Sean Madden 64 Tower Hill Loop Tuxedo Park, NY 10023

Orange County Board of Ethics 15 Matthews Street, Suite 202 Goshen, NY 10924

Public Integrity Officer Office of the State Comptroller One Civic Center Plaza, Suite 401 Poughkeepsie, NY 12601-3157

Re: Municipal Ethics Inquiry/Complaint

Ladies and Gentlemen:

I am a resident of the Village of Tuxedo Park in Orange County. I have a municipal ethics question regarding the conduct of an elected trustee and deputy mayor of the Village. I would appreciate if your office could provide guidance on this issue. To the extent relevant for your office, you may also consider this letter a formal complaint.

Backround

Claudio Guazzoni was elected a trustee of the Village in June 2015 and was subsequently appointed deputy mayor, roles he has held continuously since. Some time before May 31, 2016, trustee Guazzoni retained the law firm of Feerick Lynch MacCartney & Nugent (the "Feerick Firm") to prosecute a personal injury action in State Supreme Court, New York County. On June 3, the Feerick Firm filed a complaint in this matter. The Feerick Firm was also serving as Village attorney during this time period. Based on a review of the minutes of the Village Board of Trustees, it appears that at no time did either trustee Guazzoni or the Feerick Firm disclose their personal business relationship to the Village. A trustee who has served with trustee Guazzoni confirms that he was never informed of this relationship.

On July 26, 2016, the Village Board of Trustees conducted its annual "reorganization meeting" during which it appoints Village officials. During this meeting, the Board of Trustees voted to retain the Feerick Firm as Village attorney for another one-year term. Trustee Guazzoni participated in this discussion and vote without disclosing his personal business relationship with the Feerick Firm.

The Village of Tuxedo Park requires three trustees to approve proposed payments before such payments are made. Based on a review of such approval forms since July 2016, it appears that trustee Guazzoni has participated (i.e. executed the payment approval form) in the approval of approximately 21 payment requests by the Feerick Firm (copies of which are attached hereto), totaling over \$30,000. At no time did trustee Guazzoni disclose his personal business relationship with the Feerick Firm.

Neither trustee Guazzoni nor the Feerick Firm ever disclosed their relationship to the Board of Trustees. Rather, I informed the Board recently in the context of a FOIL request I made, currently being considered by the Feerick Firm on appeal, for an email record that trustee Guazzoni appears to have destroyed in violation of the Local Government Records Law. Though not relevant to the ethical issue I raise herein, I contend that the interests of the Village and trustee Guazzoni are not aligned, and may be in stark opposition, with respect to my pending FOIL appeal and any legal action that may ensue therefrom. Potential conflicts can thus ripen into actual conflicts.

Discussion

My questions are very straightforward: Was trustee Guazzoni required to disclose to the Village Board of Trustees his personal business relationship with the Feerick Firm before participating in any consideration of the Village's retention of (or payments to) the Feerick Firm? If not required, was such disclosure nevertheless advisable or otherwise recommended by your office? Unfortunately, the outdated bare-bones ethics law of the Village is not helpful, but I understand that courts in New York also have recognized common law duties of public officials.

I am not familiar with the ethical requirements of elected officials in the State of New York. However, I have substantial experience with corporate and non-profit boards, and general considerations of fiduciary obligation typically compel directors on such boards to disclose business relationships with any vendor or customer of the relevant entity they serve in a fiduciary capacity. Moreover, the New York City Code explicitly provides that "a person or a firm 'associated' with a public servant includes...a person with whom the public servant has a business or other financial relationship" that triggers applicable ethical considerations.¹ Best practices would also seem to compel disclosure under the circumstances at issue: the New York State Bar Association recently published *Municipal Ethics in New York: A Primer for Attorneys and Public Officials*, which has a model ethics code that would require recusal of any municipal official from a matter involving "a person or entity with whom or with which the [municipal] officer or employee has or has had a financial relationship of \$1,000 or more within the previous twelve months."²

Thank you for your consideration of this matter. I look forward to your counsel. Please do not hesitate to contact me at maddens1@mac.com or 917-679-5392.

Sincerely. Mal

Sean P. Madden

 § 2601(5), Conflicts of Interest, Chapter 68 of the New York City Charter (Nov. 2010), available at http://www.nyc.gov/html/conflicts/downloads/pdf2/books/blu_bk.pdf.
 ² Jeff Tremblay et al, Municipal Ethics in New York: A Primer for Attorneys and Public Officials 301-302 (2016).

