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Patricia E. Salkin, Esq.
Associate Dean and Director

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ZONING AND PLANNING LAW REPORT

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ETHICS ALLEGATIONS IN LAND USE CONTINUE TO FILL THE COURT DOCKETS

By Patricia E. Salkin

Patricia E. Salkin is Associate Dean and Director of the Government Law Center of Albany Law School where she is a Professor of Government Law.

Introduction

The number of reported land use cases that contain allegations of unethical conduct by actors in the planning and zoning arena—including board members, elected officials, and attorneys—continues to increase. Perhaps more disturbing in this latest trend is the types of egregious behavior that are found to have occurred at the local level despite the existence of federal, state, and local statutes, and common law governing the conduct of the various participants in the planning and zoning decisionmaking process. This article is intended to serve as a review of the reported cases and opinions over the last two years where an allegation of unethical conduct in a land use-related proceeding was brought to the attention of a court.[1] The article also reviews opinions issued by various state attorneys general during this time frame that were requested to provide guidance to local officials on certain ethics-related issues. Part I of this article focuses on conflicts of interest, and is organized into different categories of conflicts cases. Part II addresses the subject of compatibility of dual officeholding.

I. Conflicts of Interest

A. Conflicts of Interest Arising from Professional Status

Often conflicts of interest arise when municipal officials appoint individuals in certain professions to planning, zoning, and other review boards, and these individuals and/or the firms they work for also may appear before such boards within the municipality. The professions most likely to raise conflicts questions are: architects, attorneys, developers, engineers, financiers (e.g., banking and mortgage lenders), realtors, and surveyors. These individuals may be quite knowledgeable and familiar with land-related issues, but their employers or companies may also desire to do business with the local government which they serve. Courts and opinions of state attorneys general provide specific guidance in this regard on a case-by-case basis.

1. Architects

In a recent opinion, the New York Attorney General found that a member of a village design review board who is a professional architect need not resign from the board, even though he is a partner in a firm that about once a year accepts projects over which the board has jurisdiction. However, the Attorney General advised that the board member should "unquestionably" recuse himself from any consideration of a project or matter involving his firm.[2] While noting that "to maintain public confidence in the integrity of government, public officials must avoid even the appearance of impropriety,"

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the opinion concludes that "if resignation and not recusal was the appropriate remedy in every instance where a local official's private endeavors raised a potential conflict of interest . . . local units of government would have difficulty finding qualified individuals to serve the public interest."[3]

2. Attorneys

There can be chilling effects for municipal/land use attorneys who find themselves in potential conflict-of-interest situations, under the Code of Professional Responsibility or Rules of Professionalism, when they switch sides between municipal clients and private clients. For example, where a law firm represented a municipality at various times for approximately 30 years, and during the scope of that representation the firm, among other things, worked on the drafting of a local site plan law, a New York appellate court held that six years after the last representation, the law firm was prohibited under the applicable Code of Professional Responsibility from appearing before the municipality on behalf of another client requesting site plan review.[4]

A different conclusion was recently reached by the Connecticut Superior Court where a Town attempted to disqualify its former counsel under the Rules of Professional Conduct in connection with private representation involving the same piece of property and the same issue 26 years apart.[5] When serving as town counsel in 1975, the attorney had rendered an opinion letter to the town. regarding whether the property in issue qualified as a buildable lot. The attorney argued that the 1975 letter alone was insufficient by itself to provide a basis for disqualification in the present matter, since the letter was not a confidential document and it had been part of the public record from the time it was rendered.[6] Noting that the letter was issued 26 years ago at a time when the town was not in an adversarial position with respect to the subject property, and that 15 years had elapsed since the attorney had severed his relationship with the town, the court determined that "the public's interest in the scrupulous administration of justice" would not be compromised and that the "plaintiff's interest in the free selection of the counsel of his choice outweighs the defendant's interest in protecting confidential information."[7]

