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DAVID P. MORRISETTE and SANDRA S. MORRISETTE, Plaintiffs, v. TOWN OF PHILLIPSBURG TOWN COUNCIL, governing body of the municipality, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION WARREN COUNTY DOCKET NO.: WRN-L-000341-22 Civil Action AMENDED **ORDER**

THIS MATTER having come before the Court on the application of King, Moench & Collins LLP, Attorneys for Defendant Town of Phillipsburg Town Council, for an Order granting Defendant's Cross-Motion for Summary Judgment and the Court having considered the moving papers and papers filed in opposition thereto; and for good cause having been shown; and for the reasons set forth on the record on the return date of this application,

IT IS ON THIS 2nd day of January, 2024

ORDERED that Defendant's Cross- Motion for Summary Judgment is GRANTED; and it is

FURTHER ORDERED that Defendant's Cross-Motion for Summary Judgment is GRANTED as to the issue of whether Member Piazza was disqualified because of his parents property within 200 Feet of 560 an 562 South Main Street; and it is

FURTHER ORDERED that Defendant's Cross-Motion for Summary Judgment is GRANTED as to the issue of whether Member Piazza was disqualified because his father spoke at a hearing regarding the Ordinance; and it is

FURTHER ORDERED that Defendant's Cross-Motion for Summary Judgment is GRANTEDas to the issue of whether Member Piazza was disqualified due to allegedly improper political ramifications of the Ordinance vote; and it is

FURTHER ORDERED that Plaintiffs' Motion for Summary Judgment is denied; and it is

FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record via e-courts.

/s/ Kevin M. Shanahan, A.J.S.C.
Hon. Kevin M. Shanahan, A.J.S.C.

SEE ATTACHED STATEMENT OF REASONS

WRN-L-341-22
Morrisette v. Town of Phillipsburg
Plaintiff's Motion for Summary Judgment
Defendant's Cross-Motion for Summary Judgment
Returnable September 22, 2023
Opposed

I. PARTIES AND RELIEF SOUGHT

Plaintiffs, David Morrisette and Sandra Morrisette, by and through their attorney, Peter D. Dickson, move for summary judgment.

Defendant, Town of Phillipsburg, by and through their attorney, Michael L. Collins, moves for summary judgment.

II. PLAINTIFF'S STATEMENT OF FACTS[1]

1. Plaintiffs David P. Morrisette and Sandra S. Morrisette are adults residing at 5 Fairview Heights, Phillipsburg, New Jersey 08865. Complaint, Exhibit18 at 112; Answer, Exhibit 19 at ¶2.

2. Plaintiff David Morrisette is a 27 year resident of Phillipsburg and previously sender on the Planning Board. He is very familiar with the town and its neighborhoods. Morrisette certification ¶7.

3. Defendant Town of Phillipsburg is a municipality organized under the laws of New Jersey, in Warren County, with its address at 120 Fillmore Street, Phillipsburg, NJ 08865. Complaint, Exhibit18 at 113; Answer, Exhibit 19 at 113.

4. On its home page on its website, this is how Phillipsburg describes itself: Welcome To Phillipsburg, New Jersey Located on the Delaware River, in a beautiful setting of rolling hills, woodlands, and flowing waters, Phillipsburg, New Jersey offers the best of all worlds. Here, you can escape from crowded, impersonal developments, and find the joys of living in a close-knit community of families and friends, as you enjoy all the advantages of urban living as well as rural atmosphere - from a quaint downtown waterfront shopping district, to a choice of nearby airports. Just 30 minutes from the Pocono Mountains, and midway between Philadelphia and

[1] For purposes of the record, Plaintiff's statement of facts is taken verbatim from the moving papers.

New York City, Phillipsburg is an historic town with an exciting future. It's a place where the beauty, culture, tourism and recreational activities are enhanced with a growing base of small and mid-size businesses. [http ://www .phillipsburgnj.org1.]

5. On November 1,2022, the Phillipsburg Council adopted on second reading Ordinance 2022-30 (Ordinance). Notice of the adoption of Ordinance2022-30 was published on November 11, 2022. Complaint, Exhibit18 at ¶5; Answer, Exhibit 19 at'¶5.

6. The Ordinance amended the 2013 Redevelopment Plan to change the zoning for certain riverfront parcels identified as Riverfront Development Area from HD to LI [Light Industrial] and other changes. Plaintiffs' Exhibit 1.

7. The Ordinance referred to an "Exhibit A," which is Plaintiffs' Exhibit 2.

8. The intention and purpose of the Ordinance was to provide legal zoning and redevelopment authority for a proposed 360,000 sq. ft. warehouse previously given final site plan approval by the Phillipsburg Land use Board in Land Use Board Resolution 2022-12. Plaintiffs' Exhibit 3.

9. The Ordinance was adopted by a 3-1 vote, with one member, Harry Wyant, recusing himself because he owns property within 200 feet of the affected area. complaint, Exhibit 18 at ¶6, 29; Answer, Exhibit 19 at ¶6, 29.

10. The Riverfront Redevelopment area was designated as an "area in need of redevelopment" in 2005, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:124-1 et seq. ("LRHL"). Various redevelopment plans that included this area have been drafted and adopted over the years. Complaint, Exhibit 18 at 118; Answer, Exhibit 19 at ¶8.

11. At all times relevant to this action, the legally effective redevelopment plan is the "Revised Riverfront Redevelopment Plan" adopted by the Council and dated November 2013 (2013 Plan). Plaintiffs' Exhibit 4.

12. The 2013 Plan designated three districts for this area. District 3 was "Recreational/Heritage," to be primarily parks and recreational facilities. Plaintiffs' Exhibit 4.

18. The 2013 Plan designated District 5, which roughly coincides with the area that is legislated by the Ordinance, as "Riverside Residential," to consist primarily of residential buildings, and

retail, museum, cultural and office use on the ground floors, and parks and recreational facilities. Plaintiffs' Exhibit 4'

14. The 2013 Plan set out eleven "Redevelopment Goals and Objectives," none of which is consistent with a 360,000+ sq. ft. refrigerated warehouse. Plaintiffs' Exhibit 4.

15. A draft amendment to the redevelopment plan was prepared in April 2018, but never adopted. Plaintiffs' Exhibit 5 (excerpts). It makes no changes from the 2013 Plan in the provisions for District 5. No warehouses of any kind are permitted.

16. The designated redeveloper for this area is Peron Construction, identified formally in some documents, including the Ordinance and Land Use Board Resolution, as "Peron Construction, LLC." Plaintiffs' Exhibits 2, 3.

17. There has not been any attempt in recent years to develop the site in accordance with the Master Plan and reexamination reports. So far as plaintiffs are aware, there has not been any attempt in recent years to develop the site in accordance with the current redevelopment plan. Nor are plaintiffs aware of any effort by Peron to persuasively prove that the 2013 plan's objectives for this Site are unworkable.

18. At all times relevant to this action, the governing lawful Master Plan is the one adopted in 2004. Plaintiffs' Exhibit 17.

19. Peron Construction is owned by Michael Perrucci, Esq., a name and founding partner in the law firm of Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC, which has offices in Phillipsburg. https://www.floriolaw/attorney/michael-j-perrucci/.

