

MEMORANDUM

TO: Honorable Mayor and Members of the Mount Dora City Council and Others who may be interested

FROM: Lonnie N. Groot

COPIES TO: Robin Hayes, City Manager
William L. Colbert, Esquire

DATE: April 3, 2017 (Corrected)

SUBJECT: Report Of Dorothy Green

(A). INTRODUCTION:

I am not a succinct person when I write. I will try to be in this memorandum and I will, in this document, attempt to address the points raised in Ms. Green's report to the extent that I am able.

If anyone wants to review all correspondence (which, indeed, includes multitudes of emails) between me and the City or for the City - - I will make it all available. I would be glad to do so as I believe that it demonstrates a professional's efforts to work for a client and to develop relationships with that client (in, I might add, a sometime challenging context).

My goal has been, is and will be to provide high quality legal services to the City of Mount Dora. That, I believe that I have done – and it has been done with obstacles such that I have never experienced in my professional career.

(B). HOW I LEARNED ABOUT THE COMPLAINT - - - OR WAS IT COMPLAINTS?

On my 66th birthday, September 6, 2016, about 2 hours before a City Council meeting, I received a phone call from Mr. Kerkhof. I first thought that he said that he had some "good" news for me and I said something like "that sounds great" to him. Then he repeated what he had said and said it was bad news and he had wondered why I had responded in such an exuberant manner. He advised me that a hostile work environment/EEOC complaint had been filed against me by a City employee.

I did not say what Mr. Kerkhof reports that I said in Dorothy Green's report. I would like to know who "an employee" who happened to be walking by is. Is that person accusing me of saying what Mr. Kerkhof alleges that I said? I was, however, totally incredulous and, in the way that I do, I was laughingly and totally incredulous that he would call me

and not know what policy was being implemented nor who was conducting the investigation, etc. I understood that he could not tell me who filed the complaint, but expressed to him that that put me in a terrible situation of working with staff while not knowing who was complaining. After our telephone conference, I went to Mr. Colbert's office and arranged for him to handle the meeting. I **stand by** the comments that I made in the email that I later sent to Mr. Kerkhof after he emailed me and advised me that the policy that was being applied was the City's general policy.

By the way, the report stated the Mr. Kerkhof stated that that was the first time that he had spoken to me in person. Not so. I spoke with him for 10- 15 minutes waiting to meet with Kim one time and I learned about his career in Orange County and we discussed the fact that one of my son-in-law's is a Lieutenant in the Deltona Fire Department as well as some other family chit-chat. I may have spoken with him, too, at the one staff meeting that I attended.

I find it totally amazing that, taking Mr. Kerkhof's statement as it was reported, that he would call me about a "confidential" matter with his telephone on speaker mode and with the door to his office wide open. That certainly supports my incredulity with the way he called me and the manner which he communicated with me.

It is also stated that Mr. Kerkhof received the complaint on September 6 which was the Tuesday of the week following the receipt of the complaint by Mr. Bloom (September 1 – a Thursday) which all goes to the point that the "expeditious" nature of this process did not get off to a good start. That being said, why did Mr. Kerkhof receive the complaint on September 6, yet Ms. Green's invoices show that she had telephone conferences with Mr. Bloom on September 1, September 2 and September 6 and her engagement letter was executed by Mr. Bloom on September 6? More about that later as to the appropriateness of the hiring of Ms. Green.

As to Mr. Kerkhof's comments about "the emails", it should be noted that the report does not assert the words that are alleged to have caused any issues. If there is to be an allegation about something that was said it is basic that the content of what was said should be the focus. Again, as noted above, I stand ready for anyone to review all emails to and from the City or any other non-privileged communications for that matter. I have said it before and I will say it again - the problem is **that** I said **anything** about certain matters and not what I said.

Also, I might add that the gap between September 1 and September 6 as to Mr. Kerkhof's knowledge and interaction with Mr. Bloom, demonstrates exactly one of the reasons that I was copying the City Council with emails. Aside from believing that the City Council Members wanted to be fully advised as to issues and that I had an obligation to ensure that they all were provided with a high level of knowledge as to the activities of the City involving legal counsel, I also thought that doing so would assist Mr. Kerkhof as his time would be limited as he had both fire safety issues and City management issues to address for a time until the permanent City Manager arrived on duty.

As to the overall complaint, I was advised that the complaint was a hostile work environment/EEOC complaint. To me that meant sexual harassment. As the father of 7 daughters and as an attorney who drafted and prosecuted one of the first sexual harassment charges in the U.S. Army when I was a Judge Advocate General in Berlin; the thought of having to deal with such an unfounded charge was distressing. I have seen such charges made in the past and I was not happy that my name and my family could be besmirched by such an outrageous allegation.

(C). HOW I LEARNED THAT THE COMPLAINT CAME FROM A MALE CITY EMPLOYEE:

I learned that the complaint derived from a male City employee on September 19, 2016 ~~2017~~ when an editorial writer of *The Orlando Sentinel*; (while calling me an “arrogant lawyer” although I have never met her) published that I had “. . . created a hostile work environment for one manager with decades of experience and success in his position. Among other complaints, Groot suggested that the department head violated an ethics provision but never provided any proof. Groot later said in an email his comment had been misunderstood.”

