



Upper Mount Bethel Township
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UPPER MOUNT BETHEL TOWNSHIP
BOARD OF SUPERVISORS WORK SESSION MEETING MINUTES
MONDAY, JANUARY 24, 2022 – 7:00 PM

*This meeting was held in person and live streamed through the Upper Mount Bethel Township Facebook page.

I.

Chairman Pinter called the meeting to order at 7:00 pm.

The Pledge of Allegiance was recited.

Present were Chairman Pinter, Supervisor Due, Supervisor Bermingham, Supervisor Teel, Supervisor Friedman, Township Manager Nelson, Engineer Coyle and Township Solicitor Karasek.

Chairman Pinter made a MOTION to approve the agenda, seconded by Supervisor Due. Supervisor Friedman would like to amend the agenda, adding a brief comment on the well ordinance and a brief comment from Mr. Manzi on the IDA. Chairman Pinter stated he responded to Supervisor Friedman's email. Supervisor Friedman stated that with all due respect, the Chairman cannot put any stipulations on who and/or what can be on the agenda. Chairman Pinter stated that as the Chairman, he can. **MOTION** by Supervisor Teel to approve the agenda, seconded by Supervisor Due. Vote: 4-1.

Public Comment:

Andy Mahan, Kovar Lane, commented on residents repairing their own property and how difficult it is to do in the Township. At this time, he is requesting the termination of Engineer Coyle, Matt Wojaczyk and to put Tina on probation.

Richard Wilford-Hunt, Shady Lane, read his public comment, which will part of the official record. Richard commented on the lack of transparency, let the residents be a part of the discussion.

Chris Finan, Chief Mt. Bethel Fire Company, Apache Dr. commented on inaccurate information being discussed on social media that involved responding to recent emergency calls. Chris gave summary of the recent call to Air Liquide'. Chris thanked

Lou Pektor for giving the Fire Company access to the water tanks at the Power Plant and also a pond, if and when water is needed.

Charles Cole, Riverton Rd., commented on the Northampton County Council meeting which the purpose of the meeting was to discuss a resolution to have public hearings by DEP and PennDOT on the 303 Demi Rd. project. Charles stated the Attorney for RPL threaten legal action against the County Council if they adopt the Resolution.

Erv McLain, Attorney for RPL, commented on Charles Cole's comment and stated that he recommends the Board to review the recorded County Council meeting, he did not threaten to legal action to anyone.

Mark Mezger, Scenic Ct., commented on the NID, the costs and what happens if the NID budget does not meet the NID revenues.

Gary Hilliard, Slateford Rd., commented on the flooding situation and would like to know if there are any updates on fixing the issue. Manager Nelson stated he has been in contact with the Railroad, with the weather, he has been sidetracked, but that is where we have to start.

Lindsey Manzi, Road Crew Chief, commented on the social media comments regarding the road maintenance during inclement weather. Lindsey gave a summary of how things work, with weather, traffic, temperature, they all play a part in making the decision how to maintain the roads and do the right thing for the residents. Chairman Pinter asked if he was ever told not to go out because of budgetary issues, Lindsey stated no. There was a discussion on adding more road crew members. Supervisor Bermingham asked for this to be on the next agenda.

Richard Klinge, Totts Gap Rd., asked why the Township Manager's position is not advertised. Chairman Pinter stated the position is a contractual position.

Rocco Cozza, Cozza Law Group, read his public comment, regarding statements made by Supervisor Bermingham and Supervisor Friedman on the Conflict-of Interest Allegations. This comment will be part of the official record.

II.

ANNOUNCEMENTS

Chairman Pinter commented on a recent anonymous postcard that was mailed to members of the community and would like to address it on behalf of the Board of Supervisors. Many residents have expressed their outrage. This will not be tolerated in the Township. This comment will be part of the official record.

Manager Nelson announced that if anyone knows of any resident that may need assistance with keeping their homes safe, please contact the office.

III.

ACTION ITEMS

1. Heritage Conservancy Contract-Manager Nelson stated the Heritage Conservancy works with the Open Space Advisory Board on identifying

properties that would qualify for Open Space. The contract is an annual renewal, not exceeding \$15,000 for the year. Manager Nelson stated the Open Space Program is an important program, but we need balance in the Township. Solicitor Karasek stated the contract is acceptable. **MOTION** by Supervisor Due to approve the Heritage Conservancy Contract, seconded by Supervisor Bermingham. Vote: 5-0.

2. Appoint Zoning Hearing Board Members-Chairman Pinter discussed the open seats on the Zoning Hearing Board. Manager Nelson stated the position to fill this evening is the re-appointment of Scott Duddy. The seat previously held by Susan Klaver, who recently passed away, and the alternate positions, will be filled after interviewing the applicants. **MOTION** by Chairman Pinter to re-appoint Scott Duddy for a five (5) year term, expiring 12/31/2026, seconded by Supervisor Friedman. Vote: 5-0. Chairman Pinter would like to invite the applicants to the next meeting, February 14, 2022, to give the Board the opportunity to have a discussion with each applicant and that time, the Board can make a decision on filling the open seats. Secretary Cindy Beck will contact each applicant to invite them to the next meeting. **MOTION** by Chairman Pinter to table the open/alternate seats on the ZHB to the February 14, 2022, meeting, seconded by Supervisor Friedman. Vote: 4-0-1. Supervisor Teel abstained.
3. Agricultural Security Area (ASA) Belvidere Corner Rd.-Solicitor Karasek stated an application was received from Barbara Rokas and it deals with three (3) parcels on Belvidere Corner Rd. Solicitor Karasek stated that Township simply accepts the application as filed and at the end of the 180 days, the application is deemed approved, and an agreement will be prepared. **MOTION** by Supervisor Friedman to accept the ASA application as filed, seconded by Supervisor Bermingham. Vote: 5-0.
4. NID-Attorney Bolewitz stated that after a discussion with Solicitor Karasek on the NID Ordinance that was approved by the BoS on December 27, 2021, Attorney Bolewitz and Solicitor Karasek felt in order to avoid any necessary challenges it would of the best interest of the BoS to re-vote on the Ordinance. The Ordinance would take effect today and the vote is to include the establishment of the NID, the approval of the NID plan in its entirety, and identify the entity to serve as the NIDMA. Solicitor Karasek stated that he does agree and recommends that it be re-voted on again because there could be a question that it was not sufficiently advertised under the Second-Class Township Code, it may have been properly advertised under Act 130 but may have not been under the Second-Class Township Code. Supervisor Friedman had a few questions for Attorney Bolewitz concerning the new map of street boundaries to include 75 additional properties. Attorney Bolewitz stated there are not 75 new properties to be included in the NID. Supervisor Friedman asked who determines who is included and excluded within the boundaries. Attorney Bolewitz stated that was part of the entire negotiation process. There was further discussion on the map and property boundaries. **MOTION** to adopt the NID Ordinance, seconded by Supervisor Due. Discussion: John Jacko, with Leech Tishman, on behalf of New Demi Road, LLC and River Pointe Logistics LLC. Mr. Jacko stated a public