In another case, a developer being represented by a law firm in connection with the sale of real estate owned by the developed brought a suit for malpractice and breach of fiduciary duty and the duty of loyalty against the law firm, and a partner of the law firm who was also a member of the City Council, because the lawyer-councilman had voted twice in his official capacity on issues that adversely affected the developer.[8] Specifically, the developer alleged that the lawyer-councilman made a motion to adopt a building moratorium on apartments, which passed unanimously, causing the purchasers of an 11-acre apartment tract to reject the developer's contract for sale.[9] After the initial vote, the developer met with the law firm, and the lawyer-councilman learned that the firm was representing the developer in the sale of the apartment tract. The developer urged the lawyer-councilman to support its interests or, if he could not, to declare a conflict of interest and withdraw from any further leadership role, discussion, or vote concerning the moratorium.[10] Subsequently, the lawyer-councilman twice voted to extend the moratorium, and abstained from voting when the developer appeared before the City Council to request a waiver of the moratorium.[11] In reversing a summary judgment for the lawyer-councilman and the law firm, the court concluded that there was sufficient evidence to raise an issue of fact concerning the breach of the standard of care and breach of fiduciary duty and the duty of loyalty.[12]

Where a lawyer who had formerly been the mayor of a township, and had previously served as counsel to its Board of Adjustment, used his political influence in an attempt to pressure members of the township's Board of Adjustment to grant a variance to his client, the court, in a disciplinary proceeding against the lawyer, ordered that the lawyer's license to practice law be suspended for six months, pursuant to findings that (1) he had promised one member of the town council that if the council member helped secure passage of the variance request, the lawyer would help the council member's son obtain permanent employment with the county; and (2) in response to another board member's opposition to the project, the lawyer spoke with the head of the local ironworkers' union who then told the board member to reconsider his voting position so as not to "bite the hand that feeds him."[13] Prior to court review, the lawyer had pleaded guilty to the federal misdemeanor offense of promising employment or other benefit for political activity, in violation of The Hatch Act.[14] In considering the appropriate discipline, the court noted, "Respondent, as an experienced attorney and ex-counsel to the Edison Board of Adjustment, should have known that influencing two members of a zoning board, a quasi-judicial tribunal, through third parties to vote to grant a variance for the benefit of respondent's client was highly improper."[15]

The Washington Court of Appeals found no prohibited conflict of interest under the Rules of Professional Conduct where an attorney in the City of Bellevue Attorney's Office provided legal counsel and advice to the East Bellevue and Sammamish Community Councils, who were empowered to approve or disapprove certain city zoning ordinances.[16] The Community Councils asserted that the provision of legal counsel by the city constituted a conflict of interest. The court, however, noted that "it is accepted practice for different attorneys within the same public office to represent different clients with conflicting or potentially conflicting interests so long as an effective screening exists within the office sufficient to keep the clients' interests separate."[17]

3. Bankers

Where a member of a local Board of Commissioners which had voted to rezone a tract of land was also the vice president of a bank that had participated in financing the acquisition of the land by the county redevelopment authority, the Georgia Court of Appeals held that, absent more evidence that the rezoning of the parcel directly and immediately affected his pecuniary interest, there was merely a remote and speculative allegation that failed to make a case for conflict of interest.[18]

4. Planners

A former senior planner for an executive branch state agency devoted to regional land use control is precluded under New York's Ethics Law from rendering services related to any matter that the planner worked on or was directly concerned with while in state government.[19] Specifically, the planner, who had administered a federal community development block grant for a town at the time of his resignation from state service in 1994, could not later work as a private consultant for the town to administer the same grant he administered while in public service.[20]

In a Georgia case, the court found that more information was needed to determine whether a conflict of interest existed. A property owner who was the director of the county planning and zoning department, and who desired to lease his property for the installation of a telecommunications tower, submitted an application for the necessary conditional use permit to his own office for review.[21] The application was reviewed by the planning director's assistant and subordinate, who recommended approval to the land use standards commission.[22] Local property owners and members of a citizens' group opposed to the construction of the tower sued, alleging that the approval of the conditional use permit was improper due to the director's conflict of interest. On appeal, summary judgment for the director was reversed, the court holding that the defense had failed to demonstrate by competent evidence of record that the director was not a "public officer" within the meaning of the relevant state constitutional provision, and that he did not have a conflict of interest.

It is not uncommon for municipal planners to reside and own property in the community where they work, yet most often state and local land use laws and ethics laws provide little or no guidance on how to handle real or perceived conflicts of interest when a public official requests an application from their municipality. Proactive, advance planning for alternate decisionmaking models could more comfortably address these difficult scenarios.

