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November 22, 2017

To the Town of Holly Springs Town Council
Via E-mail Only

Re: Investigation Report Regarding Christine Kelly's Ethics Complaint

Dear Council Members,

As you know, Christine Kelly has alleged that Mayor Dick Sears, Town Council Members Hank Dickson, James Cobb, Cheri Lee, and Town Attorney John Schifano violated various sections of the Town's Code of Ethics and Conduct for Town Officials ("the Ethics Policy"). (Policy P-021.2) Ms. Kelly made her complaint during the public comments period of the Town Council meeting held on October 17, 2017. At all times relevant to this complaint, Ms. Kelly was a candidate for Town Council and was also subject to the Ethics Policy.

Since Ms. Kelly's complaint included allegations against the Town Attorney, the Town Manager retained me, as outside counsel, to perform an independent investigation into the complaint.

In performing this investigation, I began by interviewing Ms. Kelly on November 6, 2017. Ms. Kelly's statement was taken under oath and, at her request, her husband was allowed to attend the interview. Ms. Kelly presented a packet of information to the Town Council along with additional documentation provided at the interview. The documentation provided by Ms. Kelly has been bates stamped with numbers 0001 through 00182 and attached to her Statement Under Oath¹ as Exhibits 1 through 6.

After the interview of Ms. Kelly, I followed up with John Schifano and Joni Powell and obtained additional documentation from the Town. The documents received from Mr. Schifano are attached as Exhibit 7 and bates stamped as 00183-00326. The documents received from Ms. Powell are attached as Exhibit 8 and bates stamped 00327-00378. I reviewed portions of Town Council meetings held on September 5, 2017, September 19, 2017, and October 17, 2017. I reviewed meeting minutes related to the meetings held on September 5 and September 19. I reviewed the Town's personnel policies. I also reviewed a video created by the Town regarding the development process. I followed up with Ms. Lee regarding her response to a public records request made by Ms. Kelly.

Finally, Ms. Kelly sent additional documentation to support her claims. This information is attached as Exhibit 9 and bates stamped with pages 00379 through 00449.

¹ References to the Statement Under Oath are cited herein as "Trans. p. _."

This report summarizes Ms. Kelly's allegations and my findings of fact and conclusions of law regarding Ms. Kelly's allegations of ethics violations. This report is made in accordance with Policy P-021.2.

I. EVENTS LEADING TO MS. KELLY'S COMPLAINT

Ms. Kelly and her husband have been residents of the Town of Holly Springs for 25 years. Trans. p. 12. Ms. Kelly is employed as a marketing manager. Trans. p. 113. She also holds a realtor's license, but only engages in this pursuit as a hobby. Trans. p. 113.

According to Ms. Kelly, the allegations of ethical misconduct arise out of the Town's plan to modify downtown Holly Springs by closing a portion of Raleigh Street. The Town's engineer, Aaron Levitt, contacted Ms. Kelly and her husband, and requested to survey the corner of their lot. Mr. Levitt explained that the Town was considering taking a portion of her lot so that traffic could be re-routed when the portion of Raleigh Street was closed. Trans. p. 7.

Ms. Kelly stated that she was surprised to hear about this because she had been attending town council meetings over the past year, except for when she was absent to take a master's level class. Transp. 7. Ms. Kelly explained that a portion of her lot had been taken by the Town in 2011 when a sidewalk was added along the street. Mr and Ms. Kelly hired an attorney in 2011 regarding the taking of a portion of her lot. According to Ms. Kelly, the attorney advised her that she did not have the right to prevent the Town from taking property for public use. The Kellys' experience in 2011 made Ms. Kelly concerned that there would be a lack of dialogue with the Town in closing the street. Trans. p. 8.

Thereafter, Ms. Kelly began engaging in a dialogue with the Town regarding the plans for developing downtown and closing part of Raleigh Street. This dialogue included in-person meetings with Town staff as well as numerous e-mails concerning the plans. Trans. pp. 9 – 11; 0076.

Ms. Kelly spoke at the Town's public comment period at the Town Council meeting on September 5, 2017. Trans. p. 11. Ms. Kelly explained her concerns regarding the village district and the traffic volume and requested an update to the village district plan. Trans. pp. 12-14. Ms. Kelly became confused as to whether the Council was discussing closing the section of Raleigh Street during this meeting or not. Trans. p. 15. Mr. Schifano explained that there would be a separate notice and public comments hearing on the partial closure of Raleigh Street.

