

# Legal Ethics and Land Use Planning

Patricia E. Salkin

Land Use Law Center

Alfred DelBello Land Use and Sustainable  
Development Conference

December 5, 2019



# Defining Ethics

- Conduct or Behavior
  - Bad Faith
  - Ex Parte Conversations
- Morals or Values
  - community standards
- Conflicts of Interest
  - \* Financial/Contractual
  - \* Familial



# Lawyers as Counselors

- Ethical Issues Faced by Municipal Officials
  - Conflicts
    - Relationships
      - Family
      - Employment
      - Neighbors
    - Financial
      - Business
      - Investments
      - Personal Real Estate
  - Public Statements
    - Campaign Promises
    - Statements in other Public Fora
  - Conversations in the Community
    - Ex-Parte



# Recent Case Law and Opinions

- Conflicts of Interest
- Campaign Promises
- Familial Relationships
- Business Interests
- Business Relationships
- Membership Organizations
- Recusal
- Disqualification
- Bribery
- Ex Parte Communication



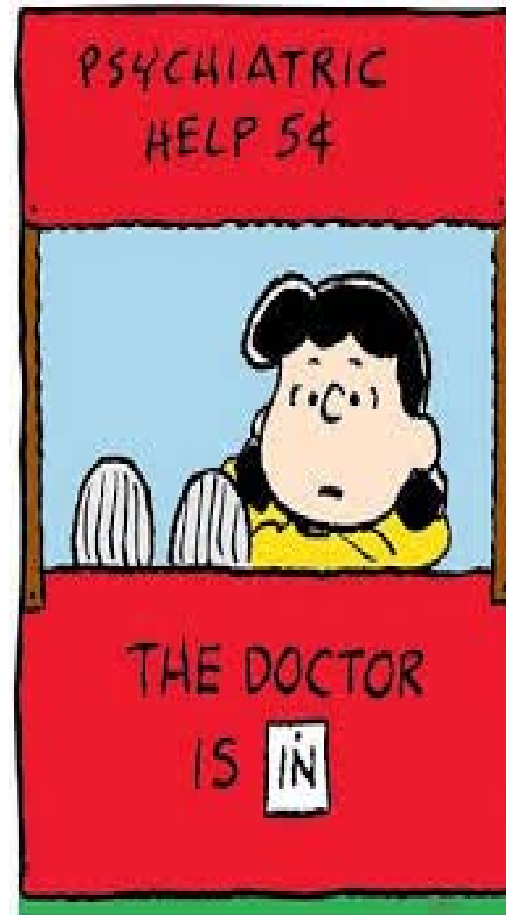
# Appreciating the Arts

- Is the spouse of deputy zoning official prohibited from petitioning the town council for an amendment to the zoning law to allow her to open and operate an art studio and gallery on the spouse's property?



# The Doctor is in the House

- Is there a prohibited conflict of interest where applicants are physicians who have a doctor-patient relationship with a member of the zoning board or a member of his/her immediate family?



# Multiple Municipal Clients

- It is a prohibited conflict of interest where the same attorney represents the zoning department before the board of adjustment but where he also represents generally the highway department ?



# What Happened Outside the Meeting Stays Outside...

- Is it a problem where a planning board member, who was also the municipal engineer, had ex parte communications with the applicant?





# The Legislative Body and the Zoning Board – Doing Business?

- Is it a problem where a County Commissioner approached a ZBA Member and attempted to speak with him during a 20 minute break in the hearing where the ZBA member told the Commissioner to speak to the Board's attorney?



# Conflicts, Recusal and Then Some...

- Is it a problem where the town supervisor fails to recuse herself from discussions where she is a member of a homeowner association suing the zoning board over a related matter?



VectorStock

vectorstock.com/1010000

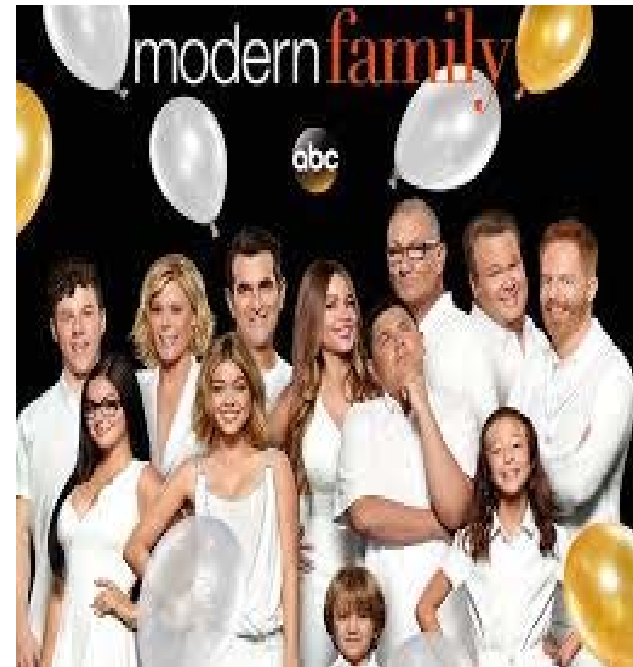
# The Rent is Due

- Is it good idea for a board member to receive a below-market rent deal from the town supervisor?



