

State of New Jersey
Department of Community Affairs
Division of Local Government Services - Local Finance Board
101 S Broad St – PO Box 803
Trenton, NJ 08625-0803
Phone – 609-292-6613
E-mail dlgs@dca.state.nj.us

February 9, 2009

Marshall Schmeizer and
Lisa Hartman
318 East Surf Road
Ocean City, New Jersey 08226

Re: Final Agency Decision
Schweizer and Hartman v. Allessandrine
Local Finance Board Appeal No. C08-025

Dear Mr. Schmeizer and Ms. Hartman:

Enclosed please find a copy of the Local Finance Board's Final Agency Decision in the above referenced matter.

An appeal of this Final Agency Decision may be made to the Appellate Division of the Superior Court [Rules Governing the Courts of New Jersey, 2: 2-3 (a) (2)]. Any appeal must be filed within 45 days from the date of service of this Final Agency Decision.

If you have any questions regarding this matter, please do not hesitate to contact David Nenno at (609) 292-0479.

Sincerely,

Susan Jacobucci, Chair
Local Finance Board

SJ:DN:la
enclosure

CC: Daniel P. Reynolds, SDAG
Elizabeth Burns, Chairperson, Ocean City Ethics Board
Charles E. Waldron, Esq., for the Respondent
City Clerk, City of Ocean City

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LOCAL FINANCE BOARD
DEPARTMENT OF COMMUNITY AFFAIRS
STATE OF NEW JERSEY
APPEAL NO. C08-025

MARSHALL SCHMEIZER
and LISA HARTMAN,

Petitioners,

FINAL AGENCY
DECISION

v.

JODI ALESSANDRINE,
Respondent

On appeal from the Local Ethics
Board of the City of Ocean City

This matter has come before the Local Finance Board pursuant to N.J.S.A. 40A:9-22.24 of the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq., and N.J.A.C. 5:35-1.4 of the regulations promulgated by the Local Finance Board pursuant to the Local Government Ethics Law. These provisions provide that a final decision of a municipal ethics board may be appealed to the Local Finance Board.

On September 2, 2008, the Local Finance Board received an appeal filed by the petitioners, Marshall Schmeizer and Lisa Hartman, in the above referenced matter. The appeal sought review of a decision rendered by the Ocean City Ethics Board on August 19, 2008 dismissing a complaint that had been filed by the petitioners against Jodi Alessandrine, a Councilman of the City of Ocean City. The complaint filed with the City of Ocean City Ethics Board by the petitioners on May 29, 2008 and July 10, 2008 alleged that Councilman Alessandrine had used his official position to take action on behalf of a group of local residents who opposed the complainants' plan to construct a home by endeavoring to effect the rezoning of one block of an eight-block area to thwart the proposed construction. The complaint alleged that the actions taken by Councilman Alessandrine in this regard violated the Ocean City Code of Ethics.

The specific allegations set forth in the complaint in this regard were as follows:

- 1) Councilman Alessandrine knowingly and deliberately misled and failed to inform first ward residents Marshall Schmeizer and Lisa Hartman about his intentions to sponsor and enact zoning Ordinance 06-022 in order to halt construction of their home with a 13 foot front yard setback;
- 2) Councilman Alessandrine knowingly and deliberately relied upon an unenforceable deed restriction in order to garner support for Ordinance 06-022 despite being advised by the municipal attorney for the City of Ocean City, Gerald Corcoran, Esq., that the City would not enforce the alleged deed restriction;

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3) Councilman Alessandrine misused Council's legislative authority to rezone one block of an eight block sub zone in order to satisfy a private rather than public interest at the expense of taxpayers and to the detriment of Schmeizer and Hartman; and

4) Councilman Alessandrine violated N.J.S.A. 9:6-8.10 and N.J.S.A. 18A:36-25 by failing to notify the Division of Youth and Family Services about a threat made by Jill Rogers in correspondence with Alessandrine toward Evan (8 years old) and Jesse (6 years old) Schmeizer that they might be harmed on the public school bus by Roger's son.

