterfront site in Phillipsburg. The earlier case, docketed as WRN-L-00248-21, has been fully briefed and argued before The Honorable Judge Kevin Shanahan, A.J.S.C., but not yet decided. In a case management order that the parties agreed to, Judge Shanahan ordered that the earlier appeal be held until this appeal was disposed of. However, as we note next, this may not be practical. Because of two arguments made in this case by the Town, it may become necessary for both cases to be decided. The Town's arguments are vanishingly

¹ As Your Honor has scheduled a case management conference in this matter, we assume that it has been transferred to you. As we stated in our trial brief, our complaint pleads four other counts. We reserve the right to brief these other counts in the event that the conflicts issues do not dispose of the case.

weak, but they must be addressed. These are the arguments we address in Points 3 and 4 below.

Preliminary Statement

To very briefly recap the relevant facts, Peron Construction, a company owned by named partner Michael Perrucci of the law firm of Florio, Perrucci, Steinhardt, Capelli, Tipton & Taylor LLC, has been seeking for several years to construct a large distribution warehouse on the last undeveloped waterfront site in Phillipsburg (the Site). The configuration of the proposed warehouse keeps changing. Mr. Perrucci's named partner, Douglas Steinhardt, is the chair of the Warren County Republican Committee, which has rendered and will continue to render very substantial financial campaign aid to Council Member (and current Mayoral candidate) Randy Piazza, Jr (Member Piazza). The ordinance we challenge here, Ordinance 2022-30, was intended to authorize the warehouse configuration given site plan approval by the Land Use Board in its Resolution 2022-21. In fact, there was no reason for this Ordinance other than to authorize that warehouse configuration.

The Town's opposition brief (Db) makes four principal arguments. First, the Town essentially argues that our State's ethics statutes and case law do not apply to redevelopment areas. Second, it argues that the ordinance we challenge here, Phillipsburg Ordinance 2022-21, has nothing to do with the house that the parents of Council Member Piazza own within 200 feet of two houses that are to be demolished. The evidence of record conclusively disproves this. Third, the Town argues that direct

campaign support that Member Piazza has received from the Warren County Republican Committee in the past and will receive in his current race for Mayor doesn't violate the State's ethics statutes and case law, because plaintiffs have not shown that Steinhardt "intended" the substantial campaign aid to influence Member Piazza or that Member Piazza had reason to believe that was Steinhardt's intention. This argument fails because of the law firm's behavior here and in the circumstances leading to the companion appeal, WRN-L-00248-21.

Finally, perhaps acknowledging the futility of its arguments, the Town has resurrected an earlier not too clever attempt to claim that Mr. Perrucci is somehow no longer a partner in the Florio Perrucci firm. A straightforward reading of the "evidence" shows this claim to be frivolous.

The third and fourth arguments implicate issues briefed in the companion case of WRN-L-000248-21.

We assume the court is familiar with the facts and legal arguments we have made in our initial brief and will not summarize or paraphrase them before demonstrating that the Town's arguments have no merit at all.

Argument

1. The House Of The Parents Of Member And Mayoral Candidate Randy Piazza, Jr., Is Formally Designated As Part Of The Project's Site And Is Within 200 Feet Of The Area Affected By The Ordinance Under Challenge Here

As we anticipated, the Town argues that the home of the parents of Council Member and mayoral candidate Randy Piazza, Jr., (Member Piazza) is not in the

redevelopment area, and for that reason alone isn't subject to the 200-foot rule. We addressed this in our initial brief and will only add this. The Town claims that we are trying to impute "one governmental entity's actions to another for conflicts purposes." Db7. That is, we are trying to "impute" the Land Use Board's site plan approval for the Peron proposed warehouse to the Council's redevelopment plan amendment under challenge. This is obviously incorrect.² The Council vote was to provide legal authorization for the Peron proposed warehouse. At the time of the Council vote, the only warehouse proposal was the one approved by the Land Use Board in its Resolution 2022-21. It had no other purpose. By voting to approve the redevelopment plan amendment, Member Piazza was providing legal authorization for the Peron warehouse, which included demolishing the two properties at 560 and 562 South Main Street, on the next block from his parents house and well within the 200 foot rule. Absent the redevelopment plan amendment, 560 and 562 South Main Street would not be demolished. The Piazza parents' house was specifically designated as part of the Site in the planning documents. The Piazza parents' house was property directly "affected by" the redevelopment plan amendment.

