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April 13, 2021

CONFIDENTIAL – ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

Brighton City Council Members
City of Brighton
200 North First Street
Brighton, MI 48116

Re: Internal Investigation Regarding Incident Involving City Representatives

Dear Mayor Pipoly and Council Members:

At the Brighton City Council meeting on March 18, 2021, Council requested our firm to conduct a general investigation into issues surrounding the resignation of City Attorney Paul Burns and, in particular, an incident that occurred prior to Mr. Burns' resignation between Mr. Burns and City Manager Nate Geinzer. As part of my investigation, I interviewed the following individuals:

- Nate Geinzer, City Manager
- Mike Caruso, Community Development Manager
- Michelle Miller, Human Resources Manager
- Henry Outlaw, Assistant to the City Manager
- Gretchen Gomolka, Finance Director
- Tara Brown, City Clerk

In addition to meeting with the above-listed individuals, I attempted to meet with two others, former City Attorney Paul Burns and Jeff Alber, an attorney who works with Mr. Burns and who has recently been assisting Mr. Burns in his representation of the City of Brighton. My understanding was that both Mr. Burns and Mr. Alber were in attendance at the meeting in which the alleged incident between Mr. Burns and Mr. Geinzer occurred and would therefore be able to provide first-hand information regarding that incident.

I first attempted to reach Mr. Burns on his office telephone number, but calls to that number did not go through. (I was later told by Mr. Burns that he had his office number disconnected.) I then attempted to contact Mr. Burns on his mobile phone number and left him a voicemail message



asking him to call me back to schedule a time to talk to him in regard to an investigation the City of Brighton had asked me to conduct. I received a call back from Mr. Burns, with Mr. Alber also on the phone, on the following day. Mr. Burns told me that he had not viewed the March 18, 2021 City Council meeting, so I provided him some background and answered some questions Mr. Burns had regarding the investigation. Mr. Burns advised me that he was in Arizona and had no date upon which he expected to return to Detroit. I told Mr. Burns that I could interview him over the telephone so the distance would not prevent an interview.

Mr. Burns was not willing to commit to an interview during that call as he wanted to talk with Mr. Alber and give some thought to my request. I advised Mr. Burns and Mr. Alber that I would appreciate a call back by the following week, and there was no objection to that request. Mr. Burns then called me back a few minutes later, with Mr. Alber on the call, and asked if they would be able to see what other witnesses said about the incident. I told him I had not discussed that with the Brighton City Council, but that I could ask the Council about its willingness to allow review of witness statements. I reiterated my request for a return call the following week before ending the second call.

Because I had not heard back from either Mr. Burns or Mr. Alber by the middle of the following week, I sent an email to both reminding them of my request to hear back that week and asking them to reach out to me as soon as possible.

I did not hear anything from either Mr. Burns or Mr. Alber for a couple of weeks, so I made one final attempt to reach out leaving a voicemail for both Mr. Burns and Mr. Alber on Friday, April 9, 2021. While I never heard back from Mr. Alber, I did receive a return call from Mr. Burns shortly after I left the message. Mr. Burns advised me that he had personally spoken to six of the seven City Council members and had provided them the exact same story about the incident, and that he had nothing else to add. I asked if he could at least tell me what he told the six City Council members about the incident, but he declined my request.

Because I was unable to speak to Mr. Burns or Mr. Alber, I concluded my investigation and prepared this Report based on the information I was provided by the other six individuals I interviewed.¹

BACKGROUND

An incident occurred at a meeting on February 10, 2021, at which certain City employees and City representatives were discussing an issue regarding the Brownfield Redevelopment

¹ I opted not to seek information about Mr. Burns' statements to individual Council members as I determined that it would have been inappropriate to make investigatory findings based on second hand accounts provided by members of Council. The ability to ask follow-up and clarification questions, as well as observe an interviewee's body language, are extremely important in an investigatory context.



Authority and a piece of land which the City was hoping would be developed soon. Shortly after that meeting, the City received a letter from then City Attorney Paul Burns dated February 16, 2021, in which Mr. Burns indicated that the City would need to retain new counsel as a result of his decision to reduce the workload of his practice and Mr. Alber's decision to refocus his practice toward the private sector. A follow up letter dated March 4, 2021 from Mr. Burns provided that his "retirement from the City" was effective immediately and that he would not be attending the City Council meeting scheduled for that evening.

While there was no indication in either of these letters that the retirement/resignation of Mr. Burns had anything to do with the City of Brighton or its employees, there was a suggestion elsewhere, which was discussed at a City Council meeting, that the retirement/resignation had something to do with an incident that occurred between Mr. Burns and Brighton City Manager Nate Geinzer during the February 10th meeting. It was based on this suggestion that the City Council requested Keller Thoma to investigate the incident that occurred during the meeting involving Mr. Burns and Mr. Geinzer, and to report findings back to City Council.