comment was prepared and sent to the Solicitor Karasek, Attorney Bolewitz, and ultimately to Mr. Friedman and Mr. Bermingham and would like to read this into the record. This is a request of Recusal of UMBT Township Supervisors, David Friedman and John Bermingham. Supervisors Bermingham and Friedman are requested to immediately comply with their common law ethical obligations to recuse themselves from the January 24, 2022, Board vote on the NID Ordinance and any future votes relating to the NID and the River Pointe Project since they are incapable of acting in an adjudicative capacity without bias as required under PA common law. Supervisors Friedman and Supervisor Bermingham have publicly expressed predisposition meets this basic legal test which means that if they were to refuse to recuse, then such vote could be judicially invalidated should they refuse to comply with their common law ethical recusal obligations. It is respectfully suggested that Supervisor Friedman and Supervisor Bermingham consider retaining personal legal counsel to represent them as all ethical issues to which they are subject are personal to them and not matters of the BoS for which they are entitled to any taxpayer funded representation. Mr. Jacko stated that he has not received any notification since sending the letter to Supervisor Friedman and Supervisor Bermingham for recusing themselves and this is what is asked before any vote on NID is taken. Chairman Pinter asked Solicitor Karasek his comment on Mr. Jacko's public statement. Solicitor Karasek stated he represents the Township Board Supervisors, not Supervisors individually. Solicitor Karasek stated he cannot comment as to whether or not Supervisor Bermingham or Supervisor Friedman should or should not recuse themselves on voting on this matter, he does not give personal representation, which would then cause disqualification of his ability to represent them or the BoS. Solicitor Karasek believes that at this point, the allegations that have been made against Supervisor Bermingham and Supervisors Friedman are allegations of a personal nature, they have to decide as a personal matter whether they want to vote or not. Solicitor Karasek does suggests getting private council to give them some advice with respect to this matter. Supervisor Friedman stated he would like this vote to be tabled in order for him to retain private council. Supervisor Bermingham asked for this to be on the February 28, 2022, meeting. Chairman Pinter stated there is a Motion and has been seconded for the NID. Chairman Pinter asked if anyone would like to recall their vote. Supervisor Teel and Supervisor Due stated no. Solicitor Karasek stated that anyone can make a Motion to amend, which takes precedence over the Motion on the floor. Chairman Pinter asked if there is a Motion to amend the Motion on the floor. **MOTION** by Supervisor Friedman to amend the Motion, seconded by Supervisor Bermingham. Vote: 3-2. Supervisor Due asked what the amendment was to the motion. Chairman Pinter responded to table. Supervisor Due stated his vote was to table but would like to question the statement made by Supervisor Bermingham at the County Council meeting. Supervisor Bermingham stated he specifically identified himself as Supervisor of Upper Mount Bethel Township, appearing for the Township and the citizens. Supervisor Bermingham stated he said, "I'm John Bermingham, I'm with the

Board of Supervisors of Upper Mount Bethel Township". Supervisor Birmingham said he was there on behalf of himself. Supervisor Birmingham stated he was there for the Rockwall. Secretary Cindy Beck asked for clarification on the motion and vote. Chairman Pinter stated there was a motion on the table that was seconded, then public discussion and then there was a motion by Supervisor Friedman to table this until the February 28th meeting and was seconded by Supervisor Birmingham and the vote was 3-2.

IV. REPORTS

1. SEO-Chairman Pinter stated that Scott is not present to give his report but is provided in the binders to review.
2. Zoning-Tina gave a summary of her monthly zoning activity as well as Matt's property maintenance report.
3. Accounting/Bookkeeper-Chairman Pinter stated that Diann's report is in the binders to review.
4. Open Space Advisory Board-Supervisor Friedman reported that the Zeigafuse property is in the final stages of completion.
5. Economic Development Committee-Chairman Pinter stated Scott had no report this month.
6. Manager-Manager Nelson reported meeting attended, signed the contracts for the two new trucks, the new excavator was delivered, some items at Eastern that we do not use we will be putting on Municibid, improved lighting at Eastern completed. Supervisor Teel strongly suggests Manager Nelson attend the PSATS Convention.
7. Engineer-Engineer Coyle reported plans reviewed and currently working with Manager Nelson and Lindsey on the National Park Dr. Bridge Culvert replacement. Manager Nelson reported that Carroll Engineering made a generous donation to Park/Rec. Supervisor Teel asked where we are with the Rt 611/512 Traffic Light. Engineer Coyle stated that the plan is with PennDOT for review and is on hold until the traffic study for RPL is completed.
8. Solicitor-Solicitor Karasek gave a summary of his monthly activity, which included meetings attended, subdivision/land development/zoning matters, litigation, and miscellaneous administrative matters. Solicitor Karasek stated he will be submitting his response to the Leech Tishman comment letter and would like it to be included in the official record.
9. Secretary-Cindy Beck gave a summary of her monthly activity, ongoing website maintenance with Stavros, grants, monthly reports, agendas and minutes, working with Tina on ZHB matters, working with Manager Nelson on RTKs, and providing assistance to the residents.
10. Parks/Rec-Stavros reported on governance, park development, sports/recreation, community engagement and community outreach. Stavros stated he was appointed Chairman and Mike Hudak has decided to not remain on the Board, after volunteering for 16 years. Thank you, Mike.

11. IT/Telecom-Stavros reported ongoing IT support, security updates, running the live stream meetings, annual software renewals, and 2022 IT wants/needs project recommendations being prepared.
12. Planning Commission-Supervisor Teel stated the Planning Commission had its reorganization and once again Supervisor Teel is the Chairman. Supervisor Teel stated the RPL East LLC Subdivision was discussed and the RPL East LLC Land Development was tabled.
13. Supervisors
 - a. Supervisor Bermingham will wait to report at the next meeting.
 - b. Supervisor Friedman had nothing to report.
 - c. Supervisor Due reported he is working with Lindsey on the roads. Supervisor Due commented on a social media post that Supervisor Bermingham posted and felt it was very inappropriate. Supervisor Bermingham stated his post had nothing to do with the roads or his management of the road crew.
 - d. Supervisor Teel had nothing to report.
 - e. Chairman Pinter had nothing to report.

V.

ADJOURNMENT

MOTION by Supervisor Teel to adjourn the meeting at 9:50 pm, seconded by Supervisor Due. Vote: 5-0.

Respectfully Submitted by Cindy Beck-Recording Secretary

Ronold Karasek

From: Ronold Karasek
Sent: Monday, January 24, 2022 12:38 PM
To: Martin Pinter; Robert Teel; David Due; John Bermingham; David Friedman
Cc: Ed Nelson; Marc B. Kaplin; Erv McClain; Matthew Bolewitz; 'jjacko@leechtishman.com'
Subject: FW: Recusal Request
Attachments: PA Second Class Township Code-Duties of Solicitor.pdf

Dear Supervisors:

Attached is a self-explanatory letter received from Attorney John J. Jacko of the Leech Tishman law firm.

As this letter has been asked to be made part of tonight's Meeting Record (as the NID is scheduled for a vote), the voting recusal issue on behalf of Supervisors Bermingham and Friedman will need to be addressed.

So the Board (and Supervisors Bermingham and Friedman) is not blind-sided, my research reveals that I will be unable to make any recommendation to the Board or to these two Supervisors as to whether or not they should recuse from voting. It must be their individual, personal...not a Board's...decision.

