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**Interim Report to the City of Johns Creek City Council
Pending Production of Documents from Mayor Bodker**

October 21, 2013

**Interim Investigative Findings Regarding the Conduct
of Mayor Michael Bodker**

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INTERIM REPORT TO CITY OF JOHN'S CREEK CITY COUNCIL
PENDING PRODUCTION OF DOCUMENTS
FROM MAYOR BODKER

INTRODUCTION

On June 17, 2013, the Johns Creek City Council (“council”) voted unanimously to investigate the Office of the Mayor pursuant to section 3.12 of the Charter. The council, through the City manager, retained this firm to conduct an investigation on its behalf and asked us to determine whether or not the Mayor has complied with the City Charter, the City Ordinances and State and Federal laws. During the course of this investigation we have interviewed approximately 40 people, some more than once, including council members, former council members, numerous City staff and other witnesses outside the City government. We have also reviewed hundreds of pages of documents. As explained below, however, Mayor Bodker has sought to delay this investigation and refused to produce certain documents relevant to it, which has impeded the completion of our work.

QUESTION PRESENTED AND SUMMARY OF CONCLUSIONS

Whether Mayor Bodker has complied with the Johns Creek City Charter, the ethics code and state or federal laws.

Short Answers:

1. We conclude that Mayor Bodker accepted a benefit from a developer, and that he had a conflict of interest when he voted on at least one rezoning matter for that developer when it came before the City council.¹
2. We conclude that Mayor Bodker violated the Executive Session Confidentiality by disclosing to a landowner details about an executive session in which the council was discussing the potential purchase of land from that landowner.²
3. We conclude that the Mayor acted contrary to the directive of council and exceeded his authority as Mayor in contacting the mayor of a neighboring city concerning matters that the council had unanimously agreed (including the Mayor himself) to keep confidential during an executive session over potential litigation.

REASONS FOR INTERIM REPORT AND LIMITATIONS TO SAME

Mayor Bodker committed to the public that he would cooperate with this investigation, but in actuality, he has not. The Mayor's public promises and his private conduct during this investigation have been very different. At the

¹ We have no evidence that the developer sought to improperly influence the Mayor. Regardless of the developer's motivation, the Mayor had a conflict and should have recused himself from any vote related to the developer.

² We have no evidence that the landowner did anything improper. The legal responsibility rests with the elected official, in this instance the Mayor, to uphold the law in regard to executive sessions.

beginning of this investigation he told the media, “one who has nothing to hide, hides nothing.” The Mayor has publicly said, “I am perfectly willing to turn over any relevant documents to the investigator that is connected to any specific allegation”. However, despite numerous requests, Mayor Bodker has refused to produce limited, but relevant telephone records and other documents that could bring clarity to several questions raised during this investigation.

We have made every effort to be fair to the Mayor and allow him the opportunity to voluntarily produce the requested records without a subpoena. We first requested records from the Mayor on September 3, 2013. Thereafter, the Mayor's publicly professed cooperation ceased. We repeatedly assured him through his attorney that we would redact any private or irrelevant information from the documents if it became necessary to use them in any report. But the Mayor continued to refuse to produce any documents. Finally, we were forced to ask you, the City council, to authorize subpoenas to obtain the documents. We decided to delay serving those subpoenas to see if the Mayor would voluntarily produce any documents at his interview, which had been rescheduled for October 1st.

At the Mayor's interview, he did provide copies of one lease and a part of another lease and rent checks, but refused to allow us to have copies of them at that time. He and his legal counsel represented that they would redact private

information from those documents and email them to us. They agreed to produce telephone records in response to our narrowed request for seven time frames related to the issues raised in his interview. To date, the only documents we have received are the lease documents mentioned above, one of which is not a complete document. We still do not have the rent checks, telephone records and other documents relevant to our inquiry. Furthermore, the Mayor's attorney made it clear in a telephone conference more than a week after the Mayor's interview that Mayor Bodker still had not requested from AT&T the records that are not available online.³

The Mayor contends that our requests for documents violates his right to privacy because they are allegedly not connected to any specific allegation and are overbroad. Mayor's Bodker's reasoning appears to be nothing more than an excuse to avoid producing the records. We spent nearly eight hours with the Mayor at his interview. During that eight hours, we explained to him in detail the allegations against him, expressed our concerns, and gave him an opportunity to respond. During those eight hours, we also explained how and why the various documents and telephone records are relevant and that they provide objective evidence that will aid in either disproving certain allegations against the Mayor or will support statements and other information we have obtained during the

³ To date, we have not been told anything to the contrary.

investigation. We also agreed to redact private and irrelevant information from those documents.

A week after the interview, we still did not have any of the documents from the Mayor that he had agreed to provide, so we followed up with his attorney. His attorney assured us that the Mayor was working on securing the documents, had already obtained the telephone records that were available online (which would go back three years) and that we could expect to receive them no later than Thursday, October 10th, even if that meant his attorney personally delivering them to our office. Late on the afternoon of the 10th, instead of the records, we received a letter from the Mayor's attorney refusing to produce the very documents he had just told us were in the Mayor's possession and that he would personally bring to our office.

The fact that the Mayor is still refusing to produce his telephone records despite his agreement to do so, despite our narrowed request, despite our commitment to redact personal and irrelevant information, despite his public statement that he would produce such documents and despite that we have painstakingly explained to him the allegations against him, raises the very serious implication that those records will be harmful to the Mayor's interest.

