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# Confidential Investigation Report for the City of Grand Haven

## March 8, 2024

**Michael D. Homier & Laura J. Genovich**
Foster, Swift, Collins, & Smith, P.C.
1700 E. Beltline Ave. NE, Ste. 200
Grand Rapids, MI 49525
Telephone: 616.726.2230
www.fosterswift.com

# MEMO

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**SUBJECT TO ATTORNEY-CLIENT PRIVILEGE**

**TO:** **City of Grand Haven**
**City Council**

**FROM:** **Michael D. Homier & Laura J. Genovich**

**DATE:** **March 8, 2024**

**RE:** **Independent Investigation – Whistleblower Complaint**

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## I. Executive Summary

At the direction of City Council, our firm conducted an extensive independent investigation of whistleblower allegations concerning the Grand Haven Board of Light and Power ("BLP"), which included reviewing voluminous emails and documents and interviewing 10 witnesses. **We conclude that the whistleblower's allegations are not substantiated by the evidence.**

First, we conclude that the evidence does not support the Whistleblower's allegations that the "BLP coordinated an attempt to delete email records related to [the Hendrick FOIA] request" or that the BLP "considered and decided to pursue the permanent deletion of documents and email records to avoid disclosure per FOIA." Our review of the data found no evidence that emails were deleted in response to Andrea Hendrick's FOIA request. Rather, some emails had been deleted *before* the Hendrick FOIA request, when no FOIA request was pending, and the BLP's document retention policy did not require the emails to be retained. After the BLP responded to the Hendrick FOIA request, the BLP's senior staff implemented an IT server policy that would routinely "purge" deleted emails from the server after a set period of time. We find nothing unlawful about that policy, and that policy conforms to applicable record retention requirements.

Second, we conclude that the evidence does not support the Whistleblower's allegations that the BLP made "repeated false and misleading statements to its employees regarding a proposed Charter amendment" or that it "pressured employees to sign a letter, to contribute funds, and to distribute door signs, all opposed to the proposed Charter amendment." The Whistleblower did not identify any allegedly false or misleading statements other than constitutionally protected political speech by other employees, and none of the witnesses that were interviewed (some of whom were identified by the Whistleblower) substantiated the Whistleblower's claim that senior staff pressured employees to contribute to the Charter amendment campaign.

Finally, we conclude that the evidence does not support the Whistleblower's allegations that the "BLP has at least attempted to avoid compliance with the requirements of the Open Meetings Act." Our review of the BLP board members' emails found no deliberations among a quorum outside of an open meeting, and none of the witnesses or documents substantiated the Whistleblower's concerns about a quorum of BLP board members meeting (physically or telephonically) at the BLP offices. Moreover, some of the Whistleblower's allegations would not amount to violations of the Open Meetings Act even if substantiated.

Consequently, we do not recommend that the City take any action in response to the Whistleblower's allegations. Although we find that the Whistleblower's allegations are unsupported by the evidence, we caution against any retaliation against the Whistleblower for bringing forward these claims, as reporting "suspected" violations entitles the Whistleblower to protection under Michigan law. However, we express no opinion as to whether the Whistleblower acted in conformity with any BLP policies applicable to its employees.

## II. Scope of Investigation

City Council initiated this investigation through its approval of Resolution No. 23-242, "A Resolution to Seek an Independent Investigation into Whistleblower Allegations Concerning the Board of Light and Power,"[1] on September 18, 2023. The Resolution states in part as follows:

> [A] BLP employee, through their attorney, has come forward as a whistleblower (the "whistleblower") to the city attorney, alleging misconduct by the BLP including, but not limited to, the following:
>
> i. After receiving a Freedom of Information Act ("FOIA") request, the BLP coordinated an attempt to delete email records related to the request;
>
> ii. The BLP considered and decided to pursue the permanent deletion of documents and email records to avoid disclosure per FOIA;
>
> iii. The BLP has repeated false and misleading statements to its employees regarding a proposed Charter amendment;
>
> iv. The BLP has at least attempted to avoid compliance with the requirements of the Open Meetings Act;
>
> v. The BLP has pressured employees to sign a letter, to contribute funds, and to distribute door signs, all opposed to the proposed Charter amendment[.]

The single source of these allegations is the Whistleblower. The Whistleblower did not submit a written complaint because, according to the Whistleblower, there was no one to submit one to. The scope of the Whistleblower's complaint is thus based on our interview and related documents and emails. The Whistleblower's identity will be withheld in this report, and the pronoun "their" will be used to avoid disclosing the Whistleblower's gender.

Our role is to determine whether the Whistleblower's allegations are substantiated by the evidence. We are not tasked with investigating any misconduct beyond the scope of the Whistleblower's allegations or "seeking out" wrongdoing where none was alleged.

Importantly, we are not tasked with determining whether the BLP produced all responsive documents in response to the FOIA request referenced in the Resolution. The question is whether documents or emails were deleted "after receiving [a FOIA] request" or "to avoid disclosure per FOIA" – not whether all responsive documents were produced in response to the FOIA. The FOIA requester had remedies available under law (in the form of an appeal or civil action) if they believed that BLP failed to produce non-exempt public records in BLP's possession.

[1] The resolution is attached to the minutes of the September 18, 2023 City Council meeting, available online here: https://grandhaven.s3.amazonaws.com/pdf_documents/minutes/council/2023/09182023CM.pdf

## III. Investigation Methodology

Our investigation consisted of two components: interviewing witnesses and reviewing documents (primarily emails and attachments, along with applicable policies).

A. Interviews

We interviewed the following witnesses.

1. Whistleblower [identity withheld] – Friday, November 17, 2023
2. Dave Walters, (Former) General Manager – January 30, 2024, and February 22, 2024
3. Rob Shelley, Interim General Manager – January 19, 2024
4. Lynn Diffell, Finance Manager – January 19, 2024
5. Earl Fisher, Engineer and Technician – February 14, 2024
6. Beau Ryther, System Operator & Union President – February 14, 2024
7. Michelle Ballast, Billing Specialist – February 14, 2024
8. Shawn Kuck, System Operator & Union Secretary/Treasurer – February 14, 2024
9. Erik Booth, Operations & Power Supply Manager – February 20, 2024
10. Renee Molyneux, Retired – February 27, 2024

The Whistleblower was represented by attorney Sarah Howard, who was independently retained. Attorney Dale Rietberg of Varnum, BLP's insurance-appointed legal counsel, attended all interviews except the Whistleblower's interview. Erik Booth was also represented by independently retained legal counsel during his interview. None of the attorneys representing either the Whistleblower or any witnesses interfered with our investigation, nor did they have any effect on the conclusions reached in this report. Furthermore, the City's attorney, Ron Bultje, merely provided documentation given to him by the Whistleblower's counsel but otherwise had no part in this investigation or the conclusions reached in this report.

During our investigation, and based on the allegations and evidence provided, we determined that interviews of BLP board members were unnecessary.

The interviewees participated voluntarily and without any promise of confidentiality or immunity. Only one interviewee, Erik Booth, indicated that he was participating at the direction of his employer, the BLP. Interviews were not recorded, but copious notes were taken, which are and remain attorney work product.

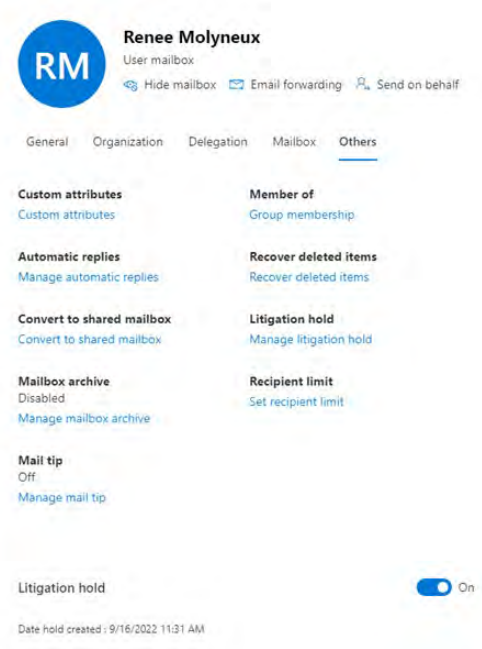
B. Emails

The Whistleblower provided us with an external hard drive containing 211 GB of data, all comprised of BLP email accounts. Those email accounts belonged to 14 BLP employees and officials, identified in the chart below.

Two dates are relevant with respect to this data:

- The **"Litigation Hold"** date. The Whistleblower placed a "litigation hold" on various email accounts. The effect of this hold, in layman's terms, is that even if the account user deleted or purged an email on the user's end, the email would not actually be deleted or purged from the server and would still be accessible on the server. For our purposes, the Litigation Hold means that all emails in these accounts were preserved after the Litigation Hold date, regardless of the account user's action to delete them.

  Below is a visual depiction of the "litigation hold" option that was placed on Renee Molyneux's mailbox on September 16, 2022:




- The **"Offload"** date. This is the date that the Whistleblower backed up the entire email account. This means we have a "snapshot" of these email accounts as of each Offload date.

  - **Important Note**: if an email was deleted by the account user after the Litigation Hold date, it will *still appear* in the data that was saved on the Offload Date where the entire mailbox was offloaded. The deleted email will appear either under "deleted items" (if deleted by the user) or "purged items" (if manually purged from the deleted items folder *or* automatically purged by the system under the policy that took effect in October 2022, discussed later in this report).

- The hard drive data does not identify the date that an email was deleted or the identity of the user who deleted it. That would require the audit log from the Microsoft Outlook Exchange server for the BLP. We requested this audit log for the period of September 5-22, 2022, from the BLP. We were advised that the BLP operates under Microsoft's default policy, which retains the audit logs only for 365 days. Consequently, Microsoft Outlook Exchange automatically disposed of any audit logs before our investigation began, and this data is unavailable.

| **Name on Email Account** | **Date of "Litigation Hold"** | **Date of Offload/Backup** | **Number of Emails[2],[3]** |
|---|---|---|---|
| Dave Walters | 9/16/2022 | 3/14/2023, 4/27/2023, 5/1/2023, and 9/6/2023 | 62,987 |
| Andrea Hendrick | n/a | 3/14/2023 | 927 |
| Dan Bryant | n/a | (unclear)[4] | 1,296 |
| Danielle Martin | n/a | 10/24/2023 | 207 |
| Erik Booth | 9/16/2022 | 4/14/2023, 7/14/2023 and 9/11/2023 | 42,296 |
| G. Witherell | n/a | 3/14/2023 | 2,480 |
| Jack Smant | n/a | (unclear) | 1,245 |
| John Naser | n/a | (unclear) | 761 |
| K. Knoth | n/a | 3/14/2023 | 356 |
| Lynn Diffell | 4/6/2023 | 4/6/2023 | 9,100 |
| M. Westbrook | n/a | 3/14/2023 | 1,625 |
| Renee Molyneux | 9/16/2022 | 4/7/2023 | 84,222 |
| Rob Shelley | 4/6/2023 | 4/6/2023 | 11,863 |
| Todd Crum | n/a | 3/14/2023 | 1,352 |
| L. Kieft | n/a | (unclear) | 1,252 |
| **Total** | | | **221,969** |

Because the Whistleblower offloaded the entire contents of these accounts, these certainly are not all *relevant* emails. To the contrary, these 221,969 emails include spam, newsletters and subscription emails, calendar entries, and other routine workplace correspondence dating back many years (for example, some accounts date back to 2012).

During the September 18, 2023 City Council meeting, City Attorney Ron Bultje stated that there was indication of a "particular file of 6,000 emails that would be especially pertinent." It is unclear what this referred to, although we speculate it was a data file of a "saved search" performed by the Whistleblower with all emails containing a particular search term.

[2] Based on most recent Offload Date.

[3] We have not included the Whistleblower's own email account in this chart.

[4] The Whistleblower did not provide this information, and the electronic "date modified" date on the hard drive pre-dates the time period when the Whistleblower indicated they were offloading e-mails.

Our investigation involved reviewing the emails that were potentially relevant by timeframe (focusing on 2022 and 2023) and subject matter. Potentially relevant emails were personally reviewed by attorneys within our law firm.

The remainder of this report is organized by the general topics of the Whistleblower's complaint.