While, as noted above, I was unable to speak with Mr. Burns or Mr. Alber, I had the opportunity to meet with the other two participants in the meeting where the incident had occurred, the City's Community Development Manager Mike Caruso and Mr. Geinzer. Mr. Caruso explained to me that the purpose of the February 10th meeting, which was conducted over Zoom, was to discuss the Brownfield Redevelopment Authority in regard to the demolition of a building located on the at-issue property. According to Mr. Caruso, City staff was in favor of moving forward with a plan that involved the City providing money prior to the sale of the at-issue property to assist in the cost of the demolition, while Mr. Burns felt there was too much risk for the City to spend the money at the time since the potential developer of the property was not fully committed to the purchase.

Mr. Caruso explained that at some point during the discussion, either Mr. Burns or Mr. Alber said something along the lines of, "Mike, just do your job and get it done with the developer" in a critical tone, suggesting the problem was not the disagreement between the City attorneys and City staff, but was the result of the staff's failure to take action to make the development happen. Mr. Caruso believed the initial comment had come from Mr. Burns and that Mr. Alber followed up with a comment supporting Mr. Burns. Mr. Caruso advised me that in response to those comments, Mr. Geinzer asked the question, "Do you really want to go there?" Mr. Caruso explained that the statement from Mr. Geinzer was made in a loud voice and was repeated several times. Mr. Caruso explained that after Geinzer's comments, he recalled Mr. Alber walking away from his camera, and that things quickly settled down.

In the lead up to the investigation, I was made aware of a suggestion that Mr. Geinzer used profane language or engaged in a profanity laced outburst during the February 10th meeting. Based on this, I asked Mr. Caruso about the use of profanity. Mr. Caruso did not recall any swearing at all by anyone at the meeting, and in response to my question, adamantly denied that there was



anything that could be characterized as a profanity laced outburst. Mr. Caruso was certain that Mr. Geinzer's comments were made in defense of Mr. Caruso.

Prior to providing me his recollection of the incident, Mr. Geinzer provided some background regarding the Brownfield Redevelopment Authority property at issue, noting that he had received direction from City Council to get the building down. According to Mr. Geinzer, Mr. Burns' directive was to protect the City's interest. Mr. Geinzer believed that going forward with the plan to spend City money to assist in the demolition of the building located on the property was in the best interest of the City, however, according to Mr. Geinzer, Mr. Burns felt there was too much risk going forward with the plan to demolish the building prior to receiving a commitment from the potential developer of the property.

Mr. Geinzer advised me that the dispute seemed to have its origin in a previous meeting, which occurred on Zoom on February 8, 2021. Geinzer indicated that these opposing opinions as to the best way to proceed on the at-issue property were being discussed during the February 8th meeting, when Mr. Burns began speaking to Mr. Geinzer and Mr. Caruso in a condescending tone indicating that they needed to do their job to get the development going. While Mr. Geinzer described being frustrated by the comment from Mr. Burns, particularly considering concerns he had with Mr. Burns' work performance for the City, Mr. Geinzer did not respond to Mr. Burns' comment during that meeting. Mr. Geinzer explained that he had no issues with the opposing viewpoints as he understood he and Mr. Burns had slightly different directives from City Council, and he felt the best way to resolve the issue was to take the matter to the Council during which both Mr. Geinzer and Mr. Burns could express their respective opinions. Mr. Geinzer further advised that there were no voices raised during the February 8th meeting, but that he felt Mr. Burns had spoken in a condescending tone toward him and Mr. Caruso.

Mr. Geinzer explained that another meeting was scheduled on Zoom on February 10, 2021 for further discussion on the issue. According to Mr. Geinzer, at the meeting of February 10th, the participants were continuing their discussion regarding the Brownfield Redevelopment when Mr. Alber started speaking in a very condescending manner toward him and Mr. Caruso. Mr. Geinzer explained that Mr. Alber was getting "snippy" and began telling Mr. Caruso how to do his job. Mr. Geinzer told me that Mr. Alber's tone and attitude were very frustrating to him as he felt this was an attack on City staff, particularly because, unlike the tone that occurred at the February 8, 2021 meeting, this condescending attitude was coming from Mr. Alber who had only been working for the City for a limited time and did not fully understand the process and the players involved in the potential development of the property.

According to Mr. Geinzer, in response to the comments from Mr. Alber, he stated in a loud voice something along the lines of, "What is with the attitude?" Mr. Geinzer further explained that he then asked the question, "Do you really want to go there?" in a loud voice, and repeated that question multiple times. Mr. Geinzer advised me that he was expressing his frustration that Mr. Alber was attacking City staff's work and suggesting it was staff's fault the development was not getting done. These accusations were once again disappointing to Mr. Geinzer considering the



ongoing issues City staff was having with the City attorneys' work. Mr. Geinzer indicated that he and other members of City administration had been feeling extremely frustrated with Mr. Burns. These frustrations were caused by what Geinzer and his staff felt were slow response times and the general unpreparedness of Mr. Burns and Mr. Alber. Mr. Geinzer explained that with that background, he found it very ironic that the City attorneys were questioning City staff's work, and that his comment was made to make the point that the attorneys would not want to have a conversation about performance of duties, because such a conversation would not go well for the attorneys.