20. Mr. Perrucci identifies himself on the law firm website: "Mike is also the owner of Peron Construction, Inc., a real estate development company...." https://www.floriolaw/attorney/michael-j-perrucci/.

21. Another name partner in the Florio Perrucci law firm is Douglas. J. Steinhardt, Esq., who is also a State Senator, the Warren County Republican Committee Chairman and the former Chairman of the New Jersey Republican State Committee. https://www.floriolaw/attorney/douglas-j-steinhardt/.

22. According to the Site Plan for the warehouse, the redeveloper would acquire two properties at 560 and 562 South Main Street, so that trucks going in and out of the Site via McKeen Street would be able to utilize a wider turn. This would also try to keep trucks out of historic downtown Phillipsburg and its businesses. Plaintiffs' Exhibits 3, 6a and 6b.

23. One Council member is Randy Piazza, Jr., who voted in favor of Ordinance 2022-30. His parents, Randy and Susan Piazza Sr., own a residence at 309 Mercer Street. Plaintiffs' Exhibit 8.

24. 560 and 562 South Main Street are identified on Peron planning documents as part of the "Site" for the warehouse plans. Plaintiffs' Exhibits 6, 6a and 6b.

25. The Piazza Sr. residence at 309 Mercer Street is within 200 feet of the Site properties at 560 and 562 South Main Street. Plaintiffs' Exhibit 9.

26. Member Piazza Jr. and both of his parents are members of the Warren County Republican Committee, which is chaired by Mr. Steinhardt. Plaintiffs' Exhibit 12. The County Committee website is at https://www.warrencountygop.com/.

27. On February 27, 2023, the Warren County Planning Board rejected the Peron warehouse proposal. Member Piazza Jr. is also the vice chair of the County planning Board and recused himself from voting on the Peron proposal. Morrisette Certification ¶18.

28. On December 12, 2022, Member Piazza posted on his council Facebook page that he "had the privilege of voting for Doug Steinhardt to fill the vacant NJ-23 Senate seat. We had a good discussion about the future of Philipsburg and his involvement. Congratulations!" Plaintiffs' Exhibit 13.

29. On January 4, 2023, Member Piazza announced that he was running for Mayor of Phillipsburg, as a Republican. Plaintiffs' Exhibit 11.

30. Member Piazza Jr. has the support in his mayoral race of the Warren County Republican Committee, chaired by Mr. Steinhardt. Plaintiffs' Exhibit 14.

31. In these local races, the support of the County Committee is essential. In 2019, Member Piazza, Jr. and Harry Wyant ran as Republicans for the Phillipsburg council, together with Todd Tersigni, then running for Mayor. They won. According to their post-election filing the ticket

took in $11,201.85, of which $7,691.49 were in-kind contributions from the warren county Republican Committee chaired by Mr. Steinhardt. Plaintiffs' Exhibit 15.

III. DEFENDANT'S REPLY TO PLAINTIFFS' STATEMENT OF FACTS[2]

1. Admitted for purposes of compliance with Rule 4:46-2.

2. Admitted for purposes of compliance with Rule 4:46-2.

3. Admitted for purposes of compliance with Rule 4:46-2.

4. Objection – Plaintiffs' statement is not supported by a record citation as required by Rule 4:46-2(a).

5. Admitted for purposes of compliance with Rule 4:46-2.

6. Admitted for purposes of compliance with Rule 4:46-2.

7. Admitted for purposes of compliance with Rule 4:46-2.

8. Objection – Plaintiffs' statements are not sufficiently supported by the exhibit as required by Rule 4:46-2(b). The exhibit appends a land use board resolution, which does not speak to the "intent and purpose" of an ordinance that would be adopted by the separate governing body.

9. Admitted for purposes of compliance with Rule 4:46-2.

10. Admitted for purposes of compliance with Rule 4:46-2.

11. Admitted for purposes of compliance with Rule 4:46-2 except to the extent that the redevelopment plan has been amended from time to time, including in an amendment that remains the subject of prerogative writ litigation under Docket No. WRN-L-248-21.

12. Admitted for purposes of compliance with Rule 4:46-2 that District 3 is designated as "Recreational/Heritage." The remaining allegations are objected to as they are not sufficiently supported by the exhibit as required by Rule 4:46-2(b). The appended 2013 Plan designates six districts and the Recreational/Heritage district descriptions speak for themselves.

[2] For Purposes of the record, Defendants' reply to Plaintiffs' Statement of Facts is taken verbatim from the Opposition papers.

13. Admitted for purposes of compliance with Rule 4:46-2.

14. Objection – Plaintiffs' statements are not sufficiently supported by the exhibit as required by Rule 4:46-2(b).

15. Admitted for purposes of compliance with Rule 4:46-2.

16. Admitted for purposes of compliance with Rule 4:46-2.

17. Objection – Plaintiffs fail to provide a citation to the record as required by Rule 4:46-2(a).

18. Denied. Phillipsburg completed a 2013 master plan reexamination report. A true copy of the cover to this report is attached as Exhibit A to this Certification.

19. Objection – Plaintiffs fail to provide a citation to the record as required by Rule 4:46-2(a).

20. Objection – Plaintiffs fail to provide a citation to the record as required by Rule 4:46-2(a).

21. Objection – Plaintiffs fail to provide a citation to the record as required by Rule 4:46-2(a).

22. Admitted for purposes of compliance with Rule 4:46-2.

23. Admitted for purposes of compliance with Rule 4:46-2.

24. Admitted for purposes of compliance with Rule 4:46-2.

25. Admitted for purposes of compliance with Rule 4:46-2.

26. Admitted for purposes of compliance with Rule 4:46-2.

27. Admitted for purposes of compliance with Rule 4:46-2.

28. Admitted for purposes of compliance with Rule 4:46-2.

29. Objection – Plaintiffs' statements are not sufficiently supported by the exhibit as required by Rule 4:46-2(b). For instance, the exhibit contains no mention of the word "Republican."

30. Admitted for purposes of compliance with Rule 4:46-2.

31. Objection – Plaintiffs' statements are not sufficiently supported by the exhibit as required by Rule 4:46-2(b).

IV. DEFENDANTS' COUNTERSTATEMENT OF FACTS[3]

1. The 560 and 562 South Main Street properties are neither a component of the Redevelopment Area addressed in the Ordinance, nor are they within two hundred (200) feet of same. (Exhs. 1, 2, 6 to Pf. Br.).

2. The 560 and 562 South Main Street Properties are at least 1,000 feet from the Redevelopment Area. (Exh. 6 to Pf. Br.).

3. Michael Perrucci was no longer a partner of the Florio Firm (as defined in Defendant's brief) as of January 1, 2020. See letter and certification submitted to the Court in Docket No. WRN-L-341-22 attached hereto as Exhibit B and incorporated by reference.

4. Michael Perrucci did not perform any legal services for any client of the Florio Firm since June 11, 2018. See letter and certification submitted to the Court in Docket No. WRN-L-341-22 attached hereto as Exhibit B and incorporated by reference.

5. Michael Perrucci has lacked an ownership interest in the Florio Firm since May 2021. See letter and certification submitted to the Court in Docket No. WRN-L-341-22 attached hereto as Exhibit B and incorporated by reference.