Even though we secured authority from the City council for the issuance of subpoenas, we chose not to serve the subpoenas because Mayor Bodker's attorney

suggested that the Mayor intended to file a court action seeking to quash any subpoena. We believe he intended to use that legal action to further delay his interview with us and this investigation. Moreover, we saw no need to expose the City to litigation costs if it could be avoided.

In sum, this inquiry would have been completed weeks ago and at less cost had the Mayor kept his promise to the public that he would cooperate with this investigation. In light of the Mayor's efforts to delay this investigation, his failure to produce the documents he committed to produce, and his misleading and incomplete statements to the public, we believe it appropriate to report to the council the status of our inquiry.

LIMITED FINDINGS AND CONCLUSIONS

At this time, we can draw some conclusions based upon the evidence we have gathered to date. Questions remain as to other allegations against Mayor Bodker, which cannot be definitively answered without the requested documents. The Mayor's failure to produce the very documents that he contends will clear him of any wrongdoing raises serious questions about those documents and the implication that the documents would actually be harmful to the Mayor. Should Mayor Bodker voluntarily produce the requested records or should this council decide to litigate the matter of the subpoenas in court, we will supplement and adjust this report as required by the evidence.

What follows is not intended to provide every detail nor note every witness who may have spoken upon a subject, such as might be set forth in our final report, nor does it contain any attachments. It is, however, intended to give you a briefing on our limited findings and conclusions to date.

BACKGROUND

The issues that have been raised by the City Council have a long and torrid history. The City Council alleges that during the seven years since the inception of the City, the Mayor has on numerous occasions acted outside the scope of his authority as Mayor, including interfering in police matters, interfering in personnel matters, disregarding the will of the council to further his own agenda, and in some instances violating the City charter. Some of these incidents occurred shortly after the formation of the City during the Mayor's proverbial "learning curve" and likely resulted from inexperience or poor judgment. Others have occurred more recently, such that the excuses of ignorance or inexperience are without merit. In any event, the evidence reveals a steady recurrence of such events throughout Mayor Bodker's tenure.

The council brought many of these matters to the Mayor's attention, and in several instances reprimanded the Mayor publicly or privately, to no avail. The Mayor's continued failure to operate within the confines of his authority as set forth in the Charter, his blatant disregard for the will of the council and his

shameless tactics to push his own political agenda, contrary to decisions of the council, have eroded the trust of the council members and created a contentious relationship between the members of the council and the mayor.

The Mayor's Interference in Police and Personnel Matters, as well as Other Instances of Overstepping His Authority, Led to the Current Distrust of Council

According to the City Charter, the Mayor is the Chief Executive Officer of the City, but his authority is actually quite limited. The Charter is clear that the day to day operations of the City rest with the City Manager. Furthermore, the Mayor, as a member of the City Council, must accept decisions of the Council once they become final.

The pervasive distrust between council and Mayor Bodker has its origins in the Mayor's failure to understand his role under the City Charter and overstepping the bounds of his office. On numerous occasions he interfered in police affairs or other City business that was beyond his purview as Mayor. More disturbing, he did some of these things in order to assist personal friends.

Shortly after the formation of the City, a close family friend shared with Mayor Bodker that her son, the Mayor's elementary age godson, was being allegedly bullied on the school bus. Rather than refer his friend to the school principal or higher level administrator, the Mayor contacted a Fulton county police officer who worked in the North Fulton County – Johns Creek area. He asked the officer to go on the school bus and talk to the alleged bully, an elementary student,

and make the bullying stop by scaring the child. The officer asked, “Really?” The Mayor said “I want you to get his attention.” However, the bus driver refused to let the officer on the bus and the school principal intervened. At that juncture, the officer reported the incident to his superior.

The Mayor now claims that he never asked the officer to take this action, but that the officer volunteered to handle it of his own accord. However, we interviewed that officer, and he made it clear that the Mayor called him and asked him to talk to the child on the bus and to “scare” the child. The Mayor even gave the officer the child’s name and the bus number the child would be riding on. We also spoke to the school principal who could not recall the specifics of the incident, but did remember the Mayor’s involvement with a student on the bus. Additionally, a member of the John’s Creek staff recalled that the Mayor spoke to her after the incident occurred and admitted to her he made a mistake by asking the officer to talk to the child on the bus. The Mayor’s lack of candor with us about this incident is disturbing.

This incident occurred very early after formation of the City and before the Johns Creek’s police department began operating (the City was utilizing the Fulton County police services). While the Mayor’s conduct certainly demonstrated extremely poor judgment and a failure to understand the limits placed upon him as an elected official, it did not rise to the level of an ethics violation. However, his

failure to recognize the inappropriateness of asking the officer to do a personal favor for him, is concerning. But his failure to recognize the impropriety of asking an armed law enforcement officer to confront an elementary school student to put a “scare” into him is disconcerting, to say the least. When the council learned of it, they chastised the Mayor for his actions.

