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TO: Human Resources Director Jenny Keigher

FROM: Benjamin E. Gehrt, Clark Baird Smith LLP

DATE: March 19, 2021

RE: Investigation Of Discrimination Complaints Alleged By Trustee Stan Nord

The Town of Normal contacted me to conduct an independent investigation into a complaint filed by Trustee Stan Nord. Briefly stated, Trustee Nord alleges that Town President Chris Koos¹, Town Manager Pamela Reece, and by extension Town staff, are discriminating against him. Trustee Nord alleges this discrimination takes the form of: 1) the President directing Town Staff not to answer Trustee Nord's questions during Town meetings; 2) the President directing staff in emails not to do work requested by Trustee Nord; and 3) different information being shared with other Town Trustees than is shared with him.

For the reasons discussed below, it is my opinion that the complaint of discrimination is without merit. There is no evidence that the Town President, the Town Manager, or Town Staff have taken adverse action against Trustee Nord based on his gender, race, age, religion, or any other trait or characteristic that is protected by Town policy or by state or federal anti-discrimination laws. Instead, Trustee Nord's complaints are ordinary political disputes that are inherent to the job of any elected official who runs for office in contested, political elections.

Background

I understand that on or about March 17, 2021, Trustee Nord complained to Human Resources Director Jenny Keigher about alleged discrimination. Director Keigher conducted a tape-recorded interview with Trustee Nord later that same day. Director Keigher was accompanied by Police Chief Rick Bleichner as a witness to the conversation.

After reviewing the complaint, the Town decided it would be best to have Trustee Nord's allegations reviewed by a third-party, neutral investigator. I was asked to conduct that independent review.

I do not have any prior connections to Mayor Koos, Trustee Nord, or any other elected officials in the Town of Normal. I have never made political contributions (cash or in kind) to any current or past candidates running for office in the Town of Normal. My law firm has occasionally provided the Town with legal advice regarding various labor and employment matters over the years. Those engagements are completely unrelated to the current discrimination complaint. In all of my Firm's engagements with the Town, including this one,

¹ The Town uses the term "President" and "Mayor" interchangeably.

the Town is always our client, not any individual employee or elected official. My job is to help the Town ensure it complies with all legal requirements and with its own policies (as long as those policies do not conflict with the law).

I conducted my investigation by reviewing the transcript from the recorded conversation on March 17. At the end of that conversation, Trustee Nord indicated he might have additional information to share, so I conducted an additional interview with Trustee Nord on March 19. I also reviewed video evidence given to me by Trustee Nord which consisted of a series of clips from various open meetings held by the Board of Trustees. I also spoke with Town Manager Reece regarding Trustee Nord's allegations. I then asked Trustee Nord follow-up questions regarding his allegations.

During my investigation, I was given full access to all documents, records, and witnesses that I wanted to speak with.² Nobody made any effort to impede my investigation in any way.

The Town's Policy Against Discrimination

Chapter 24 of the Town Code sets forth the Town's equal opportunity policy:

It is hereby declared the policy of the Town of Normal to assure full and equal opportunity to all citizens of the Town in the matters of employment, public accommodations, financing and housing free from unlawful discrimination against them because of their race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, disability, or matriculation, and with regard to housing, familial status.

It is further declared to be the policy of the Town of Normal that no person, group of persons or corporation shall attempt to escalate or de-escalate property prices because of any present or prospective change in the race, color, religion, sex, sexual orientation, marital status, familial status, national origin or ancestry, disability, or matriculation of persons in the neighborhood of said property.

It is further declared to be the policy of the Town of Normal, that in a spirit of harmony, the Town Council and its Commission on Human Relations shall endeavor to work with and cooperate with the Board of Realtors, and all other interested persons to the end that the declared purposes of this Division, to-wit: insuring opportunity for all persons to live in decent housing facilities without unlawful discrimination because of race, color, religion, sex, sexual orientation, marital status, familial status, ancestry, disability, national origin, or matriculation, of such persons, can be accomplished in an orderly, lawful and proper fashion

² Trustee Nord later indicated he is also compiling a clip from a Town Meeting in which he asked the Town Manager a question about developments in the Town. He has not yet provided me that clip. I believe I have adequate information to address that concern, and I have addressed it below. If he provides me with different information, I will evaluate that information and issue a supplemental report if warranted.