B. Conflicts of Interest Arising from Residency

Oftentimes parties allege a conflict of interest based upon the fact that a board member lives in close proximity to the parcel subject to review. Where a planning board was responsible for the drawing of the boundaries of a redevelopment area, members of the City Council who lived in close proximity to that area did not have a prohibited conflict of interest, even though they could stand to gain from the manner in which the lines of the proposed redevelopment were drawn.[23] Although a landowner whose property was the subject of condemnation for the purpose of redevelopment claimed that certain Council members, the mayor, and the mayor's father, stood to gain by the way the lines were drawn, because they owned property adjacent to the redevelopment district, the court concluded that the plaintiff was not able to establish such a conflict of interest.[24]

Where a member of a village board of trustees owns commercial property within the village's business improvement district, the New York Attorney General has opined that generally, since a public official "must avoid circumstances that compromise his or her ability to make impartial decisions solely in the public interest," and avoid even the appearance of impropriety, the village trustee should recuse himself from the board's deliberations and voting on the business improvement district budget.[25]

In a recent Connecticut case, it was alleged that a member of a planning and zoning commission, who was an abutting landowner to property for which a subdivision development application had been submitted, biased the proceedings before the commission when he participated in the public hearings on the application and did not recuse himself on the day of the vote.[26] Connecticut General Statutes § 8-21 provides in part, "No member of any planning commission shall participate in the hearing or decision of the commission of which he is a member upon any matter in which he is directly or indirectly interested in a personal or financial sense." Connecticut

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Editorial Director
Tim A. Thomas, Esq.

Contributing Editors
Patricia E. Salkin, Esq.
Kenneth H. Young, Esq.

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courts over the years have expressed concern that this provision not be used to handicap local governments by alleging that every conceivable interest, no matter how remote or speculative, require disqualification of zoning officials,[27] opting not for a per se disqualification rule, but rather for a case-by-case factual inquiry as to whether there was material prejudice to warrant the invalidation of a commission decision.[28] The court concluded that, although pursuant to the statute the commission member should have recused himself from the proceedings, the commission voted 6-0-0 against the application, and there was nothing in the record that evidenced any attempt on the commission member's part to influence the outcome of the proceedings, and that therefore the decision of the commission would not be overturned.[29]

Where a commissioner lived adjacent to a site for which an application had been made to construct a concrete batch plant, and the applicant alleged that the commissioner and his wife were opposed to the granting of the application, the court found that the commissioner, who recused himself from the vote on the application, did not bias the decision of the body by not recusing himself, from the outset, from the proceedings on the application.[30] In recognizing that commission members come from the community and have opinions on matters, the court reiterated the following language from an earlier Wisconsin Supreme Court decision: "Nevertheless, a board member's opinion on land use and preferences regarding land use development should not necessarily disqualify the member from hearing a zoning matter. Since they are purposefully selected from the local area and reflect community values and preferences regarding land use, zoning board members will be familiar with local conditions and the people of the community and can be expected to have opinions about local zoning issues."[31]

Where property owners, whose replat application was initially approved by a city planning commission but later rejected by the city council on appeal, sued and alleged, inter alia, that three of the four city council members who voted against the property owners should have abstained from voting because they held leadership positions in a homeowners' association that was vigorously opposed to the replatting, the court granted summary judgment to the defense without addressing the merits of the plaintiffs' conflict-of-interest allegations.[32] The plaintiffs had couched this aspect of their complaint in terms of procedural and substantive due process claims. The court noted that these claims failed, inasmuch as the plaintiffs had no constitutionally protected property interest in a favorable vote of the city council. (The court noted that the decision of the city council had been reversed in a state court decision, which held that the three city council members cited by the plaintiffs as having a conflict of interest had indeed had a conflict of interest, and had acted improperly by voting on the replat application.)

