

What's the Deal?

The in-house financial executive of a private company, whether in the role of Chief Financial Officer, Controller, or Chief Accounting Officer, is typically one of the first to know when an owner decides to pursue either the sale of the business or purchase of another business. As a key advisor to the owner, it is important the finance executive understand the significant business



issues which need to be considered when selling or buying a business. It is generally preferable to address these "deal" issues in a non-binding Letter of Intent ("LOI"). While not legally binding, the LOI is psychologically binding and provides the outline for the lawyers to follow when preparing and negotiating the actual agreement of sale. It is essential that the owner's advisors, both in-house and outside (such as the company's CPA and lawyer) take an active role early on as well.

Points which should be considered when negotiating a Letter of Intent include:

- Purchase price;
- Structure (e.g., asset or stock purchase);
- Anticipated closing date;
- Due diligence materials and timing of due diligence;
- Whether there will be any consulting or employment arrangement with the owner or other key employees;
- Any holdback (i.e., escrow) requirement from the seller to cover post-closing indemnities;
- Whether and to what extent the buyer will want non-compete agreements from the seller and its owners (and other key employees);
- Whether buyer will require seller to finance part of the acquisition and, if so, the terms and collateral for the financing;
- Whether buyer will require an audit of the seller's financial statements and if seller has not had audited financial statements to that point, how will buyer get the comfort they need; and
- Any standstill (or no-shop) terms.

The seller, buyer, and their advisors should do as much of the negotiation of these "deal points" early in the process to avoid unnecessary delays, identify potential deal-breaking issues, and minimize the wasting of resources. Experience shows that confronting these issues early will ease the path to the closing line (and even better, reduce the legal fees).

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Maury Reiter is a co-founder and Managing Principal of the firm. He chairs the Tax & Estates group and is a member of the Real Estate Transactions group. Mr. Reiter handles tax, estate planning and administration matters for individuals, serves regional and international clients in business structure, financing, operation, mergers and acquisitions and tax planning. He can be reached at 610.941.2476 or by e-mail to mreiter@kaplaw.com.



KS News

KAPLIN STEWART has earned the distinction of being ranked by U.S. News Media Group and Best Lawyers for 2011-2012 in the Philadelphia Metropolitan area. Our Land Use, Zoning & Development group was ranked in Tier 1, and the Litigation – Land Use & Zoning was ranked in Tier 2. These rankings, which are presented in tiers, showcase 9,633 different law firms ranked in metropolitan or state rankings in one or more of 119 major legal practice areas. Achieving a high ranking is a special distinction that signals a unique combination of excellence and breadth of expertise.

MAURY B. REITER, Managing Principal, has been elected Chairperson of the Board of Volunteers of America Delaware Valley based in Collingswood, NJ, as well as Chair of the Pension Committee, and member of the Finance Committee and Investment Committee, for Volunteers of America, Inc. in Alexandria, VA.

PAMELA M. TOBIN, member of the Commercial Litigation group, will be teaching a civics course with the Honorable James P. Gallagher at the Stewart Middle School in Norristown throughout the school year. This is a civics education program that the Montgomery County Bar Association sponsors in which it matches judges with lawyers to teach “Liberty and the Law” in the classroom.

Two of our attorneys, **MAURY B. REITER** of the Tax & Estates group and **NEIL A. STEIN** of the Land Use, Zoning & Development group were presenters at the Pennsylvania Bar Institute’s 15th Annual Real Estate Institute in Philadelphia on December 7-8, 2011. Mr. Reiter’s presentation was titled “Getting Kicked While You’re Down! Tax Aspects of Real Estate Workouts.” Mr. Stein’s presentation was titled “The New Battlefield: Property Rights Litigation.”

WILLIAM LEVANT, PAM TOBIN and **LISA LAPENNA**, Kaplin Stewart’s master spelling team, for the third year participated in the Montgomery County Literacy Network’s Corporate Spelling Bee on October 25, 2011 before a cheering crowd of their supporters. They were headed for the finish line and the championship when they got stumped on the word “zeitgeber.” (Many of the other teams missed the word as well.) Apparently, zeitgeber (German origin) means “time-giver” or “synchronizer of any exogenous (external) cue that synchronizes an organism’s endogenous (internal) time-keeping system (clock) to the 24-hour light/dark cycle.” Who knew?? The team intends to redeem itself at the spelling bee next year.

