

# PASHMAN STEIN

A PROFESSIONAL CORPORATION  
COUNSELLORS AT LAW  
COURT PLAZA SOUTH  
21 MAIN STREET  
HACKENSACK, NEW JERSEY 07601-7054  
(201) 488-8200  
FAX (201) 488-5556  
www.pashmanstein.com

January 12, 2007

Mayor John F. McKeon and Members of the Township Council  
Township of West Orange  
66 Main Street  
West Orange, New Jersey 07052

*Re: West Orange - Richard Trenk  
347 Mt. Pleasant LLC  
Our File No. 4235-001*

Dear Mayor McKeon and Members of the Township Council:

On September 27, 2006 we were formally retained as the Township's independent counsel to investigate and determine whether there was a conflict of interest or ethical violation committed by Township Attorney Richard D. Trenk in connection with his planned acquisition of an interest in property known as 347 Mt. Pleasant Avenue, West Orange, New Jersey.

This constitutes my report and includes the conclusion that I have reached in the course of the investigation.

In conducting the investigation I conducted numerous interviews and had telephone conversations with a substantial number of individuals who had personal knowledge of relevant facts. Among the interviews that I conducted are the following:

- A. 9/18/06 - telephone interview of Councilmen Skarbnick and Giuditta;

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- B. 9/25/06 - interview of Councilmen Skarbnick and Giuditta;
- C. 9/29/06 - interview of Matt Scola, Esq., an attorney who performed services for the Township in connection with Organon's tax appeal;
- D. 9/29/06 - interview of Susan Borg, Township Planner for Township of West Orange;
- E. 10/4/06 - interview of Glenn Scotland, Esq. and Steve Mariella, Esq., Township's redevelopment attorneys;
- F. 10/10/06 - interview of Robert Podvey, Esq., attorney for Organon;
- G. 10/10/06 - interview of Leonard Lepore, Director of Public Works;
- H. 10/10/06 - interview of Mayor John McKeon;
- I. 10/10/06 - meeting with Mayor McKeon and members of the Township Council;
- J. 10/27/06 - interview of Richard Trenk and his attorney Michael Sirota;
- K. 11/22/06 - meeting with Richard Trenk and Michael Sirota;
- L. 11/27/06 - telephone interview of Glenn Scotland;
- M. 12/13/06 - interview of Gene Diaz and Ed Cohen, principals of Prism Green Associates, LLC, and Robert Goldsmith, Esq. of Greenbaum Rowe law firm;

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- N. 12/28/06 - telephone interview of Stuart Portney, a professional planner employed by The Metro Company;
- O. 12/29/06 - telephone interview of Sal Anderton, Esq., attorney for West Orange Planning Board; and
- P. 1/2/07 Meeting with Mayor and Township Council.

In addition to those personal and telephone interviews, we have examined numerous documents provided to us by Township officials and employees. Included among the documents that we have examined are the following:

- A. Option Agreement between Organon and the Township of West Orange dated February 17, 2006;
- B. investigation report concerning the determination of the proposed Organon pharmaceutical manufacturing site as an area in need of redevelopment, prepared by The Metro Company, March 15, 2006;
- C. request for qualifications and development concepts relating to the redevelopment of certain areas in need of redevelopment dated April 13, 2006;
- D. response of Prism Capital Partners to the Township's request for qualifications and development concepts;

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- E. Township resolution dated July 18, 2006 ratifying Township Council's designation of Organon site as area in need of redevelopment;
- F. Organon redevelopment plan prepared by the Metro Company, dated July 27, 2006;
- G. Resolution No. 38606 dated December 19, 2006 authorizing execution of redevelopment agreement with Prism Green Associates;
- H. Redevelopment Agreement between the Township of West Orange and Prism Green Associates dated December 20, 2006;

**FACTUAL BACKGROUND**

The relevant factual background has been compiled on the basis of personal interviews and by a review of documents and materials furnished to me by Township officials.

My understanding is that the Township of West Orange (Township) has been interested in the redevelopment of its downtown/Main Street area since 1999. In March of 2000, the Township Council authorized the Planning Board to conduct a redevelopment study. In early 2002, the Township engaged redevelopment consultants to prepare a downtown redevelopment plan. A presentation of the downtown redevelopment plan to the Township Council and Planning Board was made in September, 2002. In February 2003 the Township enacted an ordinance adopting a Township redevelopment plan for the downtown/Main Street area.

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Although several developers submitted proposals to the Township in connection with that redevelopment plan, the Township was not successful in arriving at a satisfactory agreement with any of the interested developers. The Township officials believed that the main obstacle to an agreement at that time was that the redevelopment of the downtown/Main Street area was complex and expensive and that it was difficult for redeveloping firms to project that their efforts would yield an adequate profit.

An executive of Millennium Homes, one of the developers that responded to requests for proposals for the original downtown/Main Street redevelopment, had suggested in 2004 the possibility that the Organon property be considered as an additional redevelopment site. The suggestion apparently was prompted, at least in part, by an assumption that redevelopment of Organon as well as the downtown/Main Street area would present a greater opportunity for profit than would redevelopment of the downtown/Main Street area only.

Robert Podvey, Esq., an attorney who has represented Organon for several years, informed me that Organon is a pharmaceutical company that has been operating in West Orange for over forty years. It is owned by Akzo-Nobl, a Dutch company. The Organon property originally was purchased by Organon in 1959 and formerly had been used as part of the West Orange public golf course. Beginning with the initial construction of a primary building in 1959, Organon expanded the facility to accommodate the growth of its business, with major additions to the building being

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constructed in 1968, 1977, 1982 and 2001. Although originally occupying approximately 60,000 square feet, the main manufacturing building currently consists of approximately 175,000 square feet, with a footprint of approximately 112,000 square feet. The building occupies five stories and is located on a steep slope that contains 15-25% grades.

In 2003, the United States Food and Drug Administration required Organon to make substantial improvements to its factory building. Based on that requirement, Organon decided to relocate its manufacturing plant to Europe, to move its New Jersey headquarters to Roseland and to sell its West Orange campus consisting of approximately 19 acres.

In April 2004, Organon commenced offering its property for sale on a website that identified three parcels:

a) 375 Mt. Pleasant Avenue - this property is occupied by the primary 175,000 square foot building that contained manufacturing equipment, offices and laboratory facilities and occupies approximately 12 acres;

b) 347 Mt. Pleasant Avenue - this property was purchased by Organon in the late 1980's and presently consists of an office building of about 49,000 square feet. As a separate office building the parking would be non-conforming, but the Township had treated the entire Organon site as a single parcel and calculated parking based on available parking spaces on the entire 19-acre site. The Mt. Pleasant Avenue office building site consists of approximately 1.76 acres, but the website offering

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proposed that that parcel be combined with a 1.47 acre lot from the main Organon parcel in order to provide adequate parking for the Mt. Pleasant Avenue building;

c) the Prospect Avenue parcel - this consists of about five acres and is occupied by three buildings. The main building is a 39,000 square foot office building with an internal parking deck. In addition, there is an 18,000 square foot building as well as an old Verizon maintenance garage that was being used as a gym.

In September 2004, the executives of Prism Capital Partners, LLC (Prism) began to negotiate with Organon concerning a purchase of the entire 19-acre tract. According to the Prism executives, during those negotiations Organon representatives had shown them a plan to add parking for use by the 347 Mt. Pleasant Avenue office building on Organon property immediately to the west of that building. Those negotiations were complicated by concerns about the cost of an environmental cleanup of the Organon manufacturing site. According to Gene Diaz and Ed Cohen of Prism, Organon had engaged in preliminary discussions with Township officials about rezoning the Organon site for residential use, but no formal action was requested or taken.

The negotiations between Prism and Organon did not result in a sale of the entire Organon property because Organon wanted to complete the environmental cleanup before selling the main manufacturing parcel. Prism was unwilling to wait for the completion of the cleanup and offered to purchase the Prospect

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Avenue property immediately. Some time in the spring or summer of 2005, Prism acquired the Prospect Avenue parcel for \$5.4 million. I believe that property is presently unoccupied and awaits Prism's determination about how it is to be developed.

