

POTTER AND DICKSON

ATTORNEYS AT LAW
194 NASSAU STREET

PRINCETON, NEW JERSEY 08542

(609) 921-9555

R. WILLIAM POTTER
MEMBER N.J. AND CA. BARS

PETER D. DICKSON
MEMBER N.J. AND D.C. BARS

TELECOPIER
(609) 921-2181

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 08876-1282

Re: Morrisette v. Town of Phillipsburg Town Council, WRN-L-000341-22:
Case Management Conference May 16, 2023
Companion case:
Kormandy v. Town of Phillipsburg, WRN-L-00248-21 (Shanahan, A.J.S.C)

Dear Judge Ballard:

We represent the plaintiffs in this case. I write in advance of the case management conference Your Honor has scheduled for May 16.

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 Kevin Shanahan, A.J.S.C., but not yet decided. In a case management order of January 5, 2023, that the parties agreed to, Judge Shanahan ordered that the companion case be held until this appeal was disposed of. However, 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. But it's not necessary.

Both cases raise numerous arguments against the ordinances approving the

warehouse proposal, but in each case disqualifying conflicts of interest would vacate the ordinances and dispose of the cases, obviating the need for any further briefing. In each case, we have therefore briefed only the conflicts issues, reserving the right to brief the other issues should the conflicts not dispose of the complaints.

1. The 200-foot rule. In this case, we demonstrate that the parents of Council Member Randy Piazza, Jr., (Member Piazza) own a residence within 200 feet of the formal Site of the proposed warehouse; namely, two properties at 560 and 562 South Main Street that are to be demolished for traffic improvements. Under cases we cite, this is per se a disqualifying conflict of interest that would vacate the challenged ordinance. Care of Tenafly v. Tenafly, 307 N.J. Super. 362 (App. Div. 1998) is a good example of this case law. The Piazza Sr. residence is not in or within 200 feet of the redevelopment area, as the Town argues, but 560 and 562 South Main Street are formally designated as part of the "Site" on the engineers' plats, and the Piazza Sr. residence is also property "affected by" the ordinance, the language used in Care One.

If the court agrees with this, it will dispose of the case and not require any further briefing or reference to the companion case. At some point, then, Judge Shanahan will decide the companion case. (We are not trying to argue the merits, just delineate the scope of the discussion at the CMC.)

2. Remarks by Member Piazza's father. Randy Piazza, Sr., addressed the council and spoke in favor of the ordinance. Plaintiffs argue that the case of Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 565 (App. Div. 1998) requires that this vacates the

ordinance. The Town argues that Meehan is distinguishable. If the court agrees with the plaintiffs, this would vacate the ordinance and not require any further briefing or reference to the companion case. Again, at some point, Judge Shanahan will decide the companion case.

3. Other disqualifying conflicts. We have also briefed another disqualifying conflicts issue, namely, that the owner of the proposed warehouse Site, Michael Perrucci, Esq., is a named partner in the law firm of Florio, Perrucci, Steinhardt, Capelli Tipton & Taylor. His partner, State Senator Douglas Steinhardt, Esq., is the Chair of the Warren County Republican Committee, which has rendered substantial campaign aid to Member Piazza and can be expected to render substantial aid to Member Piazza's recently announced campaign for Town Mayor. The Town disagrees that this is a disqualifying conflict for two reasons. First, it claims that this would not be a disqualifying conflict because neither Mr. Steinhardt nor Member Piazza intended that the campaign aid influence Member Piazza in his official duties. See N.J.S.A. 40A:9-22.5, which so provides. In response, plaintiffs demonstrate that the actions of the Florio Perrucci firm in the as-yet undecided companion case and Mr. Steinhardt's actions in this case among other facts prove the intention to influence.

Second, the Town has repeated a claim it made in the companion case that tries to argue that Mr. Perrucci is somehow not actually a partner in the firm that still bears his name.

These two issues of the law firm's actions leading to the companion case and the

claim that Mr. Perrucci is not a partner in the Florio Perrucci firm were fully explored and briefed in the companion case. The court may conclude that it cannot decide these issues in this case because they are before Judge Shanahan.

Thus among the matters to be discussed at the CMC will be whether the court decides to proceed on the 200-foot rule and Mr. Piazza Sr.'s addressing the Council, which if plaintiffs prevail, would dispose of the case. If the court concludes those issues do not dispose of the case, then the issue is how to decide issues fully briefed in the companion case that are implicated in this case.

I should add that although the court has scheduled the CMC for remote treatment, I believe that an in-person conference would be more efficient and productive. But that is for the court to decide.

We appreciate the court's consideration.

Respectfully submitted,
POTTER AND DICKSON

By /s/ Peter Dickson
Peter Dickson
NJ Attorney ID No. 001661979

Service: by eCourts