V. PLAINTIFF'S RESPONSE TO DEFENDANT'S COUNTERSTATEMENT OF FACTS[4]

1. Admitted.

2. Admitted.

3. Denied. This assertion is inconsistent with the law governing names in law firms, see, e.g., R.P.C. 7.5(c)(law firm name may not include "the name of any person not actively associated with the firm as an attorney.... ")

[3] For purposes of the record, Defendants' Counterstatement of Facts is taken verbatim from the Opposition papers.
[4] For purposes of the record, Plaintiff's Response to Defendant's Counterstatement Of Facts is taken verbatim from the reply papers.

4. Denied. This assertion is inconsistent with the law governing names in law firms, see, e.g., R.P.C. 7.5(c)(law firm name may not include "the name of any person not actively associated with the firm as an attorney.... ")

5. Denied. This assertion is inconsistent with the law governing names in law firms, see, e.g., R.P.C. 7.5(c)(law firm name may not include "the name of any person not actively associated with the firm as an attorney.. il)

VI. PLAINTIFF'S ARGUMENT

ARGUMENT: Council Member Randy Piazza, Jr., Is Disqualified From Voting On Ordinance 2022-30: The Ordinance Is Invalid

1.Member Piazza's Parents Own Property Within 200 Feet Of The Property That Is Affected By The Ordinance

Plaintiff argues that their case is closely related to the decisions in *Care of Tenafly v. Tenafly*, 307 N.J. Super. 362 (App. Div. 1998); *Barrett v. Union Tp. Committee*, 230 N.J. Super. 195 (App. Div. 1989); and *McNamara v. Borough of Saddle River*, 64 N.J. Super. 426 (App. Div. 1960). Plaintiff points to two statutory provisions they claim are involved:

First, the Local Government Ethics Law, which provides in relevant part:

> [n]o local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

[N.J.S.A. 40A:9-22.5(d)]

And second, the Municipal Land Use Law, which provides that written notice of a land use application shall be applied to "the owners of all real property ... within 200 feet of the property that is the subject of the hearing...." N.J.S.A. 40:55D-12b.

Plaintiff argues that the cases consistently apply these provisions to follow a per se rule that disqualifies any municipal official - council or land use board member - from voting on any measure as to which the official or a member of his or her immediate family has an "interest" or an "involvement" in property within 200 feet of "the property that is the subject of the hearing."

Plaintiff first likens this case to *McNamara*, Supra, where the council was voting on a zoning ordinance that set minimum lot sizes for public and parochial schools, which would have the effect of limiting the size of a proposed Saddle River Country Day School, and a council member who owned property less than 200 feet from the site, voted for the ordinance. Noting that the court invalidated the ordinance, Plaintiff points to language which states:

> The Legislature has declared that the owners of any property within 200 feet of property to be affected by an appeal to a board of adjustment shall be served with notice of the proceedings at least ten days before the hearing. N.J.S.A. 40:55-44 [the predecessor statute to the current 40:55D-12b1. This is tantamount to a declaration of interest in the zoning treatment of a particular property on the part of those owning other property within 200 feet.

[*McNamara*, 64 N.J. Super. at 430]

Plaintiff further points to the appellate decision in *McNamara* to demonstrate the alleged per se rule of a disqualifying interest. Plaintiff points to language by the appellate court stating:

> The issue is whether or not [a councilman] had a disqualifying interest in the subject matter of the ordinance. His motives in voting for it ... are immaterial. If there is "interest," there is disqualification automatically, entirely without regard to actual motive, as the purpose of the rule is prophylactic, that is, to prevent the possibility of an official in a position of self-interest being influenced thereby to deviate from his duty to be guided only by the public interest in voting as such official.

[*McNamara*, 64 N.J. Super at 429-30]

Plaintiff acknowledges that the Piazza, Sr. house is not explicitly governed by the text of Ordinance 2022-30, but argues it is "property within 200 feet of property to be affected" by the Ordinance. Plaintiff argues the Ordinance was intended to authorize the large warehouse development that was the subject of LUB Resolution2022-12 and that proceeding included the acquisition and demolition of 560 and 562 South Main Street. Plaintiff also argues *McNamara* is controlling here given the subject matter; Plaintiff points out the *McNamara* court noted that the subject ordinance there, "while general in its surface scope, had for its realistic objective the regulatory restriction or prohibition of the use of the property leased to plaintiff Saddle River Country Day School as a day school. The whole history of this litigation indicates that the property mentioned was the real subject of the ordinance, at least so far as relevant for present purposes." *McNamara*, 64 N.J. Super. at 430 (citation omitted).

Plaintiff argues that in this case is that Ordinance 2022-30 can only refer to the Peron warehouse project given final site plan approval by the LUB in resolution 2022-12. Further, Plaintiff states there is no proposal that could be intended as the subject of this amendment other than the Peron warehouse.

Plaintiff points out that the plat for the site plan clearly identifies 560 and 562 South Main Street as included within the "SITE." Plaintiffs 'Exhibits 6, 6a and 6b. Plaintiff analogizes this case to *Care of Tenafly v. Tenafly*, supra, and *Barrett v. Union Tp. Committee*, supra, where those courts held that disqualification and voiding of the challenged ordinance was mandated because the "member of an immediate family" was a parent, as is the case here.

Thus, Plaintiff argues, the per se disqualifier of the Local Government Ethics Law and the cases applies to Member Piazza by reason of his parents' house.

2. Council Member Piazza Is Disqualified by Our Well Settled Conflict of Interest Law

Plaintiff points out that Ordinance2022-30 identifies the owner of the Site as Peron Construction LLC, the designated redeveloper of the Site. Plaintiff submits that Peron Construction LLC is owned by Michael Perrucci, Esq., a name and founding partner in the Florio Perrucci law firm.

A. Member Piazza Is Running For Mayor Of Phillipsburg As A Republican; Mr. Perrucci's Name Law Partner Douglas Steinhardt, Esq. Is Chair Of The Warren County Republican Committee, Which Can Be Expected To Provide Substantial Funds To Member Piazza's Campaign

Plaintiff represents that On January 4,2023, Member Piazza announced that he would run for the office of Mayor of Phillipsburg. Plaintiff further offers that Member Piazza and his father and mother are members of the Warren County Republican Committee. Plaintiff puts forth that Mr. Perrucci's name partner, Mr. Steinhardt is Chairman of the Warren County Republican Committee.

Plaintiff submits that On December 12, 2022, Member Piazza posted in his official Town Facebook account that "[t]his weekend I had the privilege of voting for Doug Steinhardt to fill the vacant NJ-23 [Senate] seat. Our community and Phillipsburg will be in good hands. We had a

good discussion about the future of Phillipsburg and his involvement." Morrisette Certification ft 13. Plaintiff urges that it is more than reasonable to assume that Member Piazza and Mr. Steinhardt also discussed other "future" events such as Member Piazza's candidacy for Mayor. Plaintiff further points to Mr. Steinhardt's Twitter, where he announced his intention to seek the Senate seat on September 27. https://twitter.com/DSteinhardtEsq.

