

TO: Greenburgh Town Supervisor  
Greenburgh Town Clerk

CC: Greenburgh Town Council

ADVISORY OPINION 2017-1 -- Recusal by First Deputy Town Attorney David R. Fried, Esq. relating to Regeneron.

### **Background**

Town of Greenburgh. Section 570-4k of the Greenburgh Town Code states:

“Additional standards for Town Attorney. The Town Attorney and Deputy Town Attorneys are prohibited from exercising any discretion in any matter of Town Interest which shall involve any person or Legal Entity who or which was a client of her/his or a law firm of which she/he was a member or Employee during two years prior to the time that said matter is handled by the Office of the Town Attorney. This, however, shall not prevent the assignment of such a matter to another attorney in the Town Attorney's office who has had no Interest in such matter, provided that, in the event the Town Attorney shall be so disqualified, the Deputy Town Attorney to whom the matter is assigned shall report directly to the Supervisor with respect thereto. Any law firm of which the Town Attorney or any Deputy Town Attorney shall be a member, associate attorney, counsel or employee shall not practice before the Town or any Agency of the Town while such member, associate attorney, counsel or employee is an Employee or Appointed Officer of the Town.

On April 5, 2017, First Deputy Town Attorney David R. Fried, Esq. wrote the following to the Greenburgh Board of Ethics:

*Dear Chairperson Friedman:*

*As I mentioned to the Board of Ethics at its last meeting in March, I recently learned that the law firm in which my wife is a non-equity partner will be representing Regeneron Pharmaceuticals, Inc. in general litigation matters. Regeneron is located within the Town of Greenburgh and presently is involved in a development project in which it expects to add more than one million square feet of building space. <http://greenburgh.dailyvoice.com/business/biotech-company-regeneron-plans-greenburgh-expansion/681550/> In my capacity as First Deputy Town Attorney, and counsel to the Planning Board, it would be typical for me to provide advice to the Planning Board, Town staff, and, possibly, the Town Board, on matters relating to Regeneron's applications. Most recently, before my wife's law firm was retained, the Planning Board at its February 15, 2017, meeting, made a recommendation to the Town Board with respect to the first phase of the project. In the coming months, I expect that the Planning Board and staff will consider Regeneron's applications for a steep slope permit, wetlands/watercourse permit, and a tree removal permit.*

*As counsel, I do not vote on any projects but I do provide legal advice to staff and the various boards, as well as assist in the drafting of approval letters, and discuss alternatives to proposals brought to the Town. I am requesting an advisory opinion, pursuant to Section 570-11D(2) of the Code of Ethics, for a determination as to whether I may continue these duties with respect to any applications which relate to Regeneron. I have copied Town Attorney Timothy Lewis, Community Development and Conservation Department Commissioner Garrett Duquesne and Deputy Commissioner Aaron Schmidt on this request in the event you need to contact them, pursuant to 570-12, for further information, so that you may properly exercise your functions, powers, and duties with respect to my request. Until such time as an opinion has been made by the Board of Ethics, I will not participate in any activities relating to Regeneron and its applications.*

*Respectfully,*

*David R. Fried*

On April 12, 2017, First Deputy Town Attorney Fried then came before the Board of Ethics regarding his request. At that time the BOE asked that Mr. Fried write Regeneron to determine if they would have any objection to Mr. Fried continuing to give counsel to the Planning Board, Town Staff and the Town Board regarding Regeneron applications before the Town.

On April 28, 2017, First Deputy Town Attorney Fried wrote to Regeneron Advising them of his wife's employment with counsel retained by Regeneron to represent them in applications before the Town of Greenburgh. Mr. Fried then advised Regeneron of safe guards he and the town would put into place to avoid any conflicts on his part. Included in those safeguards was a bar on any communications between Mr. Fried and his wife regarding any Regeneron applications to the Town and that Mr. Fried's actions on those applications would be under review by other members of the Town Attorney's office. A copy of the letter is attached as **Exhibit 1**.

On May 5, 2017, Salvatore Colletti, Senior Director and Assistant General Counsel responded to First Deputy Town Attorney Fried's letter stating that Regeneron has *"no objection to the way you have proposed to resolve the situation."* A copy of the Regeneron letter is attached as **Exhibit 2**.