According to Bob Podvey, when Organon decided to sell its West Orange property it filed a tax appeal for the tax years 2003, 2004 and 2005. For the year 2003, the main manufacturing parcel known as 375 Mt. Pleasant Avenue, and designated on the tax map as Block 155, Lot 26, was assessed for \$6,978,000. The Mt. Pleasant Avenue office building site, occupying approximately 1.88 acres and designated as Block 155, Lot 29, was assessed in 2003 at \$2,648,500. The Prospect Avenue property known as 471-475 Prospect Avenue, and designated on the Tax Map as Block 155, Lot 126.2, was assessed for \$3,595,400 for 2003. Accordingly, the aggregate assessed value of the entire Organon property was approximately \$13.121 million in 2003.

In 2003, West Orange was assessing property at 36.43% of true value, which meant that the true value of the entire Organon site would have had to be approximately \$36 million in order to support the assessed valuations. Appraisals obtained by the Township during the tax appeal litigation suggested that it would be difficult for the Township to support the assessed valuations of the Organon properties.

As a matter of collateral relevance to the primary investigation I have been requested to perform, I learned that in the course of the tax appeal litigation, a West Orange attorney



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named Matt Scola, who was representing West Orange in the early stages of that litigation, served a set of standard interrogatories on the attorney for Organon in the tax appeal proceeding. One set of interrogatories was served with respect to each of the three Organon parcels of property. Question 13 in the standard interrogatories asked whether the specific parcel of property had been offered for sale during the past three years and, if so, requested information about the terms of any offers, either written or oral, that were received.

With respect to the Prospect Avenue parcel, known as 471-475 Prospect Avenue (that eventually was acquired in 2005 by Prism), Organon's response to Question 13 included an email from an Organon executive named Mike Kahrer, dated May 19, 2003, addressed to two other Organon executives, Rich Antoniewicz and Jonathan Beck. That email reads as follows:

We received one verbal offer of \$3.5 million from Richard Trenk, who happens to be West Orange's attorney for the Prospect Avenue property.

We have an agreement with Real Estate Strategies to be our broker. John you should have the details. If you need a copy, let me know.


We have not offered the property for lease, but have considered that in our deliberations.

Mike


Matt Scola recalled having some concern when he learned about the offer from Richard Trenk because the offer was less than the assessed value of the Prospect Avenue parcel, which at the time

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was \$3,595,000. In addition, based on West Orange's 36.43% ratio to true value, the true value of the parcel would need to be approximately \$9.8 million to support the assessment and Richard Trenk's offer was substantially less than that figure. Apparently, nothing transpired after the offer was communicated. When I met with Richard Trenk he confirmed that he had made the offer individually and not in a representative capacity. 

Matt Scola informed me that in the later part of 2005 the tax appeal file was transferred from him to another attorney named Matthew O'Donnell.

He also told me that in December 2005 Richard Trenk called and informed him that he had negotiated a settlement of the tax appeal with Robert Podvey.  Matt Scola recalled that the terms of the settlement contemplated that the Township would be given an option to acquire Organon's 12-acre primary manufacturing site for \$5,750,000, except that a 1.47 acre portion of that property would be resubdivided and combined with the 347 Mt. Pleasant Avenue office building site for use as additional parking. As part of the purchase price, Organon would receive a tax refund in settlement of its tax appeal in the amount of \$1,125,000 and the Township would pay to Organon upon the exercise of the option an additional \$4,625,000. In addition, the settlement contemplated that the assessment on the main Organon site and on the 347 Mt. Pleasant Avenue site would be reduced by 50% for the year 2006. Subsequent to the telephone conversation, Richard Trenk sent a letter to Matt Scola and to Matthew O'Donnell dated December 27,

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2005 setting forth the terms of the settlement. Mr. Trenk's letter indicated that if the Township did not exercise the purchase option, the Township would be obligated to pay Organon \$1,125,000 as part of the settlement of the tax appeal. Attached to the letter was a document entitled "Term Sheet between Organon Corporation and Township of West Orange" that was unsigned and specifically recited that it was subject to final approval by Organon and the Township. The Term Sheet indicated that a condition subsequent to this settlement was the following:

Subdivision to be determined by Zoning Board concerning Block 155 Lot 29 (the Office Building Parcel with 1.88 acres) to include 1.12 acres of vacant land located on Block 155 Lot 26.

Item VI of the Term Sheet stated as follows:

Organon to cooperate and consent to designation of Block 155, Lot 26 as 'area in need of redevelopment' pursuant to N.J.S.A. 40A:12a-5(the 'Redevelopment Law').

Bob Podvey explained to me that while the tax appeal was pending, he developed the idea that it would be in Organon's best interest to sell off the 347 Mt. Pleasant Avenue property separately, because with adequate parking that site would have a significant market value. Mr. Podvey said that he did not believe that the 347 Mt. Pleasant Avenue property would qualify as an area in need of redevelopment because, unlike the main factory building that had been stripped down and was in a state of disrepair, 347 Mt. Pleasant Avenue was in reasonably good condition. He knew that the parking for that site was deficient and therefore decided

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that it would be necessary to resubdivide out of the 12-acre Organon site a parcel of property adjacent to 347 Mt. Pleasant Avenue to be used for parking. He believes that he developed that idea in September or October of 2005 and discussed it with Mike Kahrer and Pat Osinsky, Organon executives, as well as with Andy Zizas, the real estate broker associated with Real Estate Strategies, the firm that was handling the sale of the Organon property. They all agreed that the combination of the parking area with the 347 Mt. Pleasant Avenue parcel and the independent sale of that parcel was in Organon's best interest.


When I interviewed Mr. Podvey in October I had learned that some Township officials were concerned about the effect of the proposed resubdivision on the possible commercial redevelopment of the Organon site. I asked Mr. Podvey about the possibility of Organon making available its right to use the adjacent Public Service property as a source of additional parking, instead of the parcel from the main Organon property. In April 2000 Organon had entered into a lease agreement with Public Service Electric & Gas Company for the right to use a portion of the adjacent Public Service property for additional parking for the 347 Mt. Pleasant Avenue office building. The lease is for ten years with renewal options for three consecutive five-year periods. Mr. Podvey informed me that Organon elected not to develop that property for parking because there were associated drainage costs in the amount of approximately \$250,000, and also because that property would yield approximately 75 parking spaces, which was substantially

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less than the 150 parking spaces that could be constructed on the adjacent Organon parcel to be resubdivided.

Based on my investigation, it is apparent that some time prior to December 2005 the Mayor and members of the Township Council must have decided that the best way to revitalize the redevelopment project was to consider combining the main Organon site, occupied by a 175,000 square foot abandoned building, with the downtown Main Street site, in order to create a more comprehensive and more commercially attractive redevelopment

project. During my initial interview with them, Glen Scotland and Steve Mariella informed me that Richard Trenk, who has  described by several interviewees as the "quarterback" of the redevelopment project, discussed with them the process by which the Township could acquire the Organon site and then resell it to a redeveloper. Mr. Scotland replied that the Township would be required to comply with the local government bidding laws unless Organon had been designated as an area in need of redevelopment. Mr. Scotland also recalled that late in 2005 Mr. Trenk informed him that Township officials were talking to Prism and another company about their interest in participating in the redevelopment of the downtown project was combined with the Organon site.

Although no one has specifically related to me the sequence of events that led to the settlement of the Organon tax appeal with terms that combined a tax refund, a future tax reduction and an option to purchase the 12-acre Organon site, it appears that that

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decision on the part of the Township must have crystallized in the period between November 2005 and January 2006.

A resolution of the Township Council authorizing the execution of the Option Agreement with Organon was adopted on February 7, 2006. The Option Agreement itself is dated February 17, 2006 and the property to be acquired is described in Schedule A to the Option Agreement as follows:

Approximately eleven (11) acres of the 12.629 acres currently contained in Block 155, Lot 26 on the West Orange Tax Map. It is agreed and acknowledged that up to two (2) acres of vacant land which is now part of Block 155, Lot 26 will be subdivided from Lot 26 and added to Block 155, Lot 29 (an Office Building Parcel with 1.88 acres) to provide space for parking on said Lot 29 (the exact size and location of such land to be subdivided from Lot 26 will be determined by the Zoning Board).