At the meeting on September 5, 2017, the Town Council heard from Town employees and members of the public, including Ms. Kelly, regarding the Detailed Master Plan regarding Town Hall Commons (17-SEU-04 / 17-MAS-05 / 17-WAV-19). The Town Council made findings of fact, including but not limited to, that the proposed use of the plan will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare and would not adversely affect the adjacent area. The Town Council voted unanimously to approve these plans. See, Minutes and Recording from September 5, 2017 Meeting.

After the meeting, Ms. Kelly continued her dialogue with the Town regarding the downtown project. Trans. pp. 17-25. On September 6, 2017, Ms. Kelly submitted a public records request to the Town seeking information related to the Downtown Transportation Plan discussed at the November 2015 Town Council meeting. Trans. pp. 17-18.

Mr. Schifano followed up with Ms. Kelly via e-mail and provided further explanation regarding the process, including that there would be a separate process with a public hearing on the partial closure of Raleigh Street. Trans. pp. 20-22. Mr. Schifano explained that the partial closure of Raleigh Street is consistent with the master plan approved by town council, but that the town council is under no obligation to close the street and would not do so if there was compelling evidence against the wisdom of the closure. Transp. p. 22. Mr. Schifano further explained that professional engineers have reviewed the issues and determined that creating a five-point intersection where Raleigh, Rogers, and Main Street meet is not prudent due to safety issues. Moreover, professional engineers have determined that the obtuse angle at which Raleigh Street meets Main Street is dangerous from a site distance standpoint. As explained by Mr. Schifano, the partial closure of Raleigh Street is recommended due to these safety issues. Trans. p. 23.

After being provided with this explanation, Ms. Kelly followed up, via e-mail with Mr. Schifano, with questions about what had been passed during the meeting and the plans for downtown. Ms. Kelly stated to Mr. Schifano that, "As a resident, I am not there yet." Trans. p. 24. Accordingly, Mr. Schifano agreed to meet with Ms. Kelly on September 15th to discuss her concerns. Trans. p. 26.

On September 15, 2017, Ms. Kelly met with Mr. Schifano to discuss the project and to pick up a drive containing documents responsive to her public records request. Ms. Kelly was frustrated with the speed of the project. Ms. Kelly claims that Mr. Schifano stated that the Town staff's minds were made up regarding the project and the partial closure of Raleigh Street. Ms. Kelly asked Mr. Schifano what could be done to stop the road closure. Mr. Schifano told her that Town Council would need to be convinced to not vote in favor of the project. Ms. Kelly asked Mr. Schifano about the process to close a portion of Raleigh Street. Mr. Schifano explained that the process would begin in the first or second meeting in November. Trans. pp. 25-28.

Ms. Kelly states that the meeting with Mr. Schifano on September 15 became a "little bit heated." She stated,

Our conversation got a little bit heated because I was frustrated in this pace of this project. At one point, I had asked for the town manager to come in and sit with us. And he proceeded to say that he does not report to the town manager, he reports to the town council. So we went off – and he started to say that he thought that my complaint, that I was making trouble and that I was still made from the sidewalk issue that we went through with the town.

Trans. p. 26-27. Ms. Kelly states that they continued to talk and "at this point, we had calmed down some. Because I told him why I was frustrated and why I was trying to document everything because of my history with the sidewalk." Ms. Kelly states that she asked Mr. Schifano about

updating the VDAP and he explained that it would cost approximately \$100,000 to update the VDAP. Trans. pp. 26-27.

I spoke with Mr. Schifano with regard to Ms. Kelly's allegations regarding the meeting on September 15. Mr. Schifano stated that he was direct in answering Ms. Kelly's questions at the meeting. He stated that it was an unpleasant conversation about a difficult topic because Ms. Kelly was not pleased about the information he had to share. Mr. Schifano stated that he would not describe the meeting as being heated, but he realized that Ms. Kelly perceived his direct responses as being rude and he changed his tone for the rest of the meeting. Mr. Schifano stated that Ms. Kelly asked about having the Town Manager join the meeting and he said, "We can invite in whoever you want, but the Town Manager is not my boss." Mr. Schifano explained to Ms. Kelly that he answers to the Town Council.

Mr. Schifano explained to Ms. Kelly that the design of downtown does not operate by a democracy – meaning that every citizen does not get to vote every time the Town installs a water or sewer line, or sidewalk, or decides to close a road. Mr. Schifano states that Ms. Kelly stated something like, "John, I'm not opposed to closing Raleigh Street." Mr. Schifano responded and said, "What's all this about then? A desire to make trouble for the Town?" Mr. Schifano went on to explain that he was spending a considerable amount of time responding to her public records requests and that if she wanted something in particular, she should ask for it and he would get it for her.