### **Opinion**

This matter is properly before this Board. First Deputy Town Attorney David R Fried, Esq. has followed all procedures and responded to all requests of the Greenburgh Board of Ethics. Upon review of all of the facts presented, the documents and responses to questions of this Board, and without objection from Regeneron, it is the finding of this Board that the proposed safeguards set forth by Mr. Fried, which were approved by Town Attorney Lewis, will be sufficient to allow Mr. Fried to continue to act on behalf of the Town in matters involving Regeneron.

BY THE BOARD OF ETHICS

Adopted at May 31, 2017, Meeting Voting for:

Hon. Friedman, Chair  
Dr. Sarcinella, EdD  
Mr. Spinozzi

**Exhibits 1 and 2 Attached**

Exhibit 1



# TOWN of GREENBURGH

## Office of the Town Attorney

177 Hillside Avenue

Greenburgh, New York 10607

Telephone (914) 989-1615

Timothy W. Lewis

Town Attorney

Telefax (914) 993-1656 E-Fax(914) 989-1627

David R. Fried

First Deputy Town Attorney

Edward M. Lieberman

Richard L. Marasse

Margaret C. Tagliacozzo

Joseph A. Danko

Deputy Town Attorneys

Ellen Franze WParalegal

April 28, 2017

Joanne Deyo, Vice-President of Facilities Regenem  
Pharmaceuticals, Inc.

777 Old Saw Mill River Road Tarrytown NY  
10591

Dear Ms. Deyo:

I am the First Deputy Town Attorney for the Town of Greenburgh and Counsel to The Town Planning Board. As you are aware, I have been involved in representing the Town and its Planning Board with respect to the Loop Road Holdings (Regeneration) Case Nos. TB 16-08/PB 16-21, beginning with its first presentation to the Town during the of 2016. Recently, I was advised by my wife that the law firm at which she works may provide legal services, unrelated to land use issues, for Regeneration. My wife further advised that she will not be working on any of those matters. In light of this information, I immediately notified the Town of Greenburgh's Board of Ethics to request an advisory opinion, pursuant to ~~Greenburgh~~ Town Code 570-1 ID(2), for a determination as to whether or not I may continue my duties with respect to any applications before the Town which relate to Regeneration.

At a meeting with the Board of Ethics on April 12, 2017, the matter was discussed and it was suggested that I contact Regeneration to determine whether your company had any objection to my continued involvement on the behalf of the Town of Greenburgh and its Planning Board, with the understanding that all work I perform on this matter will be reviewed by another member of the Greenburgh Town Attorney's Office. As additional safeguard, my wife and I will refrain from having any discussions relating to matters that Regeneration has before the Town of Greenburgh. **After** you have had an opportunity to discuss this with your general counsel's office, I would greatly appreciate if you could advise me in writing whether the proposed resolution described above would be suitable to ~~Regeneration~~. Thank you for your consideration of this matter.

Very truly yours,  
  
David R. Fried

First Deputy Town Attorney

Cc: Lynda Q. Nguyen, Ph.D., J.D., via email

## Exhibit 2

REGENERON

Salvatore Colletti  
Senior Director, Assistant General Counsel  
salvatore.colletti@regeneron.com Law Department  
Regeneron Pharmaceuticals, Inc.  
777 Old Saw Mill River Road  
Tarrytown, NY 10591-6707  
Phone 914 847-3731

May 5, 2017

David R. Fried, First Deputy Town Attorney  
Town of Greenburgh  
177 Hillside Avenue  
Greenburgh, New York 10607

Dear Mr. Fried,

Thank you for your letter of April 28, 2017 to Joanne Deyo (copy attached). Regeneron has no objection to the way you have proposed to resolve the situation. Please let Joanne or me know if there is anything further you require or if you have any questions.

Sincerely,



Salvatore Colletti  
Senior Director and Assistant General Counsel

cc: Joanne Deyo, Vice President - Facilities  
Lynda Nguyen, Director, Dispute Resolution Law Department

Enc.