

**READINGTON TOWNSHIP  
BOARD OF ADJUSTMENT MEETING  
March 19, 2015**

The Meeting was called to order by Chairwoman Goodwin at 7:39 p.m. stating that the requirements of the Open Public Meeting Law have been satisfied. The Meeting had been duly advertised.

**Members present:** Michael Denning, Marygrace Flynn, Meredith Goodwin, Diana Hendry, Patrick Ryan, Joanne Sekella, Britt Simon, Richard Thompson

**Members absent:** Keith Hendrickson

**Also present:** John Hansen, Engineer  
Dr. Stephen Souza, Environmental Professional  
Michael Sullivan, Planner  
Roger W. Thomas, Attorney

**MINUTES:**

A Motion was made by Mr. Simon, seconded by Mr. Denning, that the Minutes of February 19, 2015 be approved. Motion was carried with a vote of ayes all, nays none recorded. Ms. Flynn, Ms. Hendry and Ms. Sekella abstained from the vote.

**TECHNICAL REVIEW COMMITTEE**

**Plaza 22 Plaza 22 Corporation  
Use Variance  
Block 36, Lot 65**

The applicant seeks a use variance. The T.R.C. has reviewed the application and determined it to be **complete**. The application has been set to be heard on April 16, 2015.

**Whitehouse Auto Service  
Use Variance  
Block 18, Lot 12**

The applicant seeks a use variance. The T.R.C. has reviewed the application and determined it to be **incomplete**.

**RESOLUTIONS**

**Della Pello  
D4 Variance  
B 14, L 4.06**

Chairwoman Goodwin asked if there were any comments or corrections to the resolution. None were noted. A Motion was made by Mr. Simon, seconded by Mr. Thompson, to approve the resolution. Motion was carried with the following roll call vote:

**Ayes:** Mr. Denning, Mr. Ryan, Mr. Simon, Mr. Thompson, Chair Goodwin

**Nays:** None recorded.

**Abstain:** Ms. Flynn, Ms. Hendry, Ms. Sekella

**OTHER BUSINESS**

Chairwoman Goodwin advised the Board that their email addresses should be confirmed with the Board Secretary. Board members have expressed interest in receiving correspondence and documents via electronic mail. She asked that the Board Secretary be advised of members' preference.

Chairwoman Goodwin advised the Board that the Board Secretary is working on creating writeable PDFs of the application, pre-application and checklists. These documents will be available for download on the Readington Township website in the near future.

**PUBLIC HEARINGS:**

**Ryland Developers, LLC  
B. 14, Ls. 29.02 & 29.03  
Use Variance and Preliminary/Final Site Plan**

Present for Applicant: Michael Miceli, Attorney

Attorney Thomas testified that Attorney Podvey had submitted correspondence outlining his opinion that Clarke Caton Hintz's, in particular Michael Sullivan, involvement in this Application results in a conflict of interest.

**Exhibit A-13** – was introduced: Correspondence from Robert L. Podvey, Esq. to the Township of Readington, dated March 3, 2015.

Mr. Thompson disclosed to the Board that he had reviewed the application for the Ryland Inn, as he felt it was important to see the extent of the site as a whole.

Attorney Thomas advised that members of the Board may review other applications as they are public records, but they 1) must disclose they've done so; and 2) be mindful that the Municipal Land Use Law ("MLUL") advises that other properties cannot be considered when voting on an application.

Ms. Sekella disclosed to the Board that in her capacity as a court reporter, she had been in attendance at a deposition with Mr. Podvey. She noted that Mr. Podvey did not employ her.

Attorney Thomas asked Mr. Sullivan if he had any preconceived ideas with regard to the Application as it relates to site plans and/or variances. He also inquired if he could objectively review the Application.

Mr. Sullivan testified that he did not have any preconceived notions regarding the Application and could be objective.

Attorney Thomas testified that he reviewed Exhibit A-13 in detail and noted that Attorney Podvey cites the New Jersey Administrative Code, statutes and case law throughout. He asked Mr. Sullivan, based on Attorney Podvey's statement of facts, if he was involved in the analysis of Readington Township's Master Plan and re-zoning. In particular, had the Township requested him to analyze zone changes with regarding to the property relating to the Application?

Mr. Sullivan confirmed that he was. He further testified that he works with the Township Planning Board and Township Committee to review and revise the Master Plan and implement ordinances. Mr. Sullivan indicated that he reviewed the Master Plan at the request of the Planning Board and completed the analysis based on the five questions as required by the MLUL.

Attorney Thomas clarified that the Application before the Board is not a re-examination of the Master Plan or a request for a zone change.

Mr. Sullivan testified that the Application is a request for several D variances as defined under the MLUL §70.

