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January 17, 2025

**Via eCourts and Regular Mail**

Hon. Deborah Silverman Katz, A.J.S.C.  
Superior Court of New Jersey  
Hall of Justice, Chambers 670  
101 South 5<sup>th</sup> Street  
Camden, New Jersey 08103-4001

Re: **Huehnergath v. Board of Commissioners**  
**Docket No. CAM-L-1971-24**

Dear Judge Silverman Katz:

This firm represents plaintiffs David Huehnergath and Christopher Maynes in the above-referenced matter. Please accept this letter brief in lieu of a more formal brief in reply to defendant Board of Commissioners of the Borough of Haddonfield's ("Board of Commissioners") opposition<sup>1</sup> to plaintiffs' Motion for Summary Judgment. This motion is presently returnable before Your Honor on February 14, 2025. Oral argument is requested.

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<sup>1</sup> Unless indicated to the contrary, all references herein to the opposition filed by the Board of Commissioners shall be to the submission of Siciliano & Associates, LLC and not to the submission of McManimon Scotland & Bauman. The former represents the Board of Commissioners as to Counts I and III of plaintiffs' Second Amended Complaint in Lieu of Prerogative Writs while the latter represents the Board of Commissioners as to Count II. Plaintiffs' Motion for Summary Judgment exclusively concerns Count I in accordance with the prior representations and disclosures made by plaintiffs' counsel at the November 7, 2024 case management conference. Plaintiffs' reserve all rights and waive none with respects to Counts II and III.

**LEGAL ARGUMENT**

**I. THE COURT SHOULD GRANT PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT BECAUSE KEVIN ROCHE WAS NOT A RESIDENT OF HADDONFIELD WHEN THE BOARD OF COMMISSIONERS VOTED TO DESIGNATE DEFENDANT WOODMONT PROPERTIES, LLC AS REDEVELOPER OF THE BANCROFT PROPERTY**

It is respectfully submitted that the Court need not look any further than the Board of Commissioners' responses to plaintiffs' Statement of Material Facts to confirm the absence of any genuine issue that would preclude the grant of summary judgment in plaintiffs' favor at this time. In summary, the Board of Commissioners concedes that former Commissioner Kevin Roche sold his residence in Haddonfield at the end of last March, that he leased an apartment with his wife in Washington, D.C., that he moved to the apartment in the beginning of April with everything that he owned (save for some Christmas decorations) and that he established his primary place of employment in the Washington, D.C. apartment as of April 15, 2024. Then, one month later, Roche participated in the Board of Commissioners' May 13, 2024 meeting and voted to designate defendant Woodmont Properties, LLC ("Woodmont") as redeveloper of the so-called Bancroft Property as memorialized by Resolution No. 2024-05-13-021WS.

Notwithstanding these undisputed facts, the Board of Commissioners asks the Court to deny plaintiffs' motion because of Roche's allegedly intended to remain a resident of Haddonfield after he had moved to Washington, D.C. The Board of Commissioners specifically points to a lease agreement which Roche obtained for his friend's house at 647 Pomona Avenue in Haddonfield. Despite conceding that the lease agreement was only executed by Roche, that the friend disregarded Roche's attempt to pay rent and that Roche never spent a single night in the friend's house, the Board of Commissioners nevertheless insists that this somehow

established and/or continued his prior Haddonfield residency. The Board of Commissioners also cites Roche's change of address application with NJMVC as well as his voter registration which lists his friend's residence.

It is respectfully submitted that the Court should reject the Board of Commissioners' arguments out of hand. Roche's alleged subjective intent is completely at odds with the undisputed, objective facts in this case. Specifically, Roche moved to Washington, D.C., took all his possessions with him and has been working from his office in the apartment ever since April 15, 2024. In fact, Roche freely admitted that he failed to maintain and/or secure a Haddonfield residency after the move, to wit:

Q. What was the purpose of entering into the lease if you weren't going to actually stay at the property?

A. So the property was to maintain a residence until I found a suitable dwelling in Haddonfield.

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A. ....[T]his was a four year term, I had committed to it, and I was willing to see it through. So in order to do that, **I needed to maintain a residency in town pursuant to the statutes.**

Q. **But that never actually occurred, correct?**

A. **No, it did not.**

(Transcript from Deposition of Kevin Roche, 31:5-9; 31:23-32:6, attached as Exhibit A to Certification of Jeffrey M. Brennan submitted with plaintiffs' Motion for Summary Judgment) [Emphasis supplied].

