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April 7, 2015

DAVE SNYDER
JOHNSON AND TURNER
56 E BROADWAY AVE
FOREST LAKE, MN 55025

Re: **In Re: City of Lake Elmo**
Our File: 39123

Dear Dave:

Enclosed with this letter please find a summary of my recommendations to the City. If you need additional information or require additional services, please contact me.

Very truly yours,

JARDINE, LOGAN & O'BRIEN, P.L.L.P.

Jessica E. Schwie

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JES:rjo
Enclosure

**CITY OF LAKE ELMO
REVIEW OF EMPLOYMENT MATTERS**

In re: Personnel Allegations
involving City Administrator Dean Zuleger and others

Summary of Review and Recommendations

INTRODUCTION

In December 2014, Finance Director Cathy Bendel alleged that City Administrator Dean Zuleger was subjecting her to a hostile environment based upon her gender and in retaliation for her alleged reports of unlawful conduct by others. The undersigned was retained to conduct an independent review of the allegations.

During the initial interview, the scope of Bendel's complaints broadened to contain a complaint by her against many other individuals employed by, or otherwise associated with, the City. Bendel suggested that individuals were collectively mistreating her and/or engaging in improper conduct that she believed was either unlawful, unethical, or otherwise improper. Based upon a review of various employment practices and matters at the City of Lake Elmo as of January 13, 2015, the allegations of a hostile environment based upon gender and/or retaliation are not supported.

It is fair to say that the environment at the City of Lake Elmo is dysfunctional, but its dysfunctional nature is not because of gender, retaliation for reporting unlawful conduct, or other protected reason within the meaning of the law. Rather, it appears that the dysfunctional communications and operations of the Elected Officials of the City have led to extreme levels of stress and anxiety which has in turn engendered abnormal relationships amongst City staff and a dysfunctional communication system.

STATEMENT OF THINGS RELIED UPON

Statements¹ of:

1. Finance Director Cathy Bendel (Two interviews, one collectively with Associate Allison Lindevig)
2. City Administrator Dean Zueleger (Two interviews, one collectively with Associate Allison Lindevig)
3. City Clerk Adam Bell
4. Deputy City Clerk Becky Gumatz
5. City Planning Director Kyle Klatt
6. City Planner Nick Johnson
7. Third-party Contract City Engineer Jack Griffin
8. Former Assistant City Administrator Sandy Thone (interviewed by Allison Lindevig)
9. Treasurer of Lake Elmo Library Board Ann Buchek (interviewed by Allison)
10. Taxpayer Relations and Communications Specialist Alyssa MacLeod
11. Former Finance Director Joe Rigden (interviewed by Allison)
12. Third-party HR Consultant Mary Rose Iten
13. Former Council member Wally Nelson (ultimately failed to produce himself for full interview)
14. Mike Bouthilet (ultimately failed to produce himself for full interview)

Observations of, and communications with,:

1. Councilmember Anne Smith
2. Councilmember Julie Fliflet
3. Councilmember Justin Bloyer
4. Councilmember Jill Lundgren
5. Mayor and Councilmember Mike Pearson

and the following documents and things:

1. Voluminous email communications produced by Bendel relating primarily to her communications with Zuleger.
2. Voluminous documents of varying topics produced by Bendel
3. Documents produced by Zuleger
4. Observation of City Council Meetings at <http://www.lakeelmo.org/viewmeetings>
5. Email communications between me and Bendel and Zuleger, individually and collectively.
6. Personnel files of Zuleger and Bendel
7. Personnel Policy and Handbook of the City of Lake Elmo

¹ Employees were provided the required notice of their rights prior to the taking of their interview. Copies of the executed advisories are retained by the undersigned. In executing the document, each person was specifically advised of the need for truthfulness.

Summary of Review

Based upon a review of the above-identified statements, documents and things, and my review of the behaviors and credibility of the witnesses, the following is a summary of my observations:

1. Dean Zuleger is an intelligent leader that is well-versed in a variety of leadership strategies, e.g. Steven Covey's theories as further espoused in the 7 Habits of Highly Effective People and Daniel Goleman's theories as further espoused in Emotional Intelligence. He is intense in his objective to make the City of Lake Elmo well-respected and superior in the provision of municipal services. He is well intentioned, but his level of intensity could be viewed as off-putting and abrasive. He exhibited physical signs of strain, stress and anxiety when discussing a variety of issues. When his handling of matters was questioned, he would initially engage in tactics that appeared to be for purposes of gaining control of situation and the direction of the conversation.