At that time, I had a fairly good, but not certain, idea that the complainant was John Peters.

However, that was to change.

(D). THE EXPANDED AND EVER EXPANDING COMPLAINT:

On October 30, 2016 (almost 2 full months after the complaint was filed), Ms. Green forwarded me a copy of the John Peters complaint in order that I could review it prior to the interview with her that was scheduled for November 1, 2016 ~~2017~~.

In the email from Ms. Green that transmitted the complaint to me, Ms. Green stated to me: “There is at least one additional complaint that we will discuss that was not put in writing.” So much for knowing about what was being alleged!

At the interview, Ms. Green advised me that there was an additional complaint and it was filed by Gwen Johns. Over the past several months I have heard from others that Ms. Johns did not mean to file a complaint, never intended to have this process occur, and that she desires to write a letter to end the process or the like. In any event, I will address the assertions that Ms. Green has made in her report.

If Ms. Johns feels the way that has been reported to me, I stand ready to move on. If her intentions were misunderstood, so be it. That being said, I have not heard anything about her actually stopping her part of this travesty. (Yes. I have said that this matter is a travesty and I still believe so.)

(E). THE EXPANDED AND EVER EXPANDING COMPLAINT # 2:

Ms. Green issued her report and inserted in the subject line that the complaint being investigated was filed by Mr. Peters “and others”. I do not know who the others are. I am still left in limbo about what I am responding to. I am addressing all the comments in Ms. Green’s report, but, are the others those who do not like the legal advice being given? Who are the others? I understood the investigation was initiated by an allegation that I had created a hostile work environment and has now expanded to fit Ms. Green’s views as to the scope of the representation of the City attorney, operational interference (which is something the client, the City Council, has never expressed) and her ombudsman type report about anyone who had issues with legal advice being given. How fair is that? I have a moving target to address and I am the target for anyone who wants to complain. Is there a sexual harassment complaint? Has someone targeted me for such a spurious and nefarious allegation? Ms. Green did not tell me. Is that fair? Is that a fair way to treat a person?

(F). JOHN PETERS:

(1). Introduction:

I have never criticized Mr. Peters’ engineering abilities. I have never told him how to measure an arch or calculate a radius. I have never told him that utility lines should be buried at a certain depth or that a road should or should not be built. He, on the other hand, has disputed my legal recommendations, advice and judgment on numerous fronts.

Those items will be outlined now. But, before I commence let me point out that I make recommendations – not decisions. I can recommend that a contract form not be used, but I cannot impose it being used. I will approve contracts as to legality that may be horribly written and not advantageous to the City, but not before I comment on the dangers to the City and related matters such as that. Ultimately, it is the City Council that decides whether a contract is entered or delegates that authority to someone else.

(2). Right Of Way Acquisition Procedures:

(a). Mr. Peters placed contracts totaling over a half of a million dollars before the City Council and closed on those transactions without procuring title insurance. I disagreed that that should be the case unless the City Council well knew that that was what it was doing. Mr. Peters disagreed with my legal judgment. I have recommended and will continue to recommend that the City procure title insurance when it acquires real property.

(b). I made the point that the person who negotiates right-of-way acquisitions with property owners should not, also, be the person who establishes the value for those

negotiations. Mr. Peters disagreed with my legal judgment. On page 5 of the report of Ms. Green, it is stated that I alleged Ed Barfield set prices high to be paid more. That is just not true. What I said was that a person who establishes value should also not negotiate with property owners as to the property that was valued. I said that was (and is) true if I was assigned the project, if my friend Steve Tiece (who I have worked with in right-of-way acquisition for over 30 years) or anyone else (including Mr. Barfield) was assigned the job. (Mr. Colbert attended a follow up meeting with Mr. Barfield being present were that matter was discussed again). I never questioned Mr. Barfield's ethics. I never questioned Mr. Peters' ethics. I might add, that, while serving as a Seminole County Attorney, the Deputy County Manager and I were tasked with investigation of the County's right-of-way acquisition office. I believed that my attempting to ensure that the best practices of right-of-way acquisition would benefit the City. Still do. Always will. That was my job as a legal professional. Mr. Peters stated that I did not acknowledge making these comments when he sent me an email. That is true because (i). The way that he has characterized them is not correct, and (ii). A meeting was scheduled to discuss these issues.

(c). I made the point that the person who negotiates right-of-way acquisitions with property owners should not, also, be the person who delivers the check to the persons with whom he/she has negotiated. It was, and is, my legal judgment, that such matters should be handled by a title company. Mr. Peters disagreed with my legal judgment.

(d). I made the point that a memorandum detailing all aspects of right-of-way acquisitions with property owners should be placed before the City Council in an agenda item with all property owners, appraisal matters, summaries of negotiations, etc., being presented and disclosed. Mr. Peters disagreed with my legal judgment.

(e). I questioned the use of the incentive award program of the Florida Department of Transportation (FDOT) by Mr. Peters as a methodology for providing property owner compensation and found out that the program was, indeed, not being used by the FDOT. Mr. Peters disagreed with my legal judgment in believing that it was important to ensure that right-of-way acquisitions should be more formalized.

(f). I questioned using Mr. Ed Barfield to determine the status of title to real property as he was not a title insurance company and his insurance did not cover such matters. Mr. Peters disagreed with my legal judgment.

