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VIA EMAIL ONLY

June 30, 2016

Mr. John Kaufmann
John.kaufmann21@gmail.com
44 White Street
Saratoga Springs, New York 12866

RE: FOIL request of June 12, 2016

Dear Mr. Kaufmann,

In accordance with the provisions of New York State Public Officers Law §87, this correspondence is in response your request for the following: "copy of the inquiry made to the ethics board regarding whether the mayor violated the city's ethics code by soliciting business from Saratoga Hospital" and "all correspondence between the mayor and the ethics board regarding this matter".

Attached herewith please find a copy of the inquiry which is responsive to your FOIL request. However, please note that "correspondence between the mayor and the ethics board regarding this matter" are not provided in response to your request as they fall under § 87(2)(g) and, as the matter before the ethics board has not yet been fully determined, the requested records also fall under § 87(2)(b).

Should you feel that you have been unlawfully denied access to records, you may appeal such denial in writing within thirty (30) calendar days. You may direct your appeal to this office.

If you require additional information or wish to discuss this matter further, do not hesitate to contact me.

This completes our fulfillment of your request, in accordance with the statutory requirements of the Public Officers Law.

Very truly yours,

Michelle Groce,
Executive Assistant to
City Attorney's Office



City of Saratoga Springs
OFFICE OF COMMISSIONER OF FINANCE

MICHELE D. CLARK-MADIGAN
COMMISSIONER OF FINANCE

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Deputy Commissioner

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Benefits Administrator

FLORENCE C. WHEELER
Payroll Administrator

February 1, 2016

Mr. Justin Hogan, Chair
Ethics Board, City of Saratoga Springs
City Hall - 474 Broadway
Saratoga Springs NY 12866

Mr. Hogan:

I am writing to you and the Ethics Board on behalf of the members of the City Council who have not recused themselves from the discussion and vote on Saratoga on Saratoga Hospital's Planned Unit Development Amendment: myself, Commissioner Scirocco, and Commissioner Mathiesen.

Mayor Yepsen's public statement explaining her recusal mentioned recent or current business dealings that she has had with the Hospital. This raises concerns, given that the Code of Ethics prohibits Council members from seeking to do business with entities who have applications before the Council. Section 13.3 I states:

"Officers and or employees shall not engage in, solicit, negotiate for or promise to accept work for an outside employer or business who does business with the City which creates an implied conflict with or impairs the proper discharge of his [her] duties or results in personal gain."

The only information the three of us have regarding the reason for the Mayor's recusal is her statement to the Public and Council on January 19, 2016:

"Before we move into introductory comments on the Public Hearing, I do have a statement to read, um, and that is to do with my participation in this project and this process and I want to be fully forthcoming. Um, so I appeared before the City Ethics Board recently to seek an opinion regarding my participation in the Hospital PUD discussion and vote because I have recently discussed a possible private contract between me and the Saratoga Hospital Foundation. Um, I have a small consulting business and I have done work for the Hospital Foundation in the past consulting with them on fundraising issues and there is a possible future employment. The Ethics Board issued me an opinion at 10:55 AM this morning during our Preliminary Agenda meeting executive session this morning that we were here this morning indicating that my voting on the Hospital PUD would be contrary to Section 13-3 subsection I of our City Code of Ethics. Um, so I intend to accept their opinion. I will therefore recuse myself from future participation with respect to this proposed Hospital PUD, um, and at this time I'm going to turn it over to Commissioner of Finance which in our Charter states if the Mayor cannot be available the Commissioner of Finance runs this portion of the meeting."

Not only does our City Ethics Code section 13.3 I prohibit a public officer from negotiating with a potential employer who might have business before the City, it also clearly states that public officers shall not engage in nor solicit or promise to accept work which creates an implied conflict, or impairs the proper discharge of our duties, or results in personal gain. The Mayor's statement regarding her recusal may indicate that she is in violation of section 13.3 I, whether or not she recused herself from a discussion or vote on the matter that was before us.

We see nothing that pertains to past or future work in Section 13.3 I, so the Mayor's mention of such appears to us to be a non-germane distraction from the real issue: the Mayor's publicly acknowledged solicitation to perform fundraising work for the Hospital Foundation while it has an application before the Council that, if successful, would require such fundraising services. Furthermore, we have heard - but been unable to confirm - that given the appearance of impropriety and inherent conflict of interest presented by doing business with the Mayor or her firm while seeking Council approval of proposed zoning changes to accommodate their expansion plans, the Hospital informed the Mayor that it would not entertain such opportunities; we have also heard that this was communicated to Mayor Yepsen before she made her public statement of recusal.

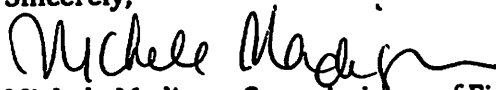
We are seeking clarification of this from other sources. As a result, we are asking you to provide us with the following information:

- A copy of the inquiry that the Ethics Board received from Mayor Yepsen;
- A copy of the minutes from the January 14th Ethics Board Meeting;
- A copy of the letter sent to Mayor Yepsen from the Ethics Board that the Mayor cited at the January 19th City Council Meeting as the reason for her recusal;
- A copy of the written summary of your advisory opinion, as required by Procedures of the City of Saratoga Springs Board of Ethics, Section 6.10;
- Evidence of any due diligence carried out by the Ethics Board as it pertained to the request for an Advisory Opinion (we hope that Saratoga Hospital was contacted to verify all information received by the Ethics Board prior to issuing their opinion).

We would also request an opinion from the Ethics Board as to whether the discussions of a possible private contract between the Mayor and the Hospital Foundation, which the Mayor alluded to in her recusal statement, were in and of themselves violation of the City's Ethics Code. If such discussions were being held while the Hospital's PUD amendment application was before the Council, would these be at odds with an Ethics Code that states: *"Officers ... shall not ... solicit, negotiate for or promise to accept work for an outside employer or business who does business with the City which creates an implied conflict with ... or results in personal gain."*

Thank you for your consideration in this matter.

Sincerely,



Michele Madigan, Commissioner of Finance

cc: Commissioner Anthony "Skip" Scirocco, Department of Public Works
Commissioner Christian Mathiesen, Department of Public Safety