The option price was \$5,750,000 and the option was exercisable on or before September 29, 2006. A proposed purchase and sale agreement was attached to the Option Agreement.

The Option Agreement permitted the Township to investigate the condition of the Organon property and obligated Organon to deliver to the Township all information relating to the environmental condition of the premises. The Option Agreement stated that there was a pending environmental investigation of the premises and that if the Township exercised the option it would assume full responsibility for environmental cleanup.

The Option Agreement also provided for the settlement of the tax appeal on the terms previously described. With respect to the

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tax refund due to Organon, the Option Agreement provided that if the Township exercised the option then a "\$1 million portion of the purchase price . . . shall be deemed payment in full satisfaction of all amounts due to Organon in connection with the settlement of the Pending appeals." If the Township does not exercise the option, then the Township was obligated to pay Organon \$1,125,000 on or before November 15, 2006 in settlement of the tax appeals. In addition, the agreement recited that the Township has reduced the tax assessment on the land and improvements located at Block 155, Lot 26 from \$7,086,400 to \$2,756,300 effective January 1, 2006, and that the Township has reduced the tax assessment on the land and improvements located at Block 155, Lot 29 (the Mt. Pleasant Avenue office building site) from \$2,648,500 to \$1,483,100, effective January 1, 2006.

Consistent with the Option Agreement, the Township Council took action in January 2006 to determine whether the Organon site was appropriate for redevelopment. On January 24, 2006 the Council by resolution authorized the hiring of Stuart Portney of the Metro Group to prepare a study of the main Organon manufacturing site to determine whether it could be designated as an area in need of redevelopment. On the same date the Council authorized the retention of the law firm of McManimon & Scotland as redevelopment counsel.

In the meantime, Organon was continuing in its efforts to find a buyer for the Mt. Pleasant Avenue office-building site. On February 23, 2006 Organon entered into an agreement with an

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organization known as Sofo Northfield I, LLC (Sofo), to sell the 347 Mt. Pleasant Avenue parcel to the Sofo organization for \$5,950,000. The agreement obligated Sofo to apply for and pursue an application for subdivision approval to authorize the resubdivision of a parcel of property adjacent to the Mt. Pleasant Avenue site and depicted on Schedule K to the agreement for additional parking. The agreement provided that either party could terminate the agreement if the resubdivision application was denied by the municipality. That agreement also provided that either party could terminate the agreement if Organon was unable to obtain environmental clearance on the property by the time of the closing date and, in addition, was unable to enter into a remediation agreement for the property with the New Jersey Department of Environmental Protection.

Mr. Podvey informed me that some time in March 2006 the Sofo organization decided not to purchase the property. Whether they exercised the right to terminate the contract as a matter of right, or whether Organon agreed to permit them to terminate the contract, the fact is that the agreement between Organon and the Sofo group was cancelled sometime in March 2006. In early April 2006, Organon decided that its real estate broker would solicit new offers for 347 Mt. Pleasant Avenue, subject to the understanding that Organon would apply for the resubdivision.

During my initial interview with Richard Trenk, he informed me that on April 5, 2006 a real estate consultant named Mark Schaevitz, who serves on the board of a temple along with Mr.



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Trenk, informed Richard Trenk that Organon's agreement with the Sofo group had been terminated and that Organon was interested in offers from new purchasers. Mr. Trenk suggested to Mr. Schaevitz that he contact Ed Bond, a partner in the accounting firm of Bederson & Company LLP (Bederson), because Mr. Trenk believed that the Bederson firm would be interested in becoming a prospective tenant. The Bederson firm occupied office space under a lease that was to expire in the summer of 2006. In addition, Mr. Trenk knew that his law firm was a tenant occupying about 10,000 square feet in the Reckson complex located behind the Essex Green Shopping Center in West Orange and that his firm was interested in more and different space. He also believed that some of his law partners might be interested in acquiring an equity interest in the building. Mr. Trenk personally spoke to Ed Bond and Mr. Bond said that his firm was interested in becoming a tenant in the building. Mr. Trenk also informed me that he assisted Ed Bond in putting together the investment group that eventually was successful in signing an agreement to acquire the building.

According to Robert Rodvey, Organon met with three potential buyers on April 18, 2006. One group was the Trenk/Bond group which has since formed an LLC known as 347 Mt. Pleasant LLC. Another prospective buyer was KAM Master, LP. A third prospective buyer was Vision Equities.

The Bond/Trenk group made the best offer and subsequently entered into an agreement with Organon to acquire the property. According to Mr. Trenk, the purchase price is \$6.5 million and the

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purchasing group contemplates a cash investment of \$2.5 million. Mr. Trenk's interest is 4% and he will be investing \$100,000, of which \$25,000 already has been deposited. Mr. Trenk indicates that there are at least twenty investors and that two of the investors are law partners of his, Elnardo Webster and Joseph DiPasquale. In addition, three or four partners in the Bederson accounting firm are investors. The rest of the participants are neither law partners of Mr. Trenk nor partners of the Bederson accounting firm. The intention is that both Mr. Trenk's law firm and the Bederson accounting firm will be tenants in the building.

I have asked for a list of the investors but, because of a confidentiality provision in the 347 Mt. Pleasant LLC Operating Agreement, the attorney for the LLC has declined to provide me with the names of the other members of the LLC, nor have I obtained a copy of the agreement between Organon and 347 Mt. Pleasant LLC. However, I was informed that the agreement was contingent on the approval of the resubdivision for which Organon was obligated to apply.

Richard Trenk also informed me of some significant dates concerning his group's prospective acquisition of the 347 Mt. Pleasant Avenue office building. According to Mr. Trenk, between April 18 and April 21, 2006 he advised Mayor McKeon and Council President Parisi that he was acquiring a small interest in an LLC that would probably be purchasing the 347 Mt. Pleasant Avenue site. On April 20, 2006, an attorney named Christopher Gangaro formed an LLC known as 347 Mt. Pleasant LLC. On April 21, 2006,

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Organon forwarded to Mr. Gangaro the initial draft of the proposed purchase agreement for the Mt. Pleasant Avenue office building. On May 23, 2006, Organon and 347 Mt. Pleasant LLC executed an agreement for the purchase of the Mt. Pleasant Avenue office-building site.

During the spring of 2006, the Township Council began to take concrete steps toward the redevelopment of the Organon site. On March 15, 2006, the Township Council received the "Investigation report concerning the determination of the proposed Organon pharmaceutical manufacturing site as an area in need of redevelopment" prepared by the Metro Company, LLC. That report concluded that the Organon site qualified as an "area in need of redevelopment" as defined in N.J.S.A. 40A:12a-5 in that it met the criteria of subsections a, b and d of the statute. The Metro company report contained the following conclusions:

The analysis presented in this study firmly supports the finding that despite aggressive marketing efforts, Organon could not sell or lease the property to another pharmaceutical company resulting in the subsequent gutting and abandonment of the manufacturing facility, clearly satisfying the statutory requirements under this subsection . . . the highly specialized, ad hoc and piecemeal nature of the construction of the main pharmaceutical building over many years, the inefficient and confusing multi-level design, the poor arrangement of buildings and parking on the site, the steep topography associated with the westerly portion of the tract, and the deed restriction limiting the site's option for redevelopment has created a condition of functional obsolescence, which clearly meets the statutory requirements under these subsections.

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. . . Therefore, it is recommended that the Study Area as described in this investigation be declared an Area in Need of Redevelopment.