Plaintiff points out that on February 8, the political website New Jersey Globe reported that Warren County Republicans would be supporting Member Piazza for Mayor, intending to oust incumbent Todd Tersigni. https://newjerseyglobe.com/local/after-losing-gop-support-for-re-election-phillipsburg-mayor-will-switch-parties-again/. Morrisette Certification T 21; Plaintiffs' Exhibit 14.

Plaintiff argues that Member Piazza, therefore, vitally needs the support of Mr. Perrucci's partner, Mr. Steinhardt, the Republican County Party Chairman, if he is to obtain the Republican nomination for Town Mayor. Plaintiff submits that if the Globe article is true, then he undoubtedly already has that support. Further, Plaintiff argues it is inconceivable that the County organization would have decided to support Member Piazza without the express support of the organization's Chairman, Mr. Perucci's name partner, Mr. Steinhardt. Moreover, Plaintiff submits, if he obtains the nomination, Mr. Piazza would expect substantial financial and in-kind support from the Warren County Republican Committee, as he did when he ran for Council in 2019. Plaintiff argues the Election Law Enforcement Commission post-election filing for the 2019 slate of Republican candidates for the Phillipsburg Mayor and Council (Member Tersigni, Member Wyant and Member Piazza) shows that the majority of the $10,937 of in-kind contributions came from the Warren County Republican Committee, in the amount of $7,691.49. Morrisette Certification f 22; Plaintiffs' Exhibit 15.7

Plaintiff again sets forth that Mr. Steinhardt spoke at the October 4,2022 Council meeting in favor of the Peron warehouse. Plaintiffs' Exhibit 7. Plaintiff urges, Mr. Steinhardt had no need to remind Member Piazza (and the other Republican Council members) of his political office and power over their political futures and that his remarks may have even prompted Member Piazza to attempt a second attempt at an authorizing resolution on October 4.

Plaintiff looks to *Wyzykowski v. Rizas*, where the New Jersey Supreme Court stated the test for disqualification:

> An actual conflict of interest is not the decisive factor, nor is "whether the public servant succumbs to the temptation," but rather whether there is a potential for conflict." A conflicting interest arises when the public official has an interest not shared in common with the other members of the public.
>
> Another way of analyzing the issue is to understand that "[t]here cannot be a conflict of interest where there do not exist, realistically, contradictory desires tugging the official in opposite directions."
>
> [*Wyzykowski*, 132 N.J. at 524, citations omitted]

Plaintiff likens this case to *Piscitelli v. Garfield ZBA*, 237 N.J. 333 (2019), where the actions of the Garfield Zoning Board of Adjustment were scrutinized because the application for development was presented by several trusts in which Dr. Kenneth Conte, the President of the Garfield Board of Education, and members of his immediate family, had an interest. Plaintiff points out that in *Piscitelli*, Five members of the zoning board were either employed by the Board of Education or had immediate family members who were so employed and that no Board member disqualified himself or herself, and the application was approved. Plaintiff notes that the Supreme Court struck down the application. Piscitelli, 237 N.J. at 345. Plaintiff points to the following language from the holding:

> We reverse and remand for further proceedings to decide whether any Zoning Board member had a disqualifying conflict of interest in hearing the application for site plan approval and variances in this case. The trial court must assess two separate bases for a potential conflict of interest. First, did Dr. Kenneth - as president or a member of the Board of Education - have the authority to vote on significant matters relating to the employment of Zoning Board members or their immediate family members? Second, did any Zoning Board members or an immediate family member have a meaningful patient-physician relationship with any of the three Conte doctors? If the answer to either of those questions is yes, then a conflict of interest mandated disqualification and the decision of the Zoning Board must be vacated.
>
> [Piscitelli, 237 N.J. at 340]

Plaintiff argues that the application of these cases to Member Piazza is straightforward and conclusive. Plaintiff claims the relationship with County Party Chairman and Mr. Perucci's name partner Mr. Steinhardt is "an interest not shared in common with the other members of the public." Wyzykowski, supra 132 N.J. at 524. Further Plaintiff states that when Member Piazza voted in favor of Ordinance2022-30, he was a few weeks away from making public his decision to run for Mayor, and in that race he would need the support, intangible and tangible, of the

Chair of the Warren County Republican Committee. Further, Plaintiff points to his membership - and his father's and mother's - on the Committee, as a factor straining credulity that he did not have some indication (or more) of Mr. Steinhardt's approval and support. Further, Plaintiff points that Mr. Steinhardt is not only the name partner of the owner of Peron, Mr. Perrucci, but he spoke in favor of the Peron proposal on October 4. Plaintiff alleges that this is certainly the type of interest that creates "realistically, contradictory desires tugging [Member Piazza] in opposite directions." *Id*. Plaintiff argues that Mr. Steinhardt, as Chair of the County Republican Committee "has the authority to vote on [or control, as Chair] significant matters relating to the" nomination and election of Phillipsburg Council members. *Piscitelli*, supra, 237 N.J. at 340. Plaintiff argues Member Piazza "might have had reasons to apprehend that [Mr. Steinhardt] would in the future vote [or decide] on such matters [as who would get the Republican nomination for Phillipsburg Mayor or support in the general election] - matters that clearly would give rise to a personal interest and the potential for a disqualifying conflict." *Id*.

B. Member Piazza's Father Spoke In Favor Of The Ordinance And His Property Would Benefit From It

Plaintiff alleges there are two additional reasons to disqualify Member Piazza and void the ordinance.

First, Plaintiff argues it cannot be denied that his parents' home would benefit from the proposed acquisition of 562 and 564 South Main Street and construction of a wider turnout. Plaintiff notes that trucks traveling to or from the warehouse would not back up into the area around that residence because a too tight turn onto Main Street (in either direction) would slow them down. Therefore, Plaintiff argues, these are concrete benefits in reduced diesel engine pollution and noise.

Second, Plaintiff argues, Mr. Piazza, Sr., spoke in favor of Ordinance 2022-30 on November 1, 2022.3T19:25, -20:1-8, 11-25, -21:1-21. Plaintiff alleges that this alone is further ground for disqualifying his son. See, e.g., *Meehan v. K.D. Partners. L.P.*, 317 N.J. Super. 563, 565 (App. Div. 1998).

VII. DEFENDANT'S OPPOSITION AND CROSSMOTION

A. COUNCILMAN PIAZZA WAS NOT CONFLICTED FROM VOTING ON A REDEVELOPMENT PLAN ORDINANCE IN WHICH HIS PARENTS DO NOT LIVE WITHIN 200 FEET OF THE REDEVELOPMENT AREA.

Defendant points out that Plaintiffs have cited numerous prior cases that, in accord with *Grabowsky*, have applied a firm 200-foot conflict standard to zoning and land use matters. See *Care of Tenafly v. Tenafly*, 307 N.J. Super. 362 (App. Div. 1988); *Barrett v. Union Tp. Committee*, 230 N.J. Super. 195 (App. Div. 1989); *McNamara v. Borough of Saddle River*, 64 N.J. Super. 426 (App. Div. 1960). However, Defendant submits that in each of these cases, the 200-foot standard is applied to the zone that was at issue before the subject body - none of the cases involved speculative conflicts based upon approvals by entirely different bodies, as Plaintiffs seek.