Another incident occurred in early March 2010, when the Mayor contacted City Manager John Kachmar and informed him that he had received complaints from members of the Atlanta Athletic Club (AAC) that they were being “targeted” by the Johns Creek police for DUI. The Mayor requested that Mr. Kachmar set up a meeting with the Mayor, members of the AAC, and the police chief. Mr. Kachmar refused without first consulting legal counsel, who advised against the Mayor attending any such meeting. Instead, Mr. Kachmar, along with the City attorney, met with the incoming president of the AAC, but made it clear Johns Creek was not targeting AAC members.⁴

One of the members of the AAC who complained to the Mayor was the Mayor’s former campaign chairman and House Speaker Pro Tem, Mark Burkhalter. Mr. Kachmar told us that the Mayor then asked him to set up a meeting between Mr. Burkhalter, the Mayor, the police chief and himself. Mr. Kachmar refused to include the mayor and police chief, but did meet with

⁴ We have no evidence to suggest that targeting actually occurred.

Burkhalter alone. Mr. Kachmar and the Mayor argued over Mr. Kachmar's refusal to involve the police chief in these meetings with AAC members. On one occasion, the Mayor began yelling at Mr. Kachmar that he did not want the AAC members targeted or issued tickets.

Another incident arose when one of the Mayor's campaign supporters⁵, and an AAC member, Ted McCain, received a traffic ticket. McCain complained to the Mayor that he had been improperly stopped and that the Johns Creek police were harassing him. The Mayor asked City Manager John Kachmar to meet with Mr. McCain. According to Mr. Kachmar, later that same day he received a call from Mr. McCain's attorney also asking for a meeting. Mr. Kachmar agreed to the meeting. Although Mr. Kachmar believed the meeting to be about McCain's ticket, McCain's attorney, Tim Boyd, quickly turned the conversation to allegations that AAC members were being harassed by the Johns Creek police. Mr. Boyd told Mr. Kachmar that he represented three other AAC members who received tickets for DUI and that he wanted to "settle" those matters with the City. Mr. Kachmar immediately terminated the meeting and reported the incident to the council.

Following these incidents, the council warned the Mayor during an executive session to stay out of police affairs. During this meeting, Council

⁵ According to campaign records, Mr. McCain hosted a campaign event at the law office where he was employed.

Member Lynn Hausman became so angry that she told the Mayor the council would call for his removal if it did not stop. Ms. Hausman is vague about this point, but other council members recall it very clearly. According to Mr. Kachmar, the next morning, Mayor Bodker demanded to know why he reported him to council and threatened to fire him.

Finally, at the time Mr. Richard Aaronson, the Mayor's friend and largest campaign contributor was finishing the construction of Johns Creek Walk II, he had difficulty obtaining a certificate of occupancy from the City. The Mayor asked Mr. Kachmar to meet with Aaronson over the certificate of occupancy. The City denied the certificate of occupancy.⁶ After the meeting, the Mayor called Mr. Kachmar again to find out why the City still refused to give Mr. Aaronson a certificate of occupancy.

In sum, in each of these instances, Mayor Bodker used his position as Mayor to assist a friend or campaign contributor. While the Mayor's actions may not rise to the level of an ethics violation, they certainly demonstrate the Mayor's failure to work within the limitations of his role as set forth in the City Charter. This type of conduct over time created lack of trust and forced a wedge between the Mayor and council.

⁶ This meeting was also attended by Mike Williams, Community Development Director. Mr. Williams and Mr. Kachmar declined to issue the certificate of occupancy based upon public safety issues.

The Mayor's threats to staff also created division with the council. According to the council members, Mayor Bodker retaliated against staff and threatened their jobs for perceived disloyalty to him. As discussed above, the Mayor threatened to fire Mr. Kachmar for notifying the council of the Mayor's proclivity for involving himself in public safety matters.⁷ (See Code of Ethics, Art. IX, Sec. 2-262(n)).

Additionally, on several occasions, Mayor Bodker has told his Chief of Staff, Patti Hansen, that the council is "the enemy"⁸ and that if he sees her talking to them he will fire her. Although Ms. Hansen explained to the Mayor that her job duties require her to interact with the council, the Mayor strictly forbade it.

FINDINGS AND CONCLUSIONS

1. Mayor Bodker Received a Benefit (i.e. a Gratuity) from a Developer and Then Cast A Favorable Vote for the Developer

Mayor Bodker should have recused himself from a zoning matter that involved a developer from whom the Mayor was receiving reduced rent and had accepted a free week's vacation at the developer's beach house in Destin, Florida. We further conclude that such action violated the Johns Creek Code of Ethics, Art. IX, Sec. 2-262(d)(1)-(2).

⁷ This incident led the council to amend the home rule of the City Charter to provide that the City Manager and City Attorney serve at the pleasure of both the City Council and the Mayor.

⁸ The Mayor admits that he has referred to the council as "the enemy."

It is undisputed that Mayor Bodker received a free vacation in Destin, Florida and a discount on his rent at Johns Creek Walk for a one year period from Richard Aaronson, a developer in the John's Creek area. Evidence of this discount is shown in the Mayor's lease documents, by the Mayor's own statements at his interview and by our interview of Mr. Aaronson. There is a conflict in the evidence, however, over the amount of the discount the Mayor received.

Beginning in December 2010 through December 2011, Mayor Bodker rented a townhome from Atlantic Realty Partners. Atlantic Realty is owned by Richard Aaronson. Mr. Aaronson is a personal friend of Mayor Bodker and is also one of his largest campaign contributors. Mayor Bodker leased this four bedroom townhome in the Reserve at Johns Creek Walk. That townhome was one of the largest townhomes available in the complex. It was also an end unit with windows on three sides instead of only two, abutted an open green space and backed up to the golf course at the Standard Club. Mayor Bodker paid a reduced rental rate for his townhome compared to the rates of other townhomes of similar size.

