

From: "Jeff Crum" <jcrum@
To: "Daniel Dominguez" <ddominguez@cityofnewbrunswick.org>, "Katie Puniello" <kpuniello@cityofnewbrunswick.org>, "Aravind Aithal"
<aithal@cityofnewbrunswick.org>
Subject: Planning Board Membership
Date: 9/15/2021 10:11:12 AM

Good Morning Dan, Katie, and Aravind,

I hope this email finds you well. I'm sad to report that my family and I will be moving out of New Brunswick. We absolutely love the City and our community, but change in work obligations is causing us to relocate a bit further north in New Jersey. We will no longer be residents of New Brunswick effective October 15th. Based on this, I believe I need to step off the Planning Board. I'm happy to schedule a conference call to discuss this matter if it would be helpful.

Have a nice rest of your day.

Thanks,

Jeffrey Crum

JOHN C. PETROLINO, J.D., LL.M.
203 New York Avenue, New Brunswick, NJ 08901
Cell Phone: _____
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October 19, 2021

The Honorable James Cahill, Mayor
New Brunswick City Hall
78 Bayard Street
New Brunswick, New Jersey 08901

Re: New Brunswick Planning Board

Dear Mayor Cahill:

I feel compelled to write to you following the Planning Board meeting held on October 4, 2021, specifically with respect to the application for New Brunswick Auto Spa, LLC. The following recounting is based on my recollection and there may be factual inaccuracies which, I'm sure, others will correct. However, the material elements are accurate to the best of my knowledge.

Prior to the hearing date, the application for the Auto Spa had been carried on, I believe, two occasions, following the Board's receipt of notice of a nearby property owner who was lodging an objection to the proposed application. The objecting property owner had retained counsel to represent their interests and the Board, the Board's attorney, and the applicant were aware of this fact. On the night of the meeting, the Auto Spa was to be the first application heard per the agenda, but was moved to the second position to allow a J&J application to precede it. At the outset of the hearing, Mr. Crum recused himself from the meeting and Ms. Sicora-Ludwig acted as Chairperson; subsequently, the objector's attorney announced himself as present with respect to the Auto Spa application. There was an initial discussion between the objector's attorney, the Applicant's attorney, and the Board's attorney regarding the objector's position that the Board did not have jurisdiction to hear the matter based on the objector's interpretation of certain case law. After a discussion, the Board's attorney opined that the Board did, in fact, have jurisdiction, and the matter would proceed. At the conclusion of the J&J application, at approximately 8PM, the Auto Spa application was brought forward. Mr. Thomas Kelso represented the Auto Spa and is a familiar advocate appearing before the Board. Mr. Kelso proffered a total of 4 expert witnesses who, in total, provided over two and one-half hours of testimony. At the conclusion of each expert, the Board's experts were given an opportunity to cross examine the Applicant's experts, and the Board was then given an opportunity to ask questions. As the meeting extended beyond the Board's announced stopping time of 10:30 P.M., the Board concluded its direct hearing of the application and the matter was opened to the

public for comment. As you may know, members of the public are limited to five minutes to provide any questions or comments. After Mr. Charles Kratovil provided some commentary as a member of the public, there were no other members of the public who asked to speak; the Board's attorney asked for a motion to close the public portion of the hearing. A motion to close the public portion was made and seconded. Following the closing of the public portion, the objector's attorney asked when he would be given the opportunity to cross examine the Applicant's experts and provide expert testimony of his own. The Board's attorney stated that because the objector had not used the public portion of the hearing to make his case, and since the public portion had been closed, the objector had no standing to be heard. The objector's counsel made known his strong disagreement with the Board's counsel's determination. At this point, I asked Board's counsel if there was a procedure to reopen the public portion of the hearing that would allow objector's counsel to be heard; Applicant's counsel quickly interjected an objection that lasted several minutes. At the Applicant's counsel's conclusion, while my question to the Board's counsel was still outstanding and unanswered, Ms. Sicora-Ludwig made a motion to approve the application, and the motion was quickly seconded by D.C. Stellatella. Following a reading of the conditions of approval, a vote was held on the motion to approve, one Board member abstained, I voted no, and the remaining Board members voted to approve.

The reason that I am writing to you is that I feel that the objector, a resident of New Brunswick, was inappropriately denied an opportunity to present grounds for an objection to the Board. Indeed, as a Board member, I believe that all relevant testimony, both for and against an application, should be heard with equal access afforded to testimony of witnesses and to a reasonable allotment of time in which to do so. It is particularly important that, when an objector has hired counsel to represent their interests, that the objector be given a reasonable opportunity to be heard so that a record of the objection may be created such that, if litigation is subsequently filed, there is an adequate record of the Board's actions being in accord with statutory requirements. For the Board to act in a manner that increases the likelihood of legal action, at the cost of taxpayer dollars, flies in the face of common sense.

Insofar as the Board acts as a quasi-judicial body, it is empowered to conduct its hearings in a manner that weeds out superfluous or irrelevant testimony. The suggestion that all who object are necessarily treated as equal in their arguments - an individual from another town is given the same 5 minutes as a neighboring property owner who has retained counsel to lodge a case - is the antithesis of a fair process designed to achieve the outcomes that the Board is required to provide. The Board should be guided in a manner that achieves these outcomes and, unfortunately, I do not believe that has been the case (including in other instances, as well as the instant matter). While there have been many instances where prudent counsel has facilitated appropriate outcomes - the closed session during the same meeting wherein the Board agreed with counsel's recommendation to not overturn an approval based on a "scrivener's error" is such an example - the instant matter demonstrates uneven

application of a rational process that holds up a doctrine of equitable treatment as having the same degree of importance as the procedural underpinnings that a public hearing must labor under. . Without an overt acknowledgement that equity is an integral feature of the Board's proceedings, the Board, in my estimation, will continue to struggle to reach outcomes that are shielded from public cynicism.

Despite the practical concerns that attach to hearings that vacillate between procedural adherence and rational deviation in the name of equity, the mere appearance of the Board being unwelcoming to residents who believe they have credible grounds to object to an application casts a pall on the legitimacy of the Board's actions and undermines public confidence in the impartiality of the Board. I was extremely proud to have received an appointment to the Board by Your Honor as it gave me a chance to perform a civic duty that I believed would allow me to play some small role in the continued evolution of New Brunswick. I have always attempted to discharge my obligations to the residents of New Brunswick - individuals and businesses alike - with an attitude of optimism for the future, tempered with respect for the vested interests held by those who may be impacted by change. While I continue to have enthusiastic optimism for the future of New Brunswick, it has become apparent to me that the Planning Board is not the vehicle to that outcome that I believed it to be. As such, please accept this letter as my resignation from the Planning Board, effective immediately. As my position as Chairperson of the Environmental Committee is grounded in my representation of the Planning Board to that body, my resignation is contemporaneously tendered for the Environmental Commission as well.

I wish you continued success in your leadership of the City and pledge my continued support in matters where I may do so.

Sincerely,

A handwritten signature in dark ink, appearing to read 'JCP', followed by a long horizontal line extending to the right.

John C. Petrolino, J.D., LL.M.

June 2, 2021

Mayor Cahill,

Please accept this letter as notice of my resignation from the New Brunswick Planning Board, effective June 4, 2021. Thank you for the great opportunity to serve.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ryan Berger". The signature is stylized with a large, looped "R" and a cursive "B".

Ryan Berger