## IV. FOIA & Alleged Deletion of Emails

### A. Hendrick FOIA Request

Before discussing the Whistleblower's complaint, it is important to understand the FOIA request that is referenced in the Resolution. The FOIA request was submitted by attorney Sarah Howard on behalf of BLP board member Andrea Hendrick. There was some "back and forth" between Attorney Howard and the BLP's FOIA coordinator, Renee Molyneux, as summarized here:

- September 6, 2022: Initial FOIA request, seeking the information described below:

  "All written or otherwise stored communications by and/or between David Walters, BLP general manager; any other staff person of BLP; any board member of BLP; any agent of a staff or board member of BLP; and/or any attorney or agent for the Varnum Law Firm, regarding the resolution presented at the August 3, 2022 BLP board meeting seeking to hire the Varnum Law Firm to represent the BLP. "Written or otherwise stored communications" include communications sent via: email and/or text on any device; messaging service like that on Facebook, Snapchat or Instragram [sic]; exchanged drafts of resolutions or of other documents intended to result in the BLP hiring its own separate legal counsel or other type of adviser; and/or voicemail messages." **(Exhibit A.)**

- September 14, 2022: Initial FOIA response from BLP:

  "The Board of Light & Power has reviewed, and is responding accordingly, to your request for copies of any written or stored communications between the GHBLP, or any agent of the GHBLP, and Varnum Law Firm regarding the Resolution presented at the August 3, 2022, Board Meeting.

  **Request Denied**: The GHBLP does not have any written or stored communications with the Varnum Law Firm regarding the Resolution approved by its Board at their August 3, 2022, Board Meeting." **(Exhibit B.)**

- September 15, 2022: FOIA clarification from Attorney Howard:

  "I believe that my request was sufficiently clear, but if not, I did indeed want all communications that are on the broad subject of seeking separate legal counsel, whether or not those communications include a person associated with the Varnum law firm. For example, that would include communications between Mr. Walters and any other person; a Board member and any other person; a BLP staff person other than Mr. Walters, and so forth." **(Exhibit C.)**

- September 22, 2022: Supplemental FOIA response from BLP:

  "The Board of Light & Power has reviewed, and is responding accordingly, to your request for copies of any written or stored communications between the GHBLP, or any agent of the GHBLP, and Varnum Law Firm regarding the Resolution presented at the August 3, 2022, Board Meeting.

  **Request Approved:** The GHBLP is providing the following documents, which includes all "written or otherwise stored communications by and/or between David Walters, BLP general manager; any other staff person of BLP; any board member of BLP; any agent of a staff or board member of BLP; and/or any attorney or agent for the Varnum Law Firm, regarding the resolution presented at the August 3, 2022 BLP board meeting seeking to hire the Varnum Law Firm to represent the BLP."

  - 07 21 22 Board Minutes
  - 08 03 22 Special Board Meeting Minutes
  - 2022 07 21 GHBLP Proposes Intragovernmental Agreement - 16.1MM Transfer to City (attachment)
  - 2022 07 21 News Release - GHBLP Proposes Intragovernmental Agreement - 16.1MM Transfer to City
  - 2022 08 02 Board - Special Board Meeting - August 3rd
  - 2022 08 02 Council - Special Board Meeting
  - 2022 08 02 Special Meeting - August 3
  - 2022 08 03 Media Release - GHBLP Adopts Resolution to Support Cohesive Plan with Grand Haven City Council
  - 2022 08 04 GHBLP Board Adopts Resolution to Support Cohesive Plan with Grand Haven City Council
  - 2022 08 05 Facebook Post – Hendrick
  - 2022 08 11 Molyneux - Hendrick RE_ Resolution
  - 2022 08 12 Keeping You Informed
  - August 3 2022 Special Meeting Notice

- Board Agenda 08 03 22 Special Mtg
- Board Package August 18, 2022
- Board Resolution 8-3-22
- Email Confirming Special Board Meeting Date and Time

> This response includes all the "written or otherwise stored communications by and/or between David Walters, BLP general manager; any other staff person of BLP; any board member of BLP; any agent of a staff or board member of BLP; and/or any attorney or agent for the Varnum Law Firm, regarding the resolution presented at the August 3, 2022 BLP board meeting seeking to hire the Varnum Law Firm to represent the BLP" that we have." **(Exhibit D.)**

To our knowledge, the FOIA requester did not appeal from this response or file a civil action under FOIA.

### B. Document Retention Policy

The BLP follows the Michigan Municipal League's Schedule #8, Record Management Handbook: Guidelines and Approved Retention Schedules for Cities and Villages ("MML Schedule #8") and any other superseded or supplement general retention schedules approved by the State of Michigan (collectively the "Record Retention Schedules").[5] The following rules are relevant to our investigation:

> Schedule #8 (MML Schedule #8; Introduction): "drafts, duplicates, convenience copies, publications and other materials that do not document agency activities" are "non-record materials" that "can be disposed of when they have served their intended purpose." (Unofficial Documents, pp 1-2)
>
> General Schedule #1 (Non-record Material Defined; approved 6/2/2015) : "Examples of non-records may include . . . draft documents that are replaced by new or final versions . . . [and] letters of transmittal (including routing slips) that do not add any information to the transmitted material."
>
> > "Non-record materials can be disposed of when they no longer needed for reference purposes."
>
> General Schedule #35 (Local Government Administrative Records; approved June 2023): "Transitory records" are records that "document local government activities

[5] Pursuant to the authority granted by Michigan law (MCL 399.811 and 750.491), the Michigan Department of Technology, Management and Budget approved the MML Schedules. The MML Schedules incorporate list specific documents and the amount of time that records must retained. The MML Schedules also identify "non-records" that are not required to be retained. We understand that the BLP follows the MML Schedules unless superseded by an updated general retention schedule or a supplemented general retentions schedules as noted on the MML's website: https://mml.org/resources-research/information/records/

that have temporary value and do not need to be retained once their intended purpose has been fulfilled. They may include, but may not be limited to, routine requests for information that require no: administrative action, policy decision, special compilation of research; requests or matters that are addressed by creating other records; and reminders." Transitory records must be retained until "activity is completed," and then can be destroyed. (Item #125.)

### C. Whistleblower Complaint

The Whistleblower states that their concerns originated in September 2022, around the time of the Hendrick FOIA request.

On September 15, 2022, the Whistleblower sent an email from their work account to their personal account with the subject line "CYA Work Situation that happened on 9/9/2022." The email reads as follows in its entirety, with relevant portions emphasized in bold by the authors of this report:

> Thursday September 15th, 2022,
>
> I'm sending this email to my personal email account as a record of an event/conversation I had last week with Dave Walters. The subject matter and what was asked of me made me feel extremely uncomfortable. I felt the situation I've explained below was morally wrong and possibly illegal in my opinion. Right after the situation I've described below took place I immediately went to my manager Rob Shelly and informed him of the conversation I had with Dave Walters and that I had some issues with it. Later that day Rob and I talked about what was said and I explained the situation to him. Rob told me that he knows the request to delete items came from Dave, but he (Rob) as my manager would not instruct me to do anything I feel is morally wrong and that he would have a conversation with Dave and would get back to me on this issue.
>
> I ended up not deleting the Outlook email items Dave Walters had ask me to delete from the executive managers accounts. Instead, I was tasked to work on creating a policy that would auto delete & purge items in the Outlook "Deleted Items" folder after 7 days.
>
> I don't know if the managers ended up deleting & purging the email items Dave Walters wanted deleted on their own or not but thinking about it the situation still makes me feel uneasy almost a week later. Which is why I'm writing about and documenting this incident. I've written this issue down in my Work Log on my iPad at the time but thought I should have this documented in a way that was a little more trackable and with timestamps.
>
> The situation:
>
> The morning of Friday September 9th, 2022, Dave Walters met with me in his office. He wanted me to show him how to delete & purge emails, so they are not recoverable. I walked Dave through the process of deleting & purging items in his

> Outlook Deleted Items folder. I also explained to him our current email retention setup that with the amount of storage space Microsoft gives us for mailboxes that all emails are kept forever until the user deletes the email and then purges the "Deleted Items" folder in Outlook. At that point, I believe I as the O365 Admin can recover items deleted & purged by users 30 days from the time the item was deleted & purged, but I don't know that for a fact and haven't ever performed that type of recovery on our system. My belief is after those 30 days from the time the user deletes and purges the item it is gone for good. **Dave informed me about a FOIA request from a Board member (Andrea) and instructed me to meet with the other executive managers (Lynn, Renee, Erik, Rob) and delete & purge their Outlook deleted items folder** and to explain to them the current email retention setup that I explained to him. Dave was upset as **he explained to me about an email Renee had that Dave instructed her to delete and for whatever reason she didn't delete it. Dave was concerned that now that email would be included in the FOIA request which he stated he didn't want.** Dave said after I meet with the other executive managers I should sit down with Rob and develop a company policy for email retention that includes autodeleting & purging items in a user's Outlook "Deleted Items" folder after a given time frame, Dave's example was something like nightly or every 1-2 days.

**(Exhibit E,** Whistleblower Email.)

During our interview, the Whistleblower explained what transpired in a manner consistent with their "CYA" email above. The Whistleblower perceived the interactions described above to mean that Dave Walters wanted to delete (or have other BLP staff members delete) a particular email to avoid producing it in response to the Hendrick FOIA request.

On September 16, 2022 (the day after the "CYA" email), the Whistleblower placed a "litigation hold" on the email accounts belonging to Dave Walters, Erik Booth, and Renee Molyneux. At some point, the Whistleblower learned that the Hendrick FOIA request related to the BLP's hiring of Varnum as legal counsel. The Whistleblower conducted various searches in the email accounts, searching for terms such as "Varnum" and "Seyferth." The Whistleblower read an unknown number of emails and found what the Whistleblower believed to be emails responsive to the Hendrick FOIA request.

One email gave the Whistleblower particular concern. The Whistleblower described it as an email from Dave Walters to Erik Booth about Varnum, stating that Walters had asked Varnum for "free legal advice." The Whistleblower recalled the email stating something to the effect of, "after you read this, delete." The Whistleblower found this suspicious.

The Whistleblower did eventually create and implement the "auto deletion" policy referenced above in October 2022, as evidenced by this October 28, 2022 email from the Whistleblower to Walters, Diffell, Booth, Shelley, and Molyneux:

> I have implemented the new email retention policy to your Outlook Deleted Items folder. It might take a little while for the policy to activate on this folder, but when its active the items in your Deleted Items folder will be deleted 7 days from the

> time the police [sic] is activated. You will then have another 14 days to recover those deleted items before they are permanently deleted from the Recovery Items location inside the Deleted Items folder. Please let me know if you have any questions.

**(Exhibit F.)** As noted in the chart on page 6 above, the Whistleblower offloaded email mailboxes at various times over the following year. Once the Whistleblower collected "enough" items to be reviewed, the Whistleblower downloaded the emails to an external storage device but was not sure how to report the emails. The Whistleblower believed BLP board members might be involved.

The Whistleblower eventually created a secret encrypted email address with an alias and sent an email to Andrea Hendrick, stating that the Whistleblower had information on what might be illegal activity. Hendrick gave the Whistleblower the contact information for Attorney Howard, who also represents Hendrick. Upon receiving the information, Attorney Howard contacted City Attorney Ron Bultje and the Attorney General's office. This led to City Council's approval of the Resolution and ultimately the engagement of our law firm.

### D. Summary of Additional Interviews

With respect to the FOIA/alleged email deletion complaint, we interviewed Renee Molyneux, Robert Shelley, Lynn Diffell, Erik Booth, and Dave Walters. The following is a brief summary of their interviews; their statements are discussed in greater detail in the Analysis section.

*Renee Molyneux*

Molyneux was the FOIA coordinator at the time of the Hendrick FOIA request. Molyneux has now retired, so she did not have access to any BLP records during our interview.

Molyneux explained that her practice during her 15 years at the BLP was to delete emails that she was not required to keep under the document retention policy (Record Retention Schedules)[6], but she did not "purge" them very often. She would occasionally purge the emails from her "deleted folder," and before her March 31, 2023 retirement, she deleted and purged any emails that did not need to be retained. Her practice was to delete draft documents, consistent with the Record Retention Schedules. Molyneux did not recall when she deleted specific draft documents.

Molyneux stated that she never deleted a document to avoid producing it under FOIA, and neither Dave Walters nor anyone else at the BLP ever asked her to do so. If anyone had asked her to delete documents in response to a FOIA request, she would not have done so. She was not aware of anyone deleting documents in response to FOIA requests.

Molyneux believes the Whistleblower's allegations about a "coordinated attempt" to delete documents to avoid disclosure under FOIA is "absolutely false."

[6] During the interviews, witnesses would use the term "MML Schedules" or "MML record retention policy" to refer to the record retention schedules BLP was required to follow. For the sake of consistency, we understand that they were referring to the Record Retention Schedules, defined above, so we will consistently use that defined term.

*Robert Shelley*

Shelley explained the history of the BLP's email practices and policies. He stated that in the past, if someone deleted an email but did not purge the email, it stayed on the server "forever." While some individuals (such as Dave Walters) knew how to purge their deleted emails, not all employees were doing that. This meant that some documents that should have been disposed of under the Record Retention Schedules would be purged in some email accounts but not others.

After the Hendrick FOIA request, several individuals in BLP's senior staff – Shelley, Walters, and Molyneux – decided that the BLP needed to have an email deletion policy because everyone was handling emails differently. They therefore asked the Whistleblower to institute a policy so that deleted emails would automatically be purged after a certain period of time.

