

CARMELA Z. CILIBERTI, ESQ.

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December 2, 2024

Via E-Mail

Board of Supervisors
Lower Oxford Township
220 Township Road
Oxford, PA 19363

RE: PLANNING COMMISSION MEMBER CONFLICT OF INTEREST

Dear Lower Oxford Township Board of Supervisors,

I am contacting you regarding Mr. Joel Brown's appointment to the Township's Planning Commission and subsequent appointment to the Oxford Region Planning Committee (ORPC). Mr. Brown is a realtor employed by Beiler – Campbell Realtors. Mr. Brown is the listing agent for 2480 Baltimore Pike, Oxford PA 19363 (Herr's Farm), owned by Herr Foods, Inc and pending sale with E. Kahn Development Corp. During his tenure as member of the planning commissions, Mr. Brown was the listing agent for real property located in Lower Oxford Township as well as several member municipalities of the ORPC. See Exhibit A.

The land development plan for Herr's Farm is currently under review by the ORPC. Further, East Nottingham Township is in the process of amending their zoning ordinance directly impacting Herr's Farm. East Nottingham Township cannot adopt this amendment without completing the process as outlined in the ORPC Intergovernmental Cooperative Implementation Agreement. Therefore, Mr. Brown has a direct financial interest in issues before the ORPC of which he is a voting member.

Members of township planning commissions and intergovernmental planning committees serve in a public capacity obligated to perform their duties in an ethical manner. Depending on the powers and duties of these entities, members may rise to the level of "public official" as defined by the Ethics Act. Public officials are subject to the Act's requirements to include financial disclosure and conflict provisions.

According to Lower Oxford Township's Code, it appears the Planning Commission is a purely advisory body and its members do not rise to the level of "public official." While township planning commissioners may not be subject to the Ethics Act, caution is to be exercised and ethical practices observed.

Conversely, the ORPC is not a purely advisory body. Specifically, the ORPC governs ordinance amendments in a way that compels and or restrains member municipalities to act in accordance with ORPC's decisions. See ORPC Intergovernmental Cooperative Implementation Agreement, Section IX. Therefore, ORPC members are "public officials" as defined by the Ethics Act and subject to the Act's requirements including financial disclosure and conflict provisions. See 51 Pa. Code §11.1, Public official (i)(B)(IV).

To clarify, Mr. Brown's service on Lower Oxford Township's Planning Commission appears to be purely advisory and not subject to the Ethics Act. However, the Planning Commission's activities are subject to public scrutiny. You, the Board of Supervisors, have a duty to ensure that Mr. Brown does not have a financial interest in issues before the Planning Commission. Not only is this in the best interest of Township residents generally, but it also serves to protect Mr. Brown and his clients from claims of unethical conduct and undue influence.

Similarly, Mr. Brown's participation in ORPC's subdivision and land review process is purely advisory. However, while acting in his capacity as a member of ORPC, Mr. Brown has advocated for his client Herr Foods, Inc. on the Herr's Farm project which is subject to his own review and recommendation. Mr. Brown, as the listing agent for the Herr's Farm, has a financial interest in an issue before the ORPC. These actions expose ORPC and its member municipalities, Beiler - Campbell, Herr Foods, Inc., and E. Kahn Development Corp. to claims of unethical conduct and undue influence.

Of even greater concern is the potential for Mr. Brown to participate in ORPC's review and approval of East Nottingham Township's forthcoming zoning ordinance amendment which directly impacts Herr's Farm. ORPC's review process for ordinance amendments is not merely advisory. Rather ORPC governs ordinance amendments in a way that compels and or restrains member municipalities to act in accordance with ORPC's decisions. Therefore, ORPC members are "public officials" as defined by the Ethics Act and subject to the Act's requirements. As a public official with a conflict of interest, Mr. Brown must ". . . abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken . . ." See 65 Pa.C.S. § 1103(j). Abstention is not limited to voting. Mr. Brown would not be permitted to participate in discussion or motions relating to the matter.

Conflicted member participation jeopardizes not only planning commission recommendations and approvals but also resulting board actions. Failure to prevent conflicts of interest exposes the township to ethics investigation and legal actions, drastically increasing costs for township residents. Further, ethics investigation and legal actions will cause costly delays to property owners and developers. It is in the best interest of Lower Oxford Township residents, property owners, and the Oxford Region at large, for you to rectify this situation directly.

Lower Oxford Township, Board of Supervisors

December 2, 2024

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Thank you for your care in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Carmela Z. Ciliberti". The signature is written in black ink and is positioned above the printed name.

Carmela Z. Ciliberti, Esquire

Enclosures: Exhibit A

cc: Upper Oxford Township, Supervisors
Oxford Borough, Council
East Nottingham Township, Supervisors
West Nottingham Township, Supervisors
Elk Township, Supervisors
Oxford Region Planning Committee, Secretary
Herr Foods, Inc.
Beiler – Campbell Realtors
E. Khan Development Corp.

Exhibit A

Key:

- ★ Select real estate listings of Mr. Joel Brown, January 2022 to present.

Source: <https://www.beiler-campbell.com/Roster/46017/Joel-Brown.aspx>