Mr. Geinzer noted that Mr. Alber stepped away from his computer at that point and that shortly thereafter, Mr. Burns stepped in as a peacemaker and things settled down. According to Mr. Geinzer, the meeting concluded without any further issues and ended with a relatively cordial tone. Mr. Geinzer advised me that he was baffled as to the actions of Mr. Alber at that meeting. He also advised me that he was defending City staff when he raised his voice and asked Mr. Alber if he really wanted to have a discussion regarding work performance.

Upon being asked if there was any profanity laced outburst, Mr. Geinzer was adamant there was nothing of the sort, acknowledging that while he could not specifically recall doing so, it was possible he used an "f-bomb" during the meeting. He was also very certain that to the extent he had, it was not used as an insult toward anyone at the meeting, but would only have been used to emphasize his point. Mr. Geinzer advised me that the "f-word" has occasionally been used in the meetings he has with Mr. Burns, but never in a derogatory way, and that Mr. Burns has also used that word in the past during their meetings.

I was advised that the February 10th meeting was conducted via Zoom, and that Mr. Geinzer and Mr. Caruso were both in Mr. Geinzer's office with the door to his office slightly ajar. Based on the proximity of others to Mr. Geinzer's office, four staff members were interviewed to determine what, if anything, those employees heard from the meeting.

I first met with Assistant to the City Manager, Henry Outlaw, whose desk is located just outside Mr. Geinzer's office. Mr. Outlaw advised me that he heard Mr. Geinzer say something along the lines of, "Are you kidding me?" and "You're going to tell me how to do my job?" He then heard Mr. Geinzer repeatedly ask, "Are you really going to go there?" Mr. Outlaw stated that he did not hear any swear words, and that the only person he heard speaking was Mr. Geinzer.

City Clerk Tara Brown, whose office is across an open area from Mr. Geinzer's office, advised me that she heard conversation during the meeting but as usual she was able to drown out the actual words. At some point though, she heard Mr. Geinzer ask something along the lines of, "Are you going to throw me under the bus?" followed by Mr. Geinzer repeating the question, "Are you really going to go there?" in a loud voice. Ms. Brown stated, upon being specifically asked, that she did not hear any swear words and did not hear anything resembling a profanity laced outburst.



I also spoke with Human Resources Manager Michelle Miller whose office shares a common wall with Mr. Geinzer's office. Ms. Miller stated that she did not hear anyone but Mr. Geinzer, and that once she started hearing a raised voice she walked out of her office into the area near Mr. Geinzer's door to see what was going on. At that point Ms. Miller stated that she heard Mr. Geinzer in a loud voice ask repeatedly, "Do you really want to go there?" Ms. Miller heard no swearing and no profanity laced outburst.

Ms. Gomolka advised me that she did not hear anything from the meeting in question.

In addition to discussing the incident in question, because it seemed to be the impetus for Mr. Geinzer's response during the meeting, I briefly asked the other witnesses about Mr. Geinzer's claim that staff was having issues with the performance of the City attorneys, Mr. Burns and Mr. Alber. Mr. Caruso, who I met with prior to my meeting with Mr. Geinzer, indicated that City staff has been frustrated regarding the work of the City attorneys and that this frustration is an ongoing conversation at staff meetings. Mr. Caruso believed that based on the content of Mr. Geinzer's statements, it was likely this frustration that caused Mr. Geinzer to respond in the manner he did during the meeting.

The others detailed similar concerns regarding the attorneys' work, providing specific examples of this frustration. Mr. Outlaw told me it was a belief among staff that if you needed something from Mr. Burns you needed to ask well in advance. Ms. Brown told me it was typical for responses to questions to come slowly from Mr. Burns, citing a relatively recent example involving a question she had regarding election law. Ms. Gomolka discussed the lack of timeliness and also described her belief that the attorneys were frequently not prepared for meetings. Ms. Miller confirmed that the issues of timeliness and lack of preparedness were frequently a topic of discussion at staff meetings.

FINDINGS

The direction from City Council included an assignment to conduct an investigation into the incident that occurred at the February 10th meeting and any other issues that I felt should be reviewed related to that incident. I was also asked to make any recommendations and share any lessons learned that would be useful to the City Council.