The Mayor denied to the public that he received any rent discount. But, after we reviewed the lease documents for the property, Mayor Bodker noted that he received a discount of \$70, but claimed that it was consistent with the market at the time. He stated that the rent on his townhome was negotiated by his agent and that he had no direct negotiation with Mr. Aaronson. The Mayor admitted,

however, he made that the initial contact with Mr. Aaronson regarding renting a unit. Richard Aaronson told us that he agreed to the \$70 “discount” from the going rental rate because he had not been able to sell the townhomes and therefore was willing to accept less rent to get someone in the unit. A review of the Mayor’s lease and copies of his rent checks confirm a \$70 discount.

Other evidence, however, indicates that the Mayor’s discount was actually significantly more. We reviewed lease agreements for other tenants living in the same complex. Tenants living in either smaller townhomes than the Mayor or in an exact model as the Mayor’s unit paid *more* in rent than Mayor Bodker by at least \$170. These units also were less desirable than the Mayor’s unit because he was located on the end of a building, his unit contained more windows and was surrounded by more green space than any others.

Although the amount of the rent discount appears to be minimal, the Mayor himself was aware that this discount could be problematic. At the time that the Mayor was negotiating his lease with Aaronson’s firm, he went to both the City Manager and the City Attorney and told them that Aaronson had offered him a good deal and asked whether a \$200-300 discount on his rent would create a problem for him. The City Manager referred him to the City Attorney, but expressed concerns. The City Attorney did likewise.

Despite the fact that Mayor Bodker accepted a free week's stay at Aaronson's beach house, and was receiving reduced rent on his townhome, he nonetheless voted on a zoning matter involving Richard Aaronson or his company in December 2010, at the very time he was moving into Aaronson's townhome,⁹ and only a few months after spending a week at Aaronson's vacation house in Florida.

In order to determine whether Mayor Bodker was communicating with Aaronson around the time he voted on the rezoning matter, we requested telephone records from Mayor Bodker for a two month period surrounding the date of the council's vote. Mayor Bodker refused to produce these limited records. If the Mayor was not communicating with Aaronson at the time of his vote, he could easily show that fact through production of his telephone records. His refusal to do so raises the inference that those records would be harmful to his interest.

Altogether, the fact that Mayor Bodker received a rental discount and the free vacation are not *per se* problematic. However, the Mayor's failure to recuse himself from voting on Aaronson's zoning matter violates the Johns Creek Ethics Code. The Johns Creek Ethics Code prohibits council members from accepting anything of value that could reasonably be considered to influence the member in his official action and which results in a pecuniary benefit to the donor. Code of

⁹ The Mayor was allowed to move into the townhouse prior to the start of the lease, but was not charged anything for being permitted to do so.

Ethics, Art. IX, Sec. 2-261(d). By accepting a gratuity and then voting on a matter involving Mr. Aaronson's property, Mayor Bodker violated the City's ethics code. The fact that the ultimate vote in favor of Mr. Aaronson was unanimous is irrelevant. The code is clear that if the member directly or indirectly received a benefit or thing of value, which could reasonably influence the member's actions and result in a pecuniary benefit to the donor, it is improper. Id.; See also City Charter Article II, Sec. 2.15.

Equally troubling, the Mayor misled the public, telling them that he did not receive any discount, when in fact he was paying reduced rent.¹⁰ But what is of most concern is that he *never mentioned* to the public that he also received a free week's stay at Aaronson's beach house and then voted in favor of Aaronson on a zoning matter that came before City council.

2. Mayor Bodker Violated the Executive Session Privilege of Confidentiality

Mayor Bodker violated executive session confidentiality by providing information to a landowner/ developer from whom the City was contemplating buying his property. In 2008, Bob Cheeley approached Mayor Bodker about the City purchasing property adjacent to Rogers Bridge Road. Mr. Cheeley was one of

¹⁰ A representative of Atlantic Realty made a public statement of an incorrect monthly rent amount paid by the Mayor that was higher than his actual rent payments. She did not account for any discount. We believe this statement was inadvertent on her part. However, we find no evidence that the Mayor made any effort to correct this misstatement.

the Mayor's campaign contributors. Mayor Bodker met Mr. Cheeley through the Mayor's friend and former campaign chairman, Mark Burkhalter.

Mr. Cheeley wanted to sell his property to the City and then develop the property as athletic fields for public use. According to both Mayor Bodker and Mr. Cheeley, in 2008 and 2009, the Mayor and Mr. Cheeley regularly communicated about the City's purchase of this property both during in person meetings and by telephone. The Mayor began pushing the City Council to buy the Cheeley property at Cheeley's asking price, based only on Mr. Cheeley's appraisal. The City attorney informed the Mayor and council that they absolutely could not buy the property without an independent appraisal. According to some council members who were on the council at that time, the Mayor became upset when the council refused to accept Cheeley's appraisal and hired an independent appraiser.

The City's independent appraisal valued the property significantly lower than Mr. Cheeley's appraisal and asking price. On October 27, 2008, the council held an executive session where it discussed details of the City's appraisal, whether the City had the funds to buy the property and a potential purchase price. The majority of the council did not want to incur debt for the City to buy the property, since the City did not have cash to pay for it. During that meeting, one member of the council, Ivan Figueroa, suggested that the council obtain more information before walking away from the opportunity for park space for the City.

