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Client Bulletin



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WHEN ITS LOCATION MAKES A FENCE NOT A FENCE

The City of Springdale in Hamilton County, Ohio has a zoning code that provides that fences are permitted in all zoning districts subject to certain conditions, one of which is a prohibition against razor wire. The zoning code defined “fence” as “a man-made yard structure which forms or which has the intended purpose to form a barrier to light, sound, wind, snow, animals, vehicles, or pedestrians” and defined “yard” as “that portion of the open area on a lot extending between a building and the nearest lot line.”

Tri-County Commons Associates, LLC (“TCCA”) owned a vacant former Walmart in Springdale. To deter thieves who were climbing onto the roof and stripping the rooftop HVAC units’ condenser coils, TCCA installed a razor wire barrier on the perimeter of the roof. Springdale’s Building Department notified TCCA that the zoning code prohibited razor wire and when TCCA failed to remove the razor wire, Springdale charged TCCA with a zoning code violation and ordered TCCA to remove the razor wire, which TCCA refused to do. Springdale sued TCCA and prevailed in the trial court, obtaining a judgment ordering TCCA to remove the razor wire. TCCA appealed.

The First District Court of Appeals in *Springdale v. Tri-Cty. Commons Assoc., LLC*, 2017-Ohio-8380, reversed the trial court’s judgment and order. The Court noted that zoning codes are in derogation of the common law and deprive a land owner of certain uses of land that the land owner would otherwise be entitled to, and therefore a zoning code’s provisions were to be strictly construed in favor of the landowner. TCCA, in a letter to the Springdale Building Department, admitted that its razor wire barrier was a fence, but the Court held that TCCA’s colloquial use of “fence” was irrelevant because the zoning code’s definition of “fence” controls. The Court held that the razor wire on the roof of a building was not a fence as it was not a “yard structure” since it was on the roof of a building and not “between a building and the nearest lot line.” The Court held that the zoning code did not prohibit razor wire but, rather, just prohibited its use as a yard fence or “man-made yard structure.”

If Springdale would amend its zoning code to prohibit razor wire anyplace, TCCA would not have to remove its razor wire on the former Walmart’s roof as the razor wire would be a “non-conforming” use (that is, it would be “grandfathered”).

OHIO MINIMUM WAGE INCREASES

Effective January 1, 2019, Ohio’s minimum wage increases \$.25 per hour to \$8.55 per hour.

IRS ANNOUNCES 2019 MILEAGE RATES

The IRS has issued the 2019 standard mileage rates. Beginning January 1, 2019, the standard mileage rates for the use of a car, van, pickup or panel truck will be:

- 58 cents per mile for business miles driven (up from 54.5 cents in 2018)
- 20 cents per mile driven for medical or moving purposes (up from 18 cents in 2018)
- 14 cents per mile driven in service of charitable organizations (currently fixed by Congress)

IRA CONTRIBUTION LIMITS INCREASE

For the first time in six years, the maximum annual amount that an individual may contribute to a traditional IRA has increased for 2019 to \$6,000 (or \$7,000 for those age 50 to 70). The provisions that contributions to a traditional IRA cannot exceed an individual's earned income for the tax year and cannot be made by individuals age 70 ½ or older remain in effect.

An individual can contribute to a Roth IRA at any age, but contributions to a Roth IRA cannot be made at certain income levels. The Roth IRA income limits increase for single income tax filers from adjusted gross income of \$135,000 in 2018 to \$137,000 in 2019 and for married filing jointly from \$199,000 in 2018 to \$203,000 in 2019.

IRS'S UPGRADED TAX EXEMPT ORGANIZATION SEARCH TOOL

Over the summer, the IRS upgraded its Tax Exempt Organization search tool at IRS.gov to show more than simply the organization's tax exempt status. The new search tool, which simplifies the search process, now makes available images of an organization's most recent IRS form 990 (which shows the organization's income and expenses, officers and directors, etc.).

PETER AND GEORGIA MANOS MEMORIALIZED WITH BRONZE PLAQUE

The late Peter Manos and his late wife, Georgia, were honored with a significant monetary contribution in their memory and a bronze plaque in The Strand Theatre, just outside the main theater, by David L. Pemberton, Sr. and Mary Ann Pemberton of Suburban Natural Gas Company. The bronze plaque honors and memorializes the Manoses for their outstanding service to the Delaware community. The Manoses owned The Strand building and donated it to Ohio Wesleyan University in a successful effort to save The Strand, now in its 102nd year as a first-run movie theater and now with all three theaters recently renovated and with new seating, digital projection and Dolby sound.

Peter and Georgia married in 1951, the same year Peter started the law practice that is today Manos, Martin & Pergram Co., LPA. The law firm's attorneys and staff sincerely thank the Pembertons for the actions to honor and memorialize Peter and Georgia.

MAIN STREET DELAWARE HONORED

At its annual Preservation and Revitalization Awards Ceremony held October 23, 2018 in the historic Allen Theater in Cleveland, Heritage Ohio, Ohio's official historic preservation organization, whose function is to foster economic development and sustainability through preservation of historic buildings, revitalization of downtowns and neighborhood commercial districts and promotion of local tourism, presented the award for Best Main Street Committee Project to Main Street Delaware for its "Home for the Holidays Weekend." That three-day weekend is highlighted by a holiday parade, community Christmas tree lighting, horse-drawn carriage rides, merchant open house, "Dash for Dasher" scavenger hunt, a Santa house in The Strand Theatre, and more.

Manos, Martin & Pergram has been associated with Main Street Delaware since its inception, including providing legal services for its corporate formation and conversion from 501(c)(4) tax exempt status to 501(c)(3) charitable organization tax exempt status and providing one of its conference rooms for Main Street Delaware's board and committee meetings.

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

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