

New Jersey Supreme Court Clarifies Conflict of Interest Standard Governing Zoning Board Members

April 29, 2019

Individual members of zoning and planning boards in New Jersey cannot hear or vote on applications where the board member's personal interest might reasonably be expected to impair the member's objectivity and ability to fairly vote on an application. In Piscitelli v. Garfield Zoning Board, the New Jersey Supreme Court took up the issue of whether board members' relationship with an applicant in other governmental roles and also in the applicant's private professional capacity constitutes a conflict of interest.

The case involved an application to the Garfield Zoning Board (the Board) seeking approval for the construction of a gas station, car wash, and quick lube on three separate lots in Garfield, New Jersey. The applicants were all family members who were physicians or family trusts established for their benefit. One of the physicians was also the president of the Board of Education (BOE), which has the power to approve employee appointments, contracts, and salaries. Five Board members were either employed by or had immediately family members employed by the BOE. In an attempt to avoid the appearance of a conflict of interest with respect to his capacity as president of the BOE, one of the physician-applicants transferred his interest in the property to a trust for the benefit of his nieces and nephews. That transfer notwithstanding, the physician appeared at the Board hearing and voiced his support for the project.

Two objectors opposed the application, claiming that Board members employed by or related to an employee of the BOE should recuse themselves. The objectors also sought inquiry into whether any Board members had a patient-doctor relationship with any of the applicants, arguing that any such relationship would also constitute a conflict of interest.

The Board unanimously approved the project without any Board member having recused themselves. The objectors challenged the approval in the Superior Court, which upheld the Board's decision. The Appellate Division affirmed the trial court's order and the Supreme Court granted the objectors' petition for certification.

Justice Albin, writing for a majority of the Court, reversed and remanded the matter to the trial court to determine whether any Board member had a conflict of interest. Specifically, the Court's opinion directed the trial judge to determine two issues: first, whether the physician-applicant who was the president of the BOE had the authority to "vote on significant matters relating to the employment of Zoning Board members or their immediate family members;" and second, whether any Zoning Board members had a "meaningful patient-physician relationship" with any of the applicants. Justice Albin stated that if the answer to either of those questions was "yes" then "a conflict of interest mandated disqualification and the decision of the Zoning Board must be vacated."

The important takeaway from Piscitelli is to identify early any possible conflicts of interest from both an applicant's and a Board's perspective. Since the Court emphasized the long-standing rule that the disqualifying event is the *potential* for a conflict of interest and not an *actual* conflict of interest, careful consideration of the facts and circumstances of an application beyond the four corners of a site plan or subdivision plat must be part of an applicant's and a Board's preparation for any given land use application.