(g). I questioned using a deed prepared months before a closing with an attorney (from the prior City Attorney's law firm) being named as the preparer of the deed. Mr. Peters disagreed with my legal judgment. I would note that the prior City Attorney was contacted and the prior City Attorney expressed issues with the City using the deed, too.

(f). As to all of the above, Mr. Peters moved forward notwithstanding my comments and notwithstanding that he and Mr. Kim Lienbach assured me that a title company would handle the closings and that title insurance would be procured. Mr. Peters alleges

that “Mr. Groot prevented the Mayor from signing the final closing documents until he could review.” I stand guilty of practicing law and making good recommendations. I made those recommendations then. I would make them now. And, I would make them in the future. Mr. Peters disagreed with my legal judgment. That which he wanted to be done was done notwithstanding my recommendations, etc.

(3). Contract Terms And Conditions:

(a). On page 1 of the Dorothy Green report, it is said that I did not provide specific comments about an agreement, but editorialized. Ms. Green attributes these comments to Mr. Peters. My comments relating to contract documents were legal comments expressing my legal judgment. My legal comments were normative in a contract review. Mr. Peters disagreed with my legal judgment. He can denigrate them as editorializing if he likes, but they were good and normative legal comments.

(b). Mr. Peters was not happy that I found numerous legal issues and errors in the contract form that he had been using for the City. Why he was in control of the contracts and not the City’s Purchasing Agent is unknown to me and, in my legal judgment, that practice is not normative. In any event, Mr. Peters disagreed with my legal judgment. I provided an exemplar contract document that was developed to both comply with controlling law and protect the interests of the City. Mr. Peters was, apparently, not happy with that contract and, again, disagreed with my legal judgment.

(c). Mr. Peters has objected to my asking questions when procurement activities are proposed. In my legal judgment, the questions (such as asking whether Mr. Bruce as the City’s Purchasing Agent has approved the documents) are sound legal questions. Mr. Peters disagreed with my legal judgment.

(d). In a sound contract for services, the City would require subcontractors to be under contract with the prime contractor while adopting the terms and conditions of the prime contract in the subcontracts. That protects the City. Also, for example, a subcontract dispute involving the City could not end up being litigation in a county besides Lake County due to a venue provision in the subcontract. In my judgment, subcontract provisions in the documents proposed by Mr. Peters were problematic. Mr. Peters disagreed with my legal judgment.

(e). In my legal judgment, subcontracts should clearly state that the contractor and not the City is the client. Mr. Peters disagreed with my legal judgment.

(f). In my legal judgment, I have concerns when documents that exist as to a contract in which the City will be a party, refer to discussions between the subcontractor and the City as, in my legal judgment, clear lines must be adhered to and no implication of any City control over a subcontractor should be evident. Such documents could be very detrimental to the City if a contract dispute develops. Mr. Peters disagreed with my legal judgment.

(g). Proposed work orders, change orders and other procurement documents were clearly prepared by vendors. In my legal judgment, that is not good practice and is not protective of the City. The City should require the use of its forms for its procurement activities. Mr. Peters disagreed with my legal judgment.

(h). There are most likely other contract issues which I have omitted to discuss herein relative to which Mr. Peters disagrees with my legal judgment. I will not further delve into the matter. I raised legal concerns. I would raise them again today as needed. I would raise them in the future as needed. Mr. Peters disagreed with my legal judgment.

(4). Purchasing Policy:

Mr. Peters asserts that I wrongfully commenced working on the City's annual Purchasing Policy. Perhaps he forgot or did not understand that the City Council adopted Resolution Number 2015-28 which adopted the 2015-2016 Purchasing Policies which related only to that fiscal year. I spoke with Mr. Bruce on many occasions about the development of a more thorough and administratively correct set of policies and procedures - - especially in view of the types of contract documents that the City had, apparently, been using. Mr. Bruce was enthusiastic and collaborated very well with me as we developed a much better document (with work still to be accomplished). I have, and will continue to emphasize the importance of the procurement process in government. It is in that process when public tax dollars are expended. It is in that process when government must earn the trust of the citizens and businesses by engaging in open and transparent processes with contract documents developed to protect the interests of the public. Mr. Peters' disagreement with my legal activities in moving forward with a revised Purchasing Policy document means very little to me and should mean very little to the City.

(5). E-Mails:

I have not and will not take the time to go through all my emails and do a daily count. However, I cannot imagine that I directed 23 emails directly to Mr. Peters in one day. Is he including emails to others relative to which he was copied? In any event, the emails of the weekend of August 27-28, 2016 started with Mr. Peters advising me that he had some time sensitive agenda items to email to me over the weekend. I emailed him on Saturday to let him know that I had not received them from him as he had said (in the event that some technology issue had arisen preventing delivery) and he emailed me back and told me that there was a delay in getting them to me. When he sent me the several sets of agenda materials, I reviewed them as I promised that I would. That is as much as I plan to go into on this absurdly ridiculous part of the allegations against me.

(6). Weekends:

As noted above, weekend communications do occur. That is true for every City and client that I represent. Most City Managers and their staffs appreciate the fact that I work on weekends and will have the materials that they asked to have reviewed,

written or the like ready for them at the start of their work week. Sometimes City Managers and staff as well as elected officials contact me on weekends and ask for extensive work on weekends. Again, that is as much as I plan to go into on this absurdly ridiculous part of the allegations against me.