On April 11, 2006, the Township Council designated the 11-acre Organon site as an area in need of redevelopment. On April 13, 2006 the Council issued a "Request for Qualifications and Development Concepts" relating to the redevelopment of the downtown/Main Street area as well as the Organon property. The Request for Qualification and Development Concepts specifically stated that

the Township's focus is on the Downtown Redevelopment Area; however, as the Township now holds this option to purchase the Organon Redevelopment Site, submissions incorporating concepts for the Organon Redevelopment Site will be considered. Notwithstanding the above, however, any response that focuses solely on the Organon Redevelopment Site and does not include the Downtown Redevelopment Area shall not be considered a responsive submission. [Request for Qualifications, Pg. 1.]

On or about May 15, 2006, West Orange received six submissions from developers in response to its request. On May 22, 2006, Prism and an organization identified as Ekstein made presentations to the Township Council concerning the redevelopment of the downtown area and the Organon site. On May 23, 2006, the Township adopted Resolution No. 141-06 authorizing negotiations with Prism Capital Partners concerning the redevelopment of certain parcels within the downtown redevelopment area.

The response of Prism Green Associates to the request for qualifications and development concepts discussed two potential

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uses for the Organon site. Prism provided site plans for a high quality residential development of three-and four-story buildings that preserved most of the existing green area. The four buildings are in combinations of three-and four-story structures comprising 254 residential units.

Prism's response also stated that although residential use may ultimately be the highest and best use for the Organon site, certain elements of the existing structures "may lend themselves extremely valuable towards adaptive reuse as a data center and/or business interruption facility." Accordingly, Prism proposed dual zoning to permit either the proposed residential development or a potential commercial use (Prism response, pages 8 and 9).

On June 16, 2006, Steve Mariella and Bill Northgrave attended a meeting at the Roseland office of the Greenbaum Rowe law firm. Bob Goldsmith of that firm represented Prism and the purpose of the meeting was to begin preliminary negotiations with Prism concerning a proposed redevelopment agreement for the

downtown/Main Street area and the Organon site. Susan Berg also was present. At that meeting, Ed Cohen, one of the principals of Prism, said that he had heard it rumored that Richard Trenk was part of the group buying an office building that is adjacent to the Organon property. Mr. Cohen stated that it would be difficult to develop the primary 11-acre site commercially if the parking on the site was compromised and he referred specifically to the fact that a portion of Organon's main site was to be resubdivided to become part of the Mt. Pleasant Avenue office-building site.

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According to the Prism executives, they previously had conducted discussions with Richard Trenk and Councilman Parisi about the zoning of the Organon site. They clearly preferred residential development of the Organon site, but as of the April/May 2006 period no agreement had been reached about whether the Organon property would be zoned for residential use. Prism's principals understood that some members of the council were more open-minded about residential zoning than others, and that some members of the council had a preference for commercial zoning. The Prism executives told me that they were not specifically aware, until the meeting on June 16, 2006, that the sale of the Mt. Pleasant Avenue office building also contemplated a conveyance of approximately 1.5 acres from the primary Organon site for parking purposes. Gene Diaz and Ed Cohen also noted that when they were negotiating with Organon in 2004 to buy the entire Organon Property, Organon had a plan for additional parking for the Mt. Pleasant office building on property west of that building. The Prism executives stated that this was the first occasion on which they fully understood that the proposed resubdivision was an essential term of the sale by Organon of the 347 Mt. Pleasant Avenue office building.

Gene Diaz and Ed Cohen also informed me that as of that date they believed that Prism might be obligated to use its best efforts to develop the Organon site commercially and that their discussions with the Township had progressed to the point that residential zoning would be acceptable only if Organon's efforts

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to develop the site commercially were unsuccessful. They believed that the resubdivision materially could affect Prism's ability to develop the Organon site commercially because of the loss of parking that would result from the resubdivision. The Prism executives represented to me that it might not be possible to develop the Organon site for commercial purposes because the parking remaining on the site would not be sufficient to support the volume of office space necessary for the Organon project to be profitable.

The Prism executives recalled that either at that meeting, or in subsequent meetings, they suggested the possibility of shared parking on the parcel to be resubdivided, a concept that is expressly noted in the redevelopment plan adopted by the Township.

Glenn Scotland and Steve Mariella informed me that, as a result of the June 16, 2006 meeting, they were concerned when they heard that Richard Trenk was part of the purchasing group for 347 Mt. Pleasant Avenue. Bill Northgrave, a lawyer in the McManimon & Scotland firm, telephoned Richard Trenk and questioned him about his participation in the purchasing group. Mr. Northgrave informed me that their conversation was brief. Mr. Trenk informed Mr. Northgrave that there was no cause for concern because he had not become involved until after the Township's negotiations with Organon to acquire the property had been completed and he believed that there was no problem with his participation.

On or about July 27, 2006 the Metro Company, the Township's planning consultant in connection with its redevelopment efforts,

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submitted the Organon Redevelopment Plan. The Plan stated that the Organon redevelopment area is comprised of approximately 11- acres of the 12.629 acres contained in Block 155, Lot 26. The Plan noted that

a portion containing approximately 1.12 acres is to be subdivided and merged into Block 155, Lot 29 for the purpose of preserving a reasonable amount of parking for the adjoining office building that is outside of the Redevelopment Area.

Map No. 2, designated as the Organon Site Boundary Map, showed that the redevelopment area excluded approximately 1.12 acres to be resubdivided and combined with the Mt. Pleasant Avenue office building site. Organon Redevelopment Plan, page 5.

Under the heading "Redevelopment Objectives," the Plan specifically identified the following objectives:

- A. To eliminate substandard, obsolete and/or dilapidated structures and remove negative influences.
- B. To encourage to the fullest extent possible the redevelopment of the Organon site for non-residential uses such as office buildings, research laboratories, data processing centers and related uses.
- C. To allow for the development of multi-family residential, including townhouses at the Organon site, should it be reasonably determined by the Township Council that non-residential uses are not feasible given real estate market conditions, economics, building and site conditions, and/or related considerations such as, but not limited to, environmental standards, health codes or other similar circumstances, or as otherwise may be provided in a Redevelopment Agreement.



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The Organon Redevelopment Plan included a section entitled "Specific Land Use Regulations". Subsection A, entitled "Preferred Non-Residential Use," encompassed among the permitted commercial uses parking facilities, including a reference to possible shared parking with an adjoining office use. The Plan described permitted parking uses in the following terms:

Surface parking and parking decks, including parking facilities serving uses on adjacent properties, provided however, that should the parking deck be shared between adjoining office uses that the developer shall submit to the Planning Board for [its] approval a detailed shared parking demand analysis demonstrating the availability of adequate parking sufficient to accommodate the parking demand generated by all affected users (emphasis added).

I was informed both by Susan Borg and Stuart Portney that that reference to shared parking in the Organon Redevelopment Plan (page 20) specifically was intended to authorize the shared use of the portion of the main Organon lot that was to be resubdivided and combined with the Mt. Pleasant Avenue site. Mr. Portney believed that the concept of shared parking was suggested by executives of Prism. He informed me that he was concerned about including any reference to shared parking in the Redevelopment Plan because he was uncertain about how the shared parking concept could be implemented if the resubdivision was approved by the Planning Board.

Subsection B of the Land Use Regulations authorized an "alternative residential use," if the Township Council should reasonably determine "that non-residential uses are not feasible

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given real estate market conditions, economics, building and site conditions". The maximum density to be allowed for multifamily mid-rise residential buildings was 25 dwelling units per acre with a maximum of 254 dwelling units constructed in buildings four stories in height erected over a parking level with a maximum of 55 feet to the roof. Alternatively, a single association townhouse development was authorized with a maximum density of 12 units per acre and a maximum of 120 dwelling units. But a footnote provided that in the event of a combination of townhouses and multifamily/mid-rise residential buildings, the maximum density set forth under multifamily/mid-rise residential development shall govern.

In the event that residential use was to be authorized, the Plan also authorized the shared usage of parking decks by office occupants on adjacent properties. The Plan specifically authorized the following accessory uses and structures as a subset of the alternative residential use authorized by the Plan:

Parking decks including usage by office occupants on adjacent properties shall be permitted provided however, that should the parking deck be shared by adjoining office uses that the developer shall submit to the Planning Board for [its] approval a detailed shared parking demand analysis demonstrating the availability of adequate parking sufficient to accommodate the parking demand generated by all affected users.