The facts of an ongoing enforcement dispute in Plainfield, Connecticut highlight the potential problems that can occur when a member of a zoning board of appeals is seeking a decision from that board. While board members should not be exempt from zoning and other land use controls, sometimes their conduct can go too far, raising ethical dilemmas for themselves, the board, and the municipality. In *Anderson v. Gallow*,[33] Gallow was the joint owner of premises that he was using in violation of the local zoning ordinance by operating a business in a residential zone. Actions were started in 1997 to enforce a cease and desist order. By 2001, there had been several applications to the zoning board on Gallow's behalf, requesting relief, and a couple of intervening court challenges to the enforcement proceedings. Gallow was a member of the zoning board, and for part of the proceedings served as its chair. Having the occasion to confront the issue of whether a zoning board can reconsider and reverse its earlier denial of a variance application, the court found that there was no authority to do so in either the local zoning ordinance nor in the state statutes, and that to allow this to happen would result in no finality to a proceeding before the board.[34] When Gallow again submitted a virtually identical application for a variance that had been the subject of previous litigation, the first selectman and town counsel issued an opinion to the four other board members (Gallow was excusing himself from voting on his own application). The opinion indicated that it was the first selectman and town counsel's opinion that the remaining four board members had a conflict of interest, and suggested that the law prevented them from sitting on the board during a consideration of the variance, and that they could not consider the variance again. The letter further advised the board members that if they were to participate in the decision, the town would not provide them with counsel nor indemnify them in subsequent litigation.[35] The matter was then tabled at a zoning board meeting after the town refused to provide another lawyer to the board. Gallow's lawyer told the board it could act, and two other lawyers told the board it could not act.[36] Following that meeting, the board chair resigned and Gallow became the chair, and the new member appointed was alleged to have been politically aligned with Gallow. Gallow's attorney declared the application to have been approved by default of the zoning board of appeals and published an unprecedented notice in the newspaper to that effect, although such publication was unsigned and did not indicate by whose authority it was promulgated.[37] The current court decision addressed civil and criminal contempt charges against Gallow, and found that the proper course of action would be to pursue and enforce civil contempt charges with a fine, rather than criminal contempt charges.[38]

C. Lack of Impartiality Based on Ethnic Slurs

During proceedings before an Inland Wetlands and

Water Courses Commission, conducted to determine what mitigation would be required of a landowner who had engaged in unauthorized encroachments on his property involving wetlands and a flood plain, the landowner's engineer was explaining that his client wanted flower beds and related greenery on the property, and stated, "He has all these kinds of interesting ideas, being an Italian, I guess, the Italians like gardens; I like gardens too."[39] A commissioner then stated, "Some of the Italians are wopsided." The engineer replied, "Lopsided?" and the commissioner stated "Wopsided." The engineer replied "Wopsided, yes, O.K., got you."[40] The commission subsequently ordered the landowner to restore his land according to a mitigation plan it had accepted several months before, rather than accepting any of the proposals subsequently made by the landowner. In an action by the landowner to overturn the order, the commissioner's use of the ethnic epithet led the court to find a lack of impartiality, the court noting that the use of ethnic remarks by the judiciary are grounds for disqualification.[41] In sustaining the landowner's appeal, the court found that the incident acted to undermine public confidence in the administration of the commission's business, and that the hearings and deliberations occurred in an atmosphere of animosity toward the landowner.[42]

Improper Motive: Show Me The Money

The U.S. District Court for the Eastern District of Pennsylvania suggested that the record provided sufficient evidence that could lead a reasonable factfinder to find improper motive on the part of a board of supervisors who had denied a landowner's request to rezone a parcel to allow for a supermarket, after the landowner had declined to "voluntarily" help the township by providing open space to compensate for loss of residential zoning caused by the proposed rezoning.[43] At a meeting of the board on July 7, 1998, concerning the rezoning request, one member asked the landowner whether it had "any interest in helping the township with open space to compensate for the loss of residential zoning."[44] When the landowner pointed out that such a contribution was not required under township ordinances, another board member responded that previously such contributions had been made voluntarily.[45] In its suit, the landowner alleged that the board had improper motives in denying its rezoning request, inasmuch as a second developer was at that time also pursuing plans for a supermarket on another site, and that the second developer, having agreed to make a contribution of $600,000 to the township to purchase property to be kept as open space, was granted a rezoning for its project.[46] In declining to grant summary judgment to the defense, the court reasoned that "The plaintiffs in this case presented evidence from which a fact finder could reasonably conclude that certain council members acting in their capacity as officers of the municipality improperly interfered with the process by which the municipality issued building permits, and that they did so for partisan political or personal reasons unrelated to the merits of the application for the permits."[47] The court relied on the following facts in reaching this conclusion: (1) minutes of the July 7, 1998 board meeting, which demonstrated that the entire board had knowledge of the motive alleged by the landowner for the denial of its rezoning request; (2) minutes of another meeting that indicated that the board was unreceptive to the second developer's plans, but that a rezoning might be possible if a suitable tradeoff could be reached; (3) a letter from the township supervisor indicating support for the other developer's supermarket because of its $600,000 donation to purchase open space; (4) other comments made to the landowner suggesting that he follow the lead of the other developer; and (5) the fact that the Board did not wait for the recommendation of the County Planning Commission before denying the landowner's request.[48]