(7). The Debary Joke:

Mr. Peters took offense to my attempting to bring a conclusion to his assertion that my legal advice (that I provide to all cities) cautioning staff to ensure separation from the subcontracting process somehow attacked his ethics. My family lived in Deltona from 1986 until 2013. I know many Debary stories and, just like I used to have Deltona stories joked about with me, I tried to joke to lessen the tension of Mr. Peters. It, obviously, did not work. Maybe it was a bad joke. It was not, and was not intended to be, an evil joke. If making a bad joke is an offense, well a lot people are committing egregious acts daily if not hourly. Anyone who is around me knows that I try to intervene with jokes as I believe as Maya Angelou when she once said "I don't trust anyone who doesn't laugh."

(8). Summary As To Mr. Peters:

In sum, I have not questioned Mr. Peters' engineering abilities or attempted to interfere with his engineering decisions or questioned his engineering judgments. Mr. Peters has not treated me with reciprocity in that regard. I have not attacked Mr. Peters. I have been the one who is the subject of an attack.

(G). GWEN JOHNS:

(1). Introduction:

I enjoy working with City Clerks about as much as anything in my municipal law practice. If one were to inquire of the City Clerks and County Clerks that I have worked with over the years and now, I believe that one would learn that the working relationships are really good. I really wanted such a relationship with Ms. Johns. As noted over the many months that have gone by as Ms. Green handled this matter, I have heard that Ms. Johns did not mean to file a complaint, never intended to have this process occur, and that she desires to write a letter to end the process or the like. I trust that she now understands that nothing that was said or done was said or done with any intent other than to provide legal guidance and determine what happened in certain circumstances and why that things happened as they did.

(2). The City Charter:

First, upon becoming City Attorney I was asked to accomplish an analysis of the *City Charter* and City policies. I provided an analysis of the *City Charter* which articulated many things, but one of which was that the City Clerk in Mount Dora is not a Charter Officer of the City and is, instead a City employee of the City Manager if the City

Manager determines not to serve as City Clerk. Somehow, that generated concern and discussion. Frankly, I have no view on the matter and have never proposed anything. If the City Council wants to propose a change in the *City Charter*, it can do so. If Ms. Johns wants to stay as is, that is fine. It is, likewise, fine if she wants to move in the direction of becoming a Charter Officer of the City. I have stated, on numerous occasions, the importance of the City Clerk position in City governments. I was asked to prepare an ordinance showing what such an ordinance could look like if a move to the City Charter Officer position was desired. I did so. I did not propose it. I merely drafted it. I do not know what else I can say.

(3). Chandler public records matter:

As to the Chandler public records matter, I urge anyone interested to review the June 14, 2016 communications and other communications about that matter. In sum, the communications were normative except for the fact that the communications that I had with Mount Dora personnel rejected the role of the City Attorney in such matters while all other cities which I engaged in conversations with worked in a collaborative manner. The matter was one about which I made a short inquiry just to ensure that all was going well from a legal perspective. My short inquiry, I might add, related to the same subject about which the main attorney for Public Risk Management (PRM) wrote an 8-page legal memorandum to PRM cities. And, the Florida Police Chief's Association issued a Red Alert" which provided, in part as follows: "First and foremost, please consult with your agency or city attorney for direction on handling any Public Records requests." Again, City staff disagreed with my legal judgment while I was not criticizing anything that they had done.

I must add that on page 13 of her report, under the Police Chief O'Grady comments, Ms. Green says that "Mr. Groot sent emails to individual officers before Ms. Johns and IT had checked out whether there were problems with the City's spam filters blocking Mr. Chandler's emails. He circumvented the City's normal procedures in such matters and changed them without going through the City Manager." I have no idea as to what this refers. I communicated with Ms. Johns and Police Chief O'Grady and not individual officers. I cannot figure out what is being said as to circumventing anything. I communicated with Ms. Johns and Police Chief O'Grady about the public records request. I am not sure if I even know who is in charge of the City's IT system.

(4). Florida League of Cities Membership Directory:

With regard to the errors that I pointed out in the Florida League of Cities (FLC) Membership Directory, they were peculiar as Council Member Tillett, who was elected on November 3, 2015, was not mentioned at all (her position is shown as "Vacant") while the Interim City Manager was mentioned by name although appointed on February 27, 2016 and, then, although our firm was named City Attorney on March 15, 2016; the former City Attorney was still named as City Attorney. Additionally, several months had elapsed prior to the publication deadline in which time the correct information could have been provided to the FLC. This type of thing reflects upon the

City and I tried to help remedy the matter and ensure that it would not occur in the future. I did follow up when I thought of the Web based FLC Directory and wanted to make certain that, at least, it was correct and I think that that was a prudent thing to do.

(5). Public Meeting Notices On City Web Site:

With regard to the meeting notices on the City's Web site, I obtain meeting materials from the Web and could not locate subject the meeting on the City's Web page. That is a significant issue. I have experienced notice issues with other cities (relative to which I have raised the same issues without controversy or intrigue) and wanted to make certain that all was well. I acted in accordance with my legal judgment. I inquired as to the policies meeting notice policies and practices of the City. I was learning, too, and I wanted to make certain that we were all on the same page.

