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April 22, 2010

Hon. Town Board
Town of Tuxedo
One Temple Dr
Tuxedo, NY 10987

Re: Ethics of Inspection Trip
Our File No. 2506-651

Dear Board Members:

You have inquired whether any requirement of the NYS Ethics laws or the Town Code of Ethics has been violated by the Town Supervisor, a Town Councilperson, and the Town Planner taking a trip on behalf of the Town to make inspection of developments of the type proposed by the developer who is seeking to amend the existing approvals of the Planned Integrated Development, at the expense of that developer. We conclude that no ethical requirement has been breached and that the actions of the Town officials with respect to the inspection trip were undertaken in conformity with the highest ethical standards.

The Town Board had determined that it would be beneficial for the Town for Town officials to inspect other developments of the type proposed by the developer who was seeking to amend its approvals. The developer proposed to transport Town officials to inspect the developments. Prior to accepting the proffered transportation on behalf of the Town, the Town Supervisor inquired of this office whether acceptance of the transportation would cause any violation of ethical standards. The Town Supervisor was advised that no ethical violations would result. The travel was on behalf of the Town and the Town was receiving the benefit of the transportation and that no personal benefit was being received by the Town officials who were making the inspection trip on behalf of the Town. It was suggested that the circumstances of the trip be disclosed on the public record so that no unfair accusations could be made against the Town officials who were merely working on behalf of the Town performing due diligence in reviewing the development application.

Prior to the trip, the Town Supervisor disclosed on the public record at a Town Board meeting that he, another Town Board Member and the Town Planner would be traveling at the developer's expense to review certain developments of the type proposed by the developer. The Town's attorney confirmed on the public record that the trip would violate no ethical standards. Upon their return, the Town officials reported the results and findings of their travel to other Town officials. At a recent Town Board meeting, the Town officials again freely confirmed that they had traveled and reviewed other developments at the developer's expense. The circumstances of the travel were fully disclosed by the Town officials, as well as the public purpose of the trip. They flew down and back on the same day without any excursions.

Certain individuals now have now falsely accused the Town officials of violating the ethics law by purportedly receiving a "gift." There is no validity in the accusation

Pursuant to Town Law §115(1), Town Board members are entitled to full reimbursement of their travel expenses on Town business. By separate contract, the Town Planner is entitled to reimbursement of the expense of her travel on behalf of the Town. It is an obvious fact that acceptance of that which one is entitled to receive cannot be a gift. For example, a worker's acceptance of his wages is not a gift. Here, Town officials undertaking an inspection trip on behalf of the Town were conducting Town business and were, therefore, entitled to full payment of all their travel expenses. Since the Town officials were entitled to travel at public expense, without any cost to themselves, the provision of such travel by another was neither a gift to them, nor an ethical violation.

The disclosure by the Town officials at a Town Board meeting prior to taking the trip, and their prior receipt of a legal opinion that their conduct would not violate ethical standards, together make it clear that no fault can be imputed to these Town officials. The Town benefitted from the inspection trip and the Town benefitted from substantial costs savings which benefit the taxpayers. Cutting costs to taxpayers is an obvious benefit to the public. The elected Town official gave their time to the Town without additional compensation. No one made any complaint regarding these actions in advance of the trip, even though the proposed trip was fully announced to the public in advance.

We trust this answers the inquiry.

Very truly yours,

Donald G. Nichol

DGN:ljs

cc: James D. Cole, Esq., Assistant Attorney General
Orange County Board of Ethics