Shelley denies that Walters ever directed him to delete or purge emails, either in general or in response to a FOIA request.

*Lynn Diffell*

Diffell worked closely with Dave Walters. She stated that Walters never asked her to delete or purge any emails or documents. Diffell would work with Molyneux (the FOIA coordinator at that time) when FOIA requests were received. Diffell and Molyneux would discuss whether certain documents were responsive or exempt from disclosure, but their conversations were not about whether they *wanted* to produce the documents.

Diffell was not involved in the discussions about an "autodeletion" policy for emails, but she understood that it was not about a "smoking gun" email, but rather the fact that the volume of emails in the BLP system was overwhelming. If deleted emails were automatically purged, then there would be less to review when a FOIA request was received.

Diffell further stated that she did not have any conversations with the Whistleblower about the deletion policy or the Whistleblower's concerns. If the Whistleblower had come to her, Diffell said she would have helped them.

*Erik Booth*

Booth had minimal involvement with FOIA requests and was only sent requests for which he potentially had responsive documents. Booth did not recall whether he had documents responsive to the Hendrick FOIA request. His practice was to delete drafts or working drafts, which he understood was a directive both from BLP's Human Resources department and Walters.

Booth denied deleting any documents in response to any FOIA requests. He stated that no one ever asked him to delete any emails in response to a FOIA request, and he had not heard of anyone at the BLP deleting emails to avoid disclosing them under FOIA.

With respect to an "autodeletion" policy for emails, Booth understood that the quantity of emails was "getting out of control," and the BLP wanted staff to be able to organize emails and quickly

find responsive documents when FOIA requests were received. However, Booth stated he was not involved in the underlying reasons for the policy and that he does not deal with IT matters.

*Dave Walters*

We interviewed Dave Walters in two sessions, for a total of nearly eight hours. Walters disputes the City Council's authority to direct this investigation. He provided a written statement of his objections and asked that it be included in this report. His statement is attached as **Exhibit G.** Despite his objections, Walters participated voluntarily in the interviews.

Walters provided extensive background on internal matters at the BLP, such as the Harbor Island environmental issues, that led to the BLP's desire to retain Varnum as its special utility counsel. Varnum had done work for the BLP for many years, but the City Council removed Varnum as BLP's counsel in appropriately March 2022, according to Walters.

Walters drafted a resolution for the BLP board's consideration at its August 3, 2022 meeting and emailed a draft to Attorney Rietberg at Varnum to review. He wanted Attorney Rietberg to review it because it involved the re-hiring of Varnum. Walters then deleted those emails around the time they were sent and received because he did not want Varnum to be in any trouble for reviewing the resolution. Walters believes the Hendrick FOIA was seeking those emails between Walters and Varnum, but they were deleted well before the FOIA request. Walters noted that the Record Retention Schedules did not require him to retain draft documents.

Walters explained that he does not routinely delete emails, but when he does, he always purges them. He traces this practice back to his experience as a submariner, where he was trained to permanently delete or destroy anything that needed to be disposed of to avoid espionage threats.

When he received the Hendrick FOIA request from Molyneux, Walters searched his email around the period of August 3, 2022, but found nothing that he believed to be responsive.

Walters stated that he never directed anyone to delete emails, other than a single email from August 31, 2022, in which he asked Erik Booth to delete a draft email after reviewing it. That email is discussed in the Analysis below. Walters adamantly stated that he did not ask anyone to delete emails in response to a FOIA request.

With regard to the "autodeletion" policy, Walters said that the "human process wasn't consistent" because some employees deleted emails and others did not. Walters's perspective was that if an employee deleted an email, it should be permanently deleted from the server – not left sitting on the system forever. Walters recalls telling his staff that he did not want a situation where the BLP failed to produce a document because different employees had retained different emails.

This is what occurred with the email exchange about the August 3 draft resolution, according to Walters. He had sent a draft to Renee Molyneux to review, and she deleted it but did not purge it. This concerned Walters because they were not required to retain it, and she had intended to delete it, but it was still on the server. Nonetheless, Walters said he did not tell Molyneux or anyone else to delete anything, and he had nothing to hide.

### E. Analysis

Under the Resolution, two allegations relate to the Hendrick FOIA request:

> "After receiving a Freedom of Information Act ("FOIA") request, the BLP coordinated an attempt to delete email records related to the request."
>
> "The BLP considered and decided to pursue the permanent deletion of documents and email records to avoid disclosure per FOIA;"

**We conclude that neither allegation is substantiated by the evidence.**

The Whistleblower summarized their concerns as follows in the CYA email:

> Dave informed me about a FOIA request from a Board member (Andrea) and instructed me to meet with the other executive managers (Lynn, Renee, Erik, Rob) and delete & purge their Outlook deleted items folder and to explain to them the current email retention setup that I explained to him. Dave was upset as he explained to me about **an email Renee had that Dave instructed her to delete and for whatever reason she didn't delete it. Dave was concerned that now that email would be included in the FOIA request** which he stated he didn't want. Dave said after I meet with the other executive managers I should sit down with Rob and **develop a company policy for email retention that includes autodeleting & purging items in a user's Outlook "Deleted Items" folder** after a given time frame[.]

There are two components of this conversation that must be analyzed separately: (1) Dave Walters's concern about an email being produced in the FOIA because Molyneux had not deleted it, and (2) Walters's request that the Whistleblower develop an "autodeleting & purging" policy. The Whistleblower also raised in their interview a third concern about other emails referencing Varnum, including one that instructed the recipients to delete after reading. We analyze each issue below.

1. <u>The Draft Resolution Email Exchange</u>

Our investigation determined that the "email Renee had that Dave instructed her to delete" that "Dave was concerned about" was an email exchange from July 31, 2022 to August 1, 2022, in which Walters, Booth, and Molyneux were exchanging drafts of the August 3, 2022 resolution of the BLP to approve Varnum as the BLP's special legal counsel for utility matters.

Dave Walters stated in our interview that he understood the Hendrick FOIA request to be requesting that draft resolution and related correspondence with Varnum. He believed this based on questions from Hendrick during the meeting. Those questions are reflected in the August 3, 2022 BLP board meeting minutes:

> Director Hendrick asked who prepared the Resolution and if an attorney assisted in that process.
>
> The General Manager stated he drafted the Resolution, which was reviewed by Varnum as the Resolution considers their reinstatement. After then being asked, Walters stated no payment was made to Varnum for this review and no invoice for such services is expected. **(Exhibit G.)**

Walters drafted the resolution. He then asked Dale Rietberg at Varnum to review the draft resolution, and Attorney Rietberg proposed revisions to the last paragraph of the resolution. The draft was then circulated internally to Erik Booth and Renee Molyneux for any changes.

This is the email exchange at issue:

> From: Dave Walters
> Sent: Sunday, July 31, 2022 10:26 PM
> To: Dale Rietberg (drrietberg@varnumlaw.com) <drrietberg@varnumlaw.com>
> Subject: Draft resolution
>
> Dale,
>
> Can you review the attached draft resolution ASAP? I think I desire to remove the references to charter sections later, however, at this point they serve to reference and highlight the applicable sections. We also may want to shorten or focus the resolution a bit further. Let me know your thoughts. I like the two "be it resolved statements" – the whereas statements are only informational and can be shortened.
>
> I have a meeting at 11 AM tomorrow with the board chair and vice-chair to schedule a special meeting (single agenda item would be this resolution) hopefully this week to act on such a resolution. SeyferthPR will additionally be drafting a press release for this meeting and action.
>
> The Board would also likely then cancel the special joint meting [sic] on the 10th, to allow the City Council time to consider the Board's resolution. We are leaving them very little room to maneuver and still proceed.
>
> Thoughts?
>
> Dave
>
> ---
>
> From: Dave Walters
> Sent: Monday, August 1, 2022 8:15 AM
> To: Dale Rietberg (drrietberg@varnumlaw.com) <drrietberg@varnumlaw.com>
> Subject: RE: Draft resolution

I [sic] few updates.

Dave
---

From: Dave Walters <DWalters@ghblp.org>
Sent: Monday, August 1, 2022 8:33 AM
To: Erik Booth <EBooth@ghblp.org>; Renee Molyneux <RMolyneux@ghblp.org>
Subject: FW: Draft resolution

Review and make any suggests [sic] to improve with an eye to shorten if possible, without losing arguments.

Dave

---

From: Renee Molyneux
Sent time: 08/01/2022 10:26:39 AM
To: Dave Walters; Erik Booth
Subject: RE: Draft resolution

Attachments: Proposed Board Resolution 8-1-22 v02.docx

Several proposed revisions are included in the attached draft.

**(Exhibit H.)**

Walters indicated that he deleted this email exchange immediately or shortly after sending and receiving the emails (in late July/early August 2022). This included permanently purging the emails from his account. Walters did this because he believed the emails were likely not privileged, and he was also concerned about getting Varnum in any kind of trouble for advising on the resolution when Varnum was not officially retained to do so. There was no FOIA request pending at this time related to the resolution; the Hendrick FOIA was submitted more than one month later.

Walters explained that he was concerned about BLP employees being inconsistent in their email deletion practices, as it could result in one employee having a document responsive to the FOIA request in a "deleted" folder and another employee not having the document, which Walters thought was problematic. Walters stated he was not concerned about producing this particular email (as he had already told the BLP board that Varnum reviewed the draft resolution, so there was nothing secretive about the exchange), but rather was concerned about inconsistent record retention within the BLP and how it might look if he had deleted an email but Renee had not.

The email records substantiate that as of September 16, 2022 (the date of the Whistleblower's litigation hold), the "draft resolution" email was not in Walters's email account, meaning it was deleted and permanently purged before September 16, 2022. There is no evidence to contradict Walters's statement that he deleted it long before the FOIA request.

The email exchange was also not found in Erik Booth's email account, indicating that he also purged it at some point before September 16, 2022. Booth stated during his interview that his practice was to delete drafts, and he understood that was the expectation not only from Walters both from the Human Resources department – drafts were not to be saved. Booth stated that when he received the Hendrick FOIA request from Renee, he would have searched his email folder files and inbox. Booth stated to Renee at the time that he had no responsive documents. There is no evidence to contradict Booth's statement that he did not delete documents in response to the Hendrick FOIA request.

The email exchange was, however, found in the "purged" folder of Renee Molyneux's email account, meaning that it had not been permanently deleted (purged) from her account before September 16, 2022, the date of her litigation hold. This could mean that Molyneux deleted (but did not permanently "purge") the email before September 16, 2022, or it could mean that Molyneux deleted the email on any date after September 16, 2022, but before April 6, 2023, when the Whistleblower offloaded her account.

During her interview, Molyneux was shown the email exchange, and she stated that she did not remember when she deleted it. She stated that under the Record Retention Schedules, the BLP was not required to retain drafts of documents.[7] Thus, she believed she would have deleted the email exchange because she was not required to retain it. Molyneux stated that she likely would not have permanently purged the email but rather simply deleted it.

When Molyneux approached retirement (she retired on March 31, 2023), she deleted and purged any emails other than those that were required to be retained or that she thought would be helpful to her successors, Lynn Diffell and Danielle Martin. She would have purged any drafts that remained in her deleted folder at this time.

With respect to the Whistleblower's allegations, Molyneux stated that she never deleted a document to avoid producing it pursuant to FOIA. She further stated that neither Dave Walters nor anyone else at the BLP ever asked her to delete a document to avoid production under FOIA, and if they *had* asked her, she would not have done so. She stated that she was unaware of anyone deleting emails in response to a FOIA request and that the allegation of a coordinated effort to delete documents in response to a FOIA request is "absolutely false."

Molyneux also noted that if the drafts were not deleted, she did not believe they would be subject to FOIA because they were subject to the attorney-client privilege and because they were only drafts.

[7] The Introduction of MML Schedule #8," states that "drafts, duplicates, convenience copies, publications and other materials that do not document agency activities" are "nonrecord materials" that "can be disposed of when they have served their intended purpose."

As noted above, the email exchange was in the "purged" Molyneux's email account when the Whistleblower offloaded the account in April 2023, but we have no evidence indicating when the email was deleted. It would have been automatically moved from "deleted" to "purged" after the autodeletion policy took effect in late October 2022.

Molyneux denies deleting the email exchange in response to the Hendrick FOIA request or to avoid disclosing it under FOIA, and there is no evidence in the email data or interviews to contradict her statement. Even the Whistleblower does not claim to have knowledge that the email was deleted; the Whistleblower only claims that Walters was concerned about having to produce it. Conjecture is not sufficient to support the Whistleblower's allegations.

No witness claims that Renee actually deleted the email exchange in response to the Henrick FOIA request. And the email data confirms that Walters and Booth deleted the email exchange well before the FOIA request, as permitted by the Record Retention Schedules. Accordingly, we find no evidence that the BLP deleted the email exchange to avoid disclosure under FOIA.