(6). Allegations Relating To Feelings:

How can I respond to an allegation that a person "feels" that every communication that I have is one where I am looking for something wrong? I cannot address that type of allegation. I can point you to the text of the communications had and feel certain that no reasonable person would come to that conclusion when looking at the communications in an objective manner. If we are all to be vulnerable to how every person we speak with or otherwise communicate with understands or feels about our communications; we are all in trouble.

(7). Saying "Thank You" Is Bad:

I need to add that we are getting to the point of ridiculousness when a person who attempts to bring a communication to a close by saying "thank you" is alleged to be aggressive, mean or hostile by saying "thank you". I say things like "have a good day", "thanks" or "thank you" at the end of virtually every communication which I write. I just do not know what to say when it is alleged that saying "thank you" was somehow a bad thing to do. I said "Thanks for the effort" to Ms. Johns and those words meant thanks for the effort – nothing more and nothing less.

(8). Summary As To Ms. Johns:

I wanted, and still want, a great working relationship with Ms. Johns. I cannot assume that every comment that I make will be taken with a bad motive attached to it or somehow involving conspiracy or intrigue. If Ms. Johns did not like what I said, when I said it or the like, that is her right. But, the statements that I made did not warrant a complaint being made. I have not attacked Ms. Johns. I have been the one who is the subject of an attack. I can only tell the reader, that I desired to work well with Ms. Johns and that the issues that I wrote about were ones that I would have, and in some cases, have written others in other governments about and which issues were addressed in a mature and professional manner without recrimination or the projection of hidden motives and agendas.

(H). MR. LIENBACH:

(1). Introduction:

This whole process has been one of the most discouraging and disillusioning things that has happened in my professional life. The comments attributed to Mr. Lienbach are just plain disheartening.

(2). General Interaction With Mr. Lienbach:

Mr. Lienbach I had numerous conversations about the City and City staff. He always told me that he was my biggest cheerleader in the City and that the City needed me to continue to provide my judgment on issues. We talked about our mutual faith on many occasions. On his last day in his position at the City he came over to Sanford for lunch and he advised me that he thought that I had been providing just what the City needed. There was one area which we disagreed and that was he said that I need not write at such length about matters and could just say that I recommended or did not recommend a contract or other like. I disagree for several reasons. I believe that governmental transparency requires that the public be able to evaluate how actions were taken by government and under what circumstances. I believe that going into detail allows decision makers to understand the views of staff and the issues that arise as to those matters. I believe that the detail provides an educational function for staff and officials alike. And, I believe that the detail provides the basis for future discussions as similar or related issues arise. Mr. Lienbach disagreed with my philosophy in that regard.

(3). The Area Of Misunderstanding:

The one area of misunderstanding that we discussed was the fact that I (and I believe others) thought that Mr. Lienbach had been engaged and paid a full City Manager's salary in order to address managerial issues in the interim until a permanent City Manager was employed. Mr. Lienbach indicated that that was never his understanding that that his main role was to "babysit". Mr. Lienbach, I might add, used the word "bully" on one occasion and it was not directed toward me, but toward a member of City staff who I will not name.

(4). Summary As To Mr. Lienbach:

In sum, what Mr. Lienbach is said to have said to Ms. Green and what Mr. Lienbach said to me come from two totally different universes.

(I). POLICE CHIEF O'GRADY:

(1). Introduction:

I have no introduction as my interaction with Police Chief O'Grady has not been great.

(2). Code Enforcement Versus Lake County Government:

First, as to directing Ms. Sommer to do anything. That I did not do. Indeed, I stated to her that "You may want to discuss that idea with Mr. Lienbach." My point was, and still is, that it is not very good for intergovernmental relations to have a government sending a code violation letter to another government unless the letter is first cleared by either the City Manager or City Council or both. That is normative in every County and City that I have worked with and I have seen an unnecessary issue arise between Volusia County and Deltona due to the City calling out the County for high grass growth. How my stating that discussions should occur with Mr. Lienbach could be construed to mean "Mr. Groot was basically saying that every issue regarding county property should go through him" is totally beyond me.

(3). The Spillman Contract:

With regard to the Spillman contract, the emails that I sent as to the matter addressed legitimate contract concerns. The matter was, in essence, however, turned over to Mr. Bruce who expanded the length of the contract by having standard City contractual terms made applicable and working with the vendor (a good thing I might add). I assisted Mr. Bruce, as needed. I praised him for his work on the project. I might also add, that Mr. Bruce and I have had a very good working relationship. He has told me that he has learned more in our time together (we have still not personally met) than he did for many years working with other legal counsel. I do not know why anyone would allege that I have treated him badly and will only say that his position is one of great importance and, as I have noted in materials that I have transmitted to the City Council, the purchasing function of a local government can make or break an organization.

(4). Lakes of Mount Dora Code Enforcement Cases:

As to the August 30, 2016 email that Police Chief O'Grady says made him look bad. The matter involved the Lakes of Mount Dora code enforcement cases and, of course, litigation was pending with regard to the property owner. The City Council, in my legal judgment, needed to know all that was going on as to those properties. As to stating that Police Chief O'Grady was unprofessional, where is anything near that stated? I wrote about my professional obligations and made my recommendation (which was rejected by Police Chief O'Grady) based upon those ethical and professional standards as I am obligated to do. I spoke with legal counsel for the code enforcement respondent (property owner) and he advised me that he had not been noticed as to hearing dates and times. I verified with City staff that he had not been noticed. My legal judgment was, and is, that a due process issue arose. Police Chief O'Grady disagreed with my legal judgment.