Accordingly, the Organon Redevelopment Plan specifically authorizes the shared use of surface parking and parking decks between either the commercial users of the Organon site or,

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alternatively, the residential users of the Organon site, on the one hand, and an adjacent office building use, on the other hand, provided that the parking is sufficient to accommodate the demand generated by all affected users. The Plan, however, provides no mechanism for requiring the 347 Mt. Pleasant Avenue office site owners to permit the shared use of the parking area resubdivided from the main Organon site or to permit the construction of a parking deck on that lot to be shared in the event of either commercial or residential development of the Organon site.

On August 1, 2006 the Township Council introduced an ordinance designating the Organon site as a redevelopment area and adopted the ordinance on August 15, 2006.

On or about October 4, 2006 the Township received a draft report from Hatch McDonald, the environmental consultant retained by the Township to study the environmental condition of the Organon property. Based on that report, the Township wrote a letter to Organon on October 9, 2006 informing Organon that the Township was declining to exercise its option to purchase the Organon site.

Also, in October 2006 the Township was continuing its discussions and negotiations with Prism concerning the possibility of Prism serving as a redeveloper for the Main Street downtown area. On or about October 25, 2006 the Township received a revised proposal from Prism and on October 27, 2006 Prism submitted a revised Pro Forma statement concerning the financing of the proposed downtown/Main Street redevelopment. Discussions

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between the Township, the Township redevelopment attorneys and Prism continued in November and December 2006. By early December Township officials and their attorneys were confident that an agreement with Prism could be reached. On December 19, 2006 the Township Council adopted Resolution No. 386-06 authorizing execution of an agreement for the redevelopment of certain properties within the downtown redevelopment area with Prism Green Associates IV, LLC. The Redevelopment Agreement between the Township and Prism Green Associates IV, LLC was executed as of December 20, 2006.

I am generally informed by Glenn Scotland, redevelopment attorney for the Township, that the Township and Prism were able to reach an agreement for redevelopment of portions of the downtown/Main Street area because of a more favorable financing arrangement negotiated with Bank of America and also because the Township no longer was requiring Prism to finance construction of a Township library. In any event, the Redevelopment Agreement executed by the Township and Prism no longer is dependent upon inclusion of the Organon site as an area in need of redevelopment.

In the meantime, Organon proceeded with its application to resubdivide the main Organon site so as to combine a 1.477 acre parcel from the main Organon site with the Mt. Pleasant Avenue office building site. According to the October 25, 2006 report from Planning Director Susan Borg to the Planning Board members, the proposed resubdivision would also require approval of several variances for the Mt. Pleasant Avenue office building, as follows:

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minimum lot area; maximum building coverage; maximum lot coverage;  
side parking set back; and free standing sign.

The October 25, 2006 report to the Planning Board also  
contained the following discussion concerning parking:

The other variances which are created by the subdivision affect parking. Currently on Lot 26 there are 137 parking spaces available. These spaces could support a total of 34,250 square feet of office use based on general parking requirements or 27,400 square feet as medical office use. The existing Organon manufacturing building far exceeds this square footage, although if the site was used for storage or data processing with a maximum of 109 full time employees, no parking variance would be necessary.

It should be noted that a previous agreement was reached to provide a parking area for 347 Mt. Pleasant Avenue (Lot 29) located to the east of the existing building, at the same grade on the PSE&G property. Granting this subdivision does create a parking deficit for the Organon Manufacturing site (Lot 26) as well as positions the parking for 347 Mt. Pleasant Avenue at a significantly higher grade.

The Planning Board held two hearings on the Organon resubdivision application. The first hearing was held on November 1, 2006. J. Michael Petry, a professional planner and engineer, testified on behalf of Organon. The second and final hearing was held on December 6, 2006. Mr. Petry provided additional testimony in support of the application. Michael Maris, a professional traffic engineer, testified in support of the application. Stuart Portney, the Township's redevelopment planner, testified as a witness called by the Planning Board.

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At the conclusion of the December 6, 2006 hearing the Planning Board voted unanimously to approve the application. On January 3, 2007 the Planning Board adopted Resolution PB-06-19/Organon approving the application for preliminary and final minor subdivision and for all related variances.

**LEGAL ANALYSIS**

**A. Rules of Professional Conduct.**

The Rules of Professional Conduct, adopted by the New Jersey Supreme Court, regulate the conduct of members of the bar. Richard Trenk, the subject of this report, is subject to the provisions of those rules.

The focus of my inquiry concerns RPC 1.7, which provides in pertinent part as follows:

RPC 1.7 Conflict of Interest: General Rule

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of a lawyer.

Subsection (b) sets forth exceptions to the general rule if the affected clients give informed consent, but specifically provides "that a public entity cannot consent to any such representation."

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Prior to 2004, RPC 1.7 also contained a subparagraph (c) that provided as follows:

(c) This rule shall not alter the effect of case law or ethics opinions to the effect that: (1) in certain cases or categories of cases involving conflicts or apparent conflicts, consent to continued representation is immaterial, and (2) in certain cases or situations creating an appearance of impropriety rather than an actual conflict, multiple representation is not permissible, that is, in those situations in which an ordinary knowledgeable citizen acquainted with the facts would conclude that the multiple representation poses substantial risk of disservice to either the public interest or the interest of one of the clients.

The rule set forth in subparagraph (c) prior to 2004 and quoted above was known as the appearance of impropriety rule. Under the appearance of impropriety rule, the question was not whether a lawyer's representation of one client, or a lawyer's financial interest, created a conflict with the lawyer's representation of another client. Rather, the question was whether an ordinary knowledgeable member of the public acquainted with the facts would determine that multiple representation or an adverse interest posed a substantial risk of disservice either to the public interest or to the interest of a client.<sup>1</sup>

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<sup>1</sup> As some courts have observed, "[t]he appearance of impropriety provisions of RPC 1.7 are framed solely in terms of multiple representation. It is nonetheless clear that the Rule applies as well to conflicts arising from self-interest or other factors". State v. Davis, 366 N.J. Super. 30, 43 n. 1 (citing Essex County Jail Annex Inmates v. Treffinger, 18 F. Supp.2d 418, 431 (D.N.J. 1998)).

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In September 2003, the Supreme Court Commission on the Rules of Professional Conduct recommended that the appearance of impropriety rule set forth in RPC 1.7(c) be abolished because the standard was too vague and provided insufficient guidance for practicing attorneys. Accordingly, after a comment period and a public hearing, the New Jersey Supreme Court adopted extensive amendments to the Rules of Professional Conduct in November 2003, to be effective on January 1, 2004, including the elimination of the appearance of impropriety standard. The Supreme Court agreed that the appearance of impropriety standard was unnecessary and "too vague to support discipline" because "[l]awyers and courts can only guess at what an ordinary citizen acquainted with the facts might conclude." However, the Supreme Court went on to note:

The Commission acknowledges that a court properly may consider the appearance of impropriety as a factor in determining that multiple representations pose an unwarranted risk of disservice either to the public interest or the interest of a client. The Commission does not believe that attorneys also should be exposed to the risk of an ethics violation for failing to predict correctly the outcome of a court's subsequent assessment.

[Supreme Court of New Jersey, Administrative Determinations in Response to the Report and Recommendation of the Supreme Court Commission on the Rules of Professional Conduct (Sep. 10, 2006), reprinted in N.J. Attorney Ethics 1134.]

On December 8, 2006, the New Jersey Supreme Court decided In re Supreme Court Advisory Committee on Professional Ethics Opinion



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No. 697, 188 N.J. 549 (2006). In that opinion the Court rejected any use whatsoever of the appearance of impropriety standard as a factor to be considered in determining whether a lawyer's competing interests might compromise his duty to the public or to a client. 188 N.J. at 559 n.5. Accordingly, as of the date of this report, the appearance of impropriety standard is completely eliminated as a basis for determining whether or not Mr. Trenk's conduct is consistent with the Rules of Professional Conduct.