Personal Financial Gain

Where a member of a planning board had recused himself from consideration of a matter involving a development project (on the advice of the Rhode Island State Ethics Commission, due to the possibility of future business relationships), but later participated as a board member in approving the project's preliminary plan, opponents of the project claimed that the member's subsequent participation constituted a procedural error invalidating the planning board's decision to approve the project.[49] The court, however, determined that prior to his participation in the approval of the preliminary plan, the board member stated for the record that he did not have a business relationship with anyone associated with the project. The court also noted that the issue had not been raised by the opponents of the project in their administrative appeal of the approval, nor had they offered any evidence of the member's alleged conflict of interest at the time of the planning board's approval of the preliminary plan. Therefore, his participation in the approval of the plan did not constitute a procedural error.[50]

A Connecticut case brought as an action for mandamus to compel a zoning board of appeals to hear an appeal was denied on the grounds that there was another remedy at law, but the underlying facts reveal another ethics allegation, to wit, that the real estate broker who had earned a commission on the sale of the subject property to its current owners was also the zoning enforcement officer of the town wherein the property was situated.[51] When citizens who objected to hunting and fishing activities conducted on the property sought to have the zoning enforcement officer disqualified from acting in his official capacity on the property, due to his involvement in its sale, he refused to recuse himself. The zoning commission subsequently refused to order the officer to issue a cease and desist order as to the hunting and fishing activity, and the officer took no action re-

garding that activity.[52] After the commission voted against taking any action, the citizens appealed to the zoning board of appeals, which decided not to hear the appeal. While the court never reached the conflict-of-interest issue, regardless of whether a legal conflict of interest existed under Connecticut law, this case raises another example of the appearance of impropriety, and advances a public perception that municipal officers are not always independent.

Pursuant to Alaska state law requiring municipalities to adopt conflict-of-interest ordinances that require members of a governing body to disclose when they have a "substantial financial interest" in an official action, the City of Homer adopted such a law and defined "substantial financial interest" to mean a "financial interest that could be affected by an official action, which might reasonably result in a pecuniary gain or loss exceeding $300."[53] After an amendment was enacted to the city's zoning and planning code, permitting the sale and servicing of motor vehicles in the central business district, a property owner sued the city to set aside the amendment. He alleged, inter alia, that a particular city council member should not have taken part in the consideration of, or vote on, the amendment because of a conflict of interest. However, the court noted that the council member did not own any property in the area affected by the amendment, nor did he participate in any business operations that were directly benefited by the amendment. Under such circumstances, said the court, it was speculative at best for the plaintiff to insinuate that the ordinance was a "significant step" towards some potential future business interest of the council member.[54] The court further held that the mere fact that the council member operated a snow removal business that used sand stored on property subject to the amendment did not give rise to conflict of interest.[55]

Other Conflicts of Interest

A landowner who owned marina property contiguous to a private yacht club sought to disqualify seven members of the planning board, who were members of the club, from acting on his application for development of his property.[56] Finding a conflict of interest, the court stated, "It is difficult for the court to believe that a typical citizen would not perceive the clear potential for the objective capacity of the Yacht Club members to be impaired in this setting."[57] Notwithstanding the recognized conflict, the court concluded that in smaller communities, such as the one involved in this case, and without an alternate procedure in place to rule on the application, the members of the Board should be permitted to rule on the application consistent with their duty to protect the public interest.[58] This case brings to the forefront the need to have state legislation authorizing the appointment of alternate members of boards, and/or the designation of an alternate board in the municipality to hear applications when conflicts such as this surface.