(5). Copying Or Not Copying City Manager With Emails:

As to whether all emails were copied to Mr. Kerkhof when he was acting City Manager, he may have been left off some as we transitioned from Mr. Lienbach to him for a short while. There was certainly no evil intent in that regard, but it is sadly amusing, how much intrigue has resulted from who and who is not copied on emails. It is also somewhat funny to note sometimes those who others criticized me for not copying told me that I need not copy them. How do you win in that scenario?

(6). Police Chief O’Grady’s Communications With Oviedo:

Lastly, with regard to Police Chief O’Grady’s communications with the City of Oviedo; the following is what transpired. One morning when I arrived at City Hall in Oviedo the City Manager advised me that the Oviedo Police Chief had been contacted by Police Chief O’Grady and that Police Chief O’Grady inquired if Robin Hayes knew what she was getting into. The Oviedo City Manager then said that he really should not have told me that. That put me in a troubling situation. As the City Council had selected Ms. Hayes and a contract was then being negotiated, I felt like I might have an obligation to bring this to the attention of the City Council as I really do not believe that such a comment would be appropriate (my judgement). I had been reaching out to Police Chief O’Grady as to some training or the like and was really disappointed. Ultimately, the Oviedo City Manager and I discussed the matter and we concluded that the best thing to be done under the circumstances was to just move forward without any further discussions as to the matter. Police Chief O’Grady and I were to have coffee prior to the September 6, 2017 City Council meeting and I was looking forward to engaging in some positive communications. Due to the complaint being filed I did not attend the City Council meeting and we did not have coffee. I challenge anyone to read the email communications and come to the conclusion that I was berating Police Chief O’Grady.

(4). Summary As To Police Chief O’Grady:

I have no idea why I need be responding to the statements of Police Chief O’Grady, but that is the result of the manner in which Ms. Green issued her report. I have done the best I can to provide the details as to the matter.

(J). “OTHERS”:

(1). Introduction:

Ms. Green continues to refer to “others”. What does that mean? How do I respond to that? The unfairness continues? That being said, I will address comments set forth in Ms. Green’s report as follows:

(2). Attorney Sherry Sutphen:

At the commencement of our being selected as City Attorney, I contacted Ms. Sutphen and advised her that I would not interfere with the litigation that she was handling and that I would not be taking such a prominent role as the prior City Attorney in litigation

strategy sessions. I well knew of the outstanding legal abilities of Ms. Sutphen and, indeed, had communicated praise to the managing partner of her law firm about cases that she handled in defense of the City of Deltona. Ms. Sutphen is a tough attorney. She is an excellent advocate. She is a very knowledgeable attorney. We had one difference of view which resulted from my firm belief that code enforcement activities and litigation should not be mixed at all. I am not suggesting that Ms. Sutphen has a wrong-headed belief or an illegal, immoral or unethical belief. We had a difference in viewpoints and we both know that mature and thoughtful people and professionals do that. She was direct and open with me and I was, likewise, with her. I do not know who the “several individuals” are who critiqued my communications with Ms. Sutphen. It is most difficult to address comments such as that which are attributed to undisclosed persons. I can advise you that Ms. Sutphen and I did agree that changes needed to be made in the City's code enforcement processes.

(3). John Bruce:

Several undisclosed interviewees are said to have believed that I bullied Mr. Bruce. Mr. Bruce states to the contrary. Indeed, he has made many favorable comments to me and we have worked together well. Nevertheless Ms. Green thought it appropriate to state that some people, unknown to me, “felt” that way. It is really not fair to say “some people said this” and “some people said that” much less that certain people “felt” a certain way.

(4). Vince Sandersfeld:

I have enjoyed my relationship with Mr. Sandersfeld. His area of City government faces a lot of highly technical challenges. With regard to the City's sign regulations, that is a matter of concern in most local governments throughout the Nation as a result of the United State Supreme Court decision in the *Reed* case. I do not know what “peppered” with emails means which was the characterization used by Ms. Green. I do know that, in my legal judgment, it was prudent and is prudent to evaluate local government sign codes. It was my legal judgment that my client was best served if the City Council received the communications with which I copied them. If the City Council desired not to receive communications, they can, as a group, or individually, so advise me.

(5). Council Members:

(i). Introduction:

I do not make it a practice of engaging in debates with members of the local governing bodies which I serve and will not do so now. I will make a few comments about some matters however.