2. Cathy Bendel sincerely believes that she is being targeted by Dean Zuleger and those close to him. When asked how she was being targeted, meaning what treatment she was complaining of, she cited primarily to the fact that persons at the City isolated her from communications; and, when they did communicate with her, they were abrupt and failed to provide sufficient information.

3. There were individual(s) who cited no short comings of Zuleger. There were individual(s) who cited no short comings of Bendel. There were individual(s) who has been identified by both Bendel and Zuleger as likely to provide informative opinions (that they likely would be respectively positive), but in who said they were both awful people to work with—that Zuleger is overly intense, a control-freak, and abrasive and that Bendel is dishonest in communications, hypercritical, and insufficiently skilled at her job. Nearly all individual(s) interviewed indicated that the real problem was neither Zuleger, nor Bendel, but the behavior and policies of the Elected Officials to City Council, in particular Anne Smith.

4. Individuals admitted that they do not seek out interactions with Bendel. As such, it is fair to conclude that Bendel is being effectively isolated. However, there was no indication that the individuals had conspired to isolate Bendel or that a directive had been issued to cut Bendel off from communications.

5. Each of the individuals cited a variety of reasons as to why they individually did not seek out communications with Bendel and effectively isolated her. Uniform amongst those reasons were two primary reasons (1) that City Council Member Anne Smith is hostile and abusive in her communications with City staff, that Smith further seeks to publicly embarrass city staff, that the other Elected Officials tolerated or even supported the conduct, that based on the recent election results the public appears to be unconcerned and unsupportive, that Bendel is believed to be a source of fodder for, and confidant of, Smith, and, therefore, if persons engage with Bendel and "she throws them under the bus", they will be subject to termination in a publicly embarrassing fashion that will ruin their professional careers and aspirations, and (2) Bendel is a hypercritical, killjoy, who does not adequately understand municipal financing tools such that not only is she unpleasant to deal with, any dealings with her are unproductive.

6. As to the tenor of any communications between Bendel and Zuleger, all persons denied ever overhearing Zuleger speak to Bendel in a manner that would suggest gender discrimination or retaliation or even an unprofessional tone. Bendel similarly could not identify any communications that linked statements made by Zuleger to her as being gender-based or retaliatory because of claimed protected reports.

7. My personal observation is that Zuleger can be abrasive and abrupt, but it is generalized in nature and put to a variety of persons unrelated to gender or possible status as a protected reporter. It is part of his personality and likely to recur.

8. My personal observation of Bendel was that she knew (and others agree) that she has solid accounting skills, but that her municipal financing skills were weaker. She understood with the ongoing and up-coming land use developments that there would be a critical need for sound municipal financing skills. She stated she was willing to improve her municipal financing skills training. Although she is a Director-level employee, she was unable to articulate an executable plan for increasing her skills and the resources provided by her department overall. Further, that in terms of her interpersonal relationships with others, she knew that she did not get along well with others. She appears to believe that she does not need to have a rapport with others, rather because she is professional in her communications (which all individuals did admit to) such was adequate.

9. In short, Bendel, who is one of the highest level managers in the City, does not have the same desire for excellence as Zuleger, nor a similar interest in leadership strategies espoused by persons such as Covey and Goleman. Therefore, it is likely that Bendel and Zuleger will continue to have conflicts that are related to carrying out the functions of their respective positions.

10. During the review of personnel matters, a communications plan between Zuleger and Bendel was put in place. In addition, each of them was given homework that was aimed at reducing their respective stress and anxiety levels and in turn increasing their levels of tolerance and patience in their communications. Finally, a process was put in place for conducting a respectful and accurate review of Bendel's job performance in order to deliver her annual performance review.

11. Both individuals reported that (1) they were completing the homework and that it did bring a measurable amount of relief, (2) that the communications plan was successful in resolving their immediate communication challenges and was improving their interactions overall, and (3) while the performance review process was a disputed one, it appears that some general consensus was achieved at a reasonable and professional level of communications.

12. The Elected Officials of the City, by any reasonable person standard, demonstrate dysfunctional communications and patterns of behavior. When given the opportunity to address the same, there is an apparent lack of insight by a number of Elected Officials regarding (1) their personal behavior and that of others, and (2) how such ill-behavior could contribute, and does contribute, to abnormal working relationships. Furthermore, when given an opportunity to do so, Elected Officials could not articulate clear objective, measurable performance goals for their direct reports and senior management in the City.