Mr. Schifano further stated that he explained to Ms. Kelly that her idea about doing a study on the VDAP would be great, but it would not likely answer the specific, detailed questions she had. The VDAP provides only a general overview for downtown development and would not address the specific change questioned by Ms. Kelly. Mr. Schifano further stated that updating the VDAP would not likely change anything with regard to the proposed road closure.

After meeting with Mr. Schifano, Ms. Kelly went to meet with Joni Powell, Town Clerk, regarding her concerns. Ms. Kelly asked Ms. Powell for all of the different plans over the years for the village district and traffic. Ms. Powell allowed Ms. Kelly to download "anything [she] wanted" from her computer. Trans. pp. 27-28.

Ms. Kelly received and reviewed the response to her Public Records Request provided by Mr. Schifano. Trans. pp. 25-35. In the documents produced, including e-mails, Town staff discussed the process for closing a portion of Raleigh Street, including the requirements of N.C. Gen. Stat. § 160A-299.

On September 19, 2017, Ms. Kelly spoke in the public comments section of the Town Council meeting with regard to her timeline of interactions with the town government since her presentation at the Council Meeting on September 5. Thereafter, Ms. Kelly's husband, Charles Kelly, resumed Mrs. Kelly's timeline of events in her requests for public records. Mr. Kelly stated that Ms. Kelly's ultimate request is that no transportation improvements be authorized for the downtown area until the Village District Area Plan (VDAP) has been updated. Mr. Kelly also stated that Mrs. Kelly requests that Councilman Dickson be excused from voting on any matters relating to downtown. Trans. pp. 36-41.

On September 20, 2017, Ms. Kelly met with Kendra Parrish, Director of Engineering, regarding her questions about the plans. Trans. pp. 43- 46. Ms. Parrish explained that the plans had been an action item at the 2015 Town Council retreat and that the draft transportation plan had been vetted by multiple town departments and administration. Ms. Parrish further explained that the draft plan allows more downtown parking, improves dangerous intersections, is more pedestrian friendly, and is an improvement from a public safety standpoint. Trans. p. 44.

Ms. Kelly made a second public records request on September 20. This second public records request grew out of Ms. Kelly's concern that Mr. Schifano had omitted information in her first public records request because she did not receive an e-mail dated "September 12, 2017" as a part of the information provided pursuant to her request. Trans. pp. 47-48. However, as explained by Mr. Schifano, the September 12 e-mail would not have been provided because the e-mail was dated after her request was made (September 6), meaning it was never requested in the first public records request because it did not exist at the time of the first request. Trans. p. 49.

On September 20, Ms. Kelly requested e-mails from all Town staff containing the following terms: VDAP, Comprehensive Traffic, Raleigh Street, Grigsby Avenue, Rogers Street, Master Plan, Town Hall Commons, road closure, Christine Kelly, Kimley-Horn, SAPI, political capital, gain votes, downtown development, October 17th, NCGS 160A-299, parking deck, and car wash. Transp. p. 48; 00184.

On October 3, 2017, Joni Powell responded to a series of questions posed by Ms. Kelly. Ms. Powell explained that decisions regarding road closures are not dependent on what is in the VDAP, but rather on needs related to land development and traffic impact analysis of that development. Ms. Powell provided information related to the adoption of the VDAP. Ms. Powell offered to assist Ms. Kelly in finding what she desired in electronic format. 00168-00169.

On October 3, 2017, in response to Ms. Kelly's second public records request, Mr. Schifano requested that Ms. Kelly specify the e-mail addresses applicable to the query she supplied for the public records request. Ms. Kelly did not respond to Mr. Schifano's request. Accordingly, Mr. Schifano ran the query on all Town e-mails based on the key words provided by Ms. Kelly. 00183.

On October 6, 2017, Mr. Schifano reported to Ms. Kelly that her second public records request had produced 140 GB of e-mails and documentation. Mr. Schifano worked to download the files from the server for two days. Mr. Schifano estimated that it would likely take a week of his time to sort through the data and remove nonpublic records including personnel information, law enforcement data, or anything protected by attorney-client privilege. Mr. Schifano indicated that Town Council may want to bill Ms. Kelly for time spent responding to the public records request. 00183.

