



**Date:** August 22, 2023

**From:** Town of Lapel's Legal Counsel; Graham, Farrer & Wilson, P.C.

**To:** The Respected Residents of the Town of Lapel

**RE: Legal Clarification of Recent Rezoning Votes and Potential Conflicts of Interest**

Dear Lapel Residents,

I hope you find this letter well. At the request of the Town Council, our firm has been requested to write this open letter to you, the residents of Lapel, dispelling any misconception, particularly concerning the legality of the voting and alleged conflict of interest pertaining to Councilman Brian Robertson and Mr. Dan Paddock, the Vice President of the Planning Commission.

Our firm, Graham, Farrer & Wilson, P.C., legally represents the Town of Lapel. It has come to ours and the Town Council's attention that several residents have raised concerns regarding the most recent rezoning votes that took place during the last Planning Commission and Town Council meetings, held on August 10<sup>th</sup> and August 17<sup>th</sup>, respectively, and a possible perception of conflict of interest by a town councilman and planning commission member. Specifically, Councilman Robertson and the Mr. Paddock's personal relationship with an individual who is employed by a division of a company that has contracted with LKQ Corporation, who is seeking to develop a new facility in Lapel, on other previous projects throughout the country.

To provide some legal background and clarity, in the State of Indiana, for there to be a conflict of interest, a public servant must have either a pecuniary interest in, or derive profit from, a contract or purchase connected with an action by the governmental entity to which the individual serves. See [IC 35-44.1-1-4\(b\)](#). Furthermore, and for the sake of clarity, a "pecuniary interest" means an interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant who is under the direct or indirect administrative control of the public servant, or receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. See IC 35-44.1-1-4(a)(3). Lastly, a "dependent" means a spouse of a public servant or a child, stepchild, or adoptee of a public servant who is unemancipated and less than eighteen (18) years of age, or an individual more than one-half (1/2) of whose support is provided during a year by the public servant. See IC 35-44.1-1-4(a)(1).

When Councilman Robertson and Mr. Paddock became aware that LKQ would be petitioning the Town to rezone an agriculturally zoned area to general industrial in LKQ's pursuit of future development of this site, and knowing they both had personal ties to a an individual employed with a company which has a contractual history and commercial relationship with LKQ, both independently approached the Town's legal counsel to disclose their relationship with this individual and sought advice and clarity on the legality of whether or not they would be allowed to vote on the rezoning matter.

Upon inquiry into this matter, it was determined that the individual in question is not a spouse; child, stepchild, or adoptee who is unemancipated or less than eighteen (18) years of age; nor an individual more than one-half (1/2) of whose support is provided during a year in relation to either Councilman Robertson or Mr. Paddock. Therefore, a pecuniary interest does not exist. Furthermore, both Councilman Robertson and Mr. Paddock have not and will not knowingly or intentionally be deriving profit from the rezone of the property in question.

Therefore, because Councilman Robertson nor Mr. Paddock do NOT have a pecuniary interest, nor have either Councilman Robertson nor Mr. Paddock knowingly or intentionally derived profit from the rezone of the relevant property, a conflict of interest, as defined by Indiana Code 35-44.1-1-4, does NOT exist. As no such conflict of interest existed before the vote, there was no need nor requirement for any public disclosure to be made in writing or otherwise before each of them cast their respective votes. Again, and to be clear, Councilman Robertson and Mr. Paddock both followed the appropriate legal and ethical guidelines by disclosing to legal counsel and seeking legal advice pertaining to any potential affiliations or interests related to the matter at hand well before any vote took place and all votes taken on the matter of the LKQ rezone by Councilman Robertson and Mr. Paddock were fully legal and without conflict of interest.

Lastly, I believe it presently necessary to reiterate that the LKQ rezoning process was done in accordance with all legal requirements and procedures prescribed by the relevant state statutes and local ordinances. The disclosures and petition by the petitioning party, LKQ and its agents, were made in good faith and a timely manner; deliberations and public comment leading to the vote were conducted transparently and in accordance with Indiana's Open Door Law; and the Lapel Planning Consultants as well as the Town's legal counsel more than ensured that the proper zoning ordinances were correctly followed.

The entire Town Council, our firm, and I all understand that Lapel's community is passionate about decisions that impact the Town's future. Healthy debate and discussions are essential for a thriving democratic process. However, it is also crucial that these discussions are based on factually accurate information and a clear understanding of the legal framework governing such decisions. No matter if we disagree on opinion of what the best choice for the Town's future is, we should all agree that the Council and its residents mutually want what's best for the Town's future, and my firm will continue to zealously advocate, advise, and help to ensure just that happens within the bounds of our federal, state, and local laws.

If you have any further questions or concerns about this matter, I implore you to review the already published [Staff Report](#) prepared by the Town's Planning Advisors. Additionally, please feel free to contact your councilpersons and appointed officials with questions, and engage in future public comment portions of the Town's open meetings.

Thank you for your attention to this matter. Your participation in our community is invaluable and we look forward to future, civil discourse for the betterment of Lapel.

Respectfully,



**Evan C. McMullen**

Attorney at Law

Of Counsel

GRAHAM, FARRER & WILSON, P.C.

Attorney for the Town of Lapel, Indiana