Defendant contrasts those cases with those where conflicts arose from properties that are actually within a 200-foot radius, by looking to *Tri-State Ship Repair & Dry Dock Co. v. City of Perth Amboy*, 349 N.J. Super. 418 (App Div. 2002), where the Appellate Division found that mere proximity to a redevelopment area – as Defendant argues is the case here – was insufficient to establish a conflict.

Defendant points to Plaintiffs allegation that Councilman Piazza was conflicted based upon the location of his parents' house and a potential benefit arising from the improvements contained in the LUB Approval. Defendant states that those conflict claims fail because the Ordinance adopted revisions to the zoning for the Redevelopment Area, and the Redevelopment Area was not located within 200 feet of Piazza's parents' home.

Defendant argues Plaintiffs can at best allege that Councilman Piazza's parents live in proximity to the Redevelopment Area. Defendant submits that the record indicates that the subject property may be within approximately 1000 feet of the redevelopment area, which would be five times the distance required to establish a conflict. Defendant argues the conflict argument fails as a matter of law because proximity is insufficient.

Defendant posits that Plaintiffs attempt to impute the properties contained within the LUB Approval into the Ordinance. Defendant states that such an attempt is groundless as the

Ordinance, on its face, makes zoning changes to Block 2102, Lots 1, 2.01, and 2.02. Defendant argues the Ordinance does not involve any actions whatsoever concerning properties that are located within 200 feet of Councilman Piazza's parents home, as would be necessary to create a legal conflict as a matter of law.

Defendant argues that the Local Government Ethics Law prevents elected officials from "act[ing] in [an] official capacity" when in conflict. N.J.S.A. 40A:9-22.5(d). However, Defendant argues that in this case, Councilman Piazza did not act in an official capacity in any relation to the South Main Properties, plain and simple. Defendant argues that Plaintiffs' further speculative argument that Councilman Piazza's parents benefit from the proposed improvements contained within the LUB Approval also fail, because they were not a component of the action Councilman Piazza voted upon.

Defendant notes that Plaintiffs also argue that the Ordinance was "specifically intended" to address the applicant's properties in the LUB Application, which included a proposed demolition of the South Main Properties. (Pf. Br. at 15, 17). But, Defendant argues, Plaintiffs fail to promote any authority that would make the alleged subjective motive of Peron in obtaining separate approvals from both the LUB and the governing body as actionable and subject to an imputation of conflicts. Defendant submits that Plaintiffs' overall argument would require this Court to impute the actions of an entirely separate legal entity upon the subject entity, yet they cite no case law to support this inventive proposition, because it is invalid. Defendant insists this argument is particularly specious considering a planning board is an "autonomous body" that is "independent of the governing body." *Baptist Home of South Jersey v. Riverton*, 201 N.J. Super. 226, 233 (App. Div. 1983); *Lehrhaupt v. Flynn*, 140 N.J. Super. 250, 268 (App. Div. 1976) (citation omitted). Defendant states that Plaintiffs' actions would force every New Jersey elected official into a conflictof-interest analysis beyond the four corners of the ordinance or resolution that they are acting upon, and require them to speculate about the effect that their action may have in relation to potential actions by other public bodies. Defendant presses that this is an unworkable proposition and cannot possibly be the law.

B. PLAINTIFFS' ALLEGATIONS CONCERNING PUBLIC COMMENTS DO NOT ESTABLISH A CONFLICT-OF-INTEREST.

Defendant addresses Plaintiffs allegation that Councilman Piazza was conflicted because his father spoke in favor of the Ordinance. Defendant states this argument was not contained in the Complaint and should be rejected on that basis alone, and even if it is evaluated, the claim is based upon a distinguishable case, and the substance of the Councilman's father's comments had no relation to the South Main Properties.

Defendant argues that Plaintiffs' public comment conflict argument's reliance upon *Meehan v. K.D. Partners,* L.P., 317 N.J. Super. 563 (App. Div. 1998) is erroneous. Defendant states that in *Meehan,* the Law Division initially voided a planning board approval, finding it was an "improper conflict of interest for a member of the Board to deliberate in a matter where that member's father was a witness in the hearings." *Id*. at 565. However, Defendant notes, on appeal, the objector and applicant purportedly "settled" the matter, and the trial judge signed a consent order vacating the voided action and reinstating the site plan approval. *Ibid*. Defendant claims the Appellate Division never evaluated the propriety of the Law Division judge's voiding of an action due to the public comment that was made, and regardless, the Law Division judge ultimately vacated that determination.

Defendant concedes that at the November 1, 2022 Council meeting, Mr. Piazza commented on the Ordinance that members of the public were "jumping the gun" about what "th[e] place may look like." 3T20:11- 14, and that he voiced his support for regaining "industry" and having "people back" and a "building back" working. 3T21:8-14. But Defendant states that at all times, Mr. Piazza was referencing the properties within the Redevelopment Area, and his comments had no relation to the South Main Properties.

Defendant argues the case proffered by Plaintiffs is unavailing when applied to these facts. Defendant finds that from a substantive standpoint, there is a stark difference between testimony by a "witness" before a land use board, as in *Meehan,* and public comment before a governing body, as in the instant case. Defendant states that Under the Municipal Land Use Law, land use boards must take the "testimony of all witnesses relating to an application for development . . . under oath or affirmation . . . and the right of crossexamination shall be permitted." N.J.S.A. 40:55D-10(d). Defendant argues this is consistent with the fact that land use boards are "discretionary governmental administrative agencies that exercise quasi-judicial functions." In re Convery, 166 N.J. 298, 306 (2001). In contrast, defendant insists, a municipal

governing body sits as a policy-making body and merely holds a public hearing prior to an ordinance adoption. N.J.S.A. 40:49-2(c). Defendant states that the public hearing merely provides "all persons interested . . . an opportunity to be heard." N.J.S.A. 40:49-2(b).

Defendant argues that Plaintiffs' argument fails because it seeks to create a false equivalency between sworn testimony before a quasi-judicial body and a statutory public comment period before a policymaking governing body. Defendant notes that Plaintiffs do not cite any other authority to support the novel legal claim that a public comment by a family member, regarding a property to which they lack any legal conflict, renders a governing body member conflicted from acting upon a policy determination in their discretion.

Defendant claims that Plaintiffs' arguments concerning the public comments by Douglas Steinhardt on October 4, 2022 are even more specious, as they simply allege a conflict based upon Steinhardt's participation in public comment and a vague claim about "his political office and power over [Piazza's] political fortunes." Defendant urges that such "speculative" allegations must be rejected as a matter of law, as our Supreme Court has held that "ethics rules must be applied with caution" because "[l]ocal governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official." *Grabowsky*, 221 N.J. at 554 (quoting *Wyzykowski v. Rizas*, 132 N.J. 509, 523 (1993)).

C. PLAINTIFFS' ALLEGATIONS ARISING FROM THE COUNCILMAN'S ANNOUNCED POLITICAL CANDIDACY SUBSEQUENT TO THE SUBJECT VOTE MUST BE REJECTED.