II. Compatibility of Office

As a general proposition of state law, in the absence of a constitutional or statutory prohibition against one person holding two municipal offices, a person may hold two offices simultaneously unless they are incompatible. To determine incompatibility under the law, courts will look to determine whether one office is subordinate to the other, or whether there is an inherent inconsistency between the two offices.[59] Over the last five years there have been a growing number of opinions dealing with compatibility of dual officeholding. For example, the following offices have specifically been found by different states to be compatible: acting city attorney and chairman of the city's zoning commission;[60] planning board director and member of a county industrial development agency;[61] and zoning board member and secretary of the board.[62] The following positions have been found to be incompatible: member of a county quorum court and member of a county planning board;[63] member of the county planning commission and member of the local legislative body;[64] and simultaneous membership on the township planning commission and zoning commission.[65]

What follows is a review of more recent opinions on the subject of compatibility of dual officeholding.

Incompatible Offices

According to the South Carolina Attorney General, it would be advisable, in order to avoid the appearance of a conflict of interest, to prohibit one person from holding the positions of Director of Planning and Development and Town Council Member.[66] The South Carolina Constitution prohibits a person from holding two offices of honor or profit at the same time.[67] As it is well settled in South Carolina that the position of town council member is an "office" in the constitutional sense,[68] the Attorney General went on to analyze the position of director of planning and development by examining the city ordinance creating the position and defining its duties.[69] While noting that whether the position of planning director is in fact an "officer" is a close call, the Attorney General opined that since the position appears to exercise a portion of the sovereign power by virtue of the authority to enforce the City's planning and zoning ordinance, the position most likely constitutes an office.[70]

The New York Attorney General determined that the position of senior typist in the city building department would be incompatible with membership on the city zoning board of appeals.[71] According to the facts presented, the typist is responsible for reviewing applications to the zoning board to ensure that they contain all required information, advising members of the public as to what board approvals are required, tracking all applications before the board, and typing information that comes before the board for review. The typist is supervised by the building inspector, who also serves as the zoning administrator. Determinations made by the typist's supervisor

are subject to review by the zoning board of appeals, and the building inspector makes recommendations to the city manager regarding the hiring, firing, and disciplining of employees in the building department. As a member of the zoning board of appeals, a person who also serves as senior typist would be reviewing determinations of her supervisor, which would at least present an "appearance that the employee's authority to review her supervisor's determinations is not being exercised impartially."[72]

Compatible Offices

After reviewing the powers and duties of the offices of a member of a county board of health and a member of the township zoning board of appeals, the Ohio Attorney General opined that the two positions are not automatically incompatible, but advised that there are infrequent situations where a conflict of interest could be present.[73] Therefore the individual dual-officeholder should abstain from participating in any deliberations, discussion, negotiations, or votes involving property that is the subject of regulatory or enforcement actions by both boards.[74] Examples of when such a conflict could occur include when property owned by the board of health of a general health district is the subject of township action against the board of health to enforce its land use and zoning regulations, and where the board of health takes a matter to the township zoning board of appeals.[75]

According to the Tennessee Attorney General, a county commissioner may legally serve as an employee of the county highway commission, absent any statutory provision prohibiting such dual officeholding, so long as that individual follows the voting restrictions set forth in Tennessee Code § 12-4-101(c), which sets forth general guidelines on conflicts of interest.[76]

Conclusion

Land use law practitioners must continue to be vigilant about the real and perceived ethical conduct of all of the players in the planning and zoning game. With fiscal motivations to protect the economic value of property, along with public health and safety motivations to make certain decisions with respect to land, the stage is always set for highly contentious board meetings that often result in the pursuit of litigation. One litigation strategy that is gaining increasing popularity is the exploration of relationships between the volunteers and public officials who serve the community, business and professional relationships, and relationships and ethics of attorneys involved in providing advice in the land use arena. Too few continuing education programs on the subject of land use include an ethics component, and the literature is still scant in this increasingly important area of practice.