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7-22-16	23686	File No.: H-	((Bruno Art. 78) 3090-16 lered June 1-30, 2016		\$3,082.50
				TOTAL	\$3,082.50
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					TOTAL	\$22.30
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File No.: H-2989-15 Services rendered April 1-30, 2016	\$5,166.67
CLAEVIANT'S CERTIFICATION	AL \$5,166.67
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	File No.: H-3047	7-15	52 		\$202.50
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3-29-16	33559	Tuxedo Park (La File No.: H-304 Services rendered	7-15	9, 2016	TOTAL	\$720.00 \$720.00
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3-3-16	33443	Tuxedo Park (La File No.: H-304 Services rendered	7-15	and the set		\$675.00
				0	TOTAL	\$675.00
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gy .	VILLAGE 80 LO I TUXED	ORDER / VOUCHER OF TUXEDO PARK RILLARD ROAD 2.0. BOX 31 0 PARK, NY 10987 4745 • FAX: (845) 351-2668	ABSTRACT NUMBER (CLAIMANT - DO NO WRITE IN THIS AREA		2090
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	ed CUSTOMER A	CCOUNT #2	Date:		
Tennor rissign	CCCOTOMER A		A. /	(Signature)	
DATE	VENDOR'S INVOICE NO,	QUANITTY	CONTRACTOR OF MATERIALS OR SERVICES	UNITPRICE	AMOUNT
6-7-16	33756	Tuxedo Park (Lar			\$1,710.00
			d February 22-March 15, 2		\$1,710.00
		Services rendere		2016 TOTAL	\$1,710.00
is true an part has b due. June T	een paid or satisfi 7, 2016 DATE DEPART he above service	Services rendered Items, services and disburse ed; that taxes, from which th MENT APPROVAL s or materials were rendered the municipality on the date	d February 22-March 15, 2 AMANT'S CERTIFICATION 	TOTAL the amount of \$ <u>1,710.0</u> municipality on the date: and that the amount cla ociate TITLE	0 s stated; that no imed is actually

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DATE	VENDOR'S	QUANITTY	DESCRIPTION OF MATER	IALS OR SERVICES	UNITPRICE	AMOUNT
	33757	Tuxedo Park (La				\$517.50
	33757	Services render			16 TOTAL	\$517.50
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	VILLAGE	X EXEMPT NO. 14-6004297	FUND-	APPROPRIATION	AMOLTNT
epartment:	Thos	lisional:	tees		
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endor Assign	ed CUSTOMER A	CCOUNT #:		241	
DATE	VENDOR'S INVOICE NO.	QUANITTY	DESCRIPTION OF MATERIALS OR SERVICES	(Signature)	AMOUNT
-7-16	33759	Tuxedo Park (Lar Services rendere	d April 29, 2016		\$90.00
				TOTAL	\$90.00
is true and part has be due.	en M. Honan correct; that the cen paid or satisfi 7, 2016	items, services and disburser	AIMANT'S CERTIFICATION , certify that the above account in the am ments charged were rendered to or for the municij e municipality is exempt, are not included; and th Associate	ount of \$ <u>90.00</u> pality on the dates at the amount clair	stated: that no
is true and part has be due.	correct; that the cen paid or satisfi	items, services and disburser ed; that taxes, from which the	AIMANT'S CERTIFICATION , certify that the above account in the am ments charged were rendered to or for the munici e municipality is exempt, are not included; and th	ount of \$ <u>90.00</u> pality on the dates at the amount clair	stated: that no

192	VILLAGE 80 LC	ORDER / VOUC OF TUXEDO PARI DRILLARD ROAD P.O. BOX 31 DO PARK, NY 10987 1-4745 + FAX: (845) 351-	K (EXTERED)	ABSTRACT NUMBER (CLAIMANT - DO NOT WRITE IN THIS AREA)	P.O. NUMBER	2090
Department: _		NOLESSIO	COMPANY REPORT OF A	FUND - A	PPROPRIATION	AMOLINT
VENDOR	FEERICK LYNC	HMACCARTNEY & NL	GENTPLIC			
(CLAMANIS)	96 South Broad	way				
NAME	SouthNyack, N	lew York 10960			TOTAL	
	ed CUSTOMER A			Date:	(Signature)	
DATE 5-7-16	INVOICE NO,	QUANTITY	DESCRIPTION OF MATER	IALS OR SERVICES	UNITPRICE	AMOUNT
		Services rende	ered March 1-Apr	il 11, 2016 '		
					TOTAL	\$495.00
			CLAIMANT'S CERTIFIC.	ATION	TOTAL	\$495.00
is true and part has be due.	en M. Honan correct; that the i ren paid or satisfie 7, 2016	tems, services and dish	025854	the above account in the amou dered to or for the municips t, are not included; and that	int of \$ <u>495.00</u>	
is true and part has be due.	correct; that the i en paid or satisfie	tems, services and dish	certify that	he above account in the amou	int of \$ <u>495.00</u>	