Investigation Results

Trustee Nord complains that the following issues demonstrate discrimination against him:

1) During Council meetings, the Town President instructs staff members not to answer his questions. 2) The Town President has said to staff in written emails "Stan's wasting your time, do not do this." 3) Different Town Council Members are told different information. Each of these broad allegations is addressed below. Importantly, Trustee Nord does not identify that he is the victim of discrimination based on his gender, age, religion, race, or other protected characteristic. Instead, Trustee Nord specifically told me, "I don't know what type of discrimination this is, other than I am the minority voice."

1. *The Town President is the Chair of all Council Meetings and the President is expected to maintain order and decorum.*

As is common throughout the State of Illinois, the Town's Municipal Code recognizes that the Town President is the Presiding Officer over all regular and special meetings of the Board of Trustees. See Town of Normal Municipal Code, Section 3.1-5. As the Presiding Officer, the Town President is the chair of all meetings. *Id.* at 3.1-6(A)(2). The Code also recognizes that Town meetings should be conducted in a manner consistent with Robert's Rules of Order. *Id.* at 3.1-2.

Trustee Nord provided a series of video clips in which the Town President does, in fact, tell Mr. Nord that he is no longer recognized to talk or directs staff not to answer Trustee Nord's questions. In each clip, the President calmly addresses Trustee Nord. He does not raise his voice or engage in any sort of personal attacks against Trustee Nord. In one of the clips, the President specifically responds to an objection raised by a different Trustee that Trustee Nord's comments were out of order.

The chair of any meeting is expected to maintain order and decorum. Part of maintaining order and decorum is ensuring that debate stays on topic and on time. Fulfilling this role of keeping discussions on topic and on time is not discrimination – it is a basic role of parliamentary procedure that is common to virtually all legislative bodies in a democratic society.

Certainly, Trustee Nord or any other elected official might disagree from time-to-time with the Chair's ruling on questions of parliamentary procedure. In that case, the Town's Code provides a clear method of redress: "the President or any Trustee may appeal a ruling of the presiding officer to the parliamentarian [the Corporation Counsel]. The President or any Trustee may appeal the ruling of the parliamentarian to the entire Council, as an appeal of the ruling of the Chair." See Town of Normal Municipal Code, Section 3.1-6(3). If any elected official follows this process but is ultimately outvoted, that is not discrimination. It simply means the official lost a vote.

2. *There is no evidence that the Town President discriminates against Trustee Nord by directing staff not to work on his requests*

During his interview on March 17, Trustee Nord asserted that one of the ways he is the victim of discrimination is that the Town President has directed staff not to work on Trustee

Nord's projects. Trustee Nord did not provide any specific examples. He did, however, recognize that the Town's staff does not report to the Trustees; instead, staff reports to the Town Manager.

Indeed, under the Town Code, Town Staff does not report to the Trustees, or even to the Town President for that matter. Section 2.3-7 recognizes that the duties of the Town Manager include the duty "to appoint and remove all directors of departments" and "to exercise control of all departments and division thereof." *Id.*, at (B-C). Thus, all staff report to the Town Manager.

Trustee Nord further complains that the Town Manager reports to both the Town Council and the Town President equally, and therefore the Town Manager should do whatever Trustee Nord requests be accomplished.

Trustee Nord overstates his role as a trustee. The Town Manager is accountable to the Town Council as a whole, not to any individual trustee. See Town Code, Sections 2.3-5 (Appointment), 2.3-6 (Removal), and 2.3-7(M) ("to assume and do all other duties as specifically delegated and assigned to [her] by said Council.") The Town Manager position is, in fact, apolitical. *Id.* at 2.3-5 (the Manager "shall be appointed without regard to [her] political beliefs.") Importantly, the Town Code recognizes that the Town President "shall have the power and authority to inspect all books and records kept by any Town officer or employees" at any time, but there is no such power assigned to the Board of Trustees, let alone any individual trustee. See Town Code, Section 2.1-2 (President's duties); Town Code, Chapter 2, Division 2 (Board of Trustees).

