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Via Email and Ordinary Mail

Mark G. Kitrick, Esq.
King, Kitrick, Jackson, McWeeney & Wells, LLC
2329 Highway 34, Suite 104
Manasquan, New Jersey 08736

**Re: Cotler, Beth and Harold / Bradley Beach Land Use Matter
Our File No. 38,884-S**

Dear Mr. Kitrick:

I submit this letter brief in response to your request that we address the issues raised in the two previous municipal land use hearings regarding the above matter.

The issues include the following:

1. Whether Ms. Deidra Phillips, a Zoning Board Member, should be disqualified because of comments made prior to evidence being submitted on behalf of the Applicant and Objector. The conclusion is in the negative.
2. Whether the Board Members must disclose if they are present or past patients of Dr. Cotler or his practice, and if so, if the relationship must disqualify that Member. The conclusion will be explained hereinbelow.
3. Whether, given Dr. Cotler's prior status as a Bradley Beach Council Member, the Application must be transferred to another municipality. This request is withdrawn.

As to issue #1 above, casual comments prior to a Meeting are not dispositive of disqualification. Board Members receive, prior to any hearing, copies of the Application, Plans and Reports, and presumably other information. However, if the Board Member affirms his/her ability to be objective, fair and unbiased, he/she can remain a Board Member. In the case of Voci v. Hard Cheese AC, LLC, 2019 Super. Unpub. LEXIS 1600, *14, 2019 WL 3029866, the Court commented:

“(l)ocal governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official.” *Grabowsky*, 221 N.J. at 554 “

The second issue is more complex, and turns on whether the Board Member relationship has been and remains "meaningful". In the case of Piscitelli v. City of Garfield Zoning Bd. of Adjustment, 237, N.J. 333, 338, 205 A.3d 183, 186, 2019 N.J. LEXIS 442, *1, 2019 WL 1371557, the Supreme Court has created a road map on determining "meaningful". The doctor-patient relationship alone does not automatically require disqualification. It remains a balance test between the Right of Privacy and the Public Right to be assured of a fair and unbiased hearing:

"The potential disclosure of highly intimate and personal health-care information raises legitimate privacy concerns and therefore must be addressed with great sensitivity. New Jersey courts have recognized that competing public policies may require disclosure of otherwise privileged information. Disclosure is required only if the party seeking production makes a compelling showing of a particularized need for the information. First, a court must recognize that those who hold public office and make decisions affecting the safety and welfare of the community surrender some degree of privacy that common citizens enjoy. Nevertheless, the nature of any disclosure relating to a patient-physician relationship must be weighed against the official's reasonable expectation of privacy. If the court determines that there is a meaningful patient-physician relationship, then the nature of the disclosure will depend on, among other factors, the degree of need for access to the information, the damage excessive disclosure would cause to a patient's right to privacy, the adequacy of safeguards to prevent excessive disclosure, and the personal dignity rights of the official."

However, and although the Applicant believes this process, i.e., litigation and discovery, is overly intrusive, rather than expose any Member to such an inquiry, the Applicant reluctantly agrees to have any patient recuse his/her self. This process must be handled with sensitivity since as any Member is removed, the relationship with Dr. Cotler will be exposed deductively. To reiterate, the Applicant agrees that any patient should voluntarily, and notwithstanding the ability to be unbiased, recuse themselves.

Finally, the procedure for replacing removed Board Members is set forth in the municipal land use Codes, i.e., N.J. Stat. § 40:55D-69 and 69(1). As a Board Member is disqualified for any reason, that Board Member is replaced by an Alternate. Should all Alternates be exhausted, then the Zoning Board of Adjustment would draw from the Planning Board. This does not automatically require the case to be sent to any other municipality should the Zoning Board of Adjustment not be able to obtain a quorum. It might be different if the Applicant was a sitting Council Member, but not necessarily required. The Applicant herein prefers then to move the case expeditiously and without further delay before the Bradley Beach Zoning Board of Adjustment on October 15, 2020

Accordingly, please consider the above and allow the Applicant to proceed before the Bradley Beach Zoning Board of Adjustment.

Simultaneously upon receipt of any support filed by an Objector, the within letter brief should be disseminated so that all interested parties will be aware of everyone's respective positions.

Thank you.

Respectfully submitted,
STONE MANDIA, LLC

A handwritten signature in black ink, appearing to read 'Richard B. Stone', with a long horizontal flourish extending to the right.

RICHARD B. STONE

rbs/ryn

cc: Beth and Harold Cotler