NOTES

1. For a review of earlier land use related ethics cases see: Salkin, "Avoiding Ethics Traps in Land Use Decisionmaking," Municipal Lawyer (IMLA March/April 2002); Salkin, "Litigating Ethics Issues in Land Use: 2000 Trends and Decisions," 33 The Urban Lawyer 687 (Summer 2001); Salkin, "Municipal Ethics Remain a Hot Topic in Litigation: A 1999 Survey of Issues in Ethics for Municipal Lawyers," 14 BYU J. of Pub. L. 209 (2000); and Salkin, "1998 Survey of Ethics in Land Use Planning," 26 Fordham Urb. L.J. 1393 (1999).

2. 2002 Op. N.Y. Atty. Gen. 8 (March 4, 2002), 2002 WL 437994.

3. Id.

4. Walden Federal Sav. and Loan Ass'n v. Village of Walden, 212 A.D.2d 718, 622 N.Y.S.2d 796 (2d Dep't 1995).

5. Nicholas v. Wilton Zoning Bd. of Appeals, 30 Conn. L. Rptr. 386, 2001 WL 1200339 (Conn. Super. Ct. 2001).

6. Id.

7. Id.

8. Two Thirty Nine Joint Venture v. Joe, 60 S.W.3d 896 (Tex. App. Dallas 2001), review granted, (2 pets.) (Feb. 13, 2003).

9. Id.

10. Id.

11. Id.

12. Id.

13. In re Convery, 166 N.J. 298, 765 A.2d 724 (2001).

14. 18 U.S.C.A. § 600.

15. Id.

16. Sammamish Community Mun. Corp. v. City of Bellevue, 107 Wash. App. 686, 27 P.3d 684 (Div. 1 2001), review denied, 145 Wash. 2d 1023, 41 P.3d 482 (2002).

17. Id.

18. White v. Board of Com'rs of McDuffie County, 252 Ga. App. 120, 555 S.E.2d 45 (2001), cert. denied, (Mar. 25, 2002).

19. McCulloch v. New York State Ethics Com'n, 285 A.D.2d 236,

728 N.Y.S.2d 850 (3d Dep't 2001), relying on N.Y. Pub. Officers Law § 73(8)(a).

20. Id.

21. Crozer v. Reichert, 275 Ga. 118, 561 S.E.2d 120 (2002).

22. Id.

23. Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy, 349 N.J. Super. 418, 793 A.2d 834 (App. Div. 2002).

24. Id.

25. 2002 N.Y. Op. Atty. Gen. 9 (March 4, 2002), 2002 WL 437992.

26. Canterbury Estates, Inc. v. Inland Wetlands Com'n of Town of Canterbury, 2002 WL 1042139 (Conn. Super. Ct. 2002).

27. See, Dana-Robin Corp. v. Common Council of City of Danbury, 166 Conn. 207, 348 A.2d 560 (1974).

28. See, Murach v. Planning and Zoning Com'n of City of New London, 196 Conn. 192, 491 A.2d 1058 (1985).

29. Canterbury Estates, Inc. v. Inland Wetlands Com'n of Town of Canterbury, 2002 WL 1042139 (Conn. Super. Ct. 2002).

30. Carew Concrete & Supply Co., Inc. v. Town of Humboldt, 242 Wis. 2d 472, 2001 WI App 75, 625 N.W.2d 360 (Ct. App. 2001) (unpublished opinion).

31. Id. quoting, Marris v. City of Cedarburg, 176 Wis. 2d 14, 498 N.W.2d 842 (1993).

32. McGuire v. City of Moraine, Ohio, 178 F. Supp. 2d 882 (S.D. Ohio 2001).

33. Anderson v. Gallow, 2001 WL 400368 (Conn. Super. Ct. 2001).

34. Id. The court also cites to St. Patrick's Church Corp. v. Daniels, 113 Conn. 132, 154

A. 343 (1931), which stated in part, "[I]t appears to be well established that a zoning board of appeals…should not ordinarily be permitted to review its decisions and revoke action once duly taken. Otherwise there would be no finality to the proceeding; the result would be subject to change at the whim of members or due to the effect of influence exerted upon them, or other undesirable elements tending to uncertainty and impermanence."

35. 2001 WL 400368.

36. Id.

37. Id.

38. Id.

39. Pirozzilo v. Berlin Inland Wetlands and Water Courses Com'n, 32 Conn. L. Rptr. 103, 2002 WL 1009705 (Conn. Super. Ct. 2002).