While the Town Manager certainly can use her time and resources (and those of her staff) to respond to requests from individual trustees, it is ultimately up to the Town Manager how to balance time and resources to achieve the objectives that have been established by the Town Council as a whole. To the extent the requests of a council member who holds the minority opinion may be given a lower priority, that is not evidence of any form of prohibited discrimination.³ Rather, it reflects the reality that if the Town Manager is not responsive to the needs of the Town Council as a whole, she places her job in jeopardy.

3. *There is no evidence that information is shared with Trustees in a discriminatory fashion*

Trustee Nord complains that he is not provided the same information as all other Trustees. He cites two specific examples.

1. Trustee Nord complains that when the Town passed emergency authorization measures in response to the coronavirus pandemic in 2020, he was led to believe the ordinances would accomplish one thing, when in fact they accomplished something different. Trustee Nord reports that after this happened, other Trustees reportedly told him that he had been "out-flanked."

³ To be clear, I did not see any evidence that the Town Manager is unresponsive to requests from Trustee Nord or any other elected official. Rather, I conclude that even if that did occur, it would not be a form of prohibited discrimination.

2. Trustee Nord complains he was not given all relevant information regarding the expansion plans of the Rivian auto plant. This impacted his decision making on two issues: street paving projects, and the expansion of water lines.

Related, Trustee Nord complains that information is sometimes discussed with Trustees in “two on one meetings,” and in that context it is impossible to guarantee that the exact same information is shared with all Trustees.

In my experience representing municipalities across the State, “two on one meetings” are commonly used to communicate information to elected officials.⁴ This type of meeting is authorized by the Open Meetings Act, which specifically states that the Act only applies when there is contemporaneous, interactive communication between “a majority of a quorum of the members of the public body....” See 5 ILCS 120/1.02. Two on one meetings are used for a variety of lawful, non-discriminatory reasons. These reasons include, but are not limited to:

- Sharing routine information with the council prior to a board meeting
- Discussing confidential information
- Discussing information with the council for informational purposes when that information does not require any formal action to be taken by the council
- Discerning the desires of the council before the next scheduled board meeting
- Discussing pressing matters that cannot wait until the next scheduled board meeting or emergency board meeting
- Discussing matters that lie within the Town Manager’s authority, but the Manager wants to talk to the council to get their input and/or make sure they are in agreement with her course of action

Two on one meetings are not discriminatory. Instead, they are a tool used to make sure the Town conducts its business in a way that complies with the Open Meetings Act.

Trustee Nord is correct that two on one meetings create the possibility that information might be slightly different from one meeting to the next. For example, one elected official might think to ask a question in his or her meeting that other trustees did not raise in their meeting. In future meetings, the non-elected staff representative might proactively address that question but might not go back to trustees with whom they already met. Having “two on one” meetings as opposed to “one on one” meetings is one way to minimize different messaging. The fact that information might vary from one meeting to the next is not discriminatory, it is simply a practical reality.

I spoke with Town Manager Reece about the Rivian auto plant project. Trustee Nord’s complaint about this project is that the Town Manager and other elected officials knew about Rivian’s expansion plans before he did. The evidence does not support this allegation.

The decision to develop the infrastructure around the Rivian auto plant predates any Town knowledge of Rivian’s plans to develop additional land around the plant. In early 2020,

⁴ The exact configuration of the meeting might vary, for example 2-2 or 1-3. These variations are based on the size of the quorum and the number of non-elected attendees needed to communicate information.

the State of Illinois Department of Commerce & Economic Opportunity (DCEO) contacted the Town and sent a site selector to view the area around the Rivian auto plant as the possible location for a large manufacturing complex. Ultimately, the Town of Normal was not selected for that project, but as a result of that interest the Town knew that the area around the auto plant would likely be attractive to other developers in the near future.

To be able to attract and support future development, the Town Manager approached the Town Council to obtain approval to complete a "loop" around the Rivian plant by connecting two existing water mains that currently dead-end. The additional water supply could potentially supply not only a possible expansion of Rivian, but also any other development that might one day come into the Town. The Town similarly approved road renewal projects around the plant, both because the road needed serious repairs, and also to support future growth.