(ii). Council Member Marie Rich:

With regard to Council Member Marie Rich, Ms. Green states that Ms. Rich determined that I had been “insubordinate” to her. I, frankly, don't know how any person could in

any way find that assertion credible. All verbal communications since our selection as City Attorney with Ms. Rich have been at City Council meetings in full view of the rest of the City Council and the public. Thus, anyone watching those meetings has seen every verbal exchange that has ever occurred between Council Member Rich and I and can judge the communications for themselves. At the one Chamber of Commerce breakfast that I attended, I waived to her while I was on the phone outside of the building. She did not return my waive. She sat at the same table with me. I said "good morning" and she did not reply. She directed no conversation toward me during the entire breakfast meeting and I did not try anymore. Thus, no verbal interaction occurred on that day. When we were first selected as City Attorney I reached out to her for an individual meeting as I did with all other City Council Members. She declined meeting with me and I do not know why. As to emails, I really only recall 2. One that she sent me stated that it was unprofessional to have the motivational and "Go Noles!" statements on my emails and advised me that some spelling errors in occurred my emails. I checked and she was correct and found out that there is a glitch in the Outlook spell check and our IT folks explained the glitch (although I have found some issues with that analysis still). I sent an email to the entire City Council expressing regret for that problem. The other email that she sent to me was, as I recall, right around the time of the Lauren Ritchie editorial in September, 2016 in which email Ms. Rich basically asked me a "have you stopped beating your wife" question which I did not respond to. Also, one time at a City Council meeting Ms. Rich asserted that I had failed to respond to an inquiry from one of her constituents. I asked her who she was referring to and she declined to state who she was referring to. I know that I had responded to everyone concerning Mount Dora business except for Ms. Ritchie. Thus, I still have no idea who she was speaking of.

(K). EMAILS GENERALLY:

There seems to be some underlying criticism of my using emails as a means of communications. If that is a violation, I stand convicted - - - as does the rest of the working and non-working world. Email is a way to communicate such that having missed telephone calls, telephone calls arriving at bad times, "voice mail tag" and the like can be avoided and, an additional benefit, is that the recipient can ponder the text of the communications, its attachments, etc., and formulate their views on the matter or forward the discussion being had to others for their views.

I would love to be able to attend meetings at City Hall and was looking forward to doing so in order to have more face-to-face time with City staff when the permanent City Manager arrived in office. The complaint being filed and the length of time that it took to engage in the resulting process has interfered with that goal.

With regard to copying emails to the City Council, in my legal judgment and judgment as the City Attorney serving the City Council, particularly in a time of transition and particularly when not all information was being provided to the local governing body in the manner in which I am accustomed to; I concluded that it was important to ensure that the City Council had the full opportunity to review all matters fully. To the extent that a communication may not be desired, the City Council person could delete the

communications or tell me to not send the communications to them (which no one did except Council Member Rich as to news articles and the like (and, to some extent Council Member Rolfson who I stopped sending news articles to for another reason)). My view, is that the local governing body of a city or county is granted the sovereign powers of the people (citizens) and deserve to be fully informed in every respect. Moreover, it is my legal judgment that it is my legal obligation to ensure that the members of the local governing body receive all information that is pertinent to the decisions that they make and that I cannot merely rely on City staff to provide all such information. In my legal judgment, I would be violating my legal duty to defer to City staff in that regard.

With regard to my having motivational sayings or “Go Noles!” on my emails, I must state that I must have sent out a million emails over the years (I hope that I am not exaggerating because it sure seems like that many) and NEVER has anyone criticized the motivational sayings or the like. Indeed, I have experienced many persons saying that I made their day or that the quote was just what they needed to hear that day or the like. The “Go Noles!” comment has resulted in numerous positive communications and ice breakers with legal counsel and others - - even in stressful contexts. I will not change who I am. I would never think so much of myself as to critique anyone else’s personhood and how they express themselves or reach out to others.

(L). HOW THE COMPLAINT WAS PROCESSED – WHY WAS THE CITY COUNCIL LEFT OUT?

I have always had issues with regard to the manner in which this complaint was handled. Perhaps I should have raised them earlier (although I did mention them to Ms. Green). In sum, and by analogy, imagine if someone approached me and alleged that the City Manager had engaged in some type of improper conduct. Imagine if I advised the City Council that, since that allegation had been made, I had determined on my own to procure the investigative services of a managerial consultant at the rate of \$250.00 an hour (plus expenses plus unknown hourly charges for other personnel plus annual fee adjustments) to investigate the matter. If I had done that, I should have been fired. This whole matter should have been brought before the City Council to determine how the City Council wanted to proceed. The City Manager and the City Attorney work directly for the City Council. The City Council can hire and fire. The City Council should have decided how to proceed in this matter.

I might add that the idea of “expeditious” handling of this matter was never implemented from the beginning. Nowhere in the agreement with Ms. Green is she instructed to act expeditiously and her work was not completed for 205 days by my calculation (the report is dated March 22, 2017, but it was delivered to the City on March 24, 2017).

With regard to confidentiality of the complaint process, I respect that. Anyone who knows me would know, however, that, if asked, I would have said make all documents public. That being said, what I found, and continue to find, odd is that the City's policy referred to expeditious and confidential processing of the complaint - - - yet neither

occurred. And, although Ms. Green took it upon herself to go well beyond that which would have been appropriate to review, she stayed away from the confidentiality issue and took 205 days to issue a report (she stated in writing and verbally that the report would be finished much earlier than that).

As to the scope of Ms. Green's investigation, it is interesting to note that, in the second paragraph of her report, she states that she had to interview Mr. Peters to "determine the scope of the investigation". Thus, the City staff that could have been managing this travesty (and, yes, that is what I believe it to be) failed to do that which should have been done. It seems that Mr. Peters and Mr. Bloom determined the scope of the inquiry as to the City Attorney who is selected directly and solely by the City Council. She seems to determine on her own accord to delve into issues that in no way relate to either Mr. Peters or Ms. Johns complaints.