Ms. Kelly did not respond to Mr. Schifano's e-mail regarding the public records request. Mr. Schifano continued working on the response, but the result still produced 90 GB of data from over 100 different e-mail boxes. On October 11, Mr. Schifano reported that the data contained various nonpublic data which did not constitute public records and he would be required to go through all 90 GB to extract the nonpublic data. Mr. Schifano stated that the request was far too

broad for the Town to comply and returned the external device provided by Ms. Kelly to the front desk. 00183.

After receiving this response, Ms. Kelly starting questioning what policies protect her as resident. Ms. Kelly examined the Town's personnel policies as well as the ethics policy. Trans. pp. 57-58. On October 17, 2017, Ms. Kelly appeared before Town Council and made allegations of ethical misconduct against John Schifano, Dick Sears, Hank Dickson, James Cobb, and Cheri Lee.

II. SUMMARY OF ETHICS VIOLATIONS ALLEGED BY MS. KELLY

Ms. Kelly alleges that the following portions of the Town's Ethics Policy were violated by Mayor Sears, Hank Dickson, Cheri Lee, James Cobb and/or John Schifano.

TRUST

D. No Town Official will engage in, or accept private employment or render service for private interest when such interest is incompatible with the proper discharge of the official's public duties or would tend to impair hi/her independence of judgment or action in the performance official duties, unless otherwise permitted by law. Notwithstanding this provision, a Town Official in a decision-making position may be involved in any contract, project or service subject to an official act of the Town if he/she excuses himself/herself from all discussions, deliberations and votes on the matter, and states with specificity at the time of recusal the reasons for recusal. Subsequent to the official action, the Town Official shall not attempt to use their position as Town Official to influence any Town Administrator or staff member in the execution of the staff member's duties.

E. The Town's Powers and resources are used for the benefit of the public rather than any official's personal or political Benefit.

F. Town officials promote public respect by avoiding the appearance of impropriety.

G. Town Policy Makers place long-term benefit to the public as a whole above all other considerations, including the concerns of individuals and special interests. The public interest including protecting the rights of under-represented minorities.

H. Town Administrators implement policies in good faith as equitably and economically as possible regardless of their personal views.

I. Whistle-blowing in appropriate on unlawful or improper actions; however, public officials bear the responsibility of avoiding accusations of wrong-doing without substantiated and validated facts.

J. Citizens have a fair and equal opportunity to express their views to Town Officials.

N. Political or referenda campaigns shall not be conducted on Town time or property.

O. No Town Official shall request or permit the use of Town-owned vehicles, equipment, materials or property or enlist Town personnel for convenience or favor or profit or political purposes, except when such services are available to the public generally.

P. Town Policy Makers owe to each other a duty of candor, full disclosure, and good faith with respect to any information regarding any official action of the Town and shall not withhold or falsify information that, if available to other members, would assist in their decision-making, nor shall they improperly promote such information to a third party without the opportunity for a full and frank discussion among the policy makers.

OBJECTIVITY

Town Officials' decision are based on the merits of issues. Judgment is independent and objective.

A. Town Officials avoid financial conflict of interest and do not accept a Personal benefit from people requesting them to affect decisions.

B. If an individual Town Official's financial or personal interests will be specifically affected by a decision, the official is to withdraw from participating in the decision.

C. Town Officials avoid bias or favoritism and respect cultural differences as part of decision making.

D. Intervention on behalf of constituents or friends is limited to assuring fairness of procedures, clarifying policies or improving service for citizens.

ACCOUNTABILITY

Open government allows citizens to make informed judgment and to hold Town Officials accountable.

A. Town Officials exercise their authority with open meetings and public records.

C. Campaigns for election allow the voters to make an informed choice on appropriate criteria.

D. Town Government systems should be self-monitoring, with procedures in place to promote appropriate actions.

LEADERSHIP

A. Town Officials lead by example

C. Leadership facilitates, rather than blocks, open discussion.

D. Town Officials avoid discreditable personal conduct, as personally honest and refrain from personal attacks.

E. Town Officials share information with all pertinent parties.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING MS. KELLY'S ALLEGATIONS OF ETHICAL VIOLATIONS

This section will address the factual evidence provided by Ms. Kelly along with legal conclusions regarding the allegations of ethical violations.

