

Ethical Considerations for Planning & Zoning Board Members

4 October 2006

Bond, Schoeneck & King, PLLC

Robert H. Feller, Esq.

- Understanding true value of "gift" may not be easy thing to do...might as well accept no gifts whatsoever. Example: Offer to see Yankee game, with transportation, could very well be over \$75.
- Should a member recuse themselves from considering an application, they may not receive any documentation in their folders regarding that specific application from that point on.
- Should use extreme caution during review if (for example) a civil engineer representing an applicant is used often by PB member(s) or appears regularly before the PB, in order to avoid any perception of favoritism/bias. This should also exclude solely relying on that civil engineer for information. Up to PB to validate project info via professional (Chazen) planners/engineers.
- As for recusing oneself from review of application: When PB member has financial interest they MUST recuse themselves. If PB member is business competitor should recuse. If PB member is a member of a group formally in opposition to application before PB, then should recuse from proceedings. If member does this, however he/she should probably not speak out as it could be seen as leading the PB to desired perception.
- There is no need to recuse oneself from applications for reasons like contiguous property ownership, knowing the applicant, having sold property to applicant, have worked with applicant. However, disclosure is extremely important. Once disclosing, the member will be judged based upon his/her conduct during the review process.
- Members should discuss all projects in generic terms as opposed to personal likes and/or dislikes.
- Members should NEVER state objections until all evidence is in and reviewed.
- Members should NEVER make judgment prior to full review being conducted.
- *Ex Parte* communications (discussions between applicants and one or more PB members), should not be conducted. Projects should be discussed in front of entire PB. This will help PB avoid "introducing matters that are not incorporated into the record thereby subjecting decisions to challenge; if widespread, they may violate right to procedural due process; they may violate open meetings law; they undermine confidence in decision making." Of course, should potential applicants have procedural questions, they should be directed to PB Secretary for having any/all questions answered.
- Email correspondence between a majority of members discussing an application before the board may be considered to violate Open Meeting Law. Direct queries to PB Secretary and she will relay to individual members. [Contradiction: Intra-agency and internal docs not FOIL-able.]