

Andrea - Deputy Clerk

From: Scott Thomas <administrator@townoflaconner.org>
Sent: Friday, September 16, 2022 10:03 AM
To: Mary Wohleb; MaryLee Chamberlain (council_4@townoflaconner.org) (council_4
@townoflaconner.org); Rick Dole (council_3@townoflaconner.org); Ivan Carlson council_2
@townoflaconner.org; Annie Taylor
Cc: Ramon Hayes (mayor@townoflaconner.org); Linda Talman; Andrea Moore
Subject: FW: For council and the website

I am forwarding to you a communication the Town received today from Ms. Talman. I thought it best to use this opportunity to address the attorney-client privilege issue in a bit more detail, as several individuals have asked me to unilaterally waive the privilege. Based upon my conversations, it seems as though there may be some confusion on this topic.

The Washington Supreme Court's Rules of Professional Conduct, applicable to all lawyers in Washington, provides as follows:

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer to the extent the lawyer reasonably believes necessary:
 - (1) shall reveal information relating to the representation of a client to prevent reasonably certain death or substantial bodily harm;
 - (2) may reveal information relating to the representation of a client to prevent the client from committing a crime;
 - (3) may reveal information relating to the representation of a client to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - (4) may reveal information relating to the representation of a client to secure legal advice about the lawyer's compliance with these Rules;
 - (5) may reveal information relating to the representation of a client to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - (6) may reveal information relating to the representation of a client to comply with a court order; or
 - (7) may reveal information relating to the representation of a client to inform a tribunal about any breach of fiduciary responsibility when the client is serving as a court appointed fiduciary such as a guardian, personal representative, or receiver.

The Washington State Municipal Attorney Association's Public Law Ethics Primer explains as follows:

The general rule [RPC 1.6, above] applies to the attorney for a governmental organization. *Port of Seattle v. Rio*, 16 Wn. App. 718, 559 P.2d 18 (1977). Public agencies are entitled to effective legal representation, and government lawyers have the same obligation to protect the confidences of their government clients as a private lawyer has to protect the confidences of a private client. *Lybbert v. Grant County*, 141 Wn.2d 29, 37, 1 P.3d 1124 (2000).

The privilege with respect to communications between a client and an attorney is the privilege of the client alone. *Hunt v. Blackburn*, 128 U.S. 464, 9 S. Ct. 125, 32 L. Ed. 488 (1888), cited in *Malco Manufacturing Company v. Elco Corporation*, 307 F. Supp. 1177, 1178 (E.D. Pa. 1969); *Eastern Technologies Inc. v. Chem-Solv. Inc.*, 128 F.R.D. 74, 76 (E.D. Pa. 1989). The privilege may be waived, but waiver must be distinct and unequivocal. *State v. Ingels*, 4 Wn.2d 676, 713, 104 P.2d 944 (1940).

I have asked Town staff to post this message on the web site as requested.

Scott Thomas
Administrator/ Town Attorney

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La Conner – it leaves you speechless, and then turns you into a storyteller.

From: Linda Talman <linda.talman@gmail.com>
Sent: Friday, September 16, 2022 8:57 AM

To: deputyclerk@townoflaconner.org

Subject: For council and the website

Andrea, can you please post and send? Thanks!

To the Council:

I ask the the council to waive the right to keep your documents private re 306 Center.

We - in good faith - have shared our legal document with you. I would also like to see how the question was framed and therefore would like to see the communications between the town to Kenyon Disend.

You want to have a meeting with townspeople to find what is going wrong. Why wait? This is it:

You set up this meeting on too short of notice. You set it up when some of you are not even able to attend. You mostly all vote the way the town suggests. The residents are ignored. And information is not abundantly publicized. The agenda is not fleshed out in the paper.

Regarding 306 Center, I ask that this not be an administrative decision but a decision of the planning commission. The planner does not demonstrate an appearance of fairness. (I sent the supporting evidence in another missive.) And the code places the job of HPD review on the shoulders of the PC.

I ask that the property be considered to be in the HPD and be scrutinized through that lens: Modulated in facade and rooflines and with more green areas around it. Smaller in footprint.

I also want someone who is not the planner to oversee the project and enforce the hearing examiner guidance - with particular attention to the the roof being capped at thirty feet including the overruns and equipment.

The residents have lost faith in the town to do what is good for residents, for schools and for safety.

Regards,
Linda Talman

Sent from my iPhone