# We Are Family

- Is it a conflict where one board member is related to a former attorney for the law firm representing the applicant?



# Planning for Retirement?

- Is it a problem where after 13 years as city attorney, the attorney drafts ordinances creating the positions of zoning hearing officer and code enforcement special magistrate for which he is appointed?



# Breaking Up is Hard to Do...

Is it a conflict where the town solicitor was the “non-amicably” released divorce attorney of the applicant seeking a special use permit?



# It's Only Money...

- Can a developer voluntarily pay a fee for the cost of extra meetings since zoning board only meets once a month?



# Campaign Promises

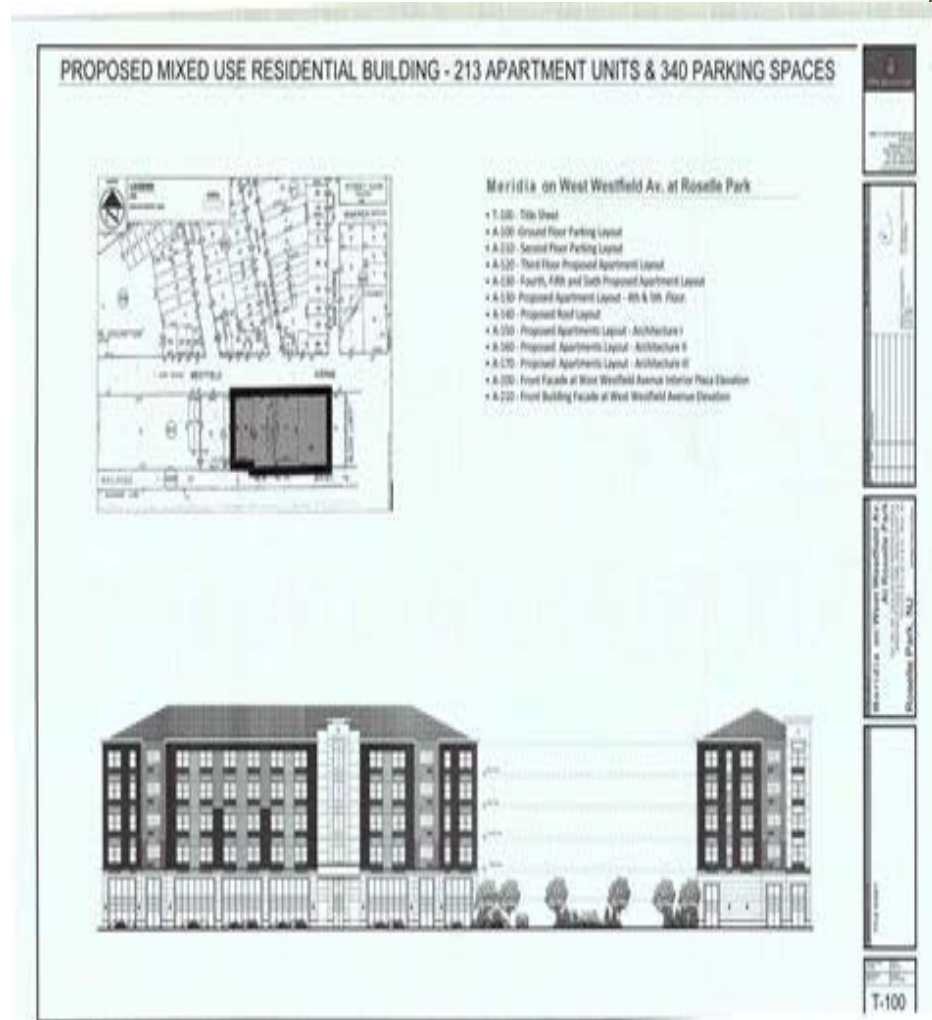
- Is it a problem where the town supervisor who voted deny a special use permit for a proposed quarry owned land near the quarry site and had run for public office on the platform of opposing the quarry?





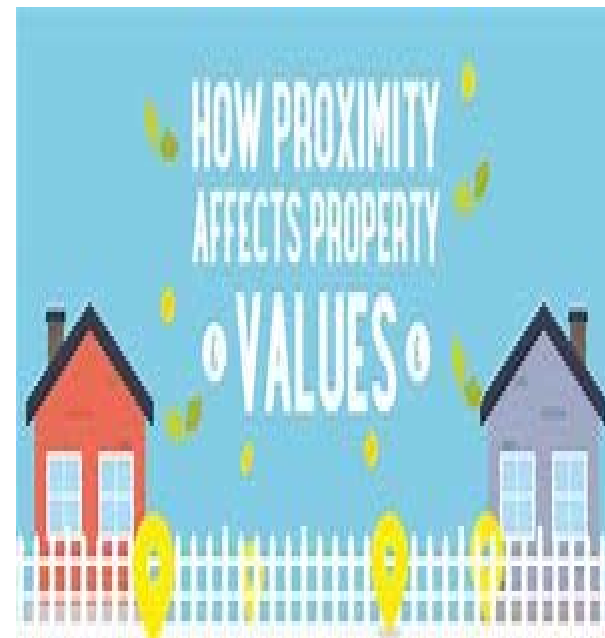
# Board Members Must Apply Too...

