



December 17, 2015

Laurel Park Neighborhood Association
P.O. Box 1485
Sarasota, FL 34230

Attention: Jude Levy, President
Laurel Park Neighborhood Association

Re: LPNA appeal from administrative site plan/building permit approval
of Woman's Exchange loading dock on Rawls Avenue
(Building permit # 20152184)

Dear Ms. Levy:

At its special meeting of December 14, 2015, the City Commission authorized me to provide a written response to your letter dated November 24, 2015 concerning the above referenced appeal. Responses to the questions posed in your November 24 letter have been orally communicated to the Association but have not been confirmed in writing.

Initially, this will confirm that we are not able to approve the LPNA request that the appeal go directly to the City Commission and bypass the Planning Board. Although we understand the reasons why you have made this request, the Zoning Code provides that the appeal must be heard by the Planning Board before a subsequent appeal is made to the City Commission. If your request were to be approved, it is conceivable that at some point later in the process an objection to bypassing the Planning Board hearing could be raised. If looked upon favorably, this objection could result in the appeal process having to re-commence with a hearing before the Planning Board. So, in the absence of a specific provision in the Zoning Code that would authorize a request of this nature to be made and approved by the City Commission, we are constrained to advise that the Planning Board hearing must occur. As you are aware, this hearing has been scheduled for January 20, 2016.

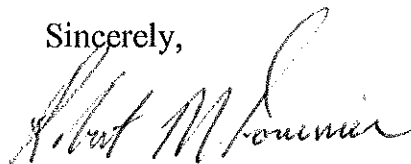
Secondly, you question the ability of Planning Board member Lindsay to participate in any quasi-judicial hearing on the matter to be conducted by the Planning Board. You note that Mr. Lindsay does not seem to have a voting conflict under the applicable Florida Statute. I agree that Mr. Lindsay does not have the type of conflict that would require him to abstain under the Code of Ethics for Public Officers and Employees because the result of the appeal will not, in the words of the statute, inure to his "special private gain or loss."

However, it is also the case that a board member might be required to abstain from participation in a quasi-judicial hearing simply because he or she is unable to be impartial and due process of law in the context of a quasi-judicial hearing requires fair and impartial decision makers. Usually, whether or not this is the case is determined by examining the prior statements and conduct of the board member in question. Any evidence of bias or inability to be objective on the part of a board member should be clear and obvious to an objective third party. We are obliged to exercise restraint before we advise a board member that he or she has exhibited sufficient bias to justify his or her disqualification as everyone is likely to have some prior life experiences that could influence their perception to some extent. Upon re-listening to Mr. Lindsay's comments at the prior Planning Board hearings on the adjustments for the Woman's Exchange project, Mr. Litchet and Mr. Connolly were unable to conclude that Mr. Lindsay should be disqualified from participation in the Planning Board hearing on the LPNA appeal.

Finally, this will confirm that because the Zoning Code requires that the affirmative vote of three members is necessary for the Planning Board to take official action and because the official action you have requested is the reversal of the administrative decision to approve the issuance of a building permit; that three affirmative votes are necessary for the Planning Board to reverse the decision of the Director of Neighborhood and Development Services.

The City Attorney's Office remains willing to discuss the procedural aspects of the hearing prior to January 20th with both parties in order to facilitate the process for both sides.

Sincerely,



Robert M. Fournier
City Attorney
City of Sarasota

RMF/lg