My duties are outlined by the Pa Second Class Township Code (see copy attached); and, while the statute recites that inter alia I am able to "...defend...any township officer against all actions or suits...in which any of the estates, rights privileges, trusts, ordinances or accounts of the township may be brought into questions before any court in this Commonwealth..." Please note that this duty of representation does not address the instant request for recusal as the result of prejudice, bias and pre-judgment so on which are the basic tenets of substantive due process in adjudicative matters i.e. a fair and unbiased tribunal and where decisions on the RPL/NID matters are adjudicative in nature under the PA Local Agency Law. 2 Pa C.S. A. Section 551 et seq. Further, a PA Supreme Court case of *Silver et al. vs. Downs et al.* 425 A.2d 359 (Pa 1981) is also instructive on this issue.

In the *Silver* case, the Bucks County Court disqualified a Township Solicitor in representing two (2) Supervisors-of a three(3) member Board-in the defense of a recall petition brought under the Pa Second Class Township Code by the third Supervisor and others. The Pa Supreme Court vacated the lower court's decision and remanded the case to the Bucks County court for discovery proceedings to determine if the Solicitor should be disqualified because the Solicitor inter alia allegedly had an attorney-client relationship with the Respondent Supervisor in his official capacity. In doing so, the Court made clear that Solicitor representation occurs on behalf of the Township Supervisors in their official capacity. It also posed the question as to whether the Solicitor's representation of the two Supervisors would affect her ability to counsel the other Supervisor on non-recall matters. The dissent goes on to also state that "The Second Class Township Code is clear that the township solicitor, herself, is a township official, is without authority to represent the township officials in their personal capacity". See 425 A.2d at 366.

Accordingly and if Supervisors Bermingham and Friedman are taken to task for failing to recuse and vote, I may not be able to represent them as the Township Solicitor unless the Board of Supervisors (as a whole) is brought into any litigation. This is especially so if the basis of the recusal request is based upon actions of Bermingham and Friedman in their individual...and not official...capacity i.e. the argument that taxpayer money should not be used to defend them in their individual capacities. Therefore and while I am reluctant to say so, Supervisors Bermingham and Friedman should strongly consider retaining private counsel on this issue as the request for recusal will continue to recur and re-occur as the RPL project proceeds.

Thank you; and, feel free to contact me if you have any questions.

Ronold J. Karasek, Esquire
Solicitor to Upper Mount Bethel Township

From:

Ronold J. Karasek, Esquire

The Karasek Law Offices, LLC

641 Market Street, Bangor, Pennsylvania 18013

E-mail: ron@karaseklawoffices.com

telephone: 610-588-0224

telefax: 610-588-2088

PLEASE NOTE: In the meantime and over the Christmas Holiday, my IT person changed my e-mail address from stacey@themklawoffice.com to ron@karaseklawoffices.com. Kindly note this change in your address book for future use; and, feel free to contact me if you have any questions. Thank You.

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that the federal tax advice (if any) contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transactions or matter addressed herein.
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From: John J. Jacko, III <jjacko@leechtishman.com>
Sent: Monday, January 24, 2022 10:45 AM
To: mbolewitz@cozzalaw.com; Ronold Karasek <ron@karaseklawoffices.com>
Cc: Julia Wu <juwu@leechtishman.com>
Subject: RE: Recusal Request

Sirs:

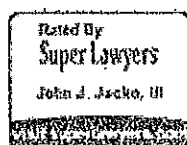
Please make my below email and letter recusal request and objection a part of the record at tonight's meeting.

John J. Jacko, III | Partner
jjacko@leechtishman.com

LEECHTISHMAN
LEECH TISHMAN FUSCALDO & LAMPL, LLC
leechtishman.com

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PITTSBURGH | CHICAGO | LOS ANGELES | NEW YORK
PHILADELPHIA | SARASOTA | WILMINGTON, DE



Recently an anonymous postcard was sent to members of this community. I would like to address that postcard on behalf of the Board of Supervisors. Everyone on this board, as well as members of our municipal staff, believes in civil discourse and the free airing of ideas and opinions. This card, however, stepped over the line of common decency and does not reflect the community standards that this board represents. With xenophobic and racist overtones, the card made a number of libelous and outrageous allegations with no proof or supporting evidence. As with most cowards, it was unsigned and gave no indication of its origin or who or what group was behind it.

There will be an active investigation as we continue to determine if this is indeed mail fraud. We are working with the US District Attorney to find the source and once that offender(s) is identified, there is a possibility that the township may sue for libel. The offender(s) may also face criminal charges and will be prosecuted to the fullest extent of the law.

I am happy to report that the postcard was not well received by the community as a whole, many of whom have expressed their outrage. This is **not** the Upper Mount Bethel that we know and love and hope the person or people who published and distributed this material will understand that it will not be tolerated.

Public Comment. – UMBT BOS Mtg. Jan 24 2022

In a recent article in Pennlive the journalist writes “warehouse development in Pennsylvania is decimating the tourism value of our region and the state for generations to come”. And yet here in UMBT you are laying out the red carpet for a massive 6.5 MSF warehouse/industrial park. The very thing that will destroy any hope of tourism and quality of life here.

As you have heard many of us do not want warehouses and/or distribution centers to blight our township. We do not want the thousands of trucks a day that this warehousing/industrial park will bring. The jam up under the rail trestle on 611 and the traffic light at 611/512 will be dangerous. Just image going to retrieve you mail with semi trucks just feet away from you. The text amendment and the NID plan you passed has given the developer almost unlimited control to build 800,000SF buildings and bigger thus heightening these concerns. Bob, at the last Planning Commission meeting you actually pushed back against Kaplan (Pektor’s land use attorney) and said we need to know what these buildings are going to be used for before they are built. Thank you for that. Maybe now you are just realizing how much control you have given up to the developer. It is not to late. It is not too late to protect what is dear to people who live here; the rural character and quality of life here in UMBT.

But I want to finish up by referring to a mis-leading statement made by Ed Nelson at the County Council meeting on Jan 20.

After I publicly commented about concern for traffic from the logistics park, he followed by saying we (was he representing UMBT BOS when he said "we", that is another question?). We are open and transparent and everything is done in public meetings. The mere fact that township citizens are forced to submit RTK requests just to get basic information counters this statement. Your lack of transparency, this boards lack of transparency is costing a lot of time and money to the township. Your lack of transparency is also costing us, the residents, time and money. None of this has to continue if you just have an open conversation with us.

You made the statement about being open and transparent - now back it up. You represent the township and the residents of UMBT. We are owed this simple courtesy. Lay out the plans, put out the studies and engineering review letters etc. Put them out here on the table BEFORE the meetings and let us, the residents of UMBT come in to review them and be part of the discussion. Again, let us work together by bringing on a community planner.

Richard Wilford-Hunt
2012 Shady Lane
Mt. Bethel, PA

January 20, 2022

VIA EMAIL ONLY

Re: Conflict-of-Interest Allegations and New Matter

Dear Upper Mount Bethel Township Board of Supervisors:

Please accept this letter as our law firm's formal response to the statements made by various members of the Board of Supervisors (the "BOS") during the BOS Meeting on January 10, 2022 (the "Meeting").

During the Meeting, Supervisor Friedman requested an executive session to discuss alleged conflict-of-interest issues regarding Matthew Bolewitz, Esq. ("Bolewitz"), and our law firm's representation of the BOS throughout the Neighborhood Improvement District (the "NID") negotiation process. After executive session, Supervisor Bermingham claimed that our firm failed to inform him of Bolewitz's prior work experience and both Supervisor Bermingham and Supervisor Friedman motioned to terminate the services from the Cozza Law Group.

Based on the statements made during the Meeting, we would like to clarify the record.