The very next day, on October 28, 2008, Mr. Cheeley contacted Mr. Figueroa on Mr. Figueroa's personal cell phone. Mr. Figueroa did not know Mr. Cheeley personally, and had never spoken to him. Mr. Figueroa had never given Mr. Cheeley his personal cell phone number. Cheeley told Mr. Figueroa that he was calling because he had spoken to Mayor Bodker and wanted to thank Mr. Figueroa for his willingness to continue discussions on the purchase of the property. It became clear to Mr. Figueroa that Mr. Cheeley was aware of what the council had discussed in the confidential executive session the night before.

We requested Mr. Figueroa's cell phone records, which show Mr. Cheeley's phone call to Mr. Figueroa on the day following the executive session. Mr. Cheeley also confirmed that he called Mr. Figueroa but cannot recall the details of that conversation.

After months passed without any purchase agreement with the City, Mr. Cheeley ultimately asked for a meeting with the City. Cheeley and his business partner, Lamar Wakefield, met with City Manager John Kachmar and Director of Community Development Mike Williams to discuss the City's position on purchasing the property. According to Mr. Kachmar and Mr. Williams, Mr. Cheeley claimed the Mayor had told him the City would buy the property. Mr. Kachmar recalled that at the time of this meeting, Mr. Cheeley knew the amount of

the City's appraisal and other information that could only have come from the executive session.

Mr. Cheeley denies that he knew the amount of the City's appraisal. He also denies that Mayor Bodker promised him that the City would buy the property, but stated that the Mayor strongly indicated the City would do so. According to Mr. Cheeley, Mayor Bodker was working with Mark Burkhalter to obtain some state funding and suggested to Cheeley that the City could buy the property with combined local and state funds. Mr. Kachmar made it clear during that meeting that the Mayor had no authority to bind the City, that the City did not have the funds to purchase the property and that the council was not inclined to do so.

Mayor Bodker denies pushing the council to buy the Cheeley property without an appraisal. According to the Mayor, he initially supported Cheeley's plan for a park area, but after the City's appraisal came back much lower than Cheeley's asking price, he came to understand that Cheeley's idea was not workable. He also denies disclosing to Cheeley any information from the executive session or providing Cheeley with Ivan Figueroa's cell phone number.

If Mayor Bodker, an elected official, was having private discussions with a potential seller about confidential information, such communication would violate the City's charter. We shared with Mayor Bodker at his interview that we had significant concerns about a possible breach of the executive session. We

requested Mayor Bodker's cell phone records for the months surrounding the City's appraisal and the executive session. Although the phone records would not reveal the contents of any calls, the length and timing of the calls would be telling if they corresponded with the dates of executive session meetings.

If Mayor Bodker's phone records in fact reflect he did not have any calls with Mr. Cheeley surrounding the executive session and immediately thereafter, one would think he would want to produce the records to dispel any concerns. Unfortunately, despite his agreement at his interview that he would produce those telephone records, he has refused to do so. The Mayor's refusal to produce phone records relevant to these specific allegations suggests that those documents may be harmful to the Mayor's interest and would not support his position.

Notwithstanding the Mayor's lack of cooperation, two independent witnesses confirm that Mr. Cheeley received information from the executive session both about the specifics of the City's appraisal as well as various council members' position on the potential land purchase. Circumstantial evidence supports the conclusion that Mayor Bodker provided that information to Cheeley. Both Mr. Cheeley and the Mayor admit they had numerous telephone conversations and in-person meetings on this matter. No other council member was communicating with Mr. Cheeley. Mr. Cheeley called Mr. Figueroa's personal cell phone the day after an executive session, confirmed that he had

spoken to Mayor Bodker, and knew information from the executive session the night before.

We conclude this conduct violated the City Code of Ethics, Article IX, Sec. 2-262(k), which provides that “[m]embers shall not directly or indirectly make use of, or permit others to make use of official information, which at the time of its disclosure is not subject to being made available to the general public, for the purpose of furthering a private interest regardless of whether the private interest belongs to the member or a third party.”

3. Mayor Bodker Acted Contrary to the Will of Council in Contacting Roswell’s Mayor Following an Executive Session Over the Brumbelow Traffic Light Dispute

Mayor Bodker acted contrary to the will of the City on February 11th or 12th, 2013, by contacting the Mayor of Roswell concerning the Brumbelow traffic light in direct contravention to instructions of the City Council in an executive session. Although there is insufficient evidence to conclude that the Mayor’s communication with Mayor Wood violated the executive session confidentiality (i.e., that he shared specific information from said session), he breached the trust and confidence of his fellow council members and unilaterally disregarded the council’s agreement and plan of action.

The issue of installing a traffic light at the intersection of Brumbelow Road and Nesbit Ferry Road has been an ongoing dispute between the Cities of Johns

Creek and Roswell for more than a year. The Johns Creek Council has long believed that the traffic light was needed as a matter of the public's safety. At one point during those discussions, the Council authorized Mayor Bodker and Council Member Ivan Figueroa to meet with Mayor Wood and one Roswell council member to attempt to negotiate a resolution to the ongoing dispute. Those negotiations failed. Subsequently, however, Johns Creek City Council agreed to pay the full cost of the traffic light, and Roswell issued a work permit for the work to begin. In early February 2013, just as Johns Creek began installation of the light and after spending approximately \$35,000, Roswell notified Johns Creek to stop work and that it was pulling Johns Creek's work permit.

