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**MEMORANDUM**

To: Millburn Township Committee  
From: Christopher Falcon  
Re: Conflict of Interest issue – Township Committee Members: Voting  
Date: August 10, 2020

A question has been raised as to whether participation in the consideration of, and voting upon, the Special Improvement District Ordinance, is a conflict of interest on the part of Deputy Mayor Prupis in light of her ownership and operation of a business in the downtown business district within the Special Improvement District. The issue is tied to a concern that Ms. Prupis could realize a financial benefit at a future date by reason of the program to be implemented pursuant to the ordinance and potential consequent fostering of positive business conditions and the improved attractiveness of Millburn as a shopping destination.

I had previously considered this question a couple of years ago and had concluded at that time that Ms. Prupis would not have to recuse on the basis of her operation of her business since her interest is diffused among a large number of persons and businesses with which she is similarly situated. For the reasons I considered then and for the reasons set forth below I have concluded that the SID Ordinance and other similar general measures affecting the business district are matters in which she can be engaged. I cautioned at that time however, and continue to assert now, that any measure or action which would confer upon her, or for that matter, any elected official, a particularized and individually identifiable benefit not uniformly shared by others, would not be permissible. Additional legal analysis further reinforces my earlier conclusion.

The law pertaining to conflicts of interest is obviously designed to ensure that the public's business is undertaken in an honest and above board manner designed to secure the confidence of the citizenry. In this regard, the law also recognizes the necessity to keep government running without undue hindrance and that disqualifications over interests generally shared with others is detrimental. In the seminal case of Van Itallie v Borough of Franklin Lakes, 28 N.J. 258 (1958), the Supreme Court noted that Courts should examine conflicts of interest carefully but further, that “[l]ocal governments would be seriously handicapped if every possible

interest, no matter how remote or speculative, would serve as a disqualification of an official”. This principle has been followed subsequently, for example in an Appellate Division decision which stated that “[C]ourts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials.” Mountain Hill, LLC v Township Committee of Middletown Township, 403 NJ Super 146 (App. Div. 2008). The same principle was reinforced by the Supreme Court in Grabowsky v Township of Montclair, 221 NJ 536 (2015).

Consistent with this principle, and with particular relevance to the current question and other similar questions, statutory guidance has been incorporated into the New Jersey Local Government Ethics Law which provides at N.J.S.A. 40A:9-22.5 (i) as follows:

“No local government officer shall be deemed in conflict with these provisions if, by reason of his participation in the enactment of any ordinance, resolution or other matter required to be voted upon or which is subject to executive approval or veto, no material or monetary gain accrues to him as a member of any business, profession, occupation or group, to any greater extent than any gain could reasonably be expected to accrue to any other member of such business, profession, occupation or group;”

This means that the enactment of laws of general application involving businesses or a group in an affected area who are similarly situated, does not require recusal of an elected official owning property, operating a business or otherwise where no material or monetary gain accrues to him or her to any greater extent than could be reasonably expected to accrue to any other member of such group.

Elected officials particularly, are regularly called upon to deliberate on and take action affecting the community in which they live and may also work. They vote to raise taxes, including their own. They vote to regulate the zoning of property in residential areas where they own residential property. As currently under discussion, they may vote on ordinance amendments to authorize the use of residential premises, theirs included, for short term rentals. A recent, and comparable example, involves the Historic Preservation District. The Ordinance creating the District, and the regulations pertaining to the same, was enacted in 1987 and amended three times since then. Most recently in 2016 it was the subject of a comprehensive revision. Not surprisingly, and undoubtedly as has been the case over the thirty three years that it has been on the books, a Member of the Township Committee, Committeewoman Burstein, voted on the ordinance while being the owner of a residential property within the Historic District. In accordance with law, she was entitled to vote notwithstanding ownership of property,

because the ordinance was a general enactment affecting hundreds of properties, and she could not reasonably be expected to realize any benefit to any greater extent than any other owner of any of the regulated properties in the District.

For another example, see also Schillinger v City of Brigantine, No. A-1171-06T3, 2004 WL 4258245 (NJ Super. Ct App. Div. 2007) where the Appellate Court stated that members of a Church that were also on the Governing Body of the municipality and voted on a measure involving the Church, did not receive a benefit greater than any other member of the Church if the Church may benefit from the actions of a local governing body. The Court reasoned that there is no conflict where it can be shown that “the local government official derives no gain to a greater extent than any other member of the group [and] that no material or monetary gain would accrue to the Council members... to any greater extent than any gain could reasonably be expected to accrue to any other parishioner of the Church.”

Upon inquiry, I am informed that over 300 properties and businesses are located in the Special Improvement District. This apparently does not include businesses operated above the 1<sup>st</sup> floor over retail establishments that are in the District. Therefore Deputy Mayor Prupis shares with hundreds of others the potential benefit, or depending upon one’s point of view, the detriment which could follow implementation of the SID Ordinance, but importantly to no greater or lesser extent than could reasonably be expected to accrue to any other member of that group.

Were the rule as advanced in favor of Ms. Prupis’ recusal, the actual rule, no resident of Millburn Township owning a business in the business district could ever run for election to the Township Committee on a platform to improve business conditions and, if elected, advocate and vote for general measures to upgrade or improve the District. This would be an example of the type of disadvantage to local government remarked upon in the Franklin Lakes and later cases. In this context, as well as many others, it would deprive the Governing Body of the precise type of knowledge and expertise which could be brought to bear on its deliberations and be most helpful in taking appropriate actions.

In summary, in analyzing whether there is a conflict of interest, or even the appearance of a conflict, in Deputy Mayor Prupis participating in the deliberation and voting on the Special Improvement District enabling ordinance because she owns a business in the District, the statute and case law conclude that there is not a disqualifying conflict of interest. Under the statute, and supported by case law if there is any benefit which Deputy Mayor Prupis gains by virtue of her ownership of a local business, there is no material or monetary gain to any greater extent than any gain could reasonably be expected to accrue to any other person or entity engaged in business among the hundreds of local businesses in the group that will also be affected by the Ordinance.