Conflict-of-Interest Allegations

First and foremost, the BOS hired the Cozza Law Group as special counsel for the NID process. The BOS did not hire Bolewitz in his individual capacity. We believe it was the aggregate experience of all attorneys in our law firm that encouraged the BOS to proceed and hire us as special counsel. Despite Bolewitz being the lead attorney on this matter, it has been the collective effort of our law firm to provide effective legal counsel to the BOS.

Second, as Supervisor Bermingham should be aware, attorneys are held to ethical standards through the rules of professional conduct. We take the code of ethics seriously and defend our actions against the allegations set forth by Supervisor Bermingham and Supervisor Friedman. Pursuant to these rules, our law firm provided a "No Conflict-of-Interest Declaration" letter to the BOS, dated April 21, 2021. The above referenced letter is attached as Exhibit A. The letter explicitly states that our firm, including Rocco E. Cozza, Esq. and Matthew J. Bolewitz, Esq., does not have nor has ever had an attorney-client relationship or any prior dealing with the company, River Point Logistics Park and/or Ashley Development Corporation.

Third, contrary to Supervisor Bermingham and Supervisor Friedman's allegations, the rules of professional conduct do not impute a conflict-of-interest issue when an attorney's prior work history overlaps with opposing counsel. In this matter, Supervisor Friedman alleges that there is a conflict due to Bolewitz's prior work history overlapping with one of the Ashley Corporation's counsel, Ken Foltz, Esq., at Leech Tishman Fuscaldo & Lampl ("Leech Tishman"). It is important to recognize that Leech Tishman is a nationwide law firm with approximately one hundred attorneys spanning several states. The notion that a lawyer would be conflicted out of any and all matters simply because their previous work experience happens to overlap with opposing counsel is without merit.

Fourth, to clarify Supervisor Pinter's statements during the Meeting, Bolewitz worked for Leech Tishman for approximately three and half (3.5) years. For the first two years, Bolewitz reported directly to one of Leech Tishman's major energy and real estate clients. During that time, Bolewitz had very limited exposure and/or interaction with other attorneys at Leech Tishman. While respecting Mr. Foltz's privacy, we can say that for approximately ten (10) months prior to Bolewitz's departure from Leech Tishman, Mr. Foltz was on medical leave and had little to no contact with Leech Tishman. Therefore, the last professional overlap between Bolewitz and Mr. Foltz, Esq. would have been a small window over two (2) years ago. As is common in any law firm, we do not doubt there were clients that would have received legal services from both Bolewitz and Mr. Foltz, Esq.; however, in no such instance did this include River Pointe Logistics Park and/or Ashley Development Corporation.

Ultimately, we will respect the BOS decision on whether to proceed with Cozza Law Group as special counsel regarding the NID process; however, we vehemently disagree with Supervisor Birmingham and Supervisor Friedman's allegations as set forth in the BOS Meeting on January 10, 2022.

New Matter Re: Conflict-of-Interest and Rust Law

Throughout the NID process, we have received numerous letters from Rust Law, whereby their law firm asserts that they represent the group called Concerned Citizens of Upper Mount Bethel Township ("CCUMBT"). Moreover, Rust Law has made abundantly clear of CCUMBT's intention to take legal action against the BOS as well as file complaints with the Disciplinary Committee of the Pennsylvania Supreme Court against our law firm. As evidence, a subset of the CCUMBT group continues to pursue legal action against the BOS in the matter Charles A. Cole, et. al. v. The Board of Supervisors of Upper Mount Bethel Township (Commonwealth Court Docket No. 957 CD 2021). Therefore, we must take Rust Law's threats of litigation and false allegations of ethical violations against our law firm very seriously.

It has come to our attention that certain members of the BOS are potentially involved with CCUMBT. It is critical that our law firm better understand these members' involvement in such group, as this presents, in our opinion, a significant conflict-of-interest with their duties as members of the BOS.

Supervisor Friedman has stated he is either one of the founders or original members of CCUMBT. Additionally, during the first public hearing on the NID, it was Mr. Friedman who stated that Mr. Robert Rust of Rust Law was with him in attendance.

Additionally, in the matter Charles A. Cole, et. al. v. The Board of Supervisors of Upper Mount Bethel Township (Commonwealth Court Docket No. 957 CD 2021), Supervisor Friedman remains a named appellant on file. As recommended by the State Ethic's Commission, Rust Law filed a Notice of Withdrawal of David Friedman as an appellant in the matter; however, to our knowledge, Supervisor Friedman has not been removed as a party in that action.

As such, we would ask that Supervisor Friedman provide formal responses to the following:



1. Has the court officially removed you as a party from the Charles A. Cole, et. al. v. The Board of Supervisors of Upper Mount Bethel Township matter?
2. Does Rust Law represent you or your immediate family members in any capacity, and if so, on what matters?
3. Are you or your immediate family members still in contact with Rust Law?
4. Are you or your immediate family members affiliated in any way with CCUMBT?
5. Do you or your immediate family members, in the past or at this time, handle, manage, and/or otherwise have access to the CCUMBT finances?
6. Have you or your immediate family members paid for Rust Law's legal fees in part or in whole?
7. Do you or your immediate family members intend to financially support and/or donate in any way to the CCUMBT group during your tenure as a Board of Supervisor?

On October 28, 2021, the BOS held the First Public Hearing on the NID. In that hearing, a question was raised to the BOS regarding their involvement with the CCUMBT group. In response, Supervisor Bermingham stated that his spouse has donated to the CCUMBT fund but did not specify whether such donations came from an account solely owned by his spouse. It is our understanding that CCUMBT solicits the general public to fund its legal fees, including payments to Rust Law.

In order to provide Supervisor Bermingham an opportunity to clarify the record, we would request that Supervisor Bermingham provide responses to the following:

1. When did your spouse donate to the CCUMBT fund?
2. When did you become aware of such donation(s)?
3. At the time the donation(s) was made, did the funds originate from an account solely owned by your spouse?
4. Were you aware that these donations are used to pay for legal fees in current and ongoing lawsuits against the BOS?
5. Do you or your immediate family members intend to financially support and/or donate in any way to the CCUMBT group during your tenure as a Board of Supervisor?

We would ask that the BOS either read this letter into the record or include this letter with the meeting minutes during the next scheduled BOS Meeting.

As always, feel free to reach out to me to discuss this matter in more detail.

Sincerely,

Rocco E. Cozza, Esq.

CC: Board of Supervisors of Upper Mount Bethel Township
Solicitor – Ronold Karasek, Esq.
Township Manager – Ed Nelson
Township Secretary – Cindy Beck



COZZA LAW GROUP PLLC
PITTSBURGH

April 21, 2021

VIA E-MAIL DELIVERY

Upper Mount Bethel Township
387 Ye Olde Highway
PO Box 520
Mount Bethel, PA 18343
Attn: Ed Nelson
Email: townshipmanager@umbt.org

RE: No Conflict-of-Interest Declaration

Members of the UMBT Board of Supervisors:

Please accept this letter as our formal statement and declaration that Cozza Law Group PLLC and attorneys, Rocco E. Cozza and Matthew J. Bolewitz, do not have nor has ever had an attorney-client relationship or any prior dealings with the company, River Pointe Logistics Park, and/or Ashley Development Corporation.