The Board of Commissioners' position clearly cannot be sustained in view of Roche's unambiguous admission as to his lack of residency. Certainly, this case does not fall into the hypothetical situation raised by the Board of Commissioners where spouses have "separate

residences for personal or professional purposes”. See Board of Commissioners’ Brief, p. 5. Nor is this a case involving a seasonal vacation home in the Pocono Mountains or at the Jersey Shore. See Board of Commissioners’ Brief, pp. 7-8. This case also does turn on a calculation of the number of days that Roche spent in New Jersey during 2024 for tax purposes. See Board of Commissioners’ Brief, p. 9.

Rather, this is a simple, straightforward case where Roche continued to participate as a member of the Board of Commissioners despite having lost his statutory eligibility. N.J.S.A. 40A:9-1.12. Once he moved to Washington, D.C. on April 15, 2024, he had no longer had a Haddonfield residence that was his “ordinary and permanent domicile”. N.J.S.A. 40A:9-1.11. Put another way, after Roche and his wife sold their Haddonfield property, the Washington, D.C. apartment became Roche’s “true, fixed, permanent home.” Borden v. Lafferty, 233 N.J. Super. 634, 640 (Law Div. 1989). Moreover, the determination of Roche’s ineligibility does not change under the New Jersey First Act despite the Board of Commissioners’ argument to the contrary. See Board of Commissioners’ Brief, p. 4. The same requires a person to “have his or her principal residence in this State.” N.J.S.A. 52:14-7. Even if Roche had not admitted to the lack of a Haddonfield residence, once he moved to Washington, D.C. with his wife and established his office in his apartment, that clearly precluded a determination that Haddonfield was the center of his “domestic life”. Id.

The Board of Commissioners’ position in this matter requires the Court to accept a fiction which did not exist in reality. The mere fact that Roche obtained a lease agreement and a driver’s license with his friend’s Haddonfield address on it does not make him a resident of Haddonfield, nor does Roche’s two-month delay in registering to vote in Washington, D.C. after

moving to that jurisdiction. While Roche surely did not intend to deceive anyone for improper purposes, the standard which the Board of Commissioners asks the Court to adopt in this case would open Pandora's Box and it does not require much imagination to conceive of the potential abuses to which it could lead. In any event, Roche was clearly not a resident of Haddonfield on May 13, 2024 and was ineligible to maintain a position on the Board of Commissioners.

**II. THE COURT SHOULD GRANT PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT BECAUSE EVEN ASSUMING, ARGUENDO, THAT ROCHE'S MERE PARTICIPATION DID NOT INVALIDATE THE BOARD OF COMMISSIONERS' ACTION, A ONE-TO-ONE TIE VOTE RESULTS IN THE FAILURE OF THE MOTION**

It has long been settled that governmental action must be invalidated when it is determined that a disqualified individual has participated in that action. See, e.g., Aldom v. Borough of Roseland, 42 N.J. Super. 495 (App. Div. 1956). Consequently, for all of the reasons explained in the preceding section, Roche's participation in the Board of Commissioners' May 13, 2024 meeting and vote to designate Woodmont as redeveloper of the so-called Bancroft Property compels the invalidation of that action as memorialized by Resolution No. 2024-05-13-021WS.

Nevertheless, even assuming, arguendo, that Roche's mere participation did not invalidate the action (which it did), the same result would obtain. Eliminating Roche's vote, the remaining two commissioners split one to one on the question of Woodmont's designation. These two commissioners constituted a quorum and an affirmative vote of a majority of them was needed to pass the measure under Haddonfield's Walsh Act form of government. See Housman v. Earle, 98 N.J.L. 379, 381 (1923). Put another way, two votes in the affirmative were required. That of course did not occur and so the motion on Woodmont's designation

failed as a matter of law. Moreover, despite the Board of Commissioners' contention to the contrary, this conclusion has dispositive consequence as to the entirety of the case. Each of the three counts in plaintiffs' Second Amended Complaint in Lieu of Prerogative Writs challenges the validity of Resolution No. 2024-05-13-021WS. With a determination that the same is invalid under any of the counts, the remainder of the case is moot.

### **CONCLUSION**

For all of the foregoing reasons as well as the reasons set forth in plaintiffs' original moving papers, the Court should grant plaintiffs David Huehnergath's and Christopher Maynes' Motion for Summary Judgment.

Respectfully submitted,

**BARON & BRENNAN, P.A.**

*/s/ Jeffrey M. Brennan*

JEFFREY M. BRENNAN, ESQUIRE

cc: Salvatore J. Siciliano, Esquire (via eCourts)  
Grant W. McGuire, Esquire (via eCourts)  
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