		1100001010
DATE	SIGNATURE	TITLE
DEPARTMENT APPROVAL The above services or materials were rendered or furnished to the municipality on the date stated and the charges are correct. <u>7/7//6</u> DATE AUTHORIZED OFFICIAL WILLINGOVERN REDUCT. MILLION FOR AUTHORIZED OFFICIAL	box L	APPROVAL FOR PAYMENT This claim is approved and ordered paid from the appropriations indicated above. DATE AUDITING BOARD

10

12513	PURCHASE ORDER / VOUCHER VILLAGE OF TUXEDO PARK 80 LORILLARD ROAD P.O. BOX 31 TUXEDO PARK, NY 10987 Phone: (845) 351-4745 • FAX: (845) 351-2668		ABSTRACT 20
Department:	VILLAGE TAX EXEMPT NO. 14-6004297 Lerenal		FUND - APPROP 1420.41
VENDOR (CLAIMANTS) NAME AND	FEERICK LYNCH MACCARTNEY & NUGENTF 96 South Broadway South Nyack, New York 10960	ILC	

	FUND - APPROPRIATION	AMOLINT
1420.41	2	69750

Purchase Order Not Valid Until Approved and Signed By Department Head.

Vendor's Federal I.D. #:

ADDRESS

Vendor Assigned CUSTOMER ACCOUNT #: _

				(Signature)	
DATE	VENDOR'S INVOICE NO,	QUANTITY	DESCRIPTION OF MATERIALS OR SERVICES	UNITPRICE	AMOUNT
01-27-17	34708	File No.: H	rk (Labor Relations) I-3047-15 Indered December 1-31, 2016		\$697.50
				TOTAL	\$697.50

CLAIMANT'S CERTIFICATION

I, Brian D. Nugent

, certify that the above account in the amount of \$697.50

Date:

is true and correct; that the items, services and disbursements charged were rendered to or for the municipality on the dates stated; that no part has been paid or satisfied; that taxes, from which the municipality is exempt, are not included; and that the amount claimed is actually due.

January 27, 2017 Partner DATE THE GNATHR (SPACE BELOW NOR MUNICIPAL USE) DEPARTMENT APPROVAL APPROVAL FOR PAYMENT The above services or materials were rendered This claim is approved and ordered paid from the or furnished to the municipality on the dates appropriations indicated above. stated and the charges are correct. AUTHORIZED OFFICIAL A DATE FEB AUDITING BOARD WILLIAMOON LAW BLOK CO., VICTOR, NY 145

	VILLAGE 80 LO I TUXED thone: (845) 351	ORDER / VOUCHER OF TUXEDO PARK RILLARD ROAD P.O. BOX 31 O PARK, NY 10987 -4745 • FAX: (845) 351-2668 KEXEMPT NO. 14-6094297			P.O. NUMBER	2174 AMOLINI
D		Hadobal	「置」	1420.4i		472.9
(CLAIMANTS) 9	6 South Broady	HMACCARINEY & NUCEN May lew York 10960	TPLLC		TOTAL	412.93
ADDRESS Vendor's Federal Vendor Assigned	· · · · · · · · · · · · · · · · · · ·	COUNT #-		Date	Purchase Order Approved and S Department He	igned By
reador rasigned	CUSIONER A				(Signature)	
DATE	VENDOR'S INVOICE NO,	QUANTIFY	DESCRIPTION OF MA	TERIALS OR SERVICES	UNITPRICE	AMOUNT
01-27-17	34706	Tuxedo Park (Br File No.: H-3090 Services rendered	0-16 December 1			\$472.93
				0	TOTAL	\$472.93
		CLA	MANT'S CERTIN	ICATION		
is true and c part has been due. Janua	Brian D. Nu orrect; that the a paid or satisfic ry 27, 2017 DATE	items, services and disburser ed; that taxes, from which the	nents charged were	y that the above account in the a rendered to or for the munici empt, are not included; and th mult USE)	pality on the dates	stated; that no
or f	above services urnished to the	MENT APPROVAL or materials were rendered e municipality on the date ges are correct. AUTHORIZED OFFICIAL		APPROVAL F This claim is approved a appropriations indicated		m the
ILLINASON LINA ROCK CO., VIC	PA	TTD FEB 16	317 -	DATE	AUDITIN	G BOARD

* 10 (n. 14)