Sincerely,

Rocco E. Cozza, Esq.
Founder, Cozza Law Group PLLC

LEECH TISHMAN

LEECH TISHMAN FUSCALDO & LAMPL

January 24, 2022

John J. Jacko, III
jjacko@leechtishman.com

Via Email: ron@karaseklawoffices.com

David Friedman, UMBT Supervisor
John Bermingham, UMBT Supervisor
c/o Ronold J. Karasek, Solicitor
Upper Mount Bethel Township
c/o THE KARASEK LAW OFFICES, LLC
641 Market Street
Bangor, PA 18013

Via Email: ron@karaseklawoffices.com

Ronold J. Karasek, Solicitor
Upper Mount Bethel Township
c/o THE KARASEK LAW OFFICES, LLC
641 Market Street
Bangor, PA 18013

Via Email mbolewitz@cozzalaw.com

Matthew J. Bolewitz, Special Counsel
Upper Mount Bethel Township Board of
Supervisors
c/o COZZA LAW GROUP PLLC
510 Washington Avenue
Carnegie, PA 15106

Re: Request of Recusal of UMBT Township Supervisors, David Friedman & John Bermingham

Dear Messrs. Friedman, Bermingham, Karasek & Bolewitz:

This firm represents, NEW DEMI ROAD, LLC ("**Demi Road**") and RIVER POINTE LOGISTICS CENTER, LLC ("**River Point**") (both collectively, the "**Developers**") regarding their development of certain parcels of real property known as the "River Pointe Industrial Park" ("River Pointe Project"). This correspondence is being sent to you in light of the bias, prejudice, capricious disbelief, and/or prejudgment that arises from certain members of the Upper Mount Bethel Township ("**UMBT**") Board of Supervisors ("**Board**"), specifically David Friedman ("**Supervisor Friedman**") & John Bermingham ("**Supervisor Bermingham**"), who have publicly expressed predisposition against the Developers' River Pointe Project generally and the River Pointe Neighborhood Improvement District ("**NID**") that the Board approved at its December 27, 2021 meeting. Supervisors Friedman & Bermingham are requested to immediately comply with their common law ethical obligations to recuse themselves from the January 24, 2022 Board vote on the NID ordinance and any future votes relating to the NID and the River Pointe Project since they are incapable of acting in an adjudicative capacity without bias as required under Pennsylvania common law.

Supervisor Friedman was recently elected as a member of the Board and is a plaintiff party in litigation before the Commonwealth Court of Pennsylvania (Docket Number: 957 CD 2021) against the text amendment related to the River Pointe Project—in which litigation River Pointe was and remains, an intervening party adverse to Supervisor Friedman and the other plaintiffs/appellants in that matter which they lost in the court below. A copy of the docket dated January 20, 2022 from that matter confirming that Supervisor Friedman remains a plaintiff in the litigation, which is on appeal, is enclosed herewith. Supervisor Friedman self-reported to the State Ethics Commission (see enclosed letter dated December

LEECH TISHMAN FUSCALDO & LAMPL, LLC
1417 Locust Street, 3rd Floor | Philadelphia, Pennsylvania 19102 | T: 267.938.4562

LEECHTISHMAN.COM

6, 2021 ("**Ethics Letter**"; at 2)) that he was a founder and active member of the Concerned Citizens of Upper Mount Bethel Township ("**CCUMBT**")—which organization has vocally challenged the River Pointe Project generally and the NID, specifically. In addition to being a plaintiff in the litigation, Supervisor Friedman admitted to contributing money to the legal fund for the litigation. In fact, after filing suit over the text amendment, Supervisor Friedman ran for and won his position on the Board on what he admitted was a public campaign platform that "emphasized keeping the Township rural and fighting the Text Amendment."¹ Thus, Supervisor Friedman's political career is built on his publicly expressed predisposition against the Developers, Mr. Pektor, the River Pointe Project generally and the NID.

Supervisor Bermingham, like Supervisor Friedman, has been a vocal Board member against the Developers, Mr. Pektor, the River Pointe Project generally and the NID. At the October 28, 2021 Board meeting, Supervisor Bermingham was queried by the Developers' counsel (the Board has a video recording of the exchange that was made available to the public on the internet) about his and his wife's involvement in or with CCUMBT. He admitted that his wife was a member of CCUMBT who contributed money to its cause—i.e., at least financially supporting the very litigation to which Supervisor Friedman is a plaintiff party adverse to intervenor, River Pointe. Although Supervisor Bermingham denied being a member of CCUMBT, that representation does not appear to have been true as the "Don't Flush Upper Mount Bethel" website (enclosed), on information and belief, operated by CCUMBT states that Supervisor Bermingham has been a member of that organization for about a year.

In addition to the foregoing, Supervisor Bermingham appeared by video at a January 20, 2022 Northampton County Council ("**Council**") meeting expressly supporting a resolution (enclosed) that is specifically and improperly targeted against the Developers, Mr. Pektor, the River Pointe Project and the NID passed by the Council. Supervisor Bermingham specifically identified himself as a Supervisor of UMBT who was appearing for the Township [UMBT] and the citizens of UMBT. Supervisor Friedman was present and seated with the supporters of the improper resolution proposal that was ultimately tabled to a future date. The overt bias publicly expressed by Messrs. Bermingham & Friedman against the Developers, Mr. Pektor, the River Pointe Project and the NID screams for their voluntary recusal.

As explained below, Supervisors Friedman & Bermingham are ethically obligated to recuse themselves under Pennsylvania common law. Neither can find refuge under the Ethics Letter as that letter solely addressed limited ethics considerations under Pennsylvania's Ethics Act, 65 Pa. C.S. §§1101, *et seq.* ("**Ethics Act**") based on facts that were self-reported by Supervisor Friedman. The demand for recusal herein is under Pennsylvania's common law of recusal—something that the State Ethics Commission did not whatsoever review or consider. See Ethics Letter at 5.

Pursuant to Pennsylvania common law, the Developers have a right to fair administrative hearings before the Board, which must be free of bias or the appearance of bias. 1 P.L.E. ADMINISTRATIVE LAW AND PROCEDURE § 44 (2021) (citations omitted). "[W]hen an action of a governing body does not establish a rule of general application, but rather applies specific criteria to a single applicant and a single piece of property, the governing body is acting in its adjudicative capacity and not its legislative capacity." Thornbury Twp. Bd. of Supervisors v. W.D.D., 119 Pa. Commw. 74, 79-80, 546 A.2d 744, 747 (1988), *citing North Point Breeze Coalition v. Pittsburgh*, 60 Pa. Commonwealth Ct. 298, 431 A.2d 398 (1981). The *Thornbury* court specifically noted:

¹ See Ethics Letter at 2. Notwithstanding this admission, it is the Developers' position that the campaign platform was, in actuality, broader and a commitment to also fight against the Developers, their principal, Louis P. Pektor, the River Pointe project and the NID.

In this case, the supervisors' decision as to WDD's application for subdivision approval was an action to administer planning and zoning ordinances already in existence. Moreover, consideration of WDD's application, if approved, constituted an action granting WDD a privilege to subdivide and develop a specific tract of land. Thus, in deciding WDD's application for subdivision approval, the supervisors were acting in an adjudicative capacity.

Thornbury Twp. Bd. of Supervisors, 119 Pa. Commw. at 80, 546 A.2d 747 (invalidating zoning board vote that included a voting supervisor who refused to recuse himself even though, prior to becoming a supervisor, he "personally appeared with counsel before the zoning hearing board to oppose WDD's application for variances[. . . and sent] a letter to WDD, indicating that the board rejected the preliminary application, when the board had not taken any official action on the application."). Thus, the Developers' proceedings before the Board involving the NID are just such adjudicative capacities that are to be free of bias or the appearance of bias.