Defendant addresses Plaintiff's additional claim, that it states is not contained in the Complaint, which arises from Councilman Piazza's participation in the political process and announcement that he is a candidate for Mayor of Phillipsburg. (Pf. Br. at 18). Defendant argues this legal argument is based upon the following claims that Plaintiffs attempt to insert into the trial record:

- On December 12, 2022, Councilman Piazza expressed his support for Doug Steinhardt to fill the vacant State Senate seat in District 23.

- On January 4, 2023, Councilman Piazza announced his candidacy for Mayor of Phillipsburg and subsequently obtained the support of the Warren County Republican Committee. Plaintiffs allege he can expect to receive financial support from same, as he purportedly did in 2019.
  [(Pf. Br. at 18, 19, 20)].

Defendant argues that Plaintiffs' arguments fail because they are based upon purported actions that took place after November 1, 2022, the date the Ordinance was adopted. Further, Defendant argues, a governing body member cannot be declared in conflict based upon things that occur in the future. Defendant urges that accepting Plaintiffs' position would require each elected official to be a prognosticator and predict political developments that may occur after they vote on something.

Defendant notes that Plaintiffs' only allegations predating the Ordinance adoption involve Councilman Piazza's 2019 campaign donations, and how a "majority" of them are from the Warren County Republican Committee. Defendant represents that this claim fails to link such donations to a conflict in the Ordinance under review. Defendant states that N.J.S.A. 40A:9-22.5 prohibits a governing body member from "solicit[ing] or accept[ing] any . . . political contribution . . . upon an understanding that the gift, favor, loan, contribution, service, promise, or other thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties." However, Defendant argues, the statute then contains a safe harbor concerning political contributions, providing it "shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the local government officer has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the local government officer in the discharge of his official duties." Ibid. Defendant states that Plaintiffs do not make any allegations that the donations they place at issue exceed this safe harbor, because they cannot. Defendant presses that the Councilman's mere receipt of campaign contributions from a county political party does not render him conflicted in any way.

Lastly, Defendant argues, just like Plaintiffs tried to introduce the South Main Properties into the Redevelopment Area, they now try to introduce redeveloper Michael Perrucci into claims about the Warren County Republican Organization and its Chairman Douglas Steinhardt.

Defendant notes that Plaintiffs state “Mr. Perruci’s name [(sic)] partner [at the Florio Firm] Mr. Steinhardt is Chairman of the Warren County Republican Committee.” (Pf. Br. at 18). Defendant states the Florio Firm previously provided a letter and certification, which was filed with this Court on July 8, 2022 under Docket No. WRN-L-248- 214, explaining that Perrucci has lacked an ownership interest in the Florio Firm since May 2021. (See Exhibit B to Statement of Undisputed Material Facts). As such, Defendant claims there is no shared ownership in a common business between Perrucci and Steinhardt to even link them in the first instance for purposes of a conflict-of-interest analysis concerning a November 1, 2022 action. Defendant reiterates that our Supreme Court has held that it is impermissible for a court to find “speculative” conflicts, which is exactly what Plaintiffs seek. Grabowsky, 221 N.J. at 554.

VIII. PLAINTIFFS’ REPLY

1. **The House of The Parents Of Member And Mayoral Candidate Randy Piazza, Jr., Is Formally Designated As Part Of The Project's Site And Is Within 200 Feet Of The Area Affected By The Ordinance Under Challenge Here**

Plaintiffs notes that the Town claims that Plaintiffs are trying to impute "one governmental entity's actions to another for conflicts purposes." - that is, Plaintiffs are trying to "impute" the Land Use Board's site plan approval for the Peron proposed warehouse to the Council's redevelopment plan amendment under challenge. Plaintiffs argue this is obviously incorrect. Plaintiffs argue the Council vote was to provide legal authorization for the Peron proposed warehouse. Additionally, Plaintiff states that at the time of the Council vote, the only warehouse proposal was the one approved by the Land Use Board in its Resolution. Plaintiff’s urge that by voting to approve the redevelopment plan amendment, Member Piazza was providing legal authorization for the Peron warehouse, which included demolishing the two properties at 560 and 562 South Main Street, on the next block from his parents house and well within the 200 foot rule. Plaintiffs argue that absent the redevelopment plan amendment, 560 and 562 South Main Street would not be demolished. Further, Plaintiffs state that the Piazza parents' house was specifically designated as part of the Site in the planning documents and the Piazza parents' house was property directly "affected by" the redevelopment plan amendment.

2. **The Council Vote Is Voided Because Member Piazza's Father Spoke in Favor**

Plaintiff states that in their initial brief they relied on the holding in the case of *Meehan v. K.D. Partners. LP*., 317 N.J. Super. 563, 565, n. 1 (App. Div. 1998), that if a parent of a member speaks at the hearing the member is conflicted and cannot vote or participate, as Member Piazza did here. Plaintiff argues that the Town mischaracterizes what happened in the case, claiming that the Appellate Division didn't "evaluate" that part of the trial court's holding, and that the trial court "ultimately vacated that determination." Plaintiffs allege that neither statement is true, and the Appellate Division was vitally concerned about the possibility of a conflict. Plaintiffs state that after the parties in *Meehan* agreed to a settlement (the municipality amended its ordinances to allow the uses) the trial court did enter a consent order, but another neighbor moved to intervene in the land use case to challenge the settlement and the order. Plaintiffs state that after the trial court denied the motion, the Appellate Division reversed and held that the neighbor had the right to intervene and challenge the appropriateness of the settlement. Plaintiffs state that contrary to the Town's assertion, the Appellate Division intended that on remand the issue of conflicts of interest should be the trial court's paramount consideration:

> As indicated, Bartkowski's relief as intervenor will be limited to challenging the settlement. At such time, the proper role of the trial judge will be to provide judicial oversight, not act in the role of the Board, a distinction which we recognized in Warner II. In this regard, the trial judge should specifically address the issue of the right of the parties to "settle" the conflict of interest issue which the trial judge had previously found dispositive in voiding the earlier approval. The judge should first make a threshold finding as to whether any of the settlement terms . . . are illegal or void as against public policy. Where the action of a municipal agency has been declared void because of a conflict of interest. the interests of the public, both real and perceived, require a precise and full articulation of why such conflict no longer stands as an impediment to approval of that same agency's action simply because of an objector's decision to no longer object to such action. All of these issues may be explored by Bartkowski on intervention.
>
> [*Meehan*,317 N.J. Super. At 574.]

Plaintiffs also address Defendant’s assertion there is no conflict of interest because Member Piazza's father was speaking as a public commenter, not a sworn witness before a land use board. Plaintiffs argue a conflict of interest does not hinge on whether a speaker is under oath or not.

3. **Member Piazza's Receipt Of Campaign Contributions From The Warren County Republican Committee Led By Mr. Perrucci's Law Partner, Douglas Steinhardt, Voids The Ordinance**

Plaintiffs' address Defendants argument that even if Member Piazza expects to receive aid from the County Committee in his campaign for Mayor, N.J.S.A. 40A:9-22.5 allows such contributions without creating a conflict if Member Piazza "has no ... reason to believe that the campaign contribution ... was given with the intent to influence the local government official in the discharge of his official duties." Plaintiffs argue the insurmountable problem with this argument is that the actions of Mr. Steinhardt and the Florio Perrucci firm conclusively prove that they very much intended to influence the actions of Member Piazza and the Council.