(A)	VILLAGE 80 LO TUXED Phone: (845) 351	ORDER / VOUCHER OF TUXEDO PARK IRILLARD ROAD P.O. BOX 31 O PARK, NY 10987 -4745 • FAX: (845) 351-2668 X EXEMPT NO. 14-6004297	·	ABSTRACT 201 NUMBER (CLAIMANT - DO NOT WRITE IN THIS AREA) FUND - A 1420 - 4i	P.O. NUMBER	2174 AMOLINI 5166.61
Department:		Dereial		1 1		
(CLAIMANIS) 5	6 South Broad	, HMACCARTNEY & NUCENT way Jew York 10960	PLLC			5166.67 Not Valid Until
					Approved and 8 Department He	igned By ad.
	And and the second second second	CC0127 -		Date:		
vendor Assigned	CUSTOMER A	CCOUNT #:			(Signature)	
DATE	VENDOR'S INVOICE NO.	QUANIITY	ESCRIPTION OF MATE	TRIALS OR SERVICES	UNITPRICE	AMOUNT
01-27-17	34707	ľň	-15	2		\$5,166.67
				20	TOTAL	\$5,166.67
is true and c part has been due. Janua	n paid or satisfi nry 27, 2017 DATE DEPARTY	gent items, services and disbursem ed; that taxes, from which the	ents charged were n municipality is exer SIGNATURE SCENATURE	that the above account in the an endered to or for the municip npt, are not included; and tha PAL USE) APPROVAL FO	ality on the dates t the amount clain Partner TITLE PR PAYMENT	stated; that no ned is actually
or f	urnished to the ed and the charg	A THORIZED OFFICIAL		This claim is approved an appropriations indicated at	D	g BOARD

25	VILLAGE 80 LO TUXED	ORDER / VOUCHER OF TUXEDO PARK RILLARD ROAD 2.0. BOX 31 0 PARK, NY 10987 -4745 • FAX: (845) 351-2668		ABSTRACT NUMBER (CLAIMANT - DO NOT WRITE IN THIS AREA)	PO NUMBER	21423
Department:	VILLAGETA	EXEMPT NO. 14-6004297		1420.4, PUND.	APPROPRIATION	AMOLINI 5/66.6
(CLAIMANTS) S NAME S	6 South Broad	HMACCARINEY & NUGEN vay ew York 10960	FPLLC		TOTAL	5164.6
AND ADDRESS Vendor's Federal	1.D, #:				Purchase Order Approved and S Department He	Not Valid Until Signed By ad.
Vendor Assigned	CUSTOMER A	CCOUNT #:		Date:		
	VENDOR'S				(Signature)	1
DATE	INVOICE NO,	QUANITTY	DESCRIPTION OF MAT	TERIALS OR SERVICES	UNITPRICE	AMOUNT
		File No.: H-2989 Services rendered		I, 2016		
					TOTAL	\$5,166.67
is true and c part has bee due. Nove	n paid or satisfie mber 30, 20 DATE DEPART	gent items, services and disburser ed; that taxes, from which the 16	SIGNATURE	That the above account in the rendered to or for the munic empt, are not included; and t FAL USE) APPROVAL F This claim is approved	Partner TITLE	stated; that no med is actually
or f	urnished to the	municipality on the date	DAN	appropriations indicated	above.	

Nº Y	VILLAGE 80 LO TUXED	ORDER / VOUCHE OF TUXEDO PARK RILLARD ROAD P.O. BOX 31 O PARK, NY 10987 -4745 • FAX: (845) 351-2660		ABSTRACT NUMBER (CLAIMANT - DO NO WRITE IN THIS ARE/		21422
Department:	VILLAGE TA	X EXEMPT NO. 14-6004297		1420.41 +	UND - APPROPRIATION	AMOLINED 157.50
	f farm					
CLARMANTS) 9	6 South Broady	HMACCARINEY & NUGE way lew York 10960	VTPLLC		TOTAL	157.50
ADDRESS Vendor's Federal	LD. #:				Purchase Order Approved and S Department He	Not Valid Until Signed By ad.
endor Assigned	CUSTOMER A	CCOUNT #:		Date:		
					(Signature)	
DATE	VENDOR'S INVOICE NO,	QUANTITY	DESCRIPTION OF MAT	ERIALS OR SERVICES	UNITPRICE	AMOUNT
			BU	DEC = 5 2016 VILLAGE OF TUXEDO VILLAGE OF TUXEDO	PARTIK	
					TOTAL	\$157.50
		CL	AIMANT'S CERTIF	ICATION		
is true and c part has bee due. Nove	n D. Nugent orrect; that the n paid or satisfi mber 30, 20 DATE		ements charged were i	mpt, are not included;	municipality on the dates	stated; that no med is actually
or i	above services urnished to th	MENT APPROVAL or materials were render e municipality on the dat ses are correct.			AL FOR PAYMENT oved and ordered paid fre icated above.	m the

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