Exasperated with Roswell's decision, the Johns Creek City Council met in an executive session on February 11, 2013, to discuss how to deal with Roswell's actions, including the possibility of filing a lawsuit. During the session, the council appointed Tom Black, the Director of Public Works, to attend a meeting with his Roswell counterparts, which had previously been scheduled for the following day. The council unanimously agreed that if Mr. Black's discussions at that meeting failed to resolve the issues with the light, the council would hold a public press conference on the morning of Thursday, February 14th at the site of the traffic light construction to notify the public of Roswell's actions.

No one expressed disagreement with this plan, including the Mayor. The council made it crystal clear to each person in the room that *no one* except Tom Black was to communicate with anyone at Roswell regarding the light. In fact, we interviewed every single person present in the room that evening, including Mayor Bodker, and without exception, everyone recalled the clear directive that no one was to communicate with Roswell. Toward the end of the meeting, one member of the council went over the agreed upon plan with the entire group to be sure everyone understood and agreed. The evidence is clear that no one expressed dissent.

Within hours of leaving the executive session, Mayor Bodker contacted Mayor Wood and discussed the Brumbelow traffic light in direct contravention to the will of the council and his own agreement not to do so. Mayor Bodker claims he was returning Mayor Jere Wood's telephone call and that although he discussed the Brumbelow light issue with Mayor Wood, he did not reveal anything from the executive session. But he admits that Mayor Wood gave him information about why Roswell had pulled the permit. Mayor Wood states that he and Bodker never discussed anything "substantive" about the light.

Early the morning after the executive session, Mayor Bodker contacted Deputy City Manager Buzz Boehm and told him he had "inside information" from someone in Roswell and relayed the information he had received from Mayor

Wood. He told Mr. Boehm to make Mr. Black aware of this information. Mayor Bodker instructed Mr. Boehm to pass that information along to Tom Black before his meeting with Roswell. He did not identify from whom he had received the information. Later that same morning, the Mayor called Mr. Boehm a second time and stated he had received additional information by way of a voicemail to pass along to Mr. Black. Mr. Boehm distinctly recalls that the Mayor did not tell him who had provided the information, and acted secretive about it.

The Mayor told us during his interview that he could not recall whether he told Mr. Boehm he got the information from Mayor Wood or if he said he got the information from someone in Roswell. But Mayor Bodker concedes that it was clear from the council meeting the night before that only Mr. Black was to communicate with Roswell. He also admits he did not express any disagreement with the council's plan at the time, but that he silently disagreed with it.

Ultimately, the City staff and City Manager Kachmar learned that Mayor Wood had been the source of Mayor Bodker's information. Karen Negri mentioned in passing to the Mayor's Chief of Staff (the morning after the executive session) that she had just spoken with her personal attorney, Jere Wood, and he told her he had "just gotten off the phone with your Mayor." Mr. Kachmar then confronted Mayor Bodker about why he had spoken with the Roswell Mayor in light of the council's discussion the night before.

Later the same day, a staff member questioned the Mayor about why he contacted Mayor Wood. According to this staff member, Mayor Bodker became very defensive and said that as Mayor he had a right to represent the City's interest and he was entitled to speak with Mayor Wood. He stated he had reached across boundaries to work out a solution. Mayor Bodker also told the staff member that he had called Wood to discuss the problem and work something out, but that he did not breach the executive session because if he learned about the information outside of the executive session, then it was okay to discuss it with Mayor Wood.

In the face of all this evidence, the Mayor admitted that he spoke to Mayor Wood about the Brumbelow traffic light shortly after the executive session and contrary to the will of council, but contends that he was returning Mayor Wood's phone call to him.

We requested Bodker's cell phone records for a fourteen day period surrounding the executive session, but he has refused to produce them, even though they are available online and supposedly in the Mayor's possession.¹¹ The fact that Mayor Bodker will not produce those telephone records suggests that they do not support his version of the communications between he and Mayor Wood following the executive session. At a minimum, however, the evidence is clear

¹¹ Mayor Bodker's council represented to us in a telephone conversation on October 8, 2013, that the Mayor had already obtained his cell phone records for the dates within the last three years, as they were available online.

that the records would further confirm that he spoke with Mayor Wood shortly after the executive session contrary to the express directive of the council.

Nonetheless, the undisputed evidence, including Mayor Bodker's own statements, is that he silently disagreed with the council's decision to hold a press conference, despite his outward agreement during the executive session. The Mayor agrees that the council had no reason to think that he disagreed with their plan of action and had every reason to believe he agreed with them. Nonetheless, within hours of the executive session, the Mayor contacted Mayor Wood in Roswell in direct contravention of the unanimous agreement of the council.

While the evidence is not clear as to whether Mayor Bodker violated an executive session privilege it is apparent that he intentionally disregarded his commitment to the council as well as the will and direction of the council and acted unilaterally without authorization.

REMAINING QUESTIONS

1. Whether Mayor Bodker violated the will of council by communicating with Dr. Harvey of the EMS council.

The council alleged that Mayor Bodker has communicated with Dr. John Harvey, Chairman of the EMS council in violation of the council's directive that only the City manager or City attorney should be communicating with him. At this time, we do not have sufficient evidence to answer this question. We have

obtained evidence that Dr. Harvey has continued to call Mayor Bodker at City hall, but without the Mayor's personal cell phone records, we cannot determine whether or not the Mayor has responded to those calls. The Mayor has refused to produce those records.