Plaintiffs use the companion case of WRN-L-000248-21, where they state the Florio, Perrucci firm, created the conflicts, to demonstrate this point. Plaintiffs state that three members of the Council (President McVey, Vice President Fulper and Member DiGerolamo, none of whom remain in those positions) were defendants in four lawsuits by Town employees alleging harassment and demotion and termination solely attributable to political views. Plaintiffs additionally point out that President McVey had been arrested for DUI and other traffic offenses and faced a potential term of incarceration as well as stiff fines and penalties. Plaintiffs state that in all five instances, the Florio Perrucci firm represented the Council members. Plaintiffs state that the firm negotiated cash settlements in the civil suits, none of which were paid by the members, and a favorable plea agreement in the DUI case.

Plaintiffs state there was no reason for the Florio Perrucci firm to engage these representations. Plaintiffs state that even if they were requested to undertake these representations, the firm could have declined. Plaintiffs allege that Florio Perrucci named and founding partner Michael Perrucci was and is the owner of Peron Construction, the owner of the riverfront Site. Plaintiffs state the first warehouse proposal had been discussed with the Town while these legal actions were pending. Plaintiffs argue the law firm actively created the conflicts with these representations. Plaintiffs urge that this demonstrates an intention to exercise improper influence over the Town Council when voting on the Peron proposal.

Plaintiffs reiterate that Mr. Steinhardt spoke in favor of the amendment at the Council meeting of October 4,2022. Plaintiffs state there was no reason for Mr. Steinhardt to address the

merits of the proposal - he is Mayor of Pohatcong and doesn't even live in Phillipsburg- but every Republican member of the Council, including Member Piazza would be well aware of the power Mr. Steinhardt held over their electoral ambitions. Plaintiffs claim these are not speculations, but hard facts. Plaintiffs state that, judging from the minutes, Mr. Steinhardt's remarks appear to have motivated the Council members to vote again (and unsuccessfully again) on a resolution of approval. Exhibit 7 at page 7. Plaintiffs urge that Mr. Steinhardt spoke because he intended to influence the Council to look favorably on his law partner's proposal, and that is certainly how Member Piazza would perceive it as well.

4. **Michael Perrucci And Douglas Steinhardt Are Law Partners; That Is How They Hold Themselves**

Plaintiffs state that in July 2022 counsel for the Town submitted a letter from Florio Perrucci named law partner Seth Tipton asserting that Mr. Perrucci (i) had retired "as an active partner", (ii) had sold his partnership interest in the firm, (iii) had no profit, loss or capital interest, and (iv) had not performed any legal services for which a client was billed. The letter raised many more questions than it answered, including (i) what is meant by "active partner", (ii) the terms of any buyout including over what period of time), (iii) whether he was paid anything other than compensation based on ownership, and (iv) what unbilled or uncompensated services he provided to clients or to the firm (such as management). Plaintiffs argue that none of this can overcome the fact that Mr. Perrucci and Mr. Steinhardt still both hold themselves out as partners in the firm, and as named partners. https://www. floriolaw.com/attorneys/, https://www. floriolaw.com/attorneys/Michael-j-perrucci/, https://www.floriolaw.com/attorney/douglas-j-steinhardt/.

IX. COURT'S DECISION

a. Standard of review

Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). A judge does not act as the fact-finder when deciding a Motion for Summary Judgment. *Judson v. Peoples Bank & Trust Co.*, 17 N.J. 67, 73 (1954).

Pursuant to Rule 4:46-2(c), the moving party must "show that there is no genuine issue as to any material fact challenged." In *Brill v. Guardian Life Ins. Co. of Am.*, 142 N.J. 520, 540 (1995), the Court stated:

> a determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the nonmoving party. The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial."

142 N.J. at 540, (alteration in original) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 214 (1986).

A genuine issue of material fact must be of a substantial, as opposed to being of an insubstantial nature. *Brill*, 142 N.J. at 529. "Substantial" means "[h]aving substance; not imaginary, unreal, or apparent only; true, solid, real," or, "having real existence, not imaginary[;] firmly based, a substantial argument." *Id*. (citations omitted). Disputed facts which are immaterial, fanciful, frivolous, gauzy, or merely suspicious are insubstantial, and hence do not raise a genuine issue of material fact. *Id.* (citations omitted).

In determining whether a genuine issue of material fact exists, the motion judge must "engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Brill*, 142 N.J. at 533. This weighing process "requires the court to be guided by the same evidentiary standard of proof—by a preponderance of the evidence or clear and convincing evidence—that would apply at the trial on the merits when deciding whether there exists a 'genuine' issue of material fact." *Id.* at 533-34.

In short, the motion judge must determine "whether the competent evidentiary materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." *Id.* at 540. Where the evidence presented "is so one-sided that one party must prevail as a matter of law," courts should not hesitate to grant Summary Judgment. *Globe Motor Co. v.*

Igdalev, 225 N.J. 469, 479 (2016); *Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A.*, 189 N.J. 436, 445-46 (2007) (quoting *Brill*, 142 N.J. at 529).

b. Whether Summary Judgment for Either Party Should be Granted

i. The location of Member Piazza's Parents' Home

The parties agree that Member Piazza's parents live at 309 Mercer Street. *See*, Pltf's Statement of facts, 23; Dfnt's Response to Statement of facts, 23. Further, the parties agree that 307 Mercer Street is within 200 feet of 560 and 562 South Main Street. *See*, Pltf's Statement of facts, 25; Dfnt's Response to Statement of facts, 25. If 560 and 562 South Main Street were part of the redevelopment area, Member Piazza may have been prohibited from voting on the Ordinance in question due to a conflict of interest. However, the Ordinance does not directly affect 560 and 562 South Main Street. The parties agree that 560 and 562 South Main Street are not part of the redevelopment project. Dfnt's Counterstatement of facts, 1; Pltf's Response to Dfnt's Counterstatement of facts, 1. Both parties agree these parcels are not referenced in the ordinance. *Id.* Moreover, both parties agree these parcels are at least one thousand feet from the redevelopment area. Dfnt's Counterstatement of facts, 2; Pltf's Response to Dfnt's Counterstatement of facts, 2.

The relevance of 560 and 562 South Main Street to the Ordinance is vital to Plaintiff's argument. Under Plaintiff's own statement of facts: the Ordinance provided legal zoning and redevelopment authority for a warehouse already given final site plan approval by the Phillipsburg Land use Board; and the Site Plan for the warehouse referenced that the redeveloper would acquire 560 and 562 South Main Street, so that trucks going in and out of the Site via McKeen Street would be able to utilize a wider turn.

Plaintiff asks this Court to apply the 200 feet rule such that where land is impacted by a zoning ordinance, but is not within the area changed by the zoning ordinance, those with an interest in that land may not vote on the ordinance. The foundation of the 200 feet rule relates to the Local Government Ethics Law which states:

> No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement

> that might reasonably be expected to impair his objectivity or independence of judgment.
>
> [N.J.S.A. 40A:9-22.5(d)]

In *McNamara v. Borough of Saddle River*, the appellate division invalidated a zoning ordinance amendment because a councilman's had a disqualifying interest. *McNamara v. Borough of Saddle River*, 64 N.J. Super. 426, 430-31, (App. Div. 1960). The zoning ordinance in *McNamara* targeted a property within 200 feet of the councilman's property. *Id.* at 430. The appellate division reasoned that the Legislature's requirement that owners of property within 200 feet of "property to be affected by" a zoning ordinance receive notice of the proceedings, was essentially a declaration of interest in the zoning treatment of that property. *Id.* Therefore, the appellate division held that the councilman had a disqualifying interest which required invalidation of the ordinance.