Attorney Thomas advised that it is his opinion, based on the testimony of Mr. Sullivan, that none of the misconduct standards referenced under N.J.A.C. 13:41-2.1 apply here. Mr. Sullivan represents the Township, Planning Board and Board of Adjustment; and it is not a conflict to represent all three. There is nothing in the obligations of the Board of

Professional Planners that pertain here. Mr. Sullivan is governed by the local ethics law as outlined in N.J.S.A. 40A:9-22.5. This law refers to the fact and an individual shall not engage in activity that will have an impact on his personal or financial relationship with an individual. That being said, Mr. Sullivan's involvement in the Master Plan review and re-examination, his involvement in defending litigation and this Application are not a conflict. Under that same statute, it indicates that no local government official shall be deemed in conflict with these provision if by reason of his participation in an enactment of an ordinance, resolution or other matter required to be voted upon which is subject to executive approval or veto, he has no monetary gain. Attorney Podvey references *Randolph v. City of Brigantine Planning Board*, 405 N.J. Super. 215, 225 (App. Div. 2009), and *South Brunswick Assocs. v. Township Council of Township of Monroe*, 285 N.J. Super. 377, 383-384 (Law Div. 1994), but these cases on their facts do not relate to the matter at hand. Attorney Thomas advised that what has happened here is that the Township Committee asked Mr. Sullivan to engage in one set of facts and now he is being asked to do so under a different set of facts and standards with regard to this Application. My opinion is that there is no conflict of interest as the Application requests D variances under MLUL §70.

Attorney Miceli testified that Exhibit A-13 is a fact sensitive analysis of the matter at hand, and many of the cases cited do not line up; but the New Jersey courts say that when in doubt, it is best to recuse yourself. Attorney Miceli feels that Mr. Sullivan is advising the Township during the Application hearing, and that is why those cases were cited. It's not the general overlap of the positions, it's the advocacy.

Ms. Hendry asked if it was Attorney Miceli's opinion that when an expert is called as an advocate for a party, he could provide an objective opinion.

Attorney Miceli indicated that if the expert is paid by a party, then they cannot be impartial.

Ms. Flynn asked Attorney Miceli if Mr. Sullivan's reports were favorable to Applicant, Applicant would claim a conflict of interest existed.

Attorney Miceli advised that Applicant would, as a conflict is a conflict, no matter when discovered.

Several Board members inquired when Applicant determined there was a conflict of interest; and whether the Board could determine if Attorney Miceli was advocating on behalf of the law firm because due diligence was not completed, or the Applicant.

Attorney Thomas advised the Board that he conversed with Attorney Podvey prior to submission of Exhibit-A13. Attorney Podvey indicated that the reason this matter has

been raised at this time is because he is not involved in the litigation, and only recently found out about Mr. Sullivan's involvement. The matter before the Board is not about motivation, but rather whether or not there is a conflict of interest.

Attorney Miceli testified that the Board should look at Mr. Sullivan's involvement in the Planning Board, Board of Adjustment and Township Committee as three separate entities. He feels that when Mr. Sullivan advocates for one entity and then advises another on the same matter, his opinion is clouded.

Mr. Simon advised that Applicant has raised a question as to whether there is a conflict of interest as to Mr. Sullivan's involvement in this Application. Mr. Simon feels that Applicant is wasting time and looking to start the proceedings over. He suggested that, the proceedings cease, Applicant get a judge's opinion as to whether there is a conflict of interest; and, thereafter, the Board will address the matter.

Attorney Miceli advised that his intent is not to start the proceedings over, but the matter at hand is a matter of ethics.

Open to Public

Richard Sasso – 143 Kosciuszko Road – representing his wife, Brenda - advised the Board that he felt the matter before them was completely baseless. Boards rely on their planners to advise the members about the town's ordinances. Attorney Miceli is trying to disqualify the Township's own expert.

Tom Pluher – 13 South Ryland Road – inquired about Applicant's proof of necessity for the application and whether this had been done yet.

Although Mr. Pluher's comments were not consistent with the matter before the Board, Attorney Thomas advised that Applicant has requested D variances, wherein positive and negative criteria must be established. To date, Applicant has not addressed this requirement.

Attorney Thomas asked if there were any additional questions. Hearing none, he advised the Board that he testified as to his opinion, they heard testimony from Attorney Miceli and, based on facts not motivation, inquired whether the Board could motion the matter.

A Motion was made by Mr. Simon, seconded by Mr. Thompson, that there is no conflict with regard to Mr. Sullivan's services and the Application. The motion was carried with the following roll call vote:

**Ayes:** Mr. Denning, Ms. Flynn, Ms. Hendry, Ms. Sekella, Mr. Simon, Mr. Thompson, Chair Goodwin

**Nays:** None recorded.

Break at 8:45 P.M.

Reconvened at 8:52 P.M.

Attorney Miceli asked that the application be carried given the motion rendered and the fact that Attorney Podvey was absent from the proceedings.

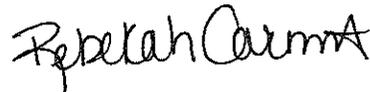
Attorney Thomas confirmed that the application would be carried until April 16, 2015 at 7:30 P.M. with no further notice.

**ADJOURNMENT:**

A Motion was made by Mr. Thompson, seconded by Ms. Sekella, to adjourn the meeting. The motion was carried with a vote of all ayes, nays none recorded.

The meeting was adjourned at 8:53 P.M.

Respectfully submitted,



Rebekah Harms  
Board of Adjustment Secretary