² Blacks' Law Dictionary defines "impute" as: "As used in legal phrases, this word means attributed vicariously; that is, an act, fact, or quality is said to be 'imputed' to a person when it is ascribed or charged to him, not because he is personally cognizant of it or responsible for it, but because another person is, over whom he has control or for whose acts or knowledge he is responsible." <https://thelawdictionary.org/imputed/> Member Piazza was, of course, "personally cognizant" of what he was voting for.

2. The Council Vote Is Voided Because Member Piazza's Father Spoke In Favor

In our initial brief we relied on the holding in the case of Meehan v. K.D. Partners, LP., 317 N.J. Super. 563, 565, n. 1 (App. Div. 1998), that if a parent of a member speaks at the hearing, the member is conflicted and cannot vote or participate, as Member Piazza did here. In an effort to avoid the plain holding, the Town badly mischaracterizes what happened in the case, claiming that the Appellate Division didn't "evaluate" that part of the trial court's holding, and that the trial court "ultimately vacated that determination." Neither statement is true, and the Appellate Division was, in fact, vitaly concerned about the possibility of a conflict. After the parties agreed to a settlement (the municipality amended its ordinances to allow the uses) the trial court did enter a consent order, but another neighbor moved to intervene in the land use case to challenge the settlement and the order. After the trial court denied the motion, the Appellate Division reversed and held that the neighbor had the right to intervene and challenge the appropriateness of the settlement. Quite contrary to the Town's assertion, the Appellate Division intended that on remand the issue of conflicts of interest should be the trial court's paramount consideration:

As indicated, Bartkowski's relief as intervenor will be limited to challenging the settlement. At such time, the proper role of the trial judge will be to provide judicial oversight, not act in the role of the Board, a distinction which we recognized in *Warner II*. *** In this regard, the trial judge should specifically address the issue of the right of the parties to "settle" the conflict of interest issue which the trial judge had previously found dispositive in voiding the earlier approval. The judge should first make a threshold finding as to whether any of the settlement terms . . . are illegal or void as against public policy. *** Where the action of a municipal agency

has been declared void because of a conflict of interest, the interests of the public, both real and perceived, require a precise and full articulation of why such conflict no longer stands as an impediment to approval of that same agency's action simply because of an objector's decision to no longer object to such action. All of these issues may be explored by Bartkowski on intervention.

[Meehan, 317 N.J. Super. at 574 (emphasis added; citations omitted).]

The Town also argues that there is no conflict of interest because Member Piazza's father was speaking as a public commenter, not a sworn witness before a land use board.

A conflict of interest does not hinge on whether a speaker is under oath or not.

3. Member Piazza's Receipt Of Campaign Contributions From The Warren County Republican Committee Led By Mr. Perrucci's Law Partner, Douglas Steinhardt, Voids The Ordinance

The Town does not really deny that Member Piazza has received substantial campaign contributions from the Warren County Republican Committee, which is chaired by Douglas Steinhardt, who is the named law partner of Peron owner Michael Perrucci. It can't because the campaign filings we included with our initial brief prove it. But it argues that even if Member Piazza expects to receive that aid from the County Committee in his campaign for Mayor, N.J.S.A. 40A:9-22.5 allows such contributions without creating a conflict if Member Piazza "has no ... reason to believe that the campaign contribution ... was given with the intent to influence the local government official in the discharge of his official duties." The insurmountable problem with this argument is that the actions of Mr. Steinhardt and the Florio Perrucci firm conclusively prove that they very much intended to influence the actions of Member Piazza and the council.

