

March 22, 2024

VIA EMAIL AND FEDEX

Ms. Jamilet Baquerizo Vite, Planning Board Clerk
Township of West Orange
66 Main Street
West Orange, NJ 07052

**Re: Essex County Country Club
Amended Site Plan Application Half-way House
350 Mt. Pleasant Avenue - Block 156, Lot 1**

Dear Ms. Baquerizo:

On behalf of the Essex County Country Club (the "Applicant") please accept this letter in response to Ms. Micaela Bennett's letter dated March 5, 2024 filed in connection with the above-referenced matter. The majority of the issues raised in Ms. Bennett's letter were previously addressed in letters filed by the Applicant on January 25, 2024, and February 23, 2024 and will not be repeated here. The purpose of this reply is to clarify two points of law raised by Mr. Bennett as follows:

A. Liquor License Considerations

Ms. Bennett purportedly relies on the decision in Lakewood Realty Assocs. v. Lakewood Twp. Planning Bd., A-3750-16T4, 2019 WL 437956 (N.J. Super. Ct. App. Div. Feb. 5, 2019), an unreported case, to support her continued and incorrect position that the West Orange Planning Board (the "Planning Board" or the "Board") has authority to consider whether the Applicant's proposed half-way house may sell alcohol and its impact on the surrounding neighbors as part of its decision-making process to grant or deny the application. First, as previously indicated in our January 25, 2024 letter, the power to control and regulate the sale of alcohol within the half-way house is reserved for other regulatory bodies pursuant to the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. (the "ABC Act"), and the Planning Board lacks jurisdiction to control same. Second, with the Applicant having established that the proposed half-way house is a permitted accessory use in the zoning district, as conceded to by Ms. Bennett's own expert, the Planning Board is likewise without statutory authority to deny the subject application based on its use characteristics for the reasons detailed in our letter of February 23, 2024.

The Lakewood case cited by Ms. Bennett is a notice case. It stands for the simple and well-established principal that the legal notice for any application must fairly apprise the public of the "nature of the matters to be considered" by the board in a commonsense manner so that an ordinary layperson may make an informed decision on whether it should obtain additional information on the

application by reviewing the plans on file or by appearing at the board hearing. N.J.S.A. 40:55D-11; Perlmart of Lacey, Inc. v. Lacey Twp. Planning Bd., 295 N.J. Super. 234, 239 (App. Div. 1996).

In Lakewood, the Appellate Division reversed the board's approval of the application for a procedural error inasmuch as the applicant's hearing notice was deficient for failure to adequately state the nature of the application. The notice stated that the application to be considered was for a "bank" and a "hotel". Lakewood, 2019 WL 437956, at *2. It also indicated that variances were required including but not limited to a parking variance. Id. The notice did not state that within the hotel a restaurant, and banquet facility with the capacity to hold more than 800 guests were proposed or that the hotel intended to apply for a liquor license. Id. at *7. The municipality's definition of "hotel" did not include a restaurant, bar or banquet facility and the court took judicial notice of the fact that not every hotel includes such facilities. Id. Accordingly, based on the totality of the facts of the cases, the court ruled that the notice did not fairly apprise the public of the nature of the application to be considered, and set aside the approval based on a jurisdictional defect. Id. The court did not consider the merits of the application, and the case in no way supports Ms. Bennett's position that this Board may consider whether the half-way house will or will not sell alcohol as part of its decision-making process to grant or deny the subject application where the use is permitted in the zoning district.

B. No Prejudgment by the Planning Board

Ms. Bennett further seeks to analogize the facts of Tanis v. Twp. of Hampton, 306 N.J. Super. 588 (App. Div. 1997) to claim that this Board has prejudged the Applicant's application, however, the procedure conducted in Tanis was wildly different than the proceedings that have occurred before this Planning Board.

In Tanis a property owner claimed that an airplane landing strip on its property was a pre-existing non-conforming use and did not apply to the zoning board for a use variance to operate the airplane strip despite advice from the municipality to do so. Tanis, 306 N.J. Super. at 592-93. Instead, the property owner applied directly to the New Jersey Department of Transportation ("NJDOT") to operate the landing strip. Id. at 596. When the NJDOT informed the municipality of its intent to issue a license for the landing strip, the municipal planning board and the municipal zoning board both held hearings on the matter without notifying the property owner. Id. In particular, the zoning board, without the property owner's awareness or participation, held a hearing, heard comments from objectors, voted that the airstrip did not conform to the municipal ordinance, and notified the NJDOT of its decision. Id. at 596-98. After NJDOT notified the property owner that the municipality expressed valid concerns related to the use, the property owner filed an application with the zoning board to declare that the landing strip was a protected nonconforming use of the property as well as a permitted accessory use. Id. at 596-97. The board thereafter held two hearings and denied the application. Id. at 597. On appeal, the property owner claimed that the zoning board had prejudged its application due to the board having conducted prior hearings without his knowledge or presence and argued that the "[b]oard's final decision on his application was not 'entitled to the ordinary presumption of correctness that the decision would otherwise have'". Id. The court agreed and decided the merits of the case de novo. Id.

In the present case Ms. Bennett and the public were provided notice of the application in accordance with the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”). Further, Ms. Bennett and the public have been provided an opportunity to cross-examine the Applicant’s witnesses, and Ms. Bennett has been provided the opportunity to present her own case in opposition to the application inclusive of the presentation of an expert witness. The Board dedicated an entire meeting to the subject application on February 7, 2024 and decided to continue the hearing to March 6, 2024 due to the late hour of the proceedings to ensure Ms. Bennett and the public were fairly provided an opportunity to participate. Moreover, despite the fact that the Applicant was ready to proceed on March 6, 2024, the Applicant and the Board granted Ms. Bennett’s request for an adjournment of the proceedings because her expert witness was not available, and the next hearing date was moved to April 3, 2024. Accordingly, both Ms. Bennett and the public have been provided with ample opportunities to participate in the hearings thus far, and it cannot be said that the Board has denied this right or prejudged the application.

While objectors are entitled to be heard, the MLUL makes clear that the presiding officer of the proceeding may place reasonable limitations on the cross-examination of witnesses as to time and number, and the “agency may exclude irrelevant, immaterial or unduly repetitious evidence.” See, N.J.S.A. 40:55D-10d and -10e. In Shim, a case involving an accessory daycare use within a church, the Court upheld the chairman’s decision to close the proceedings when an objector persisted in his demands that the record remain opened to allow unnecessary input from the Alcoholic Beverage Commission and when the objector began questioning the objectivity of the board’s attorney. Shim v. Washington Twp. Planning Bd., 298 N.J. Super. 395, 413 (App. Div. 1997). The court aptly noted that objectors “should be kept orderly by the chairperson,” and the chair may place reasonable limits on duplicative testimony or “testimony as to irrelevant matters.” Id. As a result, it determined the objector’s claim that he was deprived due process to a full and fair hearing before the board to be without merit. Id.

In the subject proceedings, the Board and the Board Chairman have properly exercised their authority to limit irrelevant testimony and questioning related to the potential sale of alcohol within the half-way house, and Ms. Bennett’s allegations to the contrary are completely baseless.

Very truly yours

/s/ Lisa A. John-Basta

Lisa A. John-Basta
Member

LAJ:bs

c: Ms. Diana McGovern, Board Attorney (via email)
Ms. Micaela Bennett (via email)