Specifically, as to right-of-way issues; I recommended that Ms. Green interview Steve Triage as to normative right-of-way acquisition practices and procedures. She, for whatever reason, determined not to do so.

Also, I believe that Ms. Green's cursory summary of Mr. Colbert's interview very much underutilized the comments and insight that Mr. Colbert provided to this matter.

(M). SUMMARY:

I have never told a City engineer how to engineer a project. I have never told a City law enforcement officer who to arrest or not arrest. I have never told a firefighter how to fight a fire. Etc., etc. I have never told a City Clerk how to do her job. Yet, it seems that when the City Attorney gives legal advice there is a belief that non-attorneys can question legal matters and superimpose all sorts of undercurrents, devious motives, horrid statements, and the like over the legal views of the City Attorney. I have never experienced what the City staff of Mount Dora has directed toward me. I was excited and enthusiastic about serving this City and becoming part of a team. There seems to be some force or effort that is against my role as a professional legal counselor.

I have very much wanted to engage personally with staff and awaited with enthusiasm the arrival of a permanent City Manager and attendance at staff meetings and the like. This complaint process has greatly interfered with the ability to do that and has chilled, at least for the time being, my ability to engage with City staff without thinking that every time I say something it will result in some type of complaint being made.

What the readers of Ms. Green's report will see is sorely lacking is quotes from correspondence issued by me which is as horrid as portrayed by her. The reason why is that if one reads the communications, one would not discern anything inappropriate. Indeed, if one reads the communications, one would see that those who critique it are grossly mischaracterizing the contents and meanings of the communications. Also, Ms. Green attributes comments or views to me that just are not true. She stated that I believe that I can be harsh in any way that I would like. I have not said that and do not

believe that. If Ms. Green believes that I have been harsh, she quotes no communications to support that conclusion. I believe in being direct and clear. I desire people to be that way with me. But, harsh. I would say that the tone of what the reader is reading now is the tone of a direct writer. Is this tone harsh? If so, I confess to being harsh? I believe that it is merely direct and strong and if the reader finds anything wrong with that, then we will just have to differ on that. The City of Mount Dora, in my view, desired to hire a strong and knowledgeable attorney. That is what I attempted to demonstrate in my dealings with everyone in the City that I had an opportunity to work with and that is what I will do in the future. I was not hired to merely sign off on whatever came my way regardless of the legal issues and regardless of the quality of the work.

(N). CONCLUSION:

The results of the charges started with the columnist from *The Orlando Sentinel* (who I still have not met in person) calling me “arrogant” and we have now progressed to her publishing that I “bullied, harassed and intimidated at least two city employees” while calling me a Donald Trump who holds people in “contempt”. Also, the commentator asserts that my flamboyant emails were “designed to humiliate employees”. I have been damaged as a result of a report that cites nothing except the fact that the legal guidance that certain employees were given was not what they wanted to hear. There is not one piece of communication, oral or written, which would in any way demonstrate that my comments treated staff in any inappropriate manner. On the other hand, look what the complaining about legal guidance has wrought. Ms. Green continually refers to fears of my retaliating against employees. How can that be mentioned without being repudiated? What power do I have to take any such action? This should be most evident from the current status of this matter. I have been defamed and what can I do about it except spell out the true facts and circumstances as I am now doing?

I have provided Mr. Colbert with many of the emails that have been brought into this matter. I urge anyone interested in this matter to actually read the emails.

Ms. Green did not find a violation of any law and should not have found a violation of any policy. I have more to say, but will bite my tongue as to any other aspects of her report such as her delving into operational issues and issues as to how I should engage the City Council in communications.

I am disillusioned with the way that I have been initiated into the Mount Dora government family. I am discouraged with the manner that I have been treated. I do not assert any violation of law or violation of the City’s rules and procedures by Ms. Johns. I do believe that the initial complaint was not well motivated and that whoever breached the confidentiality component committed a violation. However, I remain ready, willing and able to serve the City in a high quality manner and work to meet the legal and other challenges and opportunities that face the City in the future. I must reiterate that this whole affair has not had a good effect on me as it has been discouraging and disheartening.

This whole affair makes we wonder if some of the participants have ever engaged in a project or a work effort where a lot of really good minds had a lot of really diverse opinions and had to thrash them all out to achieve a common goal. That is normative in military operations, challenging litigation, complex legal discussions and the like. I really appreciate it when I am involved in such discussions and debates. I do not question the motives or presume that a person has a sinister motive because we are debating an issue. To do so would not a mature way to work as a professional. Thus, I stand amazed at what has been said by some.

I am certain that I have missed items that I could bring to your attention, but I have only so much time to address this matter and cannot devote any more time than I have to doing so.

I stand by the comments made in my emails of November 7, 2016 and December 12, 2016 to Ms. Green which were attached to her report except that I would not like to see Ms. Johns disciplined as she has indicated, as I understand matters, that she did not intend any complaint to be processed nor any harm toward me.

Thank you for your attention to this matter. I hope that all is well with the readers of this statement.