Consequently, because the New Jersey Supreme Court has now eliminated any vestige of the appearance of impropriety doctrine that may have remained after the 2004 amendments to the Rules of Professional Conduct, the focus of my attention is primarily on the provisions of RPC 1.7(a) that preclude a lawyer from representing a client if there is a significant risk that that representation will be "materially limited . . . by a personal interest of the lawyer."

Initially, I address whether Mr. Trenk's status as a prospective 4% owner of 347 Mt. Pleasant LLC, the entity that was to acquire ownership of 347 Mt. Pleasant Avenue if the resubdivision applied for by Organon was approved by the Planning Board, was an interest that was adverse in any way to the interests of the Township of West Orange. A "client's interest" is defined to include "all those [interests] that a reasonable lawyer, unaffected by a conflicting personal interest, would protect or advance." Restatement (Third) of Law Governing Lawyers, Section 125 (2000).

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Based on my investigation, I conclude that Mr. Trenk's prospective interest in the acquisition of 347 Mt. Pleasant Avenue was an interest that was, at least in part, inconsistent with the interest of the Township of West Orange in developing the Organon property for a commercial use. Several Township officials had expressed the view to me that the loss of approximately 150 parking spaces, by virtue of the proposed resubdivision, would diminish significantly the amount of office space that could be constructed on the Organon site. Executives of Prism, at the June 16, 2006 meeting with Susan Borg and the redevelopment attorneys, specifically expressed their concern that that loss of parking spaces on the lot to be resubdivided could significantly restrict Prism's ability to develop the Organon site commercially. The Redevelopment Plan for the Organon site provided for the possibility of shared parking on the parcel to be resubdivided whether or not the Organon site was to be developed commercially or residentially. I was informed by both Susan Borg and Stuart Portney that the purpose of the shared parking language in the Redevelopment Plan was to provide at least a foundation for the possible shared use of the resubdivided lot even if the resubdivision were to be approved by the Planning Board.

On the other hand, Mr. Trenk and his associates in 347 Mt. Pleasant LLC were desirous of acquiring the office building but their contract with Organon specifically provided that approval of the resubdivision was a prerequisite to the acquisition of the property. In addition, Mr. Trenk informed me that his law firm

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intended to occupy space in the 347 Mt. Pleasant Avenue office building, but that tenancy also apparently depended on the acquisition of the office building by Mr. Trenk's purchasing group. Accordingly, it would appear that Mr. Trenk had two reasons for favoring the approval of the resubdivision: first, his ability to be part of the group that acquired ownership of the office building depended on the resubdivision; and second, the likelihood that his law firm would be a tenant in the 347 Mt. Pleasant Avenue office building also depended on the approval of the resubdivision.

Because the Township of West Orange's interest in enhancing the possibility of commercial development of the Organon site would be disserved by the approval of the resubdivision that undeniably was in the interest of Mr. Trenk, his associates in 347 Mt. Pleasant LLC and the partners of his former law firm, I conclude that Mr. Trenk's interests were adverse to the interests of the Township insofar as the resubdivision of the parking area from the main Organon lot was concerned.

The next question that must be addressed is whether there was a "significant risk" that Mr. Trenk's representation of the Township would be "materially limited" by his personal interest in the 347 Mt. Pleasant Avenue office building site. That issue is complicated by the fact that the Option Agreement between the Township and Organon dated February 17, 2006 stated expressly that the parking area on the main Organon property adjacent to the Mt.

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Pleasant Avenue office building would be resubdivided and combined with the 347 Mt. Pleasant Avenue office building site.

I specifically discussed this issue with the Mayor and members of the Township Council in the course of my investigation. They emphasized that the primary reason for the Township's entering into the Option Agreement with Organon to acquire the Organon site was to enhance the Township's ability to proceed successfully with the redevelopment of the downtown/Main Street area by combining that redevelopment with the redevelopment of the Organon site. Because Organon insisted on the resubdivision as a condition of its willingness to enter into the Option Agreement, the Township agreed in February 2006 to the condition that its option to acquire the Organon site would not include the parcel to be resubdivided. Nevertheless, the Township's execution of the Option Agreement could not commit the Planning Board to approve the resubdivision because the Planning Board is a quasi-judicial body and the approval of the resubdivision and the related variances required a discretionary determination by the Planning Board.

In my discussions with the Mayor and Township Council I noted that the Township's interest in the commercial development of the Organon site might have been better served if the resubdivision approval was conditioned, for example, on the Township's right to construct a one level parking deck over the area to be resubdivided so that the redeveloper of the Organon site could use that deck for parking in connection with the ultimate use of the

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Organon site. Similarly, the Township could have negotiated with Organon to permit some shared parking arrangement; the Township could have requested Organon to seek a parking variance for the 347 Mt. Pleasant Avenue site so that the prospective owners would not need the entire parking lot parcel to be resubdivided; or the Township could have encouraged Organon to pursue the possible development of the adjacent Public Service site to provide some of the parking required for the office building. In response to the suggestion that the Township could have pursued those or other possible courses of action, the Mayor and Council informed me that, in retrospect, they doubt that they would have authorized Mr. Trenk, or anyone else on behalf of the Township, to take any action to diminish Organon's chance of successfully seeking approval of the resubdivision and related variances. The Mayor and Council members believed that they had committed themselves not to interpose any objection to the resubdivision and also believed that, until October 9, 2006 when the Council decided not to exercise its option to acquire the Organon property, that it was in the Township's best interest to allow the Organon resubdivision application to be approved in order that the Township could proceed with its plan to acquire the Organon property. Even the possibility that approval of the resubdivision might increase the likelihood that the Organon site would be developed for residential use did not affect their general belief that they would not have instructed Mr. Trenk or anyone else to

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attempt to negotiate modifications or conditions related to the resubdivision application.

In our discussions, the Mayor and Council acknowledged that after the Township decided not to exercise the option to purchase the Organon property the Township might have been more interested in attempting to negotiate further with Organon about the resubdivision. By that time, however, Mr. Trenk had completely removed himself from the performance of any legal services relating in way to the redevelopment project and therefore could not have been requested to perform such services even if the Township believed that further negotiations about the resubdivision were then in the Township's best interest. Obviously, if Mr. Trenk had not removed himself from performing legal services related to the redevelopment project, his prospective interest in the Mt. Pleasant Avenue property would have materially limited his ability to intervene on the Township's behalf with respect to the proposed Organon resubdivision.

Taking into account the views of the Mayor and Council that were communicated to me in the course of my investigation, I am persuaded that, although Mr. Trenk's prospective interest in the 347 Mt. Pleasant Avenue property was an interest that was adverse to and inconsistent with the Township's interest in the redevelopment of the Organon site for commercial purposes, there was not a significant risk that Mr. Trenk's representation of the Township would have been materially limited by his personal interest in the 347 Mt. Pleasant Avenue property. I reach that

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conclusion because I believe that, prior to October 9, 2006, the Mayor and Council would not have authorized Mr. Trenk to take any steps to negotiate with Organon in an effort to prevent or otherwise limit the intended resubdivision that had been agreed to by the Township in the Option Agreement of February 7, 2006.

Also relevant to my investigation is RPC 1.8 which provides in pertinent part as follows:

RPC 1.8 Conflict of Interest: Current  
Clients; Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: . . . (3) the client gives informed consent . . . .

RPC 1.8(1) prohibits a public entity from consenting to a representation otherwise prohibited by the rule.

I already have concluded that the interest Mr. Trenk possessed as a prospective purchaser of 347 Mt. Pleasant Avenue was to some extent adverse to the interest of the Township. However, I am unable to conclude that Mr. Trenk knew that the interest was an adverse interest at the time he and his associates executed the agreement to acquire 347 Mt. Pleasant Avenue on May 23, 2006.