"Generally, recusal is warranted where a member of the tribunal participates as an advocate or witness, **publicly expresses predisposition**, or has a fiduciary relationship with a party in interest." Piccolella v. Lycoming Cty. Zoning Hearing Bd., 984 A.2d 1046, 1057 (Pa. Cmwlth. 2009) (emphasis added). A Pennsylvania administrative law treatise, in relevant part, states:

Recusal of board member. Generally, recusal is warranted where a member of the tribunal participates as an advocate or witness, publicly expresses predisposition, or has a fiduciary relationship with a party in interest. However, a tangential relationship between a tribunal member and the litigation, without evidence of bias, prejudice, capricious disbelief or prejudgment, is insufficient to warrant recusal.

1 P.L.E. ADMINISTRATIVE LAW AND PROCEDURE § 44 (2021), *citing, inter alia, Piccolella, supra.*

The need for administrative bodies like the Board to be "unbiased and [to] avoid even the appearance of bias to be in accordance with principles of due process" is both obvious and a legal requirement. Dayoub v. Commonwealth, State Dental Council & Examining Bd., 70 Pa. Commw. 621, 625, 453 A.2d 751, 753 (1982). The type of bias, prejudice, capricious disbelief, or prejudgment need not rise to a level of demonstrating "a predilection to favor one side over the other . . . to vitiate a judicial [or administrative] proceeding as being violative of due process", but rather need only and merely demonstrate "a possible temptation to the average man as judge . . . not to hold the balance nice, clear, and true." Dayoub, 70 Pa. Commw. at 625, 453 A.2d at 753 (citation omitted). Supervisors Friedman's and Bermingham's publicly expressed predisposition meets this basic legal test which means that if they were to refuse to recuse, then such vote could be judicially invalidated should they refuse to comply with their common law ethical recusal obligations.²

Based on the foregoing, it is respectfully requested that Supervisors Friedman and Bermingham comply with their ethical obligations under Pennsylvania common law and recuse themselves from any vote relating to the Developers, the River Pointe Project and the NID.

² It is respectfully suggested that Supervisors Friedman and Bermingham consider retaining personal legal counsel to represent them as all ethical issues to which they are subject are personal to them and not matters of the Board for which they are entitled to any taxpayer funded representation.

January 24, 2022
Page Number 4

Sincerely,

LEECH TISHMAN FUSCALDO & LAMPL, LLC

A handwritten signature in black ink, reading "John J. Jacko, III". The signature is written in a cursive style with a prominent initial "J" and a long horizontal flourish at the end.

John J. Jacko, III

Enclosures

Commonwealth Docket Sheet

Docket Number: 957 CD 2021

Page 1 of 7

January 20, 2022



CAPTION

Charles A. Cole, Kyle Dutt,
David Friedman, Richard
Wilford-Hunt, Judith Henckel,
and Howard Klein,
Appellants

v.

The Board of Supervisors
of Upper Mount Bethel
Township

v.

River Pointe Logistics
Center, LLC

CASE INFORMATION

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: January 20, 2022 Awaiting Consideration

Journal Number:

Case Category: Civil Case Type(s): Zoning/Land Use

CONSOLIDATED CASES

RELATED CASES

COUNSEL INFORMATION

Appellant Wilford-Hunt, Richard

Pro Se: No

IFP Status:

Attorney: Rust, Robert Nelson, III
Address: 4461 Kohier Dr
Allentown, PA 18103-6029
Phone No: (610) 821-0484

Fax No:

Attorney: Zetterberg, Pamela N.
Law Firm: Rust Law, LLC
Address: 4502 Woodlawn Dr
Emmaus, PA 18049-1250
Phone No: (610) 421-6124

Fax No:



COUNSEL INFORMATION

Appellant Klein, Howard

Pro Se: No

IFP Status:

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Address:	4461 Kohler Dr Allentown, PA 18103-6029	
Phone No:	(610) 821-0484	Fax No:

Attorney:	Zetterberg, Pamela N.	
Law Firm:	Rust Law, LLC	
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Phone No:	(610) 421-6124	Fax No:

Appellant Henckel, Judith

Pro Se: No

IFP Status:

Attorney:	Rust, Robert Nelson, III	
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Phone No:	(610) 821-0484	Fax No:

Attorney:	Zetterberg, Pamela N.	
Law Firm:	Rust Law, LLC	
Address:	4502 Woodlawn Dr Emmaus, PA 18049-1250	
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Appellant Friedman, David

Pro Se: No

IFP Status:

Attorney:	Rust, Robert Nelson, III	
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Phone No:	(610) 821-0484	Fax No:

Attorney:	Zetterberg, Pamela N.	
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Phone No:	(610) 421-6124	Fax No:

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 957 CD 2021

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January 20, 2022



COUNSEL INFORMATION

Appellant Dutt, Kyle

Pro Se: No

IFP Status:

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Attorney: Zetterberg, Pamela N.
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Appellant Cole, Charles A.

Pro Se: No

IFP Status:

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Attorney: Zetterberg, Pamela N.
 Law Firm: Rust Law, LLC
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Appellee The Board of Supervisors of Upper Mount Bethel Township

Pro Se: No

IFP Status:

Attorney: Karasek, Ronold John
 Law Firm: Karasek Law Offices, LLC
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 641 Market St
 Bangor, PA 18013-1701
 Phone No: (610) 588-0224 Fax No:

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 957 CD 2021

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January 20, 2022



COUNSEL INFORMATION

Appellee River Pointe Logistics Center, LLC

Pro Se: No

IFP Status:

Attorney: Kaplin, Marc B.
 Law Firm: Kaplin, Stewart, Meloff, Reiter & Stein, PC
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 910 Harvest Dr PO Box 3037
 Blue Bell, PA 19422-0765
 Phone No: (610) 941-2666 Fax No:

Attorney: Tobin, Pamela
 Address: Kaplin Stewart
 910 Harvest Drive
 PO Box 3037
 Blue Bell, PA 19422-0765
 Phone No: (610) 941-2543 Fax No: (610) 684-2041

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
08/20/2021	Notice of Appeal	90.25	08/31/2021	2021-CMW-H-001533	90.25

AGENCY/TRIAL COURT INFORMATION

Order Appealed From: July 27, 2021 Notice of Appeal Filed: August 20, 2021
 Order Type: Order Dated
 Documents Received: August 31, 2021

Court Below: Northampton County Court of Common Pleas
 County: Northampton Division: Northampton County Civil Division
 Judge: Beltrami, Anthony S. OTN:
 Docket Number: C48-CV-2020-06320 Judicial District: 03

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
Trial Court Record	October 08, 2021	

Date of Remand of Record:

BRIEFING SCHEDULE

Appellant	Appellee
Cole, Charles A. Brief Due: December 20, 2021 Filed: December 20, 2021	River Pointe Logistics Center, LLC Brief Due: January 24, 2022 Filed: January 19, 2022
Dutt, Kyle Brief Due: December 20, 2021 Filed: December 20, 2021	The Board of Supervisors of Upper Mount Bethel Township Brief Due: January 24, 2022 Filed: January 20, 2022
Friedman, David Brief Due: December 20, 2021 Filed: December 20, 2021	