In making these allegations, the petitioners relied upon Section 2-15.5 B. of the City of Ocean City Code of Ethics which provides as follows:

No officer or employee shall use or attempt to use his or her official position to secure unwarranted privileges or advantages for himself, herself or others.

The Ocean City Ethics Board rendered a decision on August 19, 2008 and provided notice of its decision to all parties by letter dated October 15, 2008. As noted above, the petitioners filed an appeal of the Ocean City Ethics Board's August 19, 2008 decision with the Local Finance Board on August 29, 2008, prior to receiving the October 15, 2008 letter regarding that decision. In filing their appeal, the petitioners raised the following contentions:

1) The Ocean City Ethics Board erroneously dismissed claims 2 and 4 contained in the May 29 complaint on the basis that those claims did not state a cause of action under the ethics rules;

2) The Ocean City Ethics Board erroneously concluded that Alessandrine could not have violated the ethics rules because he "acted in unison with the Mayor, Administrator and entire City Council to correct an error in zoning;" and

3) The Ocean City Ethics Board failed to address claim 1 concerning Alessandrine's failure to provide equal access to information despite his explicit promise to do so.

Following receipt of the petitioners' appeal, the Local Finance Board forwarded a letter to the Ocean City Ethics Board on October 30, 2008. The letter directed that, in accordance with N.J.A.C. 5:35-1.4(c), the Ocean City Ethics Board provide the Local Finance Board with the complete file of the Ocean City Ethics Board with regard to this matter and also to provide the Local Finance Board with such legal analysis as the Ocean City Ethics Board had made with regard to its findings in this matter. The letter further directed that the Ocean City Ethics Board ensure that the petitioners be provided with such documents. Subsequently, on November 7, 2008, the Local Finance Board received correspondence from the Ocean City Ethics Board which included the decision and legal analysis of the Ocean City Ethics Board in this matter. The petitioners were then afforded an opportunity to

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amend their appeal and submit such additional documentation as might be required under N.J.A.C. 5:35-1.4(b).

Thereafter, in accordance with its responsibilities under N.J.S.A. 40A:9-22.7(c) and 22.24 and N.J.A.C. 5:35-1.4, the Local Finance Board has reviewed the record of the proceedings conducted before the Ocean City Ethics Board in this matter as well as the documentation submitted by the petitioners in support of their appeal. In undertaking this review, the Local Finance Board has determined, in accordance with N.J.A.C. 5:351.4(e), that the record below is sufficiently complete to enable the Local Finance Board to render a determination with regard to this matter on the basis of that record. The Board has further considered and evaluated the arguments and contentions advanced by the petitioners in support of their appeal together with the analysis and rationale presented by the Ocean City Ethics Board with regard to that Board's decision to dismiss the petitioners' complaint.

Based upon its review and consideration of the record below and all of the submissions made by both the petitioners and the Ocean City Ethics Board, the Local Finance Board has determined, at its meeting on January 14, 2009, that the findings made by the Ocean City Ethics Board in this matter are supported by the record and that the conclusions made by the Ocean City Ethics Board in light of the record were reasonable and appropriate. It also appears to the Local Finance Board, upon its review and consideration of this matter, that, absent a demonstration that a municipal official acted on the basis of financial or personal interest, it is presumably not inappropriate for an elected municipal official to participate in the enactment of an amendment to a municipal ordinance in response to concerns raised by the constituents of that official. There has been no demonstration in this matter that Councilman had either a financial or personal interest in this matter. Rather, it appears that his actions were taken in response to concerns that were voiced by certain constituents – albeit that the amendments to the municipal zoning ordinance were subsequently determined by the Law Division of the Superior Court to be invalid.

Accordingly, the Local Finance Board has determined, on the basis of and for the reasons set forth in the record before the Ocean City Ethics Board in this matter, to affirm the decision of the Ocean City Ethics Board that the actions of Councilman Alessandrine at issue in this matter did not in any way violate the Ocean City Ethics Ordinance and that the complaint against Councilman Alessandrine in this matter should consequently be dismissed on the basis that the complaint had no reasonable factual basis as it pertained to the Ocean City Ethics Ordinance.

DATE: January 14, 2009

/s/ SUSAN JACOBUCCI, CHAIR
LOCAL FINANCE BOARD

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