Recommendations

Based upon my review, I make the following recommendations:

1. All Elected Officials of the City of Lake Elmo should be required to:
 - a. Be subject to a communications plan that includes specification of what is considered a reasonable turnaround time by staff in response to inquiries made by councilmember(s), limits all email communications, and limits the use of staff resources.
 - b. Undergo the following training : Elected Official training in order to obtain a better understanding of the laws relating to municipal operations, Emotional Intelligence training, and attend the necessary training to understand what measureable performance goals should be in place for their direct reports and senior management.
 - c. Implement a plan for the objective measurement of the performance of direct reports and senior level management and execute the plan within six months.
 - d. Watch at least 1 of the recent city council meetings in the presence of youth of adequate maturity and eloquence, request that the youth provide his/her observations regarding their behaviors, and that each Elected Official truthfully and accurately report the observations together with a plan for improving the leadership and practices of the City Council.

2. Dean Zuleger should continue to be placed on a homework plan for purposes of bringing a peaceful approach to city operations. The details of the plan should be prepared in conjunction with him and overseen by legal counsel. Furthermore, Zuleger should continue to be subject to a communications plan with Bendel (set forth below); and, in the meantime, an updated communications plan should be prepared in conjunction with Bendel, Zuleger, the Finance Committee, and legal counsel.

3. Cathy Bendel should also continue to be placed on a homework plan for purposes of bringing a peaceful approach to city operations. The details of the plan should be prepared in conjunction with her and overseen by legal counsel. Furthermore, Bendel should continue to be subject to a communications plan with Zuleger (set forth below); and, in the meantime, an updated communications plan should be prepared in conjunction with Bendel, Zuleger, the Finance Committee, and legal counsel.

4. The communications plan that was put in force, stated to be effective, and that should continue until a longer term plan can be adopted should be along the lines of that as follows with the addition with a few updated terms marked by an asterisk:

All communications between Zuleger and Bendel shall be limited and generally governed as follows:

1. All incoming mail will be opened in accordance with the City's historical practices for handling. Any items directed to any one individuals' specific attention and marked confidential, personal, or similar language will be delivered to that person alone for opening and handling. Therefore, if Zuleger or Bendel has personal mail being sent to his/her attention, it will be his/her respective obligation to advise the sender to appropriately mark the mail.
2. No one will enter another's office absent an invitation or legitimate business reason to do so such as a request by the other to do so in order to procure documentation or emergency.
3. All emails and phone communication will be limited. Instead in person, face to face meetings will be scheduled as needed to address the affairs of the City in an orderly manner. Therefore, any daily emails and phone calls to one another to answer even perfunctory questions should come to an end. Instead, topics should be itemized on

individual lists for future discussion and individuals should attempt to answer their own questions using reasonable practices, such as reviewing files for information. It has been suggested that such meetings will need to be conducted generally at least two times per week for at least 45 minutes, but no more than 1 hour. No counter proposal was offered. Therefore, please proceed to plan and schedule such meetings. All meetings should be pursuant to an agenda, conducted efficiently, professionally, and in a no nonsense manner addressing and prioritizing all job tasks to be completed. The agenda should look similar to a to do list to confirm that all required financial operations are being completed and otherwise performed and that all information and other support necessary for the financial department to perform is being met. At the beginning of each meeting, you will be expected to jointly check off what has been completed under the prior agenda, identify what has not been completed, provide estimated dates of completion, discuss why items are not completed and make a plan for how to complete the task. Please arrange for a third person to be present at each meeting. Likely candidates will be the department heads of the department whose budget or financial task is planned to be discussed. For example, if there is a plan to discuss the budget for the section 4 water main project, then the City Engineer and/or the Public Works Director would be appropriate third-persons.

4. Please limit all communications to only city operations and carry those out in a professional, no nonsense manner. All physical contact should be limited to standard professional contact of hand shaking.
5. Please limit your communications with others in the workplace so as to avoid making any comments that might cast one another in a bad light.
6. *A reporting structure with Bendel reporting to Zuleger will continue.
7. *Bendel will also continue reporting to the Finance Committee, but only as is consistent with her role as the Finance Director. For example, Bendel, not Zuleger, should take the lead on presentations to the Finance Committee.

Dated: 4/7/15

JARDINE, LOGAN & O'BRIEN, P.L.L.P.

By: 

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INDEPENDENT REVIEWER