2. Autodeletion Policy

The Whistleblower states that in September 2022, "Dave said after I meet with the other executive managers I should sit down with Rob and develop a company policy for email retention that includes autodeleting & purging items in a user's Outlook 'Deleted Items' folder after a given time frame, Dave's example was something like nightly or every 1-2 days."

That policy was implemented on or around October 28, 2022:

> I have implemented the new email retention policy to your Outlook Deleted Items folder. It might take a little while for the policy to activate on this folder, but when its active the items in your Deleted Items folder will be deleted 7 days from the time the police [sic] is activated. You will then have another 14 days to recover those deleted items before they are permanently deleted from the Recovery Items location inside the Deleted Items folder. Please let me know if you have any questions. (Exhibit F.)

As noted in the interview summaries above, Walters, Diffell, and Shelley explained that the purpose of this policy was to ensure that deleted emails were handled uniformly. Walters was concerned that the BLP could have liability if a deleted email was not produced in response to a FOIA but was later discovered on the server because it had not been "purged." Most employees were not taking the extra step to purge deleted emails, so the policy ensured that this was done automatically.

The policy was implemented more than a month after the BLP responded to the Hendrick FOIA request. We find no evidence that the BLP "coordinated an attempt to delete email records related to the request" by implementing this policy. Accordingly, we do not believe this allegation has merit.

3. Other Emails of Interest

The Whistleblower appeared to believe that any emails about Varnum were relevant to the Hendrick FOIA request. For example, the Whistleblower pointed us to emails dating back to 2018 between Walters and Varnum. Those are not material to the Hendrick FOIA, which requested public records "regarding the resolution presented at the August 3, 2022 BLP board meeting seeking to hire the Varnum Law Firm to represent the BLP." (Exhibit A.)

To be sure, Walters and other BLP staff members possessed many emails referencing Varnum, but many of them were likely not within the scope of the FOIA request (a question that is beyond the scope of our investigation). Regardless, there is no evidence that these emails were deleted to avoid disclosure under FOIA.

There is one particular email that raised red flags for the Whistleblower, as it directed the recipient to delete the email after review:

> From: Dave Walters
> Sent time: 08/31/2022 05:13:19 PM
> To: Erik Booth
> Subject: FW: Reason for my earlier call
> Attachments: Kieft-Westbrook Ltr dated 9-1-2022.docx
>
> I drafted this letter to Ron for Larry and Mike and I additionally sent it to Dale below for some "free legal advice."
>
> Let me know what you think. **After you review it please delete the draft and this e-mail and your response.**
>
> Dave
>
> ---
>
> From: Dave Walters
> Sent: Wednesday, August 31, 2022 4:35 PM
> To: Dale Rietberg (drrietberg@varnumlaw.com) <drrietberg@varnumlaw.com>
> Subject: Reason for my earlier call
>
> Dale,
>
> Asking for some additional fee [sic] legal advice to review and discuss this letter. Our relationship with Ron is deteriorating further and the Board does not see it improving without some sort of action on their behalf. They asked me to draft this letter to voice their concerns, to go on record that they do not agree it is just an issue between the General Manager and the City Attorney.

> The idea is that they would copy the Mayor and Mayor Pro-tem, that have also been copied on recent selective e-mails between the two of us. As you may know, Ron has a way of inciting controversy between the two of us privately, and then copying some policy makers into our conversation, but not the entire conversation. Quite frankly, this one might actually have worked in reverse on him, as I was already forwarding the entire chain to Mike and Larry.
>
> The Board clearly now doesn't see a path to continue working with Ron in his current capacity, particularly with Ron taking such an aggressive posture (somewhat emboldened by Council's recent actions to deny the Board request) toward me, but more so toward them.
>
> If you could review this, it would be appreciated. Feel free to suggest any modifications you feel appropriate. Obviously, it would be best for this to not look like my letter. I think the Board wants to appear firm but fair, in making such an assessment.
>
> Dave

**(Exhibit I, emphasis added.)**

This email was sent on August 31, 2022, before the Hendrick FOIA request. To our knowledge, there were no pending FOIA requests that would seek this correspondence at the time it was created. Moreover, under the Record Retention Schedules, this appears to be transitory correspondence that did not need to be retained once the activity (i.e., review) was complete. We therefore do not believe this email substantiates the Whistleblower's allegations.

In sum, we conclude that the evidence **does not** support the Whistleblower's allegations that the "BLP coordinated an attempt to delete email records related to [the Hendrick FOIA] request" or that the BLP "considered and decided to pursue the permanent deletion of documents and email records to avoid disclosure per FOIA."

## V. Campaign Finance Act & Michigan Election Law

### A. Whistleblower's Complaint

According to the Resolution, the Whistleblower made the following allegations regarding the 2023 Charter Amendment campaign:

> "The BLP has repeated false and misleading statements to its employees regarding a proposed Charter amendment."
>
> "The BLP has pressured employees to sign a letter, to contribute funds, and to distribute door signs, all opposed to the proposed Charter amendment."

During our interview, the Whistleblower stated that Dave Walters spoke at lunch about the possible negative impacts (loss of insurance, jobs, and retirement) if the Charter amendment passed. Erik

Booth also allegedly spoke about this to employees. We believe these are the alleged "false and misleading" statements referenced in the Resolution. The Whistleblower also alleged that the BLP was improperly using a public relations firm to campaign against the Charter amendment.

The Whistleblower further alleged that Rob Shelley asked the Whistleblower during work hours to contribute to the employee group that was campaigning against the Charter amendment. The Whistleblower said that Shelley said he knew he was not supposed to talk on work time but that it was close enough to the end of the day. The Whistleblower claims that Shelley followed up with the Whistleblower two or three more times in the workplace.

The Whistleblower suggested that we interview BLP employees Earl Fisher, Michelle Ballast, Beau Ryther, and Shawn Kuck to confirm that they were pressured to contribute to the campaign during work hours.

### B. Summary of Additional Interviews

At the Whistleblower's suggestion, we interviewed Earl Fisher, Michelle Ballast, Beau Ryther, and Shawn Kuck. None of them substantiated the Whistleblower's account.

Fisher stated that he contributed money to the campaign (by giving cash to Shelley) and attended one meeting of the campaign committee at Odd Sides. Fisher said Shelley asked him to contribute at lunch time when Fisher and Shelley were both "off the clock." Fisher said he did not observe any campaign activity in the workplace during working hours, outside of lunch time.

Ballast stated that she was not asked to contribute money at work. She did attend campaign committee meetings at Erik Booth's house, but she said no meetings were held at the workplace. She did not ask anyone to contribute money to the campaign and did not witness anyone soliciting contributions at work. To her knowledge, all campaign activity was occurring away from work and off work hours.

Ryther stated that he was not involved in the committee and did not contribute any money. He said no one asked him to contribute, and he did not witness any campaign activity during work hours.

Kuck participated in the committee offsite. He met with Erik Booth and Rob Shelley outside of the workplace. Kuck said he did not solicit campaign contributions, and no one asked him to contribute money while he was at work.

We also interviewed Rob Shelley, who kept track of the campaign contributions on a spreadsheet on his personal Google Drive. Shelley stated that no BLP money was used for the campaign, nor was any BLP equipment used for the campaign. All efforts were employee-led and after-hours.

### C. Michigan Campaign Finance Act

Talking about elections at work is not illegal – but using public money or resources to support a political campaign is.

A. Prohibited Conduct under the MCFA

Section 57 of the Michigan Campaign Finance Act ("MCFA") prohibits public bodies (or anyone acting for a public body) from using public resources to make a campaign "contribution or expenditure," subject to certain exceptions. MCL 169.257(1). A "contribution" is a payment, gift, or transfer of anything of money value "made for the purpose of influencing the nomination or election of a candidate, for the qualification, passage, or defeat of a ballot question, or for the qualification of a new political party." MCL 169.204(1). "Expenditure" is similarly defined as "a payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party." MCL 169.206(1).

Under these definitions, a public body will violate Section 57 if it uses public resources to expressly advocate for the passage or defeat of a ballot question, or if it encourages or discourages voting for a particular candidate. "Public resources" includes more than public funds; it can include the public body's office space, office supplies, vehicles, staff time, volunteer services, or even its social media account.

The MCFA imposes penalties for violations of Section 57. Any person who knowingly violates the statute is guilty of a misdemeanor, punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both. If an entity (rather than an individual) violates the statute, then the fine could be as high as $20,000. MCL 169.257(4).

B. Protected Conduct

Section 57's prohibitions do *not* apply to the following activities:

(a) The expression of views by an elected or appointed public official who has policy making responsibilities.

(b) The production or dissemination of factual information concerning issues relevant to the function of the public body.

(c) The production or dissemination of debates, interviews, commentary, or information by a broadcasting station, newspaper, magazine, or other periodical or publication in the regular course of broadcasting or publication.

(d) The use of a public facility owned or leased by, or on behalf of, a public body if any candidate or committee has an equal opportunity to use the public facility.

(e) The use of a public facility owned or leased by, or on behalf of, a public body if that facility is primarily used as a family dwelling and is not used to conduct a fund-raising event.

(f) An elected or appointed public official or an employee of a public body who, when not acting for a public body but is on his or her own personal time, is expressing his

or her own personal views, is expending his or her own personal funds, or is providing his or her own personal volunteer services.

MCL 169.257(1).

### D. Analysis

1. Political Speech in the Workplace

We turn first to the allegation that Walters and Booth spoke in the workplace about negative impacts of the Charter amendment. Even if true, this is not unlawful. Political speech by employees during a campaign is protected political expression under the First Amendment. *Murphy v Cockrell*, 505 F3d 446, 453 (CA 6, 2007). It can only be restricted where it disrupts the workplace (in which case the disruption must be balanced against the employee's free-speech rights), but disruption was not alleged here. Nor do the BLP's employment policies restrict political speech. We do not find merit in this part of the Whistleblower's complaint.

2. Pressuring Employees to Contribute

Beyond the Whistleblower's own statement, we found no evidence that BLP's senior staff was soliciting campaign contributions from employees during work hours. In fact, all of the witnesses we interviewed on this question (including the four witnesses suggested by the Whistleblower) denied that contributions were solicited during work hours. Even if contributions were solicited during work hours, we do not believe such solicitation was unlawful, nor did the BLP have a policy against such solicitations.

Further, all of the witnesses (except the Whistleblower) stated that campaign activities did not occur during work hours and that no BLP funds or resources were used for the campaign. We found no evidence supporting the Whistleblower's allegations.

We therefore find insufficient evidence that the BLP made "repeated false and misleading statements to its employees regarding a proposed Charter amendment" or that it "pressured employees to sign a letter, to contribute funds, and to distribute door signs, all opposed to the proposed Charter amendment."

## VI. Open Meetings Act

### A. Whistleblower's Complaint

Per the Resolution, the Whistleblower alleged that "[t]he BLP has at least attempted to avoid compliance with the requirements of the Open Meetings Act[.]"

The Whistleblower offered the following examples during our interview:

- The Whistleblower claims to have seen emails that included a quorum of BLP board members.

- The Whistleblower claims to have seen emails between Dave Walters and Attorney Dale Rietberg discussing how they could conduct a closed session that would not violate the Open Meetings Act.

- The Whistleblower claims that the BLP would have one board member on the phone with Dave Walters, another member in Walters's office, and a third member in Molyneux's office. However, the Whistleblower could not hear what they were saying.

### B. Summary of Additional Interviews

We asked Walters and Booth whether they observed a quorum of BLP members at the BLP offices. They both answered no, except for non-deliberative events like training or retirement parties. Walters indicated that he would have a meeting each month with the board chair and sometimes the vice chair, but there was never a quorum.

### C. Analysis

Under the Open Meetings Act, a "meeting" is "the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy." MCL 15.262. Meetings must comply with the Open Meetings Act's notice, minutes, public comment period, and other requirements.

We reviewed the BLP board members' email accounts and found no emails where a quorum of members was "deliberating toward or rendering a decision on a public policy."

As to alleged discussions about a closed session, even if Walters and Attorney Rietberg discussed how to properly hold a closed session, that is not an Open Meetings Act violation.

We also found no evidence to substantiate the Whistleblower's claim that a quorum of BLP members were effectively "meeting" by having a member in Walters's office, a member in Molyneux's office, and a member on the phone. Even the Whistleblower admitted they could not hear what was said, so there is no way to know whether they were "deliberating toward or rendering a decision on a public policy," even if a quorum were present.

In the absence of any evidence of an Open Meetings Act violation, we find this allegation to be unsubstantiated.

## VII. Conclusion and Recommendation

Because the Whistleblower's allegations were not substantiated by the evidence, we do not recommend that the City take any action on those allegations.