A. Ms. Kelly Claims That Certain Council Members Acted With Bias.

Ms. Kelly alleges that the Council Members about whom she complains were biased because they did not listen to her when she spoke at the public comments session. Trans. p. 90. However, review of the meeting indicates that Ms. Kelly spoke at the meeting on September 5 regarding her concerns that a more detailed traffic study needed to be conducted prior to approving projects or street changes. There is no indication that the Council Members did not listen to her concerns. To the contrary, the Council heard and discussed Ms. Kelly's concerns. The Board also heard from Kendra Parrish, director of engineering, who stated that a draft transportation plan for downtown was approved by Council in 2015. Since that time, traffic studies were done in January 2015, January 2016, and the spring of 2017. Ms. Parrish explained that the Town needed to conduct another count since the completion of the Main Street extension project, but she did not expect the count to change significantly enough to alter the draft transportation plan. The Board also heard from Sean Ryan, planner, and Elizabeth Goodson, development review engineer. The Board of Adjustment had reviewed the plan and supported its passage. See, Video and Minutes from the September 5, 2017 meeting.

The Town Council members asked questions regarding the proposal under consideration. The vote in favor the Detailed Master Plan regarding Town Hall Commons (17-SEU-04 / 17-MAS-05 / 17-WAV-19) was unanimous. See, Video and Minutes from the September 5, 2017 meeting. In so voting, the Town Council made findings of fact, including that the proposed use of the plan will not be injurious to the public health, safety, comfort, community moral standards, convenience or general welfare and would not adversely affect the adjacent area. There is no evidence to support a conclusion that any of the Council members acted with bias in making these findings. Notably, Ms. Kelly has not filed an ethics complaint against Councilmen Tom O'Brian or Peter Villadsen, who also voted in favor of the proposal.

The Town Council also heard public comments by Ms. Kelly and her husband on September 19, 2017. There is no evidence that the Town Council did not consider these comments.

Although the Town Council ultimately did not agree with Ms. Kelly's position, this is no indication of an improper motive on the part of any of the council members. The Town has not yet held a public hearing with regard to the proposed partial closure of Raleigh Street. There is no evidence of any ethical violation by any Town Council member with regard to this contention by Ms. Kelly.

B. Ms. Kelly Claims That Mayor Sears, Jimmy Cobb And Hank Dickson Made Inappropriate Posts On Websites And Facebook Regarding Her Candidacy For Town Council.

Ms. Kelly asserts that Dick Sears, Hank Dickson, James Cobb, Cheri Lee and John Schifano have used their town e-mails titles to respond on political Facebook pages in inappropriate manners. Ms. Kelly asserts that this allegation is based on Section 11 of the Town's Personnel Policy.

Article I, Section 7 of the Town's personnel policy provides, in part:

The personnel policy and all rules and regulations adopted pursuant thereto shall be binding on all Town employees. The Town Manager, **Town Attorney, members of the Town Council and advisory boards and commissions will be exempted except in sections where specifically included.**

Ms. Kelly claims that Mr. Sears, Mr. Dickson, Mr. Cobb, Ms. Lee and Mr. Schifano violated the Article V, Section 11 of the personnel policy. 00034. This section provides as follows:

All electronic communication devices and sources used for Town business are the property of the Town and, as such, may be monitored, audited and reviewed for proper use. Employees shall not make any intentional use of the Internet, e-mail or other electronic communications devices or sources that is illegal, malicious, inappropriate or obscene. An employee's access to the internet is a function of the business need of their position and is not a general employee benefit. Internet and computer access is governed by the Information Policy Administrative Rules Manual policies. Improper use of the Internet, E-mail and other Town electronic business devices or sources will subject the employee to disciplinary action up to and including termination of employment.

See, Town's Personnel Policy, Article V, Section 11 on p. 29.

Since Article V, Section 11 does not specifically state that it applies to the Town Attorney or Town Council, this provision does not apply to Mr. Sears, Mr. Dickson, Mr. Cobb, Ms. Lee or Mr. Schifano.

Even if the provision did apply to these persons, a violation could only be found if these persons made intentional use of the Internet or e-mail that was illegal, malicious, inappropriate or obscene. Ms. Kelly has pointed to no use of the Internet or e-mail by these persons which is illegal, malicious, inappropriate, or obscene. See, Trans. pp. 117-118. Ms. Kelly complained about "the tone" that Mr. Schifano used in his e-mails to her, but could provide no specific instances of behavior that would violate Article V, Section 11. Trans. p. 119. Accordingly, this allegation is without merit.