In the companion case of WRN-L-000248-21, the Florio, Perrucci firm, created the conflicts. To very briefly sum up, three members of the Council (President McVey, Vice President Fulper and Member DiGerolamo, none of whom remain in those positions) were defendants in four lawsuits by Town employees alleging harassment and demotion and termination solely attributable to political views. Member Piazza was on the Council but was not named as a defendant. The suits demanded damages from each defendant personally. In addition, President McVey had been arrested for DUI and other traffic offenses and faced a potential term of incarceration as well as stiff fines and penalties. In all five instances, the Florio Perrucci firm represented the Council members. The firm negotiated cash settlements in the civil suits, none of which were paid by the members, and a favorable plea agreement in the DUI case. All of this is set out in detail in our pleadings in the companion case, which, as we said, has been fully briefed before Judge Shanahan.

There was no reason for the Florio Perrucci firm to engage these representations. Even if they were requested to undertake these representations, the firm could have declined. Florio Perrucci named and founding partner Michael Perrucci was and is the owner of Peron Construction, the owner of the riverfront Site. The first warehouse proposal had been discussed with the Town while these legal actions were pending. The law firm actively created the conflicts with these representations. That demonstrates an intention to exercise improper influence over the Town Council when voting on the Peron proposal.

Just as importantly, Mr. Steinhardt spoke in favor of the amendment at the Council meeting of October 4, 2022. We discussed this in our initial brief at pages 18-25 and provided Exhibit 7, the minutes of the October 4 meeting. There was no reason for Mr. Steinhardt to address the merits of the proposal - he is Mayor of Pohatcong and doesn't even live in Phillipsburg - but every Republican member of the Council, including Member Piazza would be well aware of the power Mr. Steinhardt held over their electoral ambitions. These are not speculations, but hard facts. In fact, judging from the minutes, Mr. Steinhardt's remarks appear to have motivated the Council members to vote again (and unsuccessfully again) on a resolution of approval. Exhibit 7 at page 7. Mr. Steinhardt spoke because he intended to influence the Council to look favorably on his law partner's proposal, and that is certainly how Member Piazza would perceive it as well.

To fully appreciate this, assume that Member Piazza (with or without his parents) opposed Mr. Perrucci's proposal. It takes no imagination at all to see how awkward it would be for Member Piazza to discuss with Mr. Steinhardt getting tangible and intangible support for his mayoral candidacy, or even re-election to the Council. Indeed, it would probably be futile for that conversation to take place. Why would Mr. Steinhardt offer any endorsement or support for a candidate who would oppose a major project proposed by his name law partner? Obviously he wouldn't.

4. Michael Perrucci And Douglas Steinhardt Are Law Partners; That Is How They Hold Themselves Out

Finally, the Town resurrects a not very clever attempt at sophistry first seen in

the companion case WRN-L-00248-21. In July 2022 counsel for the Town submitted a letter from Florio Perrucci named law partner Seth Tipton asserting that Mr. Perrucci (i) had retired "as an active partner", (ii) had sold his partnership interest in the firm, (iii) had no profit, loss or capital interest, and (iv) had not performed any legal services for which a client was billed. The letter raised many more questions than it answered, including (i) what is meant by "active partner", (ii) the terms of any buyout including over what period of time), (iii) whether he was paid anything other than compensation based on ownership, and (iv) what unbilled or uncompensated services he provided to clients or to the firm (such as management). None of this can overcome the fact that Mr. Perrucci and Mr. Steinhardt still both hold themselves out as partners in the firm, and as named partners. <https://www.floriolaw.com/attorneys/>, <https://www.floriolaw.com/attorney/michael-j-perrucci/>, <https://www.floriolaw.com/attorney/douglas-j-steinhardt/>.

We fully briefed the lack of merit to the Tipton letter in our briefs to Judge Shanahan. We note that if the court is in the least inclined to credit the letter or entertain any notion that Mr. Perrucci is not a partner in the firm, plaintiffs would by rule be entitled to take discovery relating to the letter's assertions, including reviewing the firm's relevant financial statements and Mr. Perrucci's tax returns. It should not come to that, but a party can not open the door by making assertions on a contested issue and then refuse discovery.

Conclusion

For the reasons given in this brief and our initial brief, plaintiffs respectfully request that Ordinance 2022-30 be vacated for the numerous disqualifying conflicts of interest of Council Member Randy Piazza, Jr.

Respectfully submitted,

POTTER AND DICKSON

By /s/ Peter Dickson

Peter Dickson

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