In my interviews with Mr. Trenk he stated that he assumed that the resubdivision was consistent with the interest of the Township because the Township had agreed to the resubdivision in the Option Agreement signed in February 2006. He also indicated that he was unaware, when he agreed to be part of the group

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acquiring 347 Mt. Pleasant Avenue, that the resubdivision could materially diminish the ability of the redeveloper of the Organon property to develop the site commercially. In that connection, the concerns expressed by Prism about the impact of the resubdivision on commercial development of the Organon site apparently were not communicated to any Township officials until the meeting held on June 16, 2006. Moreover, the Redevelopment Plan that contained language contemplating the possible shared use of the lot to be resubdivided was not submitted to the Township until July 27, 2006.

Although it might appear self-evident that the loss of a lot with a capacity for 150 parking spaces could not help but materially diminish the amount of commercial development on the Organon site, I cannot conclude that Mr. Trenk knowingly acquired an ownership or pecuniary interest adverse to the Township when he and his associates entered into an agreement with Organon to acquire 347 Mt. Pleasant Avenue. Based on the investigation I have conducted, I believe that the adversity became apparent sometime in June or July 2006 or thereafter, and that the adversity was not known to Mr. Trenk on the date the purchase agreement was signed.

RPC 1.8(b) addresses a lawyer's use of information relating to the representation of a client. The Rule provides as follows:

Except as permitted or required by these rules, a lawyer shall not use information relating to representation of a client to the disadvantage of a client unless the client



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after full disclosure and consultation, gives informed consent.

By way of background, until 1984 the Disciplinary Rules guided the conduct of lawyers. DR 4-101 provided: a lawyer shall not knowingly: . . . (3) use a confidence or secret of his client for the advantage of himself or of a third person unless the client consents after full disclosure. Accordingly, under the prior Disciplinary Rules an attorney could be found to have violated DR 4-101 if he entered into a business transaction based on information he learned while representing a client without obtaining the client's consent.

In that connection, my investigation indicates that in April 2006 when Mr. Trenk decided to become a member of the group purchasing an interest in 347 Mt. Pleasant Avenue, the prospect that the Organon site would be designated an area in need of development was a matter of public knowledge. On January 24, 2006 the Township Council had adopted a resolution requesting the Planning Board to study the Organon site to determine if it qualified for designation as a redevelopment area, and on the same date the Council authorized the hiring of the Metro Group to conduct a study of the Organon site. The study prepared by the Metro company was submitted to the Township Planning Board and the Township Planning Department on March 15, 2006, and on April 5, 2006 the Planning Board adopted a resolution recommending designation of the Organon site as an area in need of redevelopment. It was not until April 5, 2006 that Richard Trenk

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was informed that the medical group that had signed a contract to purchase 347 Mt. Pleasant Avenue had terminated its agreement with Organon. Accordingly, I find no basis for an inference that Mr. Trenk, in deciding to become a prospective purchaser of 347 Mt. Pleasant Avenue, did so on the basis of confidential knowledge that the adjacent Organon site was likely to be designated an area in need of redevelopment. To the contrary, I believe that fact was reasonably well known to the public by April 2006.

I also discussed with Mr. Trenk whether he possessed any confidential information about the manner in which the Organon site was likely to be redeveloped. Although the redevelopment plan clearly expresses a preference for commercial redevelopment of the site, there apparently existed a belief among some public officials in the Township that commercial redevelopment would be difficult, and perhaps impracticable, and that the more likely development of the Organon site would be residential. Mr. Trenk indicated that in the period April-May 2006 he had no insight about whether commercial or residential redevelopment was the more likely prospect. He was aware that the Prism organization preferred residential development but also was aware that some members of the Township Council strongly preferred commercial development. Although there appears to be general agreement among the experts with whom I spoke that property adjacent to an area designated as an area in need of redevelopment is likely to have enhanced value when the redevelopment occurs, there was not similar agreement on the question whether residential development

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of the Organon site would necessarily enhance the value of 347 Mt. Pleasant Avenue. At least one expert with whom I spoke expressed the view that the potential for tension or conflict between residential users and an office building use might serve to suppress any value enhancement of 347 Mt. Pleasant Avenue that might otherwise have been anticipated because of its proximity to the Organon site.

In any event, the Disciplinary Rules were superseded in 1984 and the current standard governing a lawyer's use of confidential information is the standard set forth in RPC 1.8(b), which prohibits only use of client information to the disadvantage of a client. There is no evidence that Mr. Trenk used confidential client information in deciding to become a member of the 347 Mt. Pleasant Avenue purchasing group, nor is there evidence indicating that the purchasing group's decision to acquire 347 Mt. Pleasant Avenue disadvantaged the Township. Accordingly, I find no evidence of a violation of RPC 1.8.

**B. Local Government Ethics Law.**

The New Jersey Local Government Ethics Law, N.J.S.A. 40A:9-22.1 to 22.25, regulates the conduct of public officials who fall within the definition of "local government officer" or "local government employee". Pursuant to the statute a "local government officer" is defined as follows:

Any person, whether compensated or not,  
whether part-time or full-time: . . . (2)  
serving on a local government agency which  
has the authority to enact ordinances,  
approve development applications or grant

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zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive or confidential employee of a local government agency. [N.J.S.A. 40A:9-22.3(g).]

A "local government employee" is defined as follows:

Any person, whether compensated or not, whether part-time or full-time, employed by or serving on a local government agency who is not a local government officer. [N.J.S.A. 40A:9-22.3(f).]

I am informed that Mr. Trenk became an employee of the Township during the month of September 2006. At the time he became a member of the purchasing group that was acquiring 347 Mt. Pleasant Avenue, Mr. Trenk was an independent contractor serving as Township Attorney. The question whether a Township attorney who is an independent contractor qualifies as a "local government officer" depends on whether that attorney would be regarded as a "managerial executive or confidential employee of a local government agency" within the meaning of the statute. The provision of the Local Government Ethics Law that defines "local government officer" incorporates the definition of managerial executive contained in Section 3 of the "New Jersey Employer-Employee Relations Act", N.J.S.A. 34:13A-3. That statute provides that

[m]anagerial executives of a public employer means persons who formulate management policies and practices and persons who are charged with the responsibility of directing the effectuation of such management policies and practices. [N.J.S.A. 34:13A-3(f).]

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In Department of Community Affairs Local Financial Board v. Cook, 282 N.J.Super. 207, 209 (App. Div. 1995), the Appellate Division determined that a trustee of the Dover Public Library qualified as a "local government officer" within the meaning of the definition of managerial executive. In reaching that conclusion, the court noted that the New Jersey Local Government Ethics Law "governs virtually every person who serves in local government, except individuals appointed to purely advisory bodies, and officials, such as school board members and municipal court personnel, who are guided by other equally rigorous requirements." 280 N.J.Super. at 209.

In any event, the Local Government Ethics Law requires local government officers to file financial disclosure statements annually. N.J.S.A. 40A:9-22.6. Mr. Trenk's counsel has informed me that Mr. Trenk filed financial disclosure statements during the period when he served the Township as an independent contractor, suggesting that Mr. Trenk apparently considered himself to be a local government officer at least for purposes of the financial disclosure requirements of the local government ethic law. I have concluded that Mr. Trenk was a "local government officer" within the meaning of the statute when he served as Township attorney as an independent contractor.

I address individually the specific provisions of the Local Government Ethics Law that pertain to Mr. Trenk.

Pursuant to N.J.S.A. 40A:9-22.5(a), "no local government officer or employee . . . shall . . . engage in any business [or]

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transaction which is in substantial conflict with the proper discharge of his duties in the public interest." As indicated in my discussion of RPC 1.7, I have concluded that Mr. Trenk's acquisition of a prospective interest in 347 Mt. Pleasant Avenue was an interest that to some extent was adverse to the Township in that the resubdivision that was a condition of the Purchase Agreement for 347 Mt. Pleasant Avenue would, if approved, diminish the Township's ability to require the Organon site to be developed for commercial purposes. The critical question is whether that interest was in "substantial conflict with the proper discharge of his duties in the public interest".