Additionally, it appears that Rural Metro, the company that currently provides EMS service to Johns Creek, was a campaign contributor to Mayor Bodker. For this additional reason, we believe Mayor Bodker's involvement in this matter requires further inquiry.

January 3, 2014

Mayor Pro Tem Karen Richardson
Council Member Randall Johnson
Council Member Brad Raffensperger
Council Member Ivan Figueroa
Council Member Kelly Stewart
City of Johns Creek Georgia
12000 Findley Road, Suite 400
Johns Creek, GA 30097-14

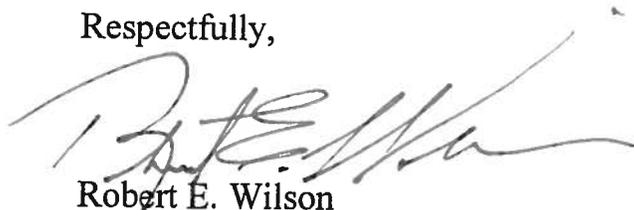
Re: Investigation into Office of the Mayor

Dear Mayor Pro Tem Richardson and Council Members:

Please find enclosed a Supplemental Report (an Attorney-Client Privileged document) and the City's Answer to the Mayor's Petition for Declaratory Judgment and Counterclaim which we filed today in the Superior Court of Fulton County.

If you have any questions, please feel free to contact me.

Respectfully,



Robert E. Wilson

REW/rmh

cc: Mayor Michael Bodker
John Kachmar, City Manager

**CONFIDENTIAL
Attorney-Client
Privileged Information**

Supplemental Report to the City of Johns Creek City
Council
Pending Production of Documents from Mayor Bodker

January 3, 2014

Supplemental Investigative Findings Regarding the
Conduct of Mayor Michael Bodker

Investigators:
Robert E. Wilson, Esq.
Keri P. Ware, Esq.

**SUPPLEMENTAL REPORT
TO THE CITY OF JOHNS CREEK CITY COUNCIL
PENDING PRODUCTION OF DOCUMENTS
FROM MAYOR BODKER**

INTRODUCTION

As you are aware, pursuant to this Council's authorization, on December 4, 2013, we served subpoenas on Mayor Bodker, AT&T, Atlantic Realty Partners and Redus Atlanta Subdivision, LLC ("Redus") as part of the investigation into the office of the Mayor. On December 11, 2013, Mayor Bodker filed a Complaint for Declaratory Judgment against the City Council to stop this Council's investigation and to declare these subpoenas and this investigation unlawful, in spite of the clear language set forth in the City Charter allowing for authorization of the same.

The Complaint against the City is the Mayor's latest strategy to delay this investigation until the newly-elected council takes office on January 6, 2014. We fully expect that the newly-elected city council members will vote to terminate the investigation of the Mayor as one of its first orders of business.¹ As such, we believe it is appropriate to provide the current council with an update as to the status of this investigation and the additional information we have obtained since the Interim Report.

¹ Based on the published Agenda for the January 6, 2014 meeting.

The Mayor's Continued Refusal to Cooperate and Contempt of this Council's Subpoenas

In blatant contempt of this Council's authority, the Mayor has refused to comply with the subpoenas authorized by this Council and issued as part of this Council's investigation. The Mayor has claimed from the beginning that this investigation was politically motivated to prevent his reelection. But the election is now over. The Mayor has been re-elected to another term. And yet he still refuses to produce the requested documents in response to a subpoena. Rather than simply produce documents that he claims will disprove the allegations against him, the Mayor has opted to sue the City.

The Mayor's Complaint is yet another delay tactic to avoid producing relevant documents. As outlined in the Interim Report (pp. 3-5), the Mayor has played a cat and mouse game since the inception of the investigation. We made every effort during this investigation to be fair to the Mayor and allow him the opportunity to voluntarily produce requested records without a subpoena. We first requested records from the Mayor on September 3, 2013. We assured him that we would redact any private or irrelevant information from the documents if it became necessary to use them in any report. But the Mayor refused to produce any documents, while at the same time proclaiming to the public that he was cooperating with the investigation.

At the Mayor's interview on October 1, 2013, he did present copies of what was purported to be one lease, a part of another lease and rent checks, but refused to allow us to have copies so that we could perform a thorough examination. However, he did agree to secure and produce certain records in response to our limited request for seven time frames related to the issues discussed in his interview.

A week after the interview, his attorney assured us that the Mayor was working on securing the documents, had already obtained the telephone records that were available online (which would go back three years), and that we could expect to receive them no later than Thursday, October 10th. Late on the afternoon of the 10th, instead of the records, we received a letter from the Mayor's attorney refusing to produce the very documents he had just told us were in the Mayor's possession.²

He claims in his lawsuit against the City that the subpoenas seek documents that violate his right to privacy, most principally the phone records. However, government officials cannot skirt open records laws by using personal phones, computers, tablets, etc. to conduct city business in an effort to avoid public

² The Mayor contended through his counsel that our requests for documents violated his right to privacy because they are allegedly not connected to any specific allegation and are overbroad. In fact, we spent nearly eight hours with the Mayor at his interview on October 1, 2013, during which time we explained to him in detail the allegations against him and why the various documents and telephone records are relevant to those allegations.

disclosure. The Mayor's city cell phone records are most certainly public documents. Thus, he cannot hide his actions on behalf of the City by using his personal cell phone instead.