The statute which the appellate division relied upon in *McNamara* was N.J.S.A. 40:55-44, which read:

> The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, giving due notice thereof to the appellant. Said appellant shall at least 10 days prior to the time appointed for said hearing give personal notice to all owners of property situate within or without the municipality, as shown by the most recent tax lists of the municipality or municipalities, whose property or properties as shown by said lists are located within 200 feet of the property to be affected by said appeal.

Courts have been hesitant to expand the 200-feet rule to areas not effected by the statute. For instance, in *Fieldstone Assocs., L.P. v. Joint Land Use Bd. of Merchantville*, the appellate division did not disqualify a member voting on a proposed amendment to a redevelopment plan where the member owned property within 200 feet of the redevelopment area. *Fieldstone Assocs., L.P. v. Joint Land Use Bd. of Merchantville*, 2015 N.J. Super. Unpub. LEXIS 876, 10 (App. Div. 2015). The appellate division recognized that the local redevelopment and housing law did not contain a provision requiring notice to individuals within 200 feet like the zoning notice provision in *McNamara* did. *Id.* The applicable law in *Fieldstone*, N.J.S.A. 40A:12A-6(b)(3)(d), only required notice to the owners of record within the redevelopment area. *Id.* Therefore, the appellate division found that the legislature had made no "declaration of interest" for which disqualification was necessary where a member owned a separate piece of property 200 feet away from the redevelopment area.

The statute relied upon in *McNamara* is no longer in effect. The current statute governing notice for zoning changes is N.J.S.A. 40:55D-62.1. In relevant part, N.J.S.A. 40:55D-62.1 provides:

> Notice of a hearing on an amendment to the zoning ordinance proposing a change to the classification or boundaries of a zoning district . . . shall be given at least 10 days prior to the hearing by the municipal clerk to the owners of all real property . . . in the case of a classification change, within the district and within the State within 200 feet in all directions of the boundaries of the district, and located, in the case of a boundary change, in the State within 200 feet in all directions of the proposed new boundaries of the district which is the subject of the hearing.

This statute does not have the language "within 200 feet of the property to be affected by said appeal" as is present within the *McNamara* statute. Therefore, the only parties who need be notified by the municipality are those property owners actually within 200 feet of the property that is subject of any zoning change.

Applying the reasoning of *Fieldstone* to the modern statute, the Legislature only declared an interest for those whose property are within 200 feet of the rezoned land. In other words, a per se disqualifying interest exists only for those properties in the changed area, excluding those areas 200 feet from property merely "affected by" the changed area.

560 and 562 Main Street are not included within the ordinance. 560 and 562 Main Street and not rezoned due to the ordinance. 560 and 562 Main Street are not transferred due to the ordinance. The only relevance of these parcels is that they were to be independently acquired as by the redeveloper because the ordinance allowed his preapproved site plan to go forward. As a matter of law, these parcels are not part of "a site that is the subject of a zoning application" for purposes of the 200 feet rule. *See, Grabowsky v. Township of Montclair*, 221 N.J. 536, 540 (2015).

This being the case, Plaintiff cannot succeed on an argument which posits the location of Member Piazza's parents' home disqualifies him from voting on the ordinance.

ii. Disqualifying Conflicts

Political Implications

Plaintiff suggests that Member Piazza was barred from taking part of the ordinance vote because of alterative disqualifying interests. A conflict of interest exists where an official "has an

interest not shared in common with the other members of the public." *Griggs v. Borough of Princeton*, 33 N.J. 207, 219 (1960). In cases such as these, "[t]he decision as to whether a particular interest is sufficient to disqualify is necessarily a factual one and depends upon the circumstances of the particular case." *Van Itallie v. Franklin Lakes*, 28 N.J. 258, 268 (1958). Further, "[t]he question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty." *Id.* However, in determining whether disqualification is necessary, courts must "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." *Id*, at 269.

In the instant case, Plaintiff alleges that Member Piazza voted in favor of the ordinance to gain political favor. It is undisputed that the warehouse construction allowed by the ordinance was to be conducted by Peron Construction. Peron construction is owned by Michael Perrucci. Michael Perrucci was a founding member of the law firm Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC. Another named partner of that law firm is Dough Steinhardt. Dough Steinhardt happens to be the chair of the warren county republican committee. Member Piazza announced he was running for mayor of Phillipsburg on January 4, 2023. Member Piazza had the support of the warren county republican committee.

Plaintiff posits that Member Piazza wanted the favor of the Warren county republican committee, so he voted to allow the committee's chair's law partner's construction company to proceed with their warehouse project.

This appears to be a "remote and nebulous interest" which asks a fact finder to speculate as to the motives of parties. There are insufficient legitimate disputes of fact as to the motives of Member Piazza.

Member Piazza's Father's Public Comment

Plaintiff also argues that Member Piazza's father spoke in favor of Ordinance 2022-30 on November 1, 2022 and that that this alone is further ground for disqualifying his son. Plaintiff points to *Meehan v K.D. Partners, L.P.*, 317 N.J. Super. 563 (App. Div. 1998) as the primary basis of the argument.

Meehan concerned the challenge of the approval of a zoning ordinance where the father of a member Planning Board was a witness in the hearings. *Meehan*, 317 N.J. Super. at 565. The lower court voided the approval due to conflict of interest, but before the appeal could be heard, the matter settled. *Id.* The appellate division later heard the case regarding an intervention issue. *Generally*, *Id.* In allowing the intervention, the Appellate Division noted that "the trial judge should specifically address the issue of the right of the parties to "settle" the conflict of interest issue which the trial judge had previously found dispositive in voiding the earlier approval. The judge should first make a threshold finding as to whether any of the settlement terms . . . are illegal or void as against public policy." *Id.* at 572. However, the Appellate Division never commented on whether a conflict existed requiring the Ordinance to be voided.

A proper reading of *Meehan* does not create a per se rule that having one's father speak on an issue bars the member from voting on said issue. Instead, a normal disqualifying interest inquiry should be done. Viewing the material facts in the light most favorable to the Plaintiff, a reasonable fact finder could not resolve this issue in favor of Plaintiff.

X. CONCLUSION

For the forgoing reasons:

Plaintiff's Motion for Summary Judgment is DENIED;

Defendant's Motion for Summary Judgment is GRANTED as to the issue of whether Member Piazza was disqualified because his parents owning property within 200 Feet of the property that is affected by the ordinance.

Defendant's Motion for Summary Judgment is GRANTED as to the issue of whether Member Piazza was disqualified because his father spoke at a hearing regarding the Ordinance.

Defendant's Motion for Summary Judgment is GRANTED as to the issue of whether Member Piazza was disqualified due to the political ramifications of the Ordinance vote.