40. Id.

41. Id., citing, Berger v. U.S., 255 U.S. 22, 41 S. Ct. 230, 65 L. Ed. 481 (1921).

42. Pirozzilo v. Berlin Inland Wetlands and Water Courses Com'n, 32 Conn. L. Rptr. 103, 2002 WL 1009705 (Conn. Super. Ct. 2002).

43. Thornbury Noble, Ltd. v. Thornbury Tp., 2002 WL 442827 (E.D. Pa. 2002).

44. Id.

45. Id.

46. Id.

47. Id.

48. Id.

49. Levitt v. Town of So. Kingstown Planning Bd. of App., 2001 WL 118447 (R.I. Super. Ct. 2001).

50. Id. The court also suggested that the Rhode Island Ethics Commission would be the more appropriate forum to address further conflict of interest allegations in this matter.

51. Battistoni v. Zoning Bd. of Appeals of Town of Morris, 2001 WL 1178683 (Conn. Super. Ct. 2001).

52. Id.

53. Griswold v. City of Homer, 34 P.3d 1280 (Alaska 2001).

54. Id.

55. Id.

56. Gunthner v. Planning Bd. of Borough of Bay Head, 335 N.J. Super. 452, 762 A.2d 710 (Law Div. 2000).

57. Id.

58. Id.

59. See, for example, People ex rel. Ryan v. Green, 58 N.Y. 295, 1874 WL 11282 (1874).

60. 98 Op. Ark. Att'y Gen. 226 (1998), 1998 WL 778119, discussed in Salkin, "1998 Survey of Ethics in Land-Use Planning," 26 Fordham Urb. L.J. 1393 (1999).

61. See, 1998 Op. (Inf) Atty. Gen. N.Y. 1103, 1998 WL 857218.

62. 1999 Ohio Op. Atty. Gen. 99-035 (1999), 1999 WL 380552.

63. 98 Op. Ark. Att'y Gen. 226 (1998), 1998 WL 778119.

64. LaGrange City Council v. Hall Bros. Co. of Oldham County, Inc., 3 S.W.3d 765 (Ky. Ct. App. 1999).

65. 1999 Mich. Op. Att'y Gen. No. 7012, 1999 WL 170802.

66. Op. S.C. Atty. Gen. (April 1, 2002), 2002 WL 735353.

67. S.C. Const. Art. XVII, § 1A.

68. Op. S.C. Atty. Gen. (April 1, 2002), 2002 WL 735353.

69. Id.

70. Id.

71. 2002 Op. (Inf) Atty. Gen. N.Y. 8 (March 4, 2002), 2002 WL 437994.

72. Id.

73. 2002 Ohio Op. Atty. Gen. 2002-012 (April 3, 2002), 2002 WL 541845.

74. Id.

75. Id.

76. Tenn. Op. Atty. Gen. No. 01-084 (May 23, 2001), 2001 WL 764467.

NOTED IN BRIEF

A trial court exceeded its authority when it declared the zoning on a 75-acre parcel of property to be unconstitutional and ordered the town to rezone the property to a specific zoning designation. Town of Tyrone v. Tyrone, LLC, 275 Ga. 383, 565 S.E.2d 806 (2002). The Supreme Court of Georgia said, "A court's role in zoning disputes is to determine whether the current zoning amounts to an unconstitutional taking, not which zoning classification should apply to a particular parcel of property. . . . Once the trial court concluded that the current zoning was unconstitutional, it should have ordered the town council to rezone the property to a constitutional designation." 565 S.E.2d at 808. The state supreme court also partially reversed the trial court's finding that the current zoning of the parcel was unconstitutional. It found that evidence in the record supported the trial court's conclusion that the 53-acre portion of the property zoned "agricultural-residential" could not be developed under that classification. However, it did not find evidence to support the trial court's conclusion that the 22-acre portion zoned "office-institutional" was unconstitutional. "[T]he Developer simply did not show by clear and convincing evidence that the 22 acres could not be developed under the office-institutional zoning. Accordingly, the trial court clearly erred in concluding that the property owners had suffered a significant detriment from having their property zoned office-institutional." 565 S.E.2d at 810.