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 957 CD 2021

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January 20, 2022



BRIEFING SCHEDULE

Appellant

Henckel, Judith

Brief

Due: December 20, 2021 Filed: December 20, 2021

Klein, Howard

Brief

Due: December 20, 2021 Filed: December 20, 2021

Reproduced Record

Due: December 20, 2021 Filed: December 20, 2021

Wilford-Hunt, Richard

Brief

Due: December 20, 2021 Filed: December 20, 2021

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
August 20, 2021	Notice of Appeal Filed Cole, Charles A. Dutt, Kyle Friedman, David Wilford-Hunt, Richard Henckel, Judith Klein, Howard		Appellant Appellant Appellant Appellant Appellant Appellant	
September 28, 2021	Notice of Docketing Appeal Exited Commonwealth Court Filing Office			09/28/2021
October 8, 2021	Trial Court Record Received Northampton County Court of Common Pleas			
October 11, 2021	Docketing Statement Filed Rust, Robert Nelson, III Rust, Robert Nelson, III Rust, Robert Nelson, III Rust, Robert Nelson, III Rust, Robert Nelson, III Rust, Robert Nelson, III	Friedman, David Cole, Charles A. Dutt, Kyle Wilford-Hunt, Richard Henckel, Judith Klein, Howard	Appellant Appellant Appellant Appellant Appellant Appellant	
October 12, 2021	Application to Quash Kaplin, Marc B. Document Name: Appellee River Pointe Logistics Center, LLC's Application to Quash Appeal.	River Pointe Logistics Center, LLC	Appellee	
October 18, 2021	Application for Relief Karasek, Ronold John Document Name: Township's Appl. to Join in the Intervenor's Motion to Quash the C. Cole et al Appeal.	The Board of Supervisors of Upper I	Appellee	

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 957 CD 2021

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January 20, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
October 26, 2021	Answer to Application to Quash			
	Rust, Robert Nelson, III	Friedman, David	Appellant	
	Rust, Robert Nelson, III	Cole, Charles A.	Appellant	
	Rust, Robert Nelson, III	Dutt, Kyle	Appellant	
	Rust, Robert Nelson, III	Wilford-Hunt, Richard	Appellant	
	Rust, Robert Nelson, III	Henckel, Judith	Appellant	
	Rust, Robert Nelson, III	Klein, Howard	Appellant	
Document Name: Appellant's Opposition to Appellee River Pointe Logistics Center's App. to Quash Appeal				
November 8, 2021	Designation of Contents of Reproduced Record			
	Rust, Robert Nelson, III	Friedman, David	Appellant	
	Rust, Robert Nelson, III	Cole, Charles A.	Appellant	
	Rust, Robert Nelson, III	Dutt, Kyle	Appellant	
	Rust, Robert Nelson, III	Wilford-Hunt, Richard	Appellant	
	Rust, Robert Nelson, III	Henckel, Judith	Appellant	
	Rust, Robert Nelson, III	Klein, Howard	Appellant	
November 8, 2021	Order Filed			11/09/2021
	Per Curiam			
Document Name: Appl. & Answer to Quash shall be listed w/ the merits of the appeal.				
Comment: NOW, November 8, 2021, upon consideration of River Pointe Logistics Center, LLC's (River Pointe) "Application to Quash Appeal" (Application to Quash), and the answer thereto filed by Charles A. Cole, Kyle Dutt, David Friedman, Richard Wilford-Hunt, Judith Henckel and Howard Klein (collectively, Appellants), the Application and answer shall be listed with the merits of the appeal. Additionally, upon consideration of the Board of Supervisors of Upper Mount Bethel Township's (Township) "Application to Join" in River Pointe's Application to Quash, to which no response has been filed, the Township's "Application to Join" is GRANTED.				
The Prothonotary is directed to issue a briefing schedule.				
November 9, 2021	Briefing Schedule Issued			
	Commonwealth Court Filing Office			
November 11, 2021	Designation of Contents of Reproduced Record			
	Kaplin, Marc B.	River Pointe Logistics Center, LLC	Appellee	

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 957 CD 2021

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January 20, 2022



DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
December 20, 2021	Appellant's Brief Filed			
	Rust, Robert Nelson, III	Friedman, David	Appellant	
	Rust, Robert Nelson, III	Cole, Charles A.	Appellant	
	Rust, Robert Nelson, III	Dutt, Kyle	Appellant	
	Rust, Robert Nelson, III	Wilford-Hunt, Richard	Appellant	
	Rust, Robert Nelson, III	Henckel, Judith	Appellant	
	Rust, Robert Nelson, III	Klein, Howard	Appellant	
	Cole, Charles A.		Appellant	
	Dutt, Kyle		Appellant	
	Friedman, David		Appellant	
	Wilford-Hunt, Richard		Appellant	
	Henckel, Judith		Appellant	
Klein, Howard		Appellant		
December 20, 2021	Appellant's Reproduced Record Filed			
	Rust, Robert Nelson, III	Klein, Howard	Appellant	
January 5, 2022	Application for Relief			
	Rust, Robert Nelson, III	Friedman, David	Appellant	
	Rust, Robert Nelson, III	Cole, Charles A.	Appellant	
	Rust, Robert Nelson, III	Dutt, Kyle	Appellant	
	Rust, Robert Nelson, III	Wilford-Hunt, Richard	Appellant	
	Rust, Robert Nelson, III	Henckel, Judith	Appellant	
Rust, Robert Nelson, III	Klein, Howard	Appellant		
Document Name: Application for Removal of Appellant, David Friedman.				
January 19, 2022	Appellee's Brief Filed			
	Tobin, Pamela	River Pointe Logistics Center, LLC	Appellee	
	River Pointe Logistics Center, LLC		Appellee	
January 20, 2022	Appellee's Brief Filed			
	Karasek, Ronold John	The Board of Supervisors of Upper	Appellee	
	The Board of Supervisors of Upper Mount Bethel Township		Appellee	



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TOLL FREE: 1-800-932-0936

STATE ETHICS COMMISSION
FINANCE BUILDING
613 NORTH STREET, ROOM 309
HARRISBURG, PA 17120-0400

FACSIMILE: 717-787-0806
WEBSITE: www.ethics.pa.gov

ADVICE OF COUNSEL

December 6, 2021

To the Requester:

Mr. David Friedman

21-562

Dear Mr. Friedman:

This responds to your correspondence dated November 10, 2021, by which you requested an advisory from the Pennsylvania State Ethics Commission (Commission), seeking guidance as to the general issue presented below:

Issue:

Does the Public Official and Employee Ethics Act place any prohibitions or restrictions upon a Township Supervisor who is a plaintiff in a lawsuit against the Township in which he serves as a public official?

Brief Answer: YES. As a plaintiff who has sued the Township, an individual would have a conflict of interest in his capacity as a Township Supervisor in matters involving that litigation. Pursuant to Section 1103(a) of the Ethics Act, a public official could not use the authority of his public office, or confidential information to which he has access, for a private pecuniary benefit related to that lawsuit.

Facts:

You request an advisory from the Commission based upon the following submitted facts.

Currently, you serve as a Member of the Board of Supervisors for Upper Mount Bethel Township (Township). The Board consists of five Members. Prior to your election, a Developer purchased property in the Township that was zoned Industrial. You assert that the Developer was not content with the zoning ordinances pertaining to this zone, but otherwise did not want to go through the variance procedures to change the zoning ordinances. The Developer submitted a Text

Amendment¹ to change the zoning ordinances in his favor. This Text Amendment was passed by the Board of Supervisors in a 4-1 vote.

