July 8, 2016

John Kaufmann

Re: City of Saratoga Springs – Numerous Inquiries

Dear Mr. Kaufmann:

You have recently made numerous inquiries of various officials of the City of Saratoga Springs including but not limited to our Zoning Board of Appeals, Assistant City Attorney and others. The inquiries to which we refer have generally involved zoning and/or ethics subject matters relating to practices and policies of our City Land Use Boards. Many of these inquiries have made reference to topics discussed at the Land Use Boards Ethics Training Workshop which I conducted for City Officials several months ago. As Legal Counsel to the City for various zoning and ethics issues, I have been asked to respond to your inquiries.

First, a substantial number of your inquiries relate to the manner in which our Boards hear applications and, more specifically, where applicant’s representatives are located when they make presentations to our Boards. In this regard, while you have somewhat accurately characterized the advice I gave to the Boards at our Ethics Workshop, one must also remember that we are subject to the physical constraints of our City meeting room as well as several other practical considerations. Regardless of what we might consider ideal presentation positions, there is actually no applicable law, rule or regulation dictating where applicants, their representatives and/or the public must stand or be seated during our Land Use Board meetings. There is also no applicable law, rule or regulation requiring identical practices by all three of our Land Use Boards and, in fact, there is no applicable law, rule or regulation requiring any one Land Use Board to conduct all of its meeting in exactly the same manner or even hear each and every application at one particular meeting in the exact same fashion. In other words, while we are certainly not suggesting this, a Board could lawfully, albeit inconsistently, allow the applicant team for a complicated application to come “in front of
the railing” to present an application to a Board, while requiring an individual applicant to speak from “behind the railing” or vice-versa without constituting any legal violation.

Despite this lack of legal requirements, you have correctly pointed out that we have generally advised that, to the maximum extent possible and practical, our City Land Use Boards establish a practice of hearing applications whereby all applicants, their representatives and other members of the public are treated as similarly as possible in terms of the location from which they speak. This suggestion is just that and is in no way any legal mandate. Any Land Use Board (in the City of Saratoga Springs or anywhere else at least in New York State) is free to establish whatever policy they wish in this regard and there is absolutely no requirement that any such policy be “cast in stone” by formal Resolution or any other formal rule. Generally speaking, a Board Chairperson has considerable latitude and discretion in deciding how a meeting should be run, including “the seating chart”, and, absent any formal pronouncement from the City Council and/or the Board itself (and no such pronouncement is required), any fair and reasonable approach is perfectly acceptable. Discussion of such issues among a Board Chairperson and the Board is certainly permissible, but is clearly not required.

Turning specifically to the principal topic of your inquiries, you are clearly concerned that our City ZBA may have at some time conducted an “illegal” meeting by gathering in violation of the Open Meetings Law to discuss presenter locations at ZBA Meetings with a resulting change in practice. However, as we understand it, no such meeting has ever been called for that purpose and our ZBA attempts to “fine tune” our practice are merely the result of less formal efforts by our ZBA Chairperson and the ZBA itself to explore better alternatives at least partially in response to comments that I made at the Ethics Workshop (and perhaps that you yourself have made on several occasions). The ZBA has not undertaken any secret discussion of this or any other issue, although it has likely been the subject of some informal casual comments at the beginning and/or end of any number of ZBA meetings. None of any such casual comments have resulted in formal Resolution by the ZBA, nor is any such formality required, and the decisions of how to proceed have largely been made by the ZBA Chairperson himself and will likely continue to be. As you know, all ZBA (and other Land Use Board) Meetings are open to the public, properly noticed and often well attended and neither the ZBA nor any other City Land Use Board or official has anything whatsoever to hide on any of these issues.

Finally, we acknowledge that you may disagree and/or be dissatisfied with some or any portion of this response and that is certainly your right. However, people sometimes confuse the rights to observe and/or attend all public processes and meetings with the ability to participate in them which, other than during a Public Hearing, is not generally required by law. In this regard, the City of Saratoga Springs has been enormously transparent and accommodating as, in but one example, allowing you to ask questions of me directly at our Ethics Training Workshop. Similarly, City Staff and others have taken substantial time to respond directly to a number of your inquiries even when not obligated to do so. While these are laudable efforts on behalf
of “good government”, repeated inquiries on essentially the same subject sometimes
distract City Staff from the balance of their responsibilities.

This completes our response to your inquiries and we hope that you understand
and appreciate our position. Thank you.

Very truly yours,

MILLER, MANNIX, SCHACHNER & HAFNER, LLC

Mark Schachner

cc: City of Saratoga Springs Zoning Board of Appeals
Mayor Joanne Yepsen
Saratoga Springs City Attorney’s Office
Saratoga Springs Department of Planning and Economic Development.