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Conflict Gets 8 Officials Disqualified From Hearing Warehouse Application

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Land Use and Planning



Charles Toutant



A New Jersey judge disqualified eight members of Sparta's municipal planning board from ruling on a warehouse application because they belonged to an organization formed to oppose the project.

Superior Court Judge Stuart Minkowitz, in Sussex County Superior Court, said the eight board members belong to Sparta Responsible Development, an organization formed to stop the warehouse project in question.

That makes it "virtually impossible" to separate the organization's goals from the need to impartially rule on the site plan application, Minkowitz ruled.

Such a large-scale disqualification appears to be unprecedented, said Adam Garcia, an attorney from Giordano, Halleran & Ciesla of Red Bank, New Jersey, who challenged the board members' impartiality on behalf of Diamond Chip Realty, the company seeking to build the warehouse project.

"I think the takeaway is: impartiality is key. You know everybody comes to an application with their own views. But you can't align yourself with an organization that has already determined that the application must fail," Garcia said.

Giant warehouses have been a booming sector in New Jersey real estate, spurred by an uptick in online shopping during the pandemic. But as developers seek local approval for their warehouse projects, opponents have become more vocal.

In Sparta, Diamond Chip applied in November 2021 to build two warehouses with 880,000 square feet of space, but the size was later reduced to 660,000 square feet.

A founder of SRD, Neill Clark, was elected to the township council in November 2022 on a "no mega warehouses" platform, and he allegedly participated in the appointment of warehouse opponents to the planning board, Garcia claimed.

In September 2023, Diamond Chip filed a suit seeking the removal of eight of the nine planning board members on the basis that they belonged to SRD.

The case can now proceed with a board consisting of members who were not disqualified, along with substitutes from Sparta's Zoning Board of Adjustment, as provided for in the state Municipal Land Use Act, Garcia said.

Garcia was assisted in the litigation by Giordano Halleran's Matthew Fiorovanti. Another of the firm's attorneys, Steven Gouin, is handling Diamond Chip's planning board application.

The judge wrote that the attorney for Sparta, Thomas F. Collins Jr. of Vogel, Chait, Collins & Schneider in Morristown, New Jersey, conceded that the eight planning board members in question all belonged to a group formed to challenge the warehouse application. But Minkowitz also wrote that the attorney maintained that all the members had signed oaths promising to "faithfully, impartially and justly perform the duties of their positions."

"Because the eight identified appointees are current and active members of an organization that was solely formed to challenge [Diamond Chip Realty's] application, there is a clear conflict, as it is virtually impossible to separate their organizational membership goals in SRD and the impartiality necessary to render a fair determination on a site plan approval," Minkowitz wrote. "The interest does not have to actually influence the action of the eight members, but only that the interest creates a conflict."

Minkowitz denied Garcia's requests to order the planning board to hear and issue a decision on Diamond Chip's application within 30 days of the resolution of the court case. But the judge did order the township to hold hearings within 45 days of a final order in the case.

Minkowitz also denied Garcia's requests to appoint a special master to supervise the planning board. Collins, the attorney for Sparta, did not respond to a request for comment on the case.

Anand Dash, the president of SRD, said in a statement that the ruling "erodes the fundamental right of citizens to partake in democracy without fear that their voices and participation will be censored by the mere allegation, without credible evidence, of their membership in an advocacy group such as SRD.

"At the same time, we are confident that this decision will have no bearing on the ultimate success of our cause and the will of the majority of Sparta citizens who believe that the proposed project is antithetical to the town's character and cherished values," Dash added.

Garcia disputed the notion that removing the board members was anti-democratic.

"Anybody's free to run for public service. I think where the line is drawn is that you can't seat someone on a board who's going to decide an application that has already preconceived that that application must not succeed. That's anti-democratic," Garcia said.

"The [Municipal Land Use Law] provides a mechanism where if you can't be impartial, you should recuse for the application," Garcia said. "They elected not to do that. They could have but they chose not to and that's why we had to seek the relief that we sought."

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