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April 18, 2016

Councilor Marc Boldt
Councilor Jeanne E. Stewart
Councilor Julie Olson
Councilor Tom Milke
Public Service Center
1300 Franklin Street
Vancouver, WA 98666

Re: Prosecutor Golik to BOCC Letter of April 13

Via: Email and U.S. Mail

Dear Prosecutor and Councilors,

I have been retained by Mr. David Madore to serve as his legal counsel.

I write to offer for your consideration what I perceive as unresolved legal issues which are raised in Prosecutor Golik's letter of April 13, 2016 wherein he offers the option -- and intimates favor of -- the execution of a waiver allowing Deputy Prosecuting Attorney Chris Horne and Deputy Prosecutor Christine Cook to resume providing legal advice to and representation of the BOCC.

It is my legal opinion that such a waiver would violate ethical legal cannons both for attorneys and public officers. Additionally, it would also run afoul of the common-sense policy of having elected officials scrupulously avoid the appearance of impropriety.

For the reasons stated below, on behalf of Mr. Madore, I ask that Prosecutor Golik carefully reconsider his advice that the BOCC could waive a conflict in the present situation and allow Deputies Horne and Cook to resume representing and advising the BOCC.

Mr. Madore has accused Deputies Horne and Cook of knowingly making material misstatements of the law during the course of the BOCC's deliberations on the Comprehensive Plan that is now under consideration. If it is true what Mr. Madore has alleged, the BOCC cannot consent to a waiver allowing Deputies Horne and Cook to resume their work. This is so because Mr. Madore's allegations in essence implicates the majority of the BOCC.

Specifically, Mr. Madore has accused Deputies Horne and Cook of making a false statement of material fact or law to the BOCC, and that these false statements were designed to further the political agenda of Councilors Boldt, Olson and Stewart to block the adoption of Alternative 4. Given that this is indisputably the political dynamic at work, it would be grossly improper for Councilors, Boldt, Olson and Stewart to absolve Deputies Horne and Cook of their failures or otherwise waive any conflict.

Mr. Madore's allegations against the Deputies are covered by RPC 4.1 regarding the truthfulness of statements to others. Mr. Golik's letter of April 13 however transmutes this accusation into one of an alleged conflict of interest that would be governed by RPC 1.8 – while I agree that a conflict might indeed exist – this in no way alters how the primary ethical problem should be dealt with. Until there is resolution whether (and why) the Deputies said what Mr. Madore alleges, no waiver is possible.

Accordingly, at least until the accuracy of Deputy Horne's and Deputy Cook's representations to the BOCC is resolved, I would submit that it is impossible within the widely recognized norms of ethical practice, both in the field of law and public service, to allow Deputies Horne and Cook to represent and advise the BOCC. Unlike a garden-variety conflict of interest scenario that can often be solved with knowing and intelligent waiver, the current situation is an entirely different animal – an allegation by one public official of the willful disregard for truth by attorneys assigned to advise the Board upon which the complaining public official sits.

Moreover, to the extent that Deputies Horne and Cook – and Prosecutor Golik for that matter – are publicly employed attorneys, it is essential to recognize that attorneys in the Prosecutor's office have a special duty to protect the general public and further the public's interest in fair, functional and transparent government.

Allowing Counselors Boldt, Olson and Stewart to consent on behalf of the Board is to run roughshod over the interests of the minority and the constituents the minority represents.

I also would note that Prosecutor Golik's absolution to Horne's and Cook's action without the benefit of external review makes me very suspect of the advice he seeks to give -- i.e. that it is ethically appropriate for Deputy Horne and Cook to return as counsel to the BOCC.

When all of this is examined in the context of the current political backdrop it is impossible to come to a conclusion that Deputies Horne and Cook should return to their prior roles at this time.

It is no secret that the three Commissioners who disfavor Alternative 4 are the same that are likely to vote in favor of waiver on Tuesday April 19th. That the statements of Deputies Horne and Cook that Mr. Madore challenges as counterfactual relate to the viability of Alternative 4

severely diminishes the propriety of such a decision. Indeed, such a decision would rightfully be seen by a large segment of Clark County citizens as patently illegitimate.

I also would be remiss if I did not immediately relate my perception of how the return of Deputies Horne and Cook would be especially inappropriate given the recent allegations leveled against my client by Mr. Oliver Orjiako who, like Boldt, Olson and Stewart, is an outspoken critic of Alternative 4. Without too much imagination, it can be reasonably deduced that Mr. Orjiako's unsubstantiated allegation of racism has all the indicia of a late-in-career shake-down where a claim by Mr. Orjiako is settled by Boldt, Olson and Stewart, not for reasons of perceived liability, but rather for reasons of political expediency and to financially reward ideologically loyal staff.

I am in agreement with Prosecutor Golik that this matter is of sufficient complexity, importance and delicacy that the Washington State Attorney General should be consulted and I am doing that on behalf of Mr. Madore and would welcome a dialog fostered under the auspices of the Attorney General's office. Until an examination of the issues is fully undertaken any vote on the return of the Deputies is premature.

I welcome any and all comments, thoughts and suggestions as we work together to resolve the instant situation.

Very truly yours,

LAW OFFICE OF NICHOLAS POWER



Nicholas E. D. Power

NEDP:

cc. Client