Related, the growth of the Rivian plant should not be a secret to any Council member. Last year, the plant submitted permit requests for approximately \$250 million of construction projects. I am told the entire Council was notified about those construction permits.

Coincidentally, within the last few weeks, Rivian has filed applications to have some land around the plant re-zoned and annexed. To the Town's knowledge, Rivian does not yet own that land. Logic suggests that Rivian might intend to purchase that land for its own use, but only if the rezoning is successful.

Most importantly, the Town did not have prior concrete knowledge of these plans.⁵ Predicting and anticipating growth is one thing; knowing about actual development is something entirely different. To the extent Trustee Nord asked whether "any company asked the Town to install the water main," the Town Manager was truthful when she said nobody *asked* for that to occur. Rather, the Town Council and the Town Manager predicted that the area would be attractive to future development, and that prediction appears to have possibly paid off. There is nothing discriminatory about the Town Council's predictions about future growth hopefully proving to be accurate.

Trustee Nord's final complaint relates to the emergency powers delegated to the Town President by the Town Council at the outset of the COVID-19 pandemic. The Town Code already authorizes the Mayor to issue emergency orders in the event of a civil emergency. See Town Code Section 25.2-12. These provisions have been in place since 1969. Amongst other items, the Town Code authorizes the Mayor to ban the sale of guns and ammunition in the event of a civil emergency. The Mayor's emergency powers are only effective for 48 hours. The Mayor can extend his emergency proclamation for an additional 48 hour period of time, but he cannot make more than two consecutive proclamations after his original proclamation. *Id.* at 12(D).

At a special meeting on March 23, the Council considered Ordinance 5824 to extend the Mayor's emergency powers for periods of time longer than 48 hours. As originally drafted, the ordinance cross-referenced the Mayor's powers under Section 25.2-12. Several members of the

⁵ The Town Manager did note that several high-ranking Rivian employees live in the Bloomington-Normal area, and those employees might talk with individual elected officials from time to time. If that happens, what information those individual elected officials share with their colleagues is their own personal choice.

public objected to the ordinance to the extent it granted the Mayor the power to ban the sale of guns and ammunition. The Council moved to amend the ordinance to remove the cross-reference to Section 25.2-12, and that amendment passed unanimously. The ordinance was then passed unanimously.

At no point during the discussion, or since then, has the Council amended Section 25.2-12 of the Town Code. As such, the Mayor retains the power under Section 25.2-12 to pass emergency declarations for up to 48 hours. He also has the expanded powers granted to him in Ordinance 5824.

Sometime after the passage of Ordinance 5824, students returned to Illinois State University. The State's COVID metrics were trending in the wrong direction, and simultaneously the Town learned through social media outlets that students were planning parties that violated the Governor's stay-at-home orders. To deter this conduct and protect the public health, the President exercised his authority under Section 25.2-12 to limit large gatherings. Because the President acted under Section 25.2-12, his action was limited to 48 hours. The following Monday, the Town Council ratified the President's decision.

The President's exercise of his powers under Section 25.2-12 is not "discrimination" against Trustee Nord or against any other elected official, nor is it a form of "hiding information" from Trustees. The Trustees' should be fully aware of the powers that exist under Section 25.2-12 of the Town Code. If they weren't aware before, they certainly should have been aware after the discussion of Ordinance 5824. If Trustee Nord and a majority of the Trustees wish to amend Section 25.2-12 of the Town Code, they can certainly do so in a properly noticed Open Meeting. Regardless, political disputes over whether the President should or should not exercise the powers given to him by the Town Code are not in any way "discrimination" in violation of Town policy or state or federal law.

Conclusion

Trustee Nord's concerns do not rise to the level of discrimination under the Town's policies, or under state or federal law. Instead, Trustee Nord's concerns relate to political disputes. Being on the losing end of a vote is not a form of discrimination; if anything, it means the politician needs to use his or her best efforts to rally further support for the cause. All elected officials should refrain from using the Town's Human Resources department as a tool in their political disputes.