We note, however, that the Whistleblower remains protected from retaliation even though the allegations were not proven. Under Michigan's Whistleblowers' Protection Act, an employee who reports a "suspected violation" is entitled to protection. The Whistleblower clearly suspected a

violation, based on the limited information they had at the time, and thus we would caution the City or BLP against disciplining the Whistleblower for bringing forward these allegations.[8]

Please let us know if you have any questions or concerns.

[8] We express no opinion as to whether the Whistleblower can or should be disciplined for accessing and copying the BLP's email data or any other BLP policy, which we understand may be the subject of a separate investigation by the BLP.

# EXHIBIT A

| | |
|---|---|
| **From:** | Sarah Riley Howard |
| **To:** | Renee Molyneux |
| **Cc:** | Ronald A. Bultje |
| **Subject:** | FOIA request for documents |
| **Date:** | Tuesday, September 6, 2022 2:48:48 PM |
| **Attachments:** | image001.png |

Dear Ms. Molyneux,

I am an attorney who represents Andrea Hendrick. I am sending you this request for information related to the Grand Haven Board of Light and Power ("BLP") under Michigan's Freedom of Information Act ("FOIA"). I am also copying BLP's attorney, Ronald Bultje, in the event that you are no longer BLP's FOIA Coordinator. I would appreciate if you and/or Mr. Bultje would confirm receipt of this request.

I am seeking the information described below:

- All written or otherwise stored communications by and/or between David Walters, BLP general manager; any other staff person of BLP; any board member of BLP; any agent of a staff or board member of BLP; and/or any attorney or agent for the Varnum Law Firm, regarding the resolution presented at the August 3, 2022 BLP board meeting seeking to hire the Varnum Law Firm to represent the BLP. "Written or otherwise stored communications" include communications sent via: email and/or text on any device; messaging service like that on Facebook, Snapchat or Instragram; exchanged drafts of resolutions or of other documents intended to result in the BLP hiring its own separate legal counsel or other type of adviser; and/or voicemail messages.

Please respond within the five business days permitted by FOIA. In addition, if you believe that the cost will exceed $50, please advise in advance with a detailed estimate of charges. I prefer electronic delivery of copies of the materials described, but I am also willing to accept receipt in whatever way is easiest and most economical, including in-person review. Let me know if you have any questions – my cell number is 616-901-9140.

Thank you in advance –
Sarah Howard

**SARAH RILEY HOWARD**
Employment, Labor & Civil Rights Attorney
**showard@psfklaw.com**
**p 616.451.8496 | c 616.901.9140**

**PINSKY, SMITH, FAYETTE & KENNEDY, LLP**
**Protecting Working People and their Families**

**McKay Tower**
146 Monroe Center NW, Suite 418
Grand Rapids, Michigan 49503-2818
**info@psfklaw.com** | **www.psfklaw.com**

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# EXHIBIT B

Grand Haven Board of Light & Power 1700 Eaton Drive, Grand Haven, MI 49417

Administrative Services | p 616.607.1261 | f 616.846.3114 | e-mail rmolyneux@ghblp.org | ghblp.org

September 14, 2022

Ms. Sarah Riley Howard
Pinsky, Smith, Fayette & Kennedy, LLP
146 Monroe Center NW, Suite 418
Grand Rapids, Michigan 49503-2818

Re: FOIA Request dated September 6, 2022

Dear Ms. Riley Howard:

The Grand Haven Board of Light and Power (GHBLP) received your FOIA request by email dated Tuesday, September 6, 2022. Pursuant to the FOIA, that means the time to respond begins to run on Wednesday, September 7, 2022. The Michigan Freedom of Information Act provides that you may request from the Board of Light & Power copies of public record. The phrase "public record" is defined in the Michigan Freedom of Information Act as, "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

The Board of Light & Power has reviewed, and is responding accordingly, to your request for copies of any written or stored communications between the GHBLP, or any agent of the GHBLP, and Varnum Law Firm regarding the Resolution presented at the August 3, 2022, Board Meeting.

Request Denied: The GHBLP does not have any written or stored communications with the Varnum Law Firm regarding the Resolution approved by its Board at their August 3, 2022, Board Meeting.

Fee: No fee is required for this digital correspondence.

Because of the denial of your FOIA request, you have the right to appeal to the GHBLP Board, or to the Circuit Court, or to both. Attached is a copy of Section 10 of the FOIA, which explains your appeal rights.

Please contact me with any questions.

Best regards,
GRAND HAVEN BOARD OF LIGHT & POWER

Renee Molyneux
Administrative Services Manager

Enclosure

# EXHIBIT C

**From:** Renee Molyneux
**To:** Sarah Riley Howard; Ronald A. Bultje
**Subject:** RE: 2022 09 14 FOIA Response - Howard - Appeal/Questions on Response Denying Responsive Documents
**Date:** Thursday, September 15, 2022 8:32:00 AM
**Attachments:** image005.png

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Good morning Sarah,

Your explanation below is a much broader interpretation than what I read in your FOIA. Given that, I am now exercising the 10-day extension to conduct a wider search.

Thank you,
Renee


**Grand Haven**
**Board of Light & Power**
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

**Renee Molyneux**
Administrative Services Manager
616-607-1261
Fax 616-846-3114
rmolyneux@ghblp.org


---

**From:** Sarah Riley Howard <showard@psfklaw.com>
**Sent:** Wednesday, September 14, 2022 6:17 PM
**To:** Renee Molyneux <RMolyneux@ghblp.org>; Ronald A. Bultje <RBultje@dickinson-wright.com>
**Subject:** Re: 2022 09 14 FOIA Response - Howard - Appeal/Questions on Response Denying Responsive Documents

Renee,

I believe that my request was sufficiently clear, but if not, I did indeed want all communications that are on the broad subject of seeking separate legal counsel, whether or not those communications include a person associated with the Varnum law firm. For example, that would include communications between Mr. Walters and any other person; a Board member and any other person; a BLP staff person other than Mr. Walters, and so forth.

I appreciate your efforts on this.

Thank you,
Sarah

**From:** Renee Molyneux <RMolyneux@ghblp.org>
**Sent:** Wednesday, September 14, 2022 5:53:25 PM
**To:** Sarah Riley Howard <showard@psfklaw.com>; Ronald A. Bultje <RBultje@dickinson-wright.com>
**Subject:** RE: 2022 09 14 FOIA Response - Howard - Appeal/Questions on Response Denying Responsive Documents

Hi Sarah,

We understood your FOIA request to seek communications with Varnum from the named list. Our answer, accordingly, was in response to this request. Please clarify your request further if you desire additional information.

Renee


Grand Haven
Board of Light & Power
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

Renee Molyneux
Administrative Services Manager
616-607-1261
Fax 616-846-3114
rmolyneux@ghblp.org


**From:** Sarah Riley Howard <showard@psfklaw.com>
**Sent:** Wednesday, September 14, 2022 5:24 PM
**To:** Renee Molyneux <RMolyneux@ghblp.org>; Ronald A. Bultje <RBultje@dickinson-wright.com>
**Subject:** RE: 2022 09 14 FOIA Response - Howard - Appeal/Questions on Response Denying Responsive Documents

Ms. Molyneux and Mr. Bultje,

Thank you for this response. I have some questions about your explanation that there are no documents which exist which are covered by my request and required to be produced pursuant to FOIA. If you need to consider this an appeal in order to answer these questions, please do, although I do not believe that is required.

Your explanation makes me think that there could be communications otherwise responsive to my request as written that are held on personal devices of Board staff or Board members that you are not providing. If so, such communications are responsive and must be produced under FOIA as containing the business of the Board, even if they are not in the Board's physical possession right

now. Mr. Bultje took this position on behalf of the Board when the Board's chair made a FOIA request for Ms. Hendrick's communications earlier this year. Please identify whether the Board is refusing to provide existing documents under my FOIA request for this reason.

Second, my original request read as follows:

- All written or otherwise stored communications by and/or between David Walters, BLP general manager; any other staff person of BLP; any board member of BLP; any agent of a staff or board member of BLP; and/or any attorney or agent for the Varnum Law Firm, regarding the resolution presented at the August 3, 2022 BLP board meeting seeking to hire the Varnum Law Firm to represent the BLP. "Written or otherwise stored communications" include communications sent via: email and/or text on any device; messaging service like that on Facebook, Snapchat or Instragram; exchanged drafts of resolutions or of other documents intended to result in the BLP hiring its own separate legal counsel or other type of adviser; and/or voicemail messages.

Among other things, this would require that the Board produce under FOIA any communications between/among Board members and/or staff, even those communications not involving anyone from Varnum, on the subject of hiring Varnum. The wording of your response makes me think that the Board is only denying that communications involving a party from Varnum exist. Please provide confirmation that there are no communications between/among Board members/staff, or provide those communications as originally requested under the FOIA.

If either of these questions are unclear, please let me know. I will look forward to hearing from you.

Sarah Howard

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**From:** Renee Molyneux <RMolyneux@ghblp.org>
**Sent:** Wednesday, September 14, 2022 4:52 PM
**To:** Sarah Riley Howard <showard@psfklaw.com>
**Cc:** Ronald A. Bultje <RBultje@dickinson-wright.com>
**Subject:** 2022 09 14 FOIA Response - Riley Howard

Ms. Sarah Riley Howard
Pinsky, Smith, Fayette & Kennedy, LLP
146 Monroe Center NW, Suite 418
Grand Rapids, Michigan 49503-2818

Re: FOIA Request dated September 6, 2022

Dear Ms. Riley Howard:

The Grand Haven Board of Light and Power (GHBLP) received your FOIA request by email dated Tuesday, September 6, 2022. Pursuant to the FOIA, that means the time to respond begins to run on Wednesday, September 7, 2022. The Michigan Freedom of Information Act provides that you may

request from the Board of Light & Power copies of public record. The phrase “public record” is defined in the Michigan Freedom of Information Act as, “a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created.”

The Board of Light & Power has reviewed, and is responding accordingly, to your request for copies of any written or stored communications between the GHBLP, or any agent of the GHBLP, and Varnum Law Firm regarding the Resolution presented at the August 3, 2022, Board Meeting.

Request Denied: The GHBLP does not have any written or stored communications with the Varnum Law Firm regarding the Resolution approved by its Board at their August 3, 2022, Board Meeting.

Fee: No fee is required for this digital correspondence.

Because of the denial of your FOIA request, you have the right to appeal to the GHBLP Board, or to the Circuit Court, or to both. Attached is a copy of Section 10 of the FOIA, which explains your appeal rights.

Please contact me with any questions.

Best regards,
GRAND HAVEN BOARD OF LIGHT & POWER

Renee Molyneux
Administrative Services Manager

Enclosure

**Grand Haven**
**Board of Light & Power**
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

**Renee Molyneux**
Administrative Services Manager
616-607-1261
Fax 616-846-3114
rmolyneux@ghblp.org

To: rmolyneux@ghblp.org Remove this sender from my allow list

From: showard@psfklaw.com

*You received this message because the sender is on your allow list.*

# EXHIBIT D

Grand Haven Board of Light & Power 1700 Eaton Drive, Grand Haven, MI 49417

Administrative Services | p 616.607.1261 | f 616.846.3114 | e-mail rmolyneux@ghblp.org | ghblp.org

September 22, 2022

Ms. Sarah Riley Howard
Pinsky, Smith, Fayette & Kennedy, LLP
146 Monroe Center NW, Suite 418
Grand Rapids, Michigan 49503-2818

Re: FOIA Request dated September 6, 2022

Dear Ms. Riley Howard:

The Grand Haven Board of Light and Power (GHBLP) received your FOIA request by email dated Tuesday, September 6, 2022 with the time to respond beginning to run on Wednesday, September 7, 2022. As you know, we exercised the ten-day extension to do a more comprehensive search for records given your broadened clarification of the FOIA request (vs. my initial interpretation) sent via email on September 14, 2022.

The Michigan Freedom of Information Act provides that you may request from the Board of Light & Power copies of public record. The phrase "public record" is defined in the Michigan Freedom of Information Act as, "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created."

The Board of Light & Power has reviewed, and is responding accordingly, to your request for copies of any written or stored communications between the GHBLP, or any agent of the GHBLP, and Varnum Law Firm regarding the Resolution presented at the August 3, 2022, Board Meeting.

Request Approved: The GHBLP is providing the following documents, which includes all "written or otherwise stored communications by and/or between David Walters, BLP general manager; any other staff person of BLP; any board member of BLP; any agent of a staff or board member of BLP; and/or any attorney or agent for the Varnum Law Firm, regarding the resolution presented at the August 3, 2022 BLP board meeting seeking to hire the Varnum Law Firm to represent the BLP."