You, along with five others, sued the Board of Supervisors for passing/enacting this Text Amendment. You state that you and the five others believed the Text Amendment was detrimental to the Township and would set a precedent for other development in the Township.

You, along with about a dozen other citizens, formed a coalition to raise awareness and funds for legal expenses in your lawsuit. This group is called the Concerned Citizens of Upper Mount Bethel Township (CCUMBT).

Wanting to enact policy instead of reacting to it, you ran for the Board of Supervisors and were elected. Your campaign platform emphasized keeping the Township rural and fighting the Text Amendment.

In submitting your request for an Advisory, you stress the following points:

1. You are a plaintiff in the lawsuit against the Board of Supervisors.
2. You have contributed monetarily to the legal fund to pay for the lawyer.
3. You are an active member of the CCUMBT.
4. You have no financial interest or sought any financial gain in perusing this lawsuit.

You seek an Advisory on the following questions that could arise during your tenure as a Supervisor.

1. Do you have to withdraw your name from the lawsuit in order to vote on issues pertaining to the Text Amendment?
2. If your name remains on the lawsuit would you need to recuse yourself from any issues pertaining to the Text Amendment?
3. Will you need to disassociate from the CCUMBT?

Discussion:

Pursuant to Sections 1107(10) and 1107(11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), advisories are issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, the Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all of the material facts

¹ "A [Text Amendment] is an ordinance amending the text of a zoning ordinance without any facial effect on the zoning map. Text amendments can add or remove permitted uses within a zoning district or change the dimensional requirements applicable to buildings and other structures." Rezoning and Text Amendments in Pennsylvania: Procedural and Substantive Considerations, David J. Tshudy, <https://www.troutman.com/insights/rezonings-and-text-amendments-in-pennsylvania-procedural-and-substantive-considerations.html>

relevant to the inquiry. 65 Pa.C.S. §§ 1107(10), (11). An advisory only affords a defense to the extent the requester has truthfully disclosed all of the material facts.

As a Township Supervisor for Upper Mount Bethel Township, you are a "public official" as that term is defined in the Public Official and Employee Ethics Act (Ethics Act).

Section 1103(a) of the Ethics Act provides:

§ 1103. Restricted activities

(a) Conflict of interest. -- No public official or public employee shall engage in conduct that constitutes a conflict of interest.

65 Pa.C.S. §§ 1103(a).

The following terms related to Section 1103(a) are defined in the Ethics Act as follows:

§ 1102. Definitions

"Conflict" or "conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

"Authority of office or employment." The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

65 Pa.C.S. § 1102.

In addition, Sections 1103(b) and 1103(c) of the Ethics Act provide, in part, that no person shall offer to a public official/employee anything of monetary value and no public official/employee shall solicit or accept anything of monetary value based upon the understanding that the vote, official action, or judgement of the public official/employee would be influenced thereby. Reference is made to these provisions of the law not to imply that there has been or will be any transgression thereof but merely to provide a complete response to the question presented.

Subject to the statutory exclusions to the Ethics Act's definition of the term "conflict" or "conflict of interest," 65 Pa.C.S. § 1102, a public official/public employee is prohibited from using the authority of public office/employment or confidential information received by holding such a public position for the private pecuniary benefit of the public official/public employee himself, any member of his immediate family, or a business with which he or a member of his immediate family is associated.

The use of authority of office is not limited merely to voting but extends to any use of authority of office including, but not limited to, discussing, conferring with others, and lobbying for a particular result. Juliante, Order 809.

In each instance of a conflict of interest, a public official/public employee would be required to abstain from participation, which would include voting. Because you serve on a five-member board, the voting conflict provisions of Section 1103(j) are not applicable.

Per the Pennsylvania Supreme Court's decision in Kistler v. State Ethics Commission, 610 Pa. 516, 22 A.3d 223 (2011), in order to violate Section 1103(a) of the Ethics Act, a public official/public employee:

... must act in such a way as to put his [office/public position] to the purpose of obtaining for himself a private pecuniary benefit. Such directed action implies awareness on the part of the [public official/public employee] of the potential pecuniary benefit as well as the motivation to obtain that benefit for himself.

Kistler, *supra*, 610 Pa. at 523, 22 A.3d at 227. To violate Section 1103(a) of the Ethics Act, a public official/public employee "must be consciously aware of a private pecuniary benefit for himself, his family, or his business, and then must take action in the form of one or more specific steps to attain that benefit." *Id.*, 610 Pa. at 528, 22 A.3d at 231.

In applying the above provisions of the Ethics Act to the circumstances which you have submitted, the fact that you are involved as a plaintiff in litigation against the Township does not preclude you from holding office as a Township Supervisor. However, pursuant to Section 1103(a) above, you cannot use the authority of your public office as a Township Supervisor, or confidential information you would have access to by being in that position, for a prohibited private pecuniary benefit. For example, a conflict of interest would exist should you, in your public position, engage in any Township deliberation, decision, or any other action involving the lawsuit such as by taking action to reduce or eliminate personal liability for counsel fees. See Lewis, Advice of Counsel: 98-503.

As to your specific inquiries, so long as you remain associated with CCUMBT and/or the lawsuit, you will have a conflict as to any use of office concerning the Text Amendment and a pecuniary gain to yourself, a member of your immediate family, and/or a business (including a non-profit business/association) with which you or a member of your immediate family are associated. You will need to recuse yourself from any action regarding the Text Amendment so long as you (or an immediate family member) remain associated with the lawsuit and/or CCUMBT.

To the extent such use of office would not result in, or advance the prospects of a private pecuniary benefit within the context of Section 1103(a) – no conflict would exist. In each instance of a conflict of interest, you would be required to abstain, recuse, and remove yourself from any Township action, including executive session discussions and deliberations.

The propriety of the proposed conduct has only been addressed under the Ethics Act; the applicability of any other statute, code, ordinance, regulation or other code of conduct other than the Ethics Act has not been considered in that they do not involve an interpretation of the Ethics Act. Specifically, this advisory does not address any applicability of the Municipality Authorities Act.

Conclusion:

As a Member of the Board of Supervisors for Upper Mount Bethel Township, you are a "public official" as that term is defined by the Pennsylvania Public Official and Employee Ethics Act (65 Pa.C.S. § 1101 *et seq.*) As a Township Supervisor you are prohibited from utilizing the authority of your public office, or confidential information to which you have access, for a private pecuniary benefit related to that lawsuit.

Pursuant to Section 1107(11) of the Ethics Act, an Advice is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding, provided the requester has disclosed truthfully all the material facts and committed the acts complained of in reliance on the Advice given.

This letter is a public record and will be made available as such.

Finally, if you disagree with this Advice or if you have any reason to challenge same, you may appeal the Advice to the full Commission. A personal appearance before the Commission will be scheduled and a formal Opinion will be issued by the Commission.

Any such appeal must be in writing and must be actually received at the Commission within thirty (30) days of the date of this Advice pursuant to 51 Pa. Code § 13.2(h). The appeal may be received at the Commission by hand delivery, United States mail, delivery service, or by FAX transmission (717-787-0806). Failure to file such an appeal at the Commission within thirty (30) days may result in the dismissal of the appeal.

Respectfully,



Brian D. Jacisin
Chief Counsel

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