Legal Perspectives

Getting Zoning Permits Approved

Zoning permits are often required for a new business. All too often an applicant goes “hat in hand” to the local zoning officials to “ask” whether the new use is allowed without doing the up-front work to maximize the probability of getting the permit. Before speaking to the officials - and certainly before making any applications, a careful review of the ordinances is in order. Armed with this information, the application should be tailored to demonstrate entitlement to the permit.

If the permit is denied there is a right to appeal to the local zoning board, and if necessary, to the courts. Two recent decisions by the Pennsylvania Commonwealth Court dealing with a proposed rehabilitation center illustrate that the powers to deny



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zoning permits are sharply limited.

In *Orange Stones Co. v. Borough of Hamburg Zoning Hearing Board*, 991 A.2d 996 (Pa. Cmwlth 2010) the court held that in an appeal of a denial of a permit the zoning hearing board is limited to the reasons given by the zoning officer and cannot uphold the denial on other grounds. In *Orange Stones Co. v. Borough of Hamburg Zoning Hearing Board*, 28 A.3d 228 (Pa. Cmwlth 2011) the court held that (i) an ordinance that was not adopted under the PA Municipalities Planning Code (which controls zoning matters) cannot be used to deny a zoning permit and (ii) a zoning board has no power to impose conditions of approval on a zoning permit – even where the conditions were purportedly designed to memorialize the parameters of the use.

Meet our Construction Law Professionals

This month, Kaplin Stewart shines the spotlight on Josh Quinter. Josh is a partner in the construction and surety department and handles many different types of construction and complex commercial litigation cases.

Born into a military family, Josh had a chance to see many parts of the country, and in fact the world, at an early age. He credits living in Okinawa, Japan and travelling at home and abroad with giving him perspective at an early age. Although he did not know it at the time, Josh believes that these cultural experiences and the opportunity to see how people handle situations in unique ways have helped him in his practice.



JOSH QUINTER

After graduating from William & Mary and then Villanova School of Law, Josh started practicing law in Center City Philadelphia at a small firm. A former athlete, he was immediately drawn to the "competition" of trial work. He was afforded that opportunity early in his career and took full advantage of it.

A move to Kaplin Stewart followed and Josh has been happily plying his trade here since. He is a member of Kaplin Stewart's construction and surety department, but he is involved in all types of complex commercial litigation cases. His client list ranges from

small businesses and individuals to large corporations. Although Josh enjoys being in Court, he considers himself a practical problem solver first.

Josh has become known for his practical

advice. Having been in countless court rooms, he understands that a lawsuit is not always the solution. Sometimes a client benefits from a different approach. Josh is not immune from telling a client that a problem can be solved in a way that does not necessitate his involvement and the accompanying legal fees. This practical approach has earned him the trust of many a client.

A family man, Josh can likely be found at home when his work is done. He has a multitude of interests outside of the law. He is an avid golfer and loves to read. His favorite past-time, however, is soccer. After playing collegiately at William & Mary and pursuing a brief professional career after graduation, he has stayed involved. He plays twice a week and is a huge supporter of the Philadelphia Union MLS team. Of all the things he has done in the game though, sharing it with his children has been the most enjoyable. He coaches his kids' team now and loves every minute of it.

Do You Know...

One interesting trend that has developed over the last several years is a shift by certain shopping center owners away from the traditional, retail type tenants to alternative, unconventional tenants. This trend is a direct result of the current economic climate and the rise of online shopping, which have resulted in an increase in vacancies. As a result, shopping centers have begun to focus on previously untapped businesses, such as medical centers, laser-tag complexes, children's swim clubs, play areas, aquariums, fencing academies and health/fitness clubs. Although there are clear advantages to



adding non-traditional tenants to shopping centers, including increased foot traffic and an exposure to a potentially more diverse customer market, owners need to be diligent in verifying that no restrictions exist in current leases that prohibit or limit such non-traditional usage. For example, not only may an existing lease explicitly prohibit a specific use at the center, e.g., "no swim clubs", but it may also include broader restrictions on any "non-retail"

tenancies. This is not an ancillary issue, thus requiring careful review to protect the new tenant.

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Unless otherwise expressly stated herein, all discussions and opinions are based upon the law of the Commonwealth of Pennsylvania and the State of New Jersey. **Your comments or suggestions are welcome...** Phone: 610.260.6000 • Fax: 610.260.1240 • www.kaplaw.com

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