As noted earlier, the Mayor and members of the Township Council have informed me that, because they had expressed their consent in the Option Agreement with Organon to the proposed resubdivision, they would have been reluctant to direct Mr. Trenk, or any other Township official, to take steps to modify or condition the approval of the resubdivision by the Planning Board. As they explained their position to me, their primary interest, while the Option Agreement was in effect, was to acquire the Organon site in order that it could be included as an additional redevelopment area with the downtown/Main Street site and thereby make more likely the successful redevelopment of the downtown/Main Street area. Accordingly, they informed me that they would have been reluctant to take any action concerning the resubdivision that might have interfered with the Township's ability to complete the exercise of the option and the acquisition of the Organon

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property. Even the prospect that the resubdivision would make it more likely that the Organon site would be developed residentially did not appear to alter their view that Township interference with or renegotiation of the terms of the resubdivision would have been inappropriate.

Based on those representations, I cannot conclude that Mr. Trenk's prospective interest in 347 Mt. Pleasant Avenue was "in substantial conflict with the proper discharge of his duties in the public interest". Although the Township's position might have been different after October 9, 2006, the date on which the Township informed Organon that it would not exercise the option to purchase the Organon property, by that time Mr. Trenk had removed himself from all legal services related to redevelopment and, therefore, his prospective interest in the 347 Mt. Pleasant Avenue site would not have been in conflict with the discharge of his professional duties subsequent to October 9, 2006.

N.J.S.A. 40A:9-22.5(d) provides as follows:

No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or 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.

Based on my investigation, I do not find that Mr. Trenk acted in his official capacity in any matter in which his prospective interest in 347 Mt. Pleasant Avenue might reasonably have been expected to impair his objectivity or independence of judgment.

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Unquestionably, Mr. Trenk was instrumental in negotiating the Option Agreement with Organon entered into in February 2006. Pursuant to the terms of that agreement, the Township agreed to permit Organon to resubdivide the lot adjacent to 347 Mt. Pleasant Avenue so that it could be used for parking for the office building. In addition, pursuant to the Option Agreement the Township agreed to reduce the assessment on the 347 Mt. Pleasant Avenue property by fifty percent effective January 1, 2006. But at the time Mr. Trenk was negotiating that agreement he had no interest or prospective interest in 347 Mt. Pleasant Avenue. In fact, the agreement between Organon and Sofo Northfield I, LLC previously referred to was entered into on February 23, 2006, approximately two weeks after the Option Agreement was executed. The negotiations between Organon and Sofo commenced at least as early as January 2006 and, therefore, at the time the Option Agreement was entered into Mr. Trenk would have had no basis for believing that he would ever be part of a group that would acquire ownership of 347 Mt. Pleasant Avenue.

My investigation does not reveal that Mr. Trenk performed any legal services on behalf of the Township between May 2006, when his purchasing group entered into the agreement to acquire 347 Mt. Pleasant Avenue, and late September 2006, when he removed himself from legal work affecting redevelopment issues, with respect to which his prospective interest in 347 Mt. Pleasant Avenue might reasonably have been expected to impair his objectivity or independence of judgment.



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N.J.S.A. 40A:9-22.5(g) provides as follows:

No local government officer or employee shall use, or allow to be used, his public office or employment, or any information, not generally available to the members of the public, which he receives or acquires in the course of and by reason of his office or employment, for the purpose of securing financial gain for himself, any member of his immediate family, or any business organization with which he is associated.

As discussed in connection with RPC 1.8, I am satisfied that at the time Mr. Trenk decided to become part of the group that was purchasing 347 Mt. Pleasant Avenue, it was publicly known that the Organon property was likely to be designated as an area in need of redevelopment. As indicated above, Mr. Trenk stated that he had no knowledge in May 2006 whether the Organon site was more likely to be redeveloped commercially or residentially, and there apparently are conflicting views about whether residential development of the Organon site would be beneficial or detrimental to the future value of the 347 Mt. Pleasant Avenue office building. In any event, based on my investigation I do not find that Mr. Trenk used his public office, or any information not available to the public that he acquired by reason of his public office, to secure financial gain for himself or for the group of which he was an affiliate in the purchase of 347 Mt. Pleasant Avenue.

Accordingly, I conclude that Mr. Trenk, during the relevant time period, was a local government officer subject to the provisions of the Local Government Ethics Law but that his actions

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in acquiring a partial interest in the 347 Mt. Pleasant Avenue office building site did not violate any provision of the Local Government Ethics Law.

**CONCLUSION**

The length of this report demonstrates that the issues presented to me for review, investigation and evaluation were not simple. The fact that I have concluded that there was no violation of either the Rules of Professional Conduct or the Local Government Ethics Law is dispositive of the formal assignment given to me by the Township.

I think that it is relevant and appropriate to supplement the formal disposition of my investigation with a personal observation based on my experience as a former Justice of the New Jersey Supreme Court and as a public official who has served in other capacities. Because public service is imbued with the public trust, persons that hold public office or serve public bodies in an advisory capacity are expected to adhere to a standard of conduct that justifies public confidence. The Rules of Professional Conduct and the Local Government Ethics Law are publicly recognized standards imposed by the Supreme Court and the Legislature that are intended to guide public officials and their advisors in conducting themselves during the period they are engaged in the public service. Violation of the RPCs or the statute may result in the imposition of disciplinary sanctions or monetary fines. But compliance with the strict letter of the Rules of Professional Conduct and the Local Government Ethics Law

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is not the only relevant standard by which public officials should measure the propriety of their conduct. Earning and retaining the public's confidence in their independence, objectivity and dedication to the public interest should be an enduring purpose of those engaged in the public service. To that end, personal transactions that may affect the public's perception of a public official's impartiality should be approached with extreme care and circumspection. If any such transaction is likely to unduly diminish or cast doubt on a public official's independence, objectivity and dedication to the public interest that transaction should be avoided, not because it is illegal but because it may adversely affect public confidence in that public official and in the quality of government.

By that standard, I am of the view that Mr. Trenk committed an error of judgment when he decided to become a participant in the group that was acquiring 347 Mt. Pleasant Avenue. I reach that conclusion because Mr. Trenk had been instrumental in the negotiation of the Option Agreement between the Township and Organon. One significant term of that Option Agreement was that the Township agreed to reduce the tax assessment on the 347 Mt. Pleasant Avenue property by 50% as of January 1, 2006. Another significant provision was that the Township agreed to permit Organon to resubdivide the lot adjacent to 347 Mt. Pleasant Avenue for parking use.

Even though Mr. Trenk may have perceived that he had no conflicting interest when he negotiated that agreement, the very

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fact of his participation in that negotiation should have discouraged him from becoming a member of the group acquiring 347 Mt. Pleasant Avenue. Only three months had elapsed between the Township's execution of the Option Agreement and the execution by the entity formed by Mr. Trenk's group of an agreement to purchase 347 Mt. Pleasant Avenue.

Understandably, members of the public and Township officials were concerned that there may have been some legal impropriety because of Mr. Trenk's prior involvement in the negotiation of the Option Agreement and, in addition, his significant involvement in all phases of the Township's redevelopment activities. Moreover, as was demonstrated by subsequent events, the mere possibility that adversity might develop between the proposed resubdivision and the Township's preference for commercial development of the Organon site, whether or not perceived by Mr. Trenk in May 2006, confirms that his decision to participate in the 347 Mt. Pleasant Avenue purchasing group was unwise.

Prudence, caution and sound judgment also should be guides to the conduct of public officials, just as the Rules of Professional Conduct and the Local Government Ethics Law provide formal legal standards to regulate the behavior of public officials. Although no statute or disciplinary rule has been violated, I am persuaded that Mr. Trenk committed an error of judgment in deciding to become a member of the purchasing group. I suspect that with the benefit of hindsight he would have made a different decision.

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Although not required by the Rules of Professional Conduct or the Local Government Ethics Law, but in the interest of enhanced public confidence in the Township's redevelopment efforts, I would recommend to the Township that Mr. Trenk should not provide any legal services in connection with the redevelopment of the Organon site in view of his interest in the entity that will be acquiring 347 Mt. Pleasant Avenue.

Respectfully submitted,

  
Gary S. Stein

GSS/nh