The descriptions of the meeting provided by Mr. Caruso and Mr. Geinzer were very consistent. Both denied any sort of profanity filled outburst, and in fact neither could even remember Mr. Geinzer swearing during the meeting. Both agreed that Mr. Geinzer was loud in response to a statement questioning the actions of City staff in regard to the issue that was being discussed. While the description of the words used by Mr. Geinzer were not exactly the same, both described words indicating that Mr. Geinzer was frustrated by the comments of the City Attorneys. While none of the other witnesses heard anything that was stated by anyone other than Mr. Geinzer, all three witnesses who heard the conversation (Ms. Brown, Mr. Outlaw and Ms. Miller), all of whom I found to be credible, indicated hearing Mr. Geinzer state something similar, questioning



someone about their interest in discussing a certain topic. All three described a frustration or annoyance in Mr. Geinzer's voice consistent with the details described by Mr. Caruso and Mr. Geinzer, and heard no swearing during the portion of the discussion they heard.

Based on the interviews I conducted, I find it clear that there was no profanity outburst at the meeting.

I find Mr. Geinzer's explanation for his loud statements directed at Mr. Alber to be credible. Mr. Geinzer's explanation was that his statements, which he admitted were expressed in a loud voice, were made out of his frustration with the City's Attorneys' criticism of Mr. Geinzer and City staff for not doing their job. I also find Mr. Geinzer's statement that his frustration was heightened by the fact that the attorney levying the criticism of City staff work was relatively new, inexperienced and did not have a thorough knowledge of the issues and players involved in the matter being discussed to be reasonable and credible. Mr. Caruso supported this basis for Mr. Geinzer's reaction, noting that that Mr. Geinzer's loud statements arose out of frustration in response to the City's Attorneys' suggestion that it was City staff not doing work to get the at-issue project completed.

The witnesses who provided statements unanimously supported Mr. Geinzer's explanation regarding the frustration he was experiencing regarding the work of the City attorneys. Each and every one of them, while providing positive statements about Mr. Burns' representation of the City and Mr. Burns personally, detailed concerns with his work, and in particular the timeliness of work and his overall preparation.

With respect to the suggestion that Mr. Geinzer may have used the "f-word" during the meeting as had been relayed to me in discussions leading to the investigation, neither of the attendees of the meeting I was able to interview recalled him doing so, and the three bystanders did not hear any swearing. Since neither Mr. Burns nor Mr. Alber would provide any substantive statements to me, I cannot say how they recalled or perceived the actions of Mr. Geinzer at the February 10th meeting. In light of the consistent statements of Mr. Geinzer, Mr. Caruso, Mr. Outlaw, Ms. Brown and Ms. Miller, and the opposing refusal of Mr. Burns and Mr. Alber to participate in the investigation, I cannot conclude that there was any profanity used during the meeting. In any event, it is perhaps noteworthy that Mr. Geinzer indicated that an occasional swear word has been used in prior meetings between the individuals involved to emphasize points and not as a personal attack.

At the meeting at which Council requested the investigation, I was also asked to provide any recommendations and lessons learned from the investigation of this matter. Of course, it would always be my recommendation that City staff and City representatives strive to maintain a positive relationship and professional interactions, even in the face of disagreement. There clearly were some underlying concerns with the work of the City attorneys from the perspective of City staff during the timeframe leading up to the February 10th interaction. Moreover, Mr. Burns and Mr. Alber spoke in a manner that was perceived by Mr. Caruso and Mr. Geinzer to be condescending.



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Mr. Geinzer's loud response to those statements seems to be more of a one-off and there is no evidence that would suggest a pattern of contentious interactions in the relationship.

Without interviewing Mr. Burns, I cannot say with any certainty why he decided to resign from his work with the City. However, based on the facts as they have been presented to me, it would seem Mr. Burns' decision to sever his working relationship with the City may have been based on other factors. It does not seem reasonable that this single instance of Mr. Geinzer raising his voice would have caused Mr. Burns to end his relationship with the City, particularly because Mr. Geinzer was simply reacting to a suggestion by one or both City Attorneys that the administration was somehow deficient.

One concern I did note during my interviews with the non-participants of the February 10th meeting is some frustration with the process, some of which appears to be based on City Council conversations regarding this issue which took place in open session, and on one occasion, in a closed session while the issue of the Brownfield Redevelopment was being discussed. This issue seems to stem from the apparent perception of some members of Council, underscored by the current situation, that staff lacks independence and is controlled in some manner by Mr. Geinzer. I believe it would be beneficial to have a discussion between City staff and Council on this issue in an attempt to improve staff morale and fix any lingering frustration over individual perceptions.

I trust this letter provides the information City Council was seeking regarding the incident that occurred between the City's attorneys and the City Manager. I will be in attendance at the April 15, 2021 City Council meeting to address this Report and answer any further questions regarding this matter.

Very truly yours,

KELLER THOMA, A PROFESSIONAL CORPORATION



Gregory T. Schultz

GTS/sad

