

TO: Mr. Paul Feiner, Greenburgh Town Supervisor

CC: Greenburgh Town Council
Greenburgh Town Clerk

ADVISORY OPINION 2021-2

Town Supervisor Paul Feiner has sent an email to Blase Spinozzi the BOE Chairperson asking for an expedited opinion on “new language recently added to the Building Permit application which requires that applicants supply the names and addresses of individuals who are part of Limited Liability Corporations” through a new form. Mr. Feiner has advised that this requirement has resulted in pushback from the public.

The BOE notes that the origin of the new form has not been provided. Nor has the BOE been informed as to under what authority the new form came to be used. This information is important in light of the following:

BOE Code §570-3 defines the terms “Applicant” and “Affiliate”. Appendix B is a list of exclusions to the term “Applicant”. On the list are various permits and licenses, including “Building Permit”, unless their issuance “involves approval by the Town Board, The Planning Board and/or the Zoning Board of Appeals.”

Because the Town Board enacted the COE, including its appendices, it would seem that removal of any of the exclusions, would have to have been approved by the Town Board and the code amended to reflect that approval. If such is the case the BOE was not informed of the change. Nor was the BOE asked to weigh in on the issue before any amendment to the code. If the code was not amended then the use of the new LLC form by the building department is in conflict with the code and should not be used.

Building permit applicants do not fall under the term “Applicants” as used in §570-4(D) and §570-7(A)(1) and by extension their “Affiliates” also would not fall under these sections. The BOE finds that the prohibitions in §570 were not intended to include Building Permit applicants.

The BOE was not asked to address the issue of identifying members of LLC applicants who do not fall under the Appendix B exclusions. For example, an LLC seeking a variance before the Zoning Board would not fall under the exclusions in Appendix B.

The prohibition regarding the solicitation and/or acceptance of certain political donations is to prevent conflicts of interests on the part of Public Officers and appointed officers. The Town also seeks to avoid and/or limit the potential for graft and corruption that could ensue were donations from applicants to be allowed.

Therefore, the identities of the members of an LLC becomes more consequential for those applicants that don't fall under the Appendix B exclusions.

It is the BOE's belief that public officers and candidates in receipt of donations from an LLC would have an obligation to look behind the LLC and seek to identify its members in order to avoid a violation of the COE. It is understood that the burden becomes more difficult if not impossible if the donation comes from the member and not the LLC itself. How the Public Officer would know of the connection between the member and the LLC is problematic. All of this is tempered by the fact that the occasions that a Public Officer is in a position to decide an application are limited. For example, the application for a variance would go before the Zoning Board and not the Town Board.

There are some members of the public who assume graft and corruption on the part of town officials and employees; the BOE would rather rely on their better angels and assume innocence until proven otherwise. Furthermore, no form, no matter how well intentioned can guarantee it will be one hundred percent effective in meeting its intended goal. Honesty and accuracy on the part of those filling out the forms are all that can be hoped for and are assumed until proven otherwise.

BY THE BOARD OF ETHICS

Adopted at July 22, 2021 meeting

Voting for:

Blase Spinozzi, Chair

Timothy Hays

Claire Pizzuti