- 07 21 22 Board Minutes
- 08 03 22 Special Board Meeting Minutes
- 2022 07 21 GHBLP Proposes Intragovernmental Agreement - 16.1MM Transfer to City (attachment)
- 2022 07 21 News Release - GHBLP Proposes Intragovernmental Agreement - 16.1MM Transfer to City
- 2022 08 02 Board - Special Board Meeting - August 3rd
- 2022 08 02 Council - Special Board Meeting
- 2022 08 02 Special Meeting - August 3
- 2022 08 03 Media Release - GHBLP Adopts Resolution to Support Cohesive Plan with Grand Haven City Council
- 2022 08 04 GHBLP Board Adopts Resolution to Support Cohesive Plan with Grand Haven City Council
- 2022 08 05 Facebook Post – Hendrick
- 2022 08 11 Molyneux - Hendrick RE_ Resolution
- 2022 08 12 Keeping You Informed

Grand Haven Board of Light & Power 1700 Eaton Drive, Grand Haven, MI 49417

Administrative Services | p 616.607.1261 | f 616.846.3114 | e-mail rmolyneux@ghblp.org | ghblp.org

- August 3 2022 Special Meeting Notice
- Board Agenda 08 03 22 Special Mtg
- Board Package August 18, 2022
- Board Resolution 8-3-22
- Email Confirming Special Board Meeting Date and Time

This response includes all the "written or otherwise stored communications by and/or between David Walters, BLP general manager; any other staff person of BLP; any board member of BLP; any agent of a staff or board member of BLP; and/or any attorney or agent for the Varnum Law Firm, regarding the resolution presented at the August 3, 2022 BLP board meeting seeking to hire the Varnum Law Firm to represent the BLP" that we have.

Fee: Because Andrea Hendrick is a Board member of GHBLP, no fee will be required for this digital correspondence.

Please contact me with any questions.

Best regards,
GRAND HAVEN BOARD OF LIGHT & POWER

Renee Molyneux
Administrative Services Manager

Attachments

# EXHIBIT E

Gmail [redacted]

# CYA Work Situation that happened on 9/9/2022

1 message

[redacted] Thu, Sep 15, 2022 at 11:25 AM

To: [redacted]

Thursday September 15th, 2022,

I'm sending this email to my personal email account as a record of an event/conversation I had last week with Dave Walters. The subject matter and what was asked of me made me feel extremely uncomfortable. I felt the situation I've explained below was morally wrong and possibly illegal in my opinion. Right after the situation I've described below took place I immediately went to my manager Rob Shelly and informed him of the conversation I had with Dave Walters and that I had some issues with it. Later that day Rob and I talked about what was said and I explained the situation to him. Rob told me that he knows the request to delete items came from Dave, but he (Rob) as my manager would not instruct me to do anything I feel is morally wrong and that he would have a conversation with Dave and would get back to me on this issue.

I ended up not deleting the Outlook email items Dave Walters had ask me to delete from the executive managers accounts. Instead, I was tasked to work on creating a policy that would auto delete & purge items in the Outlook "Deleted Items" folder after 7 days.

I don't know if the managers ended up deleting & purging the email items Dave Walters wanted deleted on their own or not but thinking about it the situation still makes me feel uneasy almost a week later. Which is why I'm writing about and documenting this incident. I've written this issue down in my Work Log on my iPad at the time but thought I should have this documented in a way that was a little more trackable and with timestamps.

**The situation:**

The morning of Friday September 9th, 2022, Dave Walters met with me in his office. He wanted me to show him how to delete & purge emails, so they are not recoverable. I walked Dave through the process of deleting & purging items in his Outlook Deleted Items folder. I also explained to him our current email retention setup that with the amount of storage space Microsoft gives us for mailboxes that all emails are kept forever until the user deletes the email and then purges the "Deleted Items" folder in Outlook. At that point, I believe I as the O365 Admin can recover items deleted & purged by users 30 days from the time the item was deleted & purged, but I don't know that for a fact and haven't ever performed that type of recovery on our system. My belief is after those 30 days from the time the user deletes and purges the item it is gone for good. Dave informed me about a FOIA request from a Board member (Andrea) and instructed me to meet with the other executive managers (Lynn, Renee, Erik, Rob) and delete & purge their Outlook deleted items folder and to explain to them the current email retention setup that I explained to him. Dave was upset as he explained to me about an email Renee had that Dave instructed her to delete and for whatever reason she didn't delete it. Dave was concerned that now that email would be included in the FOIA request which he stated he didn't want. Dave said after I meet with the other executive managers I should sit down with Rob and develop a company policy for email retention that includes auto deleting & purging items in a user's Outlook "Deleted Items" folder after a given time frame, Dave's example was something like nightly or every 1-2 days.

[redacted]

[redacted]

# EXHIBIT F

**From:** [redacted]
**Sent time:** 10/28/2022 02:12:37 PM
**To:** Dave Walters; Renee Molyneux; Lynn Diffell; Rob Shelley; Erik Booth
**Subject:** I have applied the Email retention policy to your Outlook Deleted Items folder

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I have implemented the new email retention policy to your Outlook Deleted Items folder. It might take a little while for the policy to activate on this folder, but when its active the items in your Deleted Items folder will be deleted 7 days from the time the police is activated. You will then have another 14 days to recover those deleted items before they are permanently deleted from the Recovery Items location inside the Deleted Items folder. Please let me know if you have any questions.
Thanks,

[redacted]

# EXHIBIT G

David Walters written comments provided February 22, 2024

As I stated in our discussion on January 30, 2024, I am concerned with the evolving nature of the publicly stated allegations, rationale, and focus of this "Independent Investigation" as initiated by the City Council in its resolution of September 18, 2023, particularly considering the "Board of Light and Power Board Resolution Regarding General Manager," the Board passed January 25, 2024, which had the effect of terminating my employment.

More specifically, I believe this Council resolution was carefully drafted by the City Attorney in a fashion the City Council could approve at that time, without a concurring vote or action by the Board, as I, and two board members thought appropriate, and told the council so at this meeting. This resolution suggests "a BLP employee," not a City employee, "through their (private) attorney, has come forward as a whistleblower to the city attorney, alleging misconduct by **the BLP**."

It is important to note here that the "BLP" is defined within the resolution's whereas statements, by citing applicable language from the City Charter, as "**an elected board**, to be known as **the Board of Light and Power**," that "shall have the charge of the city's electric services, and shall organize and conduct the affairs of the city's system's for the generation, purchase, and distribution of electric light and power," ..... "**subject to the general direction of the city council**." As the Council resolution (and the City Charter) further highlights, "the city's electric utility facilities and services shall constitute a department of the city government," and that city department is "under the control and direction" of the Board of Light and Power. **Why is this "distinction" important here?**

While "the Board," is no doubt, "subject to the general direction of the Council," the Charter clearly states that the "Director of Light and Power (or the General Manager)," shall be "responsible to the Board and serve at its pleasure." This director, or utility General Manager, shall act as the Board's "Administrative Agent," and "shall have the control and direction of the employees of the Board, subject to the provisions of this charter." Accordingly, my current Employment Agreement was made "as of July 1, 2022, between the Grand Haven Board of Light and Power, **an elected board operating and having contractual authority over the department of the City of Grand Haven that provides electric utility service**, the principal business address of which is 1700 Eaton Drive, Grand Haven, MI 49417 (the "**BLP**")."

While the City Attorney, within Council's resolution here and elsewhere, seems to interchange the terms "BLP," or Board of Light and Power (i.e. "the Board"), with "the department of the City of Grand Haven that provides electric service," or "the employees of the Board," neither my employment agreement nor the City Charter, does the same.

The City Attorney openly recognizes this issue in his attempt to help me better "understand" the Board's January 25,2024 resolution in his e-mail to me dated February 7, 2024, in which he distinguishes, at least from his perspective, "the difference" between the Board of Light and Power "as an organization including multiple components, including staff, and the BLP Board (or the **Board** of Light and Power **Board**), as part of that organization." **He further states "keeping that distinction in mind should help (me) understand the resolution more clearly," as he intended as the one who drafted it.**

Apparently, the City Attorney would now like us all to understand that his use of the term "Board of Light and Power" in the Board's resolution refers to these "**multiple components**, including staff" of the

organization (or city department) as a whole, and in his new legal interpretation of the applicable charter provisions, would suggest it is now most appropriate to create a new term, one that is not contained in the charter, "the **Board** of Light and Power **Board**," or "BLP Board," to more specifically refer to the Board created by the charter, more simply referred to therein, as the Board of Light and Power. I liken this to renaming the "Ottawa County Road Commission," the "Ottawa County Road Commission **Commission**," because we don't want the public to get confused when we are referring to the Commission or the country road "department" the commission is elected to control and direct, or the employees that may be considered as "road commission employees."

While I am not an attorney, it may be easier for the City Attorney to call the "BLP" organization "the city's electric utility facilities and services," department, the Board, "the Board of Light and Power," and refer to "internal" staff by their job titles, exactly as the charter does, within his resolution. **One must ask, "Why is the City Attorney creating such distinctions at this point?"** The BLP organizational structure is quite clear. The elected Board shall have the charge to organize and conduct the affairs of the city electric utility subject to the general direction of City Council. The Board shall appoint a director of light and power to act as their "administrative agent," and the director will have "control and direction of the employees of the Board." It is clear that the Board is the "employer," and that the Board's employees are not the Board, and the Board's employees are not subject to the general direction of council, the Board is.

Our Employee Handbook also does a better job of distinguishing the differences between "the Grand Haven Board of Light and Power," when it is used to describe the organization (the electric utility department) as opposed to "the Board," elected to conduct the affairs of the utility, and "the Board employees" hired within that city department. It is no doubt confusing when the title of the "elected Board" is also given to the organization more generally, that the Board was put in place to direct and control. **In these very significant Board or City Council resolutions, at least from my perspective, more care should undoubtedly be given by those drafting these documents when these terms are used interchangeably.**

In the past, the City Attorney, and others, have similarly and inappropriately referred to the "Board of Light and Power," as a "department of the City." **The Board** is not a department of the city; it is an elected Board charged with organizing and conducting the affairs of a department of the city, as specified in Section 14 of the Charter, quite different from the control and direction the City Council, and the City Manager, have over other departments and employees of the City (as discussed in Section 7 of the City Charter). **Why has this historically recognized relationship been recently challenged by city officials?**

As I am sure you are aware, the same City officials, that supported City Council taking this action in September (approving the council resolution), at the same time, were advocating and supporting a Charter Amendment on the ballot in November, that was subsequently defeated by the voters, to eliminate the Board, and its General Manager, from the established organizational and governance structure of "the City of Grand Haven." **I don't see how one effort or action can be separated from the other, or not recognize the political motivations of these same officials in both.**

**It would seem then that the Council, has some authority and responsibility under the Charter to investigate "misconduct" by "the Board."** However, the Board's bylaws state in Section 6., the Board will also make a "determination" regarding a Board member's "default to the City, excessive absence

from meetings as refenced in Section 13 of these Bylaws, failure to perform duties or other Board member conduct prohibited by Section 4.10 of the Charter, or other applicable laws."

More importantly, as I stated to the City Council at their meeting on September 18th, as did the Board Chair and another member of the Board at the time, **the City Council** (or the City Administration, through the City Manager, as defined in Section 7 of the City Charter and its Code of Ordinances) **is not the "employer" of the BLP "whistleblower,"** under the Whistleblower Protection Act, or of any other "Board employee," that the whistleblower may have accused of misconduct. **How can the Board carry out their obligations and responsibilities to its employees as the employer, if the city council has inappropriately usurped and assumed these responsibilities as their own? And now, when the Board does act as the employer, how can they base their decisions on investigations they did not conduct or participate in directing (or even wait for them to be completed)?**

It would seem the City Attorney was well aware of these distinctions, and crafted a resolution the City Council could pass without concurring Board action. The City Manager, and the Mayor, were then left to explain these distinctions, to myself and the Board Chair, in the absence of our joint legal counsel, the City Attorney, minutes before this resolution was surprisingly (to us) released to the public in Council's pre-meeting materials (on September 14 – the draft date of the resolution by DW). Mayor Pro-tem Cummins expressed his regrets for not allowing the Board the opportunity to participate in this process over social media after being publicly challenged for not doing so, but he obviously didn't feel enough regret to propose council alter its established course forward without the Board's participation or involvement.

From my perspective, the Board of Light and Power (i.e. "the Board"), under applicable laws, its Employee Handbook, its labor and employment contracts, and its internal employment policies and procedures, has both an obligation and responsibility in these regards, to its employees, including the utility's General Manager, that cannot be usurped by City Council, regardless of any determinations otherwise by the City Attorney. The Board has acted in this capacity for decades, without interference from the City Council.

As council's resolution states, after being approached by the whistleblower (a Board employee, under the definitions of the City Charter) and his private attorney (that is also representing Board Member Hendrick and Council Member Lowe in other legal matters of the Board and City), **the City Attorney** (who is also the assigned attorney of the Board of Light and Power), **chose to involve only the City Council**, not the Board, citing as his rationale, that the Board employee whistleblower alleged misconduct "by the Board," necessitating action by City Council, and not the Board (as the Board is subject to the "general direction" of Council, not its employees).