- Is it a prohibited conflict of interest for the planning board to approve a site plan application filed by a board member where the board member disclosed his interest and recused himself from voting on his application?



# Where You Live...

- Is it a conflict for a zoning board of appeals member to vote on an application where the property is in close proximity to where they live?



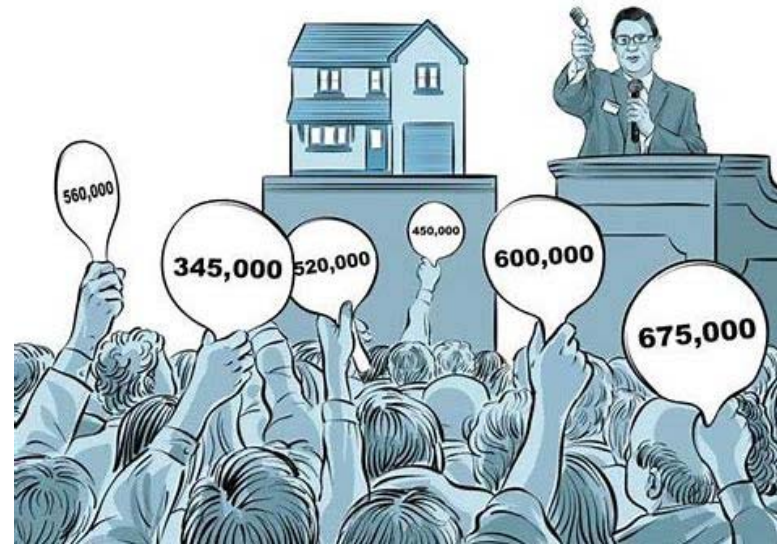
# His Honor the Mayor Esquire

- Is it a prohibited conflict of interest where the Mayor was the partner in a law firm with the brother of the applicant who was seeking to construct and operate an asphalt manufacturing plant?



# I'll Buy That....

- Is it a prohibited conflict for a zoning board member to participate in a hearing where:
  - he owned the adjacent property;
  - tried to purchase the subject property but was outbid by the applicant;
  - he offered to purchase the property at the hearing;
  - His wife sent a letter in opposition and she also appeared at the hearing and voiced her objection to the application



# For Rent

- Is it a prohibited conflict of interest where a township employee raised opposition to the plaintiffs being allowed to rent any home built on their property where the employee runs a rental property three houses away?
- How about if zoning board members allegedly threaten the plaintiff with eminent domain if they don't agree to certain requests?



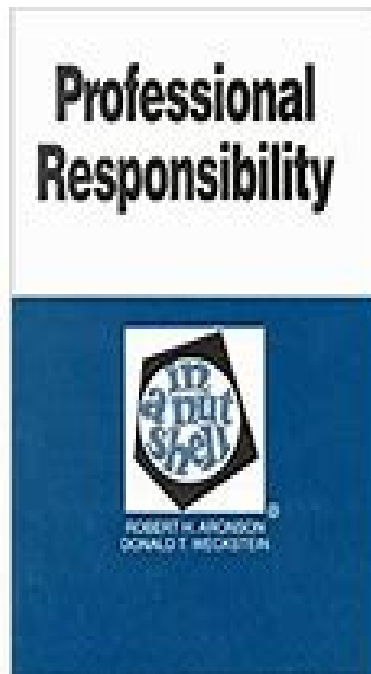
# Is Bribery Ever a Good Idea?

- Instead of cash for permits, would it be better to simply make a donation to the charity of a city council member's choosing?



# Board Attorney Disqualified?

- Should an attorney for the zoning board of adjustment be disqualified where the lawyer represented the applicant prior to gaining employment with the Board?



# The Counselor is in...

- Under a First Amendment Claim is it a problem where Village officials involved in a zoning decision making were represented by the same law firm that employs the Village attorney?





# More Work Please....

- Can someone serve simultaneously as an elected member of a school district board of directors and also as a member of the local city planning commission?



# Every Vote Matters...

- Is it a problem when a Township Councilman casts the deciding vote on an ordinance designed to prevent 104-unit townhouse project from being built on land adjacent to his home?



# Until Next Time

- If you have to ask, go with your gut and don't do it
- Recusal is not bad and disclosure is good
- Don't think about ethics as a legal issue, think about it as a public trust
- Let's keep the trend going and not see a case between now and next time with anyone from the Local and State Government Law Section or their client as a defendant!