It is undisputed Mayor Bodker has routinely used his personal cell phone to conduct City business. He has even gone so far as to put his personal cell phone number on correspondence to the public so that they can personally contact him with questions about city affairs. He has used his personal cell phone to talk to fellow mayors, city council members, state representatives, developers, city staff members, etc. about city business. And the Mayor has been very open about his use of his personal cell phone for city business. Thus, it is inconceivable that he is now attempting to use his right of privacy as a shield to hide the public's business from its taxpayers.

**Additional Documents Obtained Through a Subpoena
Show the Mayor Received a Gratuity and Lied About It**

It is not surprising that the Mayor would go to such lengths to protect himself from scrutiny. Subsequent to the issuance of the Interim Report to the Council, we obtained documents from a third party, Redus,³ in response to one of our subpoenas. One of those documents reveals that the Mayor misled the public, these investigators and this Council as to the extent of the discount he received on

³ Redus took over Aaronson's Johns Creek Walk properties after they were foreclosed on.

his lease. These documents substantiate our initial determination that by obtaining this discount, the Mayor received a gratuity from the developer and that he had a conflict of interest when he voted on a matter that the developer had before the council at the very time the Mayor was receiving this benefit. Interestingly, these documents also reveal that the developer who gave the Mayor reduced rent on his lease and a free vacation was also less than candid with these investigators.

In the Interim Report, we indicated that there was a conflict in the evidence over the *amount* of the discount the Mayor received. As stated in the Interim Report, it is undisputed that Mayor Bodker received a free vacation in Destin, Florida and a discount on his rent at Johns Creek Walk for a one year period from his friend, Richard Aaronson, a developer in the John's Creek area. The Mayor initially denied to the public that he received any lease discount. After we reviewed the Mayor's lease documents at the time of the his interview, however, Mayor Bodker admitted that he did receive a discount but said it was only \$70 per month, and claimed that it was consistent with the market at the time. We also reviewed lease agreements for other tenants living in the same complex and learned that tenants living in either *smaller* townhomes than the Mayor or in an exact model as the Mayor's unit paid *more* in rent than Mayor Bodker by at least \$170.

Based upon the new evidence, we now conclude that the discounted rent was even greater than the evidence initially revealed. The recent documents from Redus show that, in fact, Mayor Bodker was actually paying \$300 *less* per month than other renters with townhomes of the same size. These documents are consistent with and support the statements of two witnesses. As the Mayor was entering into this lease arrangement, he first approached the City Manager and then the City Attorney and told them that Aaronson had offered him a “good deal” and asked whether a \$200-300 discount on his rent would create a problem for him. It was clear that he was seeking approval from them to justify his receiving such a benefit, especially from a developer who regularly had business before the council. Neither individual gave him such approval. The documents from Redus reflect the level of discount the Mayor discussed with the City Manager and the City Attorney. Nonetheless, he first told the public that he did not receive any discount on his lease, while later telling us that he received only a \$70 per month discount. In both instances, the Mayor intentionally sought to mislead the public and these investigators.

This investigation cannot be completed without securing and thoroughly reviewing the various records being sought by the subpoenas which the Mayor is so desperately trying to hide. We believe those records would further reveal the extent of benefits received by the Mayor, and the disclosure of confidential

information by him for the benefit of a privileged few. Thus the man who publically said at the beginning of this investigation that “one who has nothing to hide, hides nothing” continues to hide relevant information from the public and these investigators.

Supplemental Conclusions:

In sum, we reiterate the Findings and Conclusions set forth in the October 21, 2013 Interim Report, and provide the following supplemental conclusions:

1. Mayor Bodker received a \$300 per month discount on his monthly lease payment at Johns Creek Walk from developer Richard Aaronson. This discount is significantly greater than the amount the Mayor reported to us.

2. Mayor Bodker misled the public, this Council and the Investigators regarding the extent of the discount he received on his rent.

3. Mayor Bodker has made statements in his Complaint for Declaratory Judgment that are patently untrue in an effort to stop this investigation.

- He claims he was never apprised of the specific allegations against him, notwithstanding an eight hour interview during which we painstakingly explained those allegations.
- He contends that the telephone records requested from AT&T either do not exist or are not in his possession. However, during this investigation, the Mayor’s attorney represented to us that the Mayor

had obtained records from AT&T for the last three years, which were available online. Moreover, we have confirmed that these documents do exist in AT&T's possession, and they were certainly within the Mayor's control to request and obtain them. As reflected in our Interim Report, another witness did exactly that in a short period of time.

Given the clear evidence from newly obtained documents that the Mayor misled the public, this Council, and these investigators, it is no surprise that he has gone to great lengths to prevent disclosure of his telephone and certain financial records. Just as the recently obtained documents revealed additional information to substantiate the conclusions of the Interim Report, we expect that the AT&T phone records and bank records will also reveal information relevant to this investigation.

Please be advised that until we review the documents sought through the subpoenas we cannot complete our work. Should the newly constituted council choose to terminate this investigation, then the results are incomplete. If you have any questions, please feel free to contact us.