Only after the investigation began, were the Board's employees made aware that Board employees, not the Board, were the primary (if not the sole) subjects of the investigation Council then had inappropriately initiated, and even then, the specific allegations, and those accused by the whistleblower, were not revealed to us, the Board's employees, despite specific requests to do so by those of us that felt targeted under Council's resolution. It has now become rather obvious who was primarily being targeted throughout this investigation, by the whistleblower, his attorney, the City Council, the City Attorney, and the Board of Light and Power, given their premature actions before the results of all investigation(s) are even released publicly.

Additionally, to my knowledge, neither the Board, nor its employees, were provided the City Attorney's "notification" to the Michigan Attorney General of "all whistleblower allegations and suspected violations of Michigan Law" as required by the City Council in their resolution, despite us asking for it. **Isn't this a public record?** What kind of employer initiated "independent investigation" allows employees to be investigated for "violations of criminal and civil laws" without informing them of the allegations and charges against them, and then inform them of any rights they may have in that criminal investigation? **Is the employer (i.e. the Board), or its employees, being investigated by City Council?** What does the council's resolution suggest? What authority does the city council have to initiate an employer investigation of Board employees? Didn't we ask the council that question before they approved this resolution?

Quite frankly, as it is confusing to me to distinguish the various "investigations" referenced in the Board of Light and Power Board Resolution Regarding General Manager (i.e. who conducted them, what did they review, what did they find, and when did the Board review and consider the investigations' findings), I can completely appreciate the confusion of the public reading a media article summary on this Board resolution. There are investigations, and Board reviews of those investigations, mentioned therein that I wasn't even aware of at the time the Board passed the resolution. I have now asked to review them all, as would seem appropriate before the Board took its actions on January 25, 2024, and I have been told the public documents aren't readily available, without spending time separating "attorney-client privileged and confidential" materials. How can an "internal investigation" by BLP staff, contain attorney-client privileged materials? When did the Board "publicly consider" this internal investigation and make the Board's determinations? Are these not legitimate questions?

It should not be lost on anyone involved, that the only party not represented by legal counsel of some nature during this so called "whistleblower investigation" is myself. The "whistleblower" and a Board member (Ms. Hendrick) are represented by Ms. Howard. The City Council has been represented by the City Attorney, as has the Board to an extent. Varnum has additionally ensured the Board was represented to the extent the Board was accused of anything by either the whistleblower, the City Attorney, or the City Council. My senior staff, not me, has been in direct contact with legal counsel assigned by our cybersecurity insurance carrier, and as such they have been given "full access" to all the e-mails the whistleblower provided, and the searches he conducted, both before and after submitting the information to the city attorney. And Mr. Booth, the BLP's Operations Manager, has retained the services of his own attorney, which is advising him not to participate in the investigation. One must ask now, where has this legally unrepresented "cooperation" left me? At this point, it has left me without a job! How can this not be viewed as retaliation for raising my claims for more than two years?

As members of the public have asked on numerous occasions, "how much are all these attorney's costing the citizens of Grand Haven, and the customers of the electric utility?" Governance dysfunction and ineffective and divisive decision-making by the Board and City Council, as I have pointed to, has this result.

As I have been told by my senior staff, the whistleblower now faces legal problems of his own, as his release of this information has apparently comprised a "security breach," as determined by our cybersecurity professionals and consultants, that will likely result in disciplinary action against him, only after this investigation is concluded. But the Board can take the action it did against me "amid the ongoing whistleblower investigation," as highlighted in recent media headlines, contrarily?

While I have not been made aware of any more specific "allegations against the BLP" (as defined in the resolution to be the Board), that may represent "misconduct" and "violations of criminal and civil laws," I have been made aware of certain allegations being investigated against Board employees, more specifically myself, that would seem inappropriate, at least at this point, and/or inconsistent with the Board's employment policies, practices, and employment and labor contracts, **to be investigated under the direction of City Council**, as may be implemented by the City Manager (contrary to Section 7.3.(d) of the City Charter), without more active Board involvement, participation, review and oversight. **How can the Board defer their employer obligations and responsibilities to others in these regards, even if "directed" to do so by Council?**

As you may not be aware, these are similar "actions of omission" by the Board, I have claimed represent a "breach of contract" under my employment agreement with them.

It would seem entirely inconsistent with the Board's employer obligations and responsibilities to its employees, particularly for the General Manager who is under contract with the Board directly, for City Council to assign an "independent investigator," to investigate allegations of misconduct and potential violations of criminal and civil laws, that may or may not have been those alleged by the "BLP whistleblower," against Board employees (not the Board as specified in Council's resolution).

Even more troubling then is the resolved paragraph 5. of the Board of Light and Power Board Resolution Regarding General Manager passed on January 25, 2024, that effectively "terminated" my employment agreement, for reasons described therein, **with no prior public discussions of the Board**, and almost no due process whatsoever. This paragraph states, "If the City's investigation into the whistleblower accusations against the General Manager provides evidence that the BLP (the Board?) had cause to terminate the General Manager according to Paragraph 10.B. of the July 1, 2022 Employment Agreement, the BLP (the Board?) reserves the right to terminate the General Manager accordingly and not pay the General Manager the benefits provided to him by Paragraph 10.C., all subject to a vote of the BLP Board."

Apparently, the Board is now suggesting they can terminate its General Manager, for a reason identified in 10.B. of my employment agreement with the Board, upon reviewing an "independent investigation" initiated by the City Council, with no involvement or oversight whatsoever, by the Board. Is that consistent with what you told me in our last discussion would happen? Has the Board then fulfilled all their obligations under my employment agreement?

It would seem that the Board then is suggesting within their resolution that they have no further obligations or responsibilities, as my employer, and the counterparty to my employment agreement, under the Board's own employment policies and practices, and applicable laws, other than to vote.

It appears inevitable at this point, that I will need to file my longstanding "breach of contract," and now wrongful discharge, claims against the Board, and the City, to an applicable court, as may be appropriate to resolve and remedy them. These claims have also been misconstrued and inappropriately limited to "allegations of discrimination, harassment, and retaliation," within the Board Resolution Regarding the General Manager. Apparently, the Board of Light and Power "has done an internal investigation" of these claims and has "not found any basis for them." I obviously have similar due process concerns with this internal investigation (as with the "whistleblower" investigation), the specifics of which have also been withheld from me. Accordingly, I have had to file a FOIA request to obtain information that should

have undoubtedly been placed into my employee personnel files and been made available to me as a public employee.

What is apparent, the findings of these investigations (the BLP internal investigation of the merits of my previous claims and this "whistleblower" investigation) has, and will be, used by the Board to determine the reasons associated with my termination, "by action of the Board," as highlighted specifically in the Board of Light and Power Board Resolution Regarding General Manager. **Accordingly, any suggestion that the Board took the action they did on January 25, 2024, for "no reason," whether entitled to do so or not under our employment agreement, is nonsense at this point.**

**It was my understanding from our last discussion that this whistleblower investigation will not provide the "actionable" determinations necessary for the Board to "terminate the General Manager" for a reason identified in paragraph 10.B. as threatened by the Board in its resolve paragraph 5. of the Board of Light and Power Board Resolution Regarding General Manager, and as such certain due process and evidentiary rules were not necessarily required during this investigation.** Is this correct?

I have no doubt been harmed as a result of these very public political proclamations of allegations of misconduct and wrongdoing, that have now culminated in these two inappropriate resolutions passed by the City Council and the Board of Light and Power (as well as those raised by some of these same city officials before the City Human Relations Commission earlier).

How then has the Board fulfilled its responsibilities and obligations, as my employer and counterparty in our employment agreement, **to conduct a "prompt, thorough, and confidential (to the extent reasonably possible) investigation as necessary and appropriate to ensure proper resolution of the matter,"** consistent with the Board's employment practices, **and my employment agreement**?

One only needs to read the sensationalized headlines in the Holland Sentinel the day after the Board passed its resolution to recognize this harm ..... "**Grand Haven utility fires General Manager amid ongoing whistleblower investigation**." At this point, from my perspective, the Board can't wash its hands of council and city attorney actions in these regards, and it can't put that "genie back in the bottle."

Obviously, City officials have not charged you, the "independent investigators," they hired to investigate their own actions to inappropriately initiate this process, and prematurely terminate my employment agreement before your investigation is complete. And the Board has now left it to me under paragraph 4. of its resolution to conduct any further investigation and provide evidence that may admittedly result in the Board negotiating "**more generous terms of separation for the General Manager**." Such further investigations should not be limited to "allegations of discrimination, harassment, and retaliation" by a single Board member (i.e. "Director Hendrick"), as suggested, and should not be left for me to investigate, simply because the Board, or the City Attorney, doesn't want to do so, given their limited review of the circumstances involved, and the potential that my claims are actually validated through that investigation (that I have been requesting for years).

I had thought my employer, the Board, through the Board Chair, stated very clearly during his remarks to City Council at their meeting on September 18, that the Board took all such "whistleblower" type claims against the Board, or other Board employees, "very seriously." It would seem entirely appropriate then for the Board, the City Council, and any other City officials involved, to fully explain the differences in

their response, investigation, and now "premature" action, before the results of any investigations (independent or internal) are made public, and such investigative reports are able to be scrutinized by those being investigated and potentially disciplined as a result (through public action of an elected public body). The general public that elected these city officials is also entitled to review these findings and hear the Board and Council consider them. I am quite sure the "governance dysfunction" I have alleged will become readily apparent rather quickly if they do so.

Please enter these comments into "the record" of this investigation.

# EXHIBIT H

GRAND HAVEN BOARD OF LIGHT AND POWER
MINUTES
AUGUST 3, 2022

A special meeting of the Grand Haven Board of Light and Power was held on Wednesday, August 3, 2022 at the Board's office located at 1700 Eaton Drive in Grand Haven, Michigan and electronically via live Zoom Meeting.

The meeting was called to order at 4:00 p.m. by Chairperson Kieft.

Present were Directors Crum, Hendrick, Westbrook, Witherell, and Kieft.

Also present were David Walters, General Manager, Renee Molyneux, Administrative Services Manager and Secretary to the Board, and Rob Shelley, Distribution & Engineering Manager.

Director Witherell, supported by Director Crum, moved to approve the meeting agenda. The motion was unanimously approved.

Public Comment Period – Jeffrey Miller, 1120 S. Harbor Drive, read in a prepared statement that he is opposed to the Resolution the Board is considering at tonight's meeting. He doesn't feel the meeting is being held in an open and transparent manner due to having a 24-hour advance notice during the week of the Coast Guard Festival. He asked the Board to vote no on the proposed Resolution.

John Naser, 1450 S. Ferry, said the BLP is a department of the city, and the City Council has the final say on ~~all~~ major BLP actions. He disapproves of the Board moving forward with tonight's Resolution and does not agree that the BLP would need to raise rates (if it paid for the city's portion of environmental remediation on Harbor Island).

Mac Davis, 209 S Third, stated he is concerned about a movement opposed to a democratic process, and he feels the BLP is not following a democratic process with the proposed Resolution. He asked the Board to reconsider moving forward with the Resolution.

Field Reichardt, 1053 Ohio Avenue, asked to have the camera focus on public speakers. He feels the city should draft an amendment to the Charter to dissolve the Board.

Ryan Cummins, 551 Gidley, stated that on March 7, 2022, the city rejected the BLP's recommendation to Council to enhance its approved legal services of Varnum to include employment and labor practices and further, the Council amended their agenda at the beginning of that meeting to allow Council to take action to remove its former approval of Varnum's legal services to the Board completely and require the Board to use the city attorney for all legal matters.

Ron Bultje, 113 Lafayette Avenue, current city attorney, cited Section 7.6(e) of the Charter, which he interprets to mean the city attorney is the Board's attorney, and Section 7.6(g), which states, upon request, an assistant attorney may be appointed. Council's action at their March 7, 2022 meeting required the Board to use Bultje for all legal matters. He stated what is being considered tonight is an action reserved by City Council and proceeding with approval will be a violation of the Charter. According to Section 2.7, violations of the Charter may be punishable with a fine of $500 or imprisonment and/or possible removal from office. Bultje asked the Board to not take this action and stated, if they did, it would not turn out well for the Board.

Paul Peppin, 212 Sherman Ave., submitted an emailed written statement prior to the meeting. He extended his appreciation to BLP employees, who provide excellent, reliable service

to our community and rapid restoration efforts whenever infrequent power outages occur. He said he had the opportunity to read the prepared comments from Jeffrey Miller and John Naser before this meeting and he shares their concerns regarding the Resolution the Board is considering at tonight's meeting. He feels a discussion should be held with City Council prior to acting and urged tabling action.

No formal action taken.

22-12A Director Witherell, supported by Director Westbrook, moved to approve the Resolution of the Grand Haven Board of Light & Power's Commitment to the Continued Environmental Remediation and Redevelopment of the Former Sims Power Plant Site on Harbor and Appointment of Varnum as Special Legal Counsel for Utility Matters:

**RESOLUTION OF THE GRAND HAVEN BOARD OF LIGHT AND POWER'S COMMITMENT TO THE CONTINUED ENVIRONMENTAL REMEDIATION AND REDVELOPEMENT OF THE FORMER SIMS POWER PLANT SITE ON HARBOR ISLAND AND APPOINTMENT OF VARNUM AS SPECIAL LEGAL COUNSEL FOR UTILITY MATTERS**

**WHEREAS** the members of the Board of Light and Power, like those on the City Council, are City Officers, similarly committed to the betterment of the community and the representation of the citizens who elected them both (City Charter Section 4.1 (a)); and

**WHEREAS** the Board of Light and Power also performs a local electric utility regulatory function answerable to all approximately 14,700 residential, commercial, and industrial customers within the City of Grand Haven, Ferrysburg, and three surrounding townships; and

**WHEREAS**, unlike members of any boards and commissions of the City and administrative officers appointed by, under the authority of, and accountable to City Council (City Charter Section 4.1 (b), Section 7.14 and Section 7.20), the members of the Board of Light and Power have broader powers and authority of their own, and are assigned a unique charge, distinctive roles, responsibilities, and obligations to conduct the affairs of the city owned electric utility, subject only to the "general direction of the Council," which is not as clearly defined in the Charter as some have recently suggested (City Charter Chapter 14); and

**WHEREAS**, while the electric utility facilities and services constitute a department of the city government, this department, unlike others within the City's Administrative Service, is under the control and direction of the Board of Light and Power, City Officers themselves, and its administrative agent (City Charter Chapter 14), as opposed to the administrative structure of the City, except the city electric utility, under the more direct control of City Council, its administrative agent, and the boards and commissions of the city (City Charter Chapter 7); and

**WHEREAS,** the Board of Light and Power appoints its own administrative agent, exercises full control over its funds, makes contracts concerning the electric utility, has its own purchasing policies, can acquire and dispose of property in the name of the City for its purposes, is not subject to the same budget procedures as other departments, boards, and commissions, of the City, and possesses the full power and authority to set electric rates (City Charter Chapter 14); and

**WHEREAS**, electric utility funds, including electric utility operating revenues, bond proceeds, and electric utility reserve funds, are additionally restricted by Charter and ordinance, and may only (1) defray the cost of operating the utility, (2) be used for the defined Project for which the bonds were issued, or (3) be utilized for the purpose for which the reserve funds were established (City Charter Chapter 14); and

**WHEREAS**, the Board of Light and Power desires, before moving forward further on the former Sims site environmental remediation, to establish a clear and mutual written agreement and understanding of the Board's governing roles, responsibilities, and funding obligations, and those of City Council and the Administrative Service of the City, with respect to the joint environmental remediation and redevelopment project of the former Sims Power Plant site between the Board of Light and Power, City Council, and other departments and administrative officers of the City. The project is no longer exclusively an electric utility project, as determined appropriate by City Council, although some elements and components of it continue to serve an electric utility purpose, and the project is now being directed by other appointed City administrative officers, under the direction of Council.

**WHEREAS,** the City Attorney has recently opined that the City Council and the Board of Light and Power may enter into an intragovernmental agreement for this purpose; and

**THEREFORE, IT IS RESOVED** that the Board of Light and Power shall not approve further funding of the Sims site environmental remediation activities which are not directly under contract with the Board, or approve the use of electric operating revenues, electric utility revenue bond proceeds, or electric utility reserve funds for such purpose until a written agreement is drafted and approved by both the Board and the City Council to better define and clarify the roles, responsibilities, and funding obligations for the jointly governed project now led and controlled directly by the City Council and other appointed administrative officers of the City, and limited, if any, review and approval by the Board or involvement by BLP staff; and

**BE IT FURTHER RESOLVED** that the Board of Light and Power approves and appoints of Varnum as its special legal counsel for utility matters, as it has served in this fashion for over 25 years until February 2022. Varnum will then serve as an agent of the Board and will work with the City Attorney to negotiate and mediate such written agreement between the Board and City Council. The Board will not proceed in development of the written intragovernmental agreement with City Council without legal representation, and until Varnum's reinstatement by the Board is approved by City Council, which approval has historically been granted as a routine matter with due consideration of the Board's approval and recommendation.

**BE IT FURTHER RESOLVED** that the primary purpose and intent of these resolutions is to promote and facilitate productive dialog and discussion between the Board and City Council and legal representation of both governing bodies, with the goal of reaching a mutual understanding and agreement on a fair, equitable and reasonable allocation of the costs and other responsibilities associated with the environmental remediation of the Sims Power Plant site on Harbor Island, consistent with the requirements and parameters of the City Charter, bond finance covenants, applicable law and regulatory requirements.

Grand Haven City Charter:
https://library.municode.com/mi/grand_haven/codes/code_of_ordinances?nodeId=PTICH

Chairperson Kieft provided the Board ten-minutes to review the Resolution so they may prepare their questions and comments.

Director Hendrick asked who prepared the Resolution and if an attorney assisted in that process.

The General Manager stated he drafted the Resolution, which was reviewed by Varnum as the Resolution considers their reinstatement. After then being asked, Walters stated no payment was made to Varnum for this review and no invoice for such services is expected.

Directors Crum and Witherell stated they had no further questions or concerns regarding the Resolution.

Director Westbrook said the key points should not be considered controversial, which include moving forward on dialogue with City Council and reappointing Varnum as BLP's special council to work with the city attorney on drafting the intragovernmental agreement. Westbrook stated he does not know what the fear is for the BLP to have its own representation.

The General Manager said the Board, through this Resolution, is approving Varnum as the BLP's attorney for utility matters, which has been done historically, and if approved tonight, this decision will again be brought to City Council at their August 15, 2022 meeting for their consideration, as has been done historically. This is the process the Board and Council have used for at least the last 25-30 years.

Ron Bultje said he does not see where the Board is asking for or recommending City Council approval of the Board's approval and appointment of Varnum within the Resolution.

The General Manager explained his understanding is the Board approves and appoints, then brings that decision to City Council for their approval. If Council does not approve, then Varnum is not approved by City Council, and the BLP will then not proceed without the representation it believes appropriate with the proposed discussions with Council toward reaching a written agreement, as it is stating in its Resolution. The General Manager sees no crime or Charter violation in the Board approving the proposed Resolution. The Board is simply asking City Council to reconsider Council's earlier action in February, where they denied the Board's request for special counsel it determined most appropriate and necessary to conduct the affairs of the utility. The Board continues in this determination, particularly in light of the need to develop and negotiate the proposed written intragovernmental agreement.

Director Witherell stated he does not agree with City Attorney Ron Bultje. We need outside legal help to walk us through this process of developing a written agreement. Witherell stated he is in total support of doing so. He does not believe the BLP should rely solely on the city attorney in the development of the written agreement or for all other utility matters. This has not been the Board's historical practice. Many recent utility concerns brought to the city have been ignored. The meeting the Board would have liked to have with Council will end up the same. He does not agree with the new interpretations of the Charter, nor did Scott Smith, former city attorney, agree with some of Bultje's current interpretations.

While Director Hendrick desired additional discussion of the Resolution, there was no support to do so from the Board. Chairman Kieft then closed discussion and called for the vote.

In a roll call vote of the Board, those in favor: Directors Crum, Westbrook, Witherell and Kieft; those absent: none; those opposed: Director Hendrick. Motion passed.

22-12B Other Business – Director Westbrook, supported by Director Crum, moved to direct staff to bring the Board's action to approve and appoint Varnum as special legal counsel, as contained in the approved Resolution, to City Council for their consideration at their August 15, 2022 meeting.

In a roll call vote of the Board, those in favor: Directors Crum, Westbrook, Witherell and Kieft; those absent: none; those opposed: Director Hendrick. Motion passed.

At 4:43 p.m. by motion of Director Witherell, supported by Director Westbrook, the August 3, 2022 Special Board Meeting was adjourned.

Respectfully submitted,

Renee Molyneux
Secretary to the Board

RM

# EXHIBIT I

| | |
|---|---|
| **From:** | Renee Molyneux |
| **Sent time:** | 08/01/2022 10:26:39 AM |
| **To:** | Dave Walters; Erik Booth |
| **Subject:** | RE: Draft resolution |
| **Attachments:** | Proposed Board Resolution 8-1-22 v02.docx |

Several proposed revisions are included in the attached draft.


**Grand Haven**
**Board of Light & Power**
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

**Renee Molyneux**
Administrative Services Manager
616-607-1261
Fax 616-846-3114
rmolyneux@ghblp.org


**From:** Dave Walters <DWalters@ghblp.org>
**Sent:** Monday, August 1, 2022 8:33 AM
**To:** Erik Booth <EBooth@ghblp.org>; Renee Molyneux <RMolyneux@ghblp.org>
**Subject:** FW: Draft resolution

Review and make any suggests to improve with an eye to shorten if possible, without losing arguments.

Dave


**Grand Haven**
**Board of Light & Power**
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

**David Walters**
General Manager
616-607-1260
Fax 616-846-3114
dwalters@ghblp.org


**From:** Dave Walters
**Sent:** Monday, August 1, 2022 8:15 AM
**To:** Dale Rietberg (drrietberg@varnumlaw.com) <drrietberg@varnumlaw.com>
**Subject:** RE: Draft resolution

I few updates.

Dave


**Grand Haven**
**Board of Light & Power**
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

**David Walters**
General Manager
616-607-1260
Fax 616-846-3114
dwalters@ghblp.org


**From:** Dave Walters
**Sent:** Sunday, July 31, 2022 10:26 PM
**To:** Dale Rietberg (drrietberg@varnumlaw.com) <drrietberg@varnumlaw.com>
**Subject:** Draft resolution

Dale,

Can you review the attached draft resolution ASAP? I think I desire to remove the references to charter sections later, however, at this point they serve to reference and highlight the applicable sections. We also may want to shorten or focus the resolution a bit further. Let me know your thoughts. I like the two "be it resolved statements" – the whereas statements are only informational and can be shortened.

I have a meeting at 11 AM tomorrow with the board chair and vice-chair to schedule a special meeting (single agenda item would be this resolution) hopefully this week to act on such a resolution. SeyferthPR will additionally be drafting a press release for this meeting and action.

The Board would also likely then cancel the special joint meting on the 10th, to allow the City Council time to consider the Board's resolution. We are leaving them very little room to maneuver and still proceed.

Thoughts?

Dave

# EXHIBIT J

| | |
|---|---|
| **From:** | Dave Walters |
| **Sent time:** | 08/31/2022 05:13:19 PM |
| **To:** | Erik Booth |
| **Subject:** | FW: Reason for my earlier call |
| **Attachments:** | Kieft-Westbrook Ltr dated 9-1-2022.docx |

I drafted this letter to Ron for Larry and Mike and I additionally sent it to Dale below for some "free legal advice."

Let me know what you think. After you review it please delete the draft and this e-mail and your response.

Dave


Grand Haven
Board of Light & Power
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

**David Walters**
General Manager
616-607-1260
Fax 616-846-3114
dwalters@ghblp.org


**From:** Dave Walters
**Sent:** Wednesday, August 31, 2022 4:35 PM
**To:** Dale Rietberg (drrietberg@varnumlaw.com) <drrietberg@varnumlaw.com>
**Subject:** Reason for my earlier call

Dale,

Asking for some additional fee legal advice to review and discuss this letter. Our relationship with Ron is deteriorating further and the Board does not see it improving without some sort of action on their behalf. They asked me to draft this letter to voice their concerns, to go on record that they do not agree it is just an issue between the General Manager and the City Attorney.

The idea is that they would copy the Mayor and Mayor Pro-tem, that have also been copied on recent selective e-mails between the two of us. As you may know, Ron has a way of inciting controversy between the two of us privately, and then copying some policy makers into our conversation, but not the entire conversation. Quite frankly, this one might actually have worked in reverse on him, as I was already forwarding the entire chain to Mike and Larry.

The Board clearly now doesn't see a path to continue working with Ron in his current capacity, particularly with Ron taking such an aggressive posture (somewhat emboldened by Council's recent actions to deny the Board request) toward me, but more so toward them.

If you could review this, it would be appreciated. Feel free to suggest any modifications you feel appropriate. Obviously, it would be best for this to not look like my letter. I think the Board wants to appear firm but fair, in making such an assessment.

Dave


Grand Haven
Board of Light & Power
1700 Eaton Drive
Grand Haven, MI 49417
ghblp.org

**David Walters**
General Manager
616-607-1260
Fax 616-846-3114
dwalters@ghblp.org