Ms. Kelly claims that Mayor Sears, Mr. Dickson, Ms. Lee and Mr. Cobb made inappropriate comments on social media regarding Ms. Kelly and her campaign. Ms. Kelly has provided no documentation to support her allegation of inappropriate comments on websites, blogs, or Facebook. None of the printouts from websites, blogs, or Facebook specifically name Ms. Kelly. Even if Ms. Kelly were specifically named on the internet, there is no evidence of an ethical violation. Accordingly, this allegation is unsubstantiated and without merit.

Ms. Kelly claims that she has been falsely accused of politicizing the issue regarding downtown development. However, Ms. Kelly concedes that she posted information concerning her views on the issue on her website, www.christinekellyforcouncil.com, and Facebook page, Christine Kelly for Holly Springs, (00149, 00158) while she was a candidate for public office. Trans. pp. 97-100, 111-112.

Allowing candidates to post information on the internet regarding their positions is supportive of the concept of open government and provides citizens with information when voting for candidates. This is appropriate based on the plain language of the Ethics Policy.

C. Ms. Kelly Claims That The Town Improperly “Fast Tracked” The Partial Closure Of Raleigh Street.

Ms. Kelly alleges that the Town improperly sought to “fast track” the partial closure of Raleigh Street. N.C. Gen. Stat § 160A-299 describes the procedure a municipality must follow for permanently closing streets and alleys. N.C. Gen. Stat. § 160A-299 states, in part, as follows:

(a) When a city proposes to permanently close any street or public alley, the council shall first adopt a resolution declaring its intent to close the street or alley and calling a public hearing on the question. The resolution shall be published once a week for four successive weeks prior to the hearing, a copy thereof shall be sent by registered or certified mail to all owners of property adjoining the street or alley as shown on the county tax records, and a notice of the closing and public hearing shall be prominently posted in at least two places along the street or alley. If the street or alley is under the authority and control of the Department of Transportation, a copy of the resolution shall be mailed to the Department of Transportation. At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county in which the street, or any portion thereof, is located.

(b) Any person aggrieved by the closing of any street or alley including the Department of Transportation if the street or alley is under its authority and control, may appeal the council's order to the General Court of Justice within 30 days after its adoption. In appeals of streets closed under this section, all facts and issues shall

be heard and decided by a judge sitting without a jury. In addition to determining whether procedural requirements were complied with, the court shall determine whether, on the record as presented to the city council, the council's decision to close the street was in accordance with the statutory standards of subsection (a) of this section and any other applicable requirements of local law or ordinance.

No cause of action or defense founded upon the invalidity of any proceedings taken in closing any street or alley may be asserted, nor shall the validity of the order be open to question in any court upon any ground whatever, except in an action or proceeding begun within 30 days after the order is adopted. The failure to send notice by registered or certified mail shall not invalidate any ordinance adopted prior to January 1, 1989.

On September 8, 2017, Mr. Schifano told Ms. Kelly that the Town would comply with N.C. Gen. Stat. § 160A-299 with regard to the road closure. 00196.

As explained in the meeting, the vote by Town Council on September 5, 2017 did not authorize the partial closure of Raleigh Street. The Town has not yet approved the partial closure of Raleigh Street. There has been no evidence presented by Ms. Kelly that the Town has taken any illegal action to close Raleigh Street. Accordingly, this allegation is not substantiated.

D. Ms. Kelly Claims that Dick Sears, Hank Dickson and John Schifano Violated the Town's Personnel Policy Prohibiting Violence, Aggressive, Threatening, Intimidating, Bullying or Disruptive Behaviors.

Ms. Kelly claims that Mayor Sears, Mr. Dickson, and Mr. Schifano committed improper personal conduct in violation of the Town's personnel policy, Article IX, Section 5(B)(11). This provision states:

Violence or other aggressive, threatening, intimidating, bullying or disruptive behavior whether by means of communication devices or by means of physical visits to the grounds or home of the targeted individual, for the purpose of harassing an individual.

While Ms. Kelly included this allegation in her ethics complaint, she has not provided any evidence that anyone came to her home, committed any violence towards her, or otherwise threatened, intimidated, or harassed her.

Ms. Kelly claims that Mr. Sears and Mr. Dickson violated the Town's bullying and harassment policy based on comments they made on websites. (Trans. p. 140) Ms. Kelly has cited to no websites, blogs, or Facebook pages showing that Mr. Dickson or Mayor Sears specifically referenced Ms. Kelly or made any comments that could be considered intimidating or harassing in nature.

Ms. Kelly claims that she was bullied because she was told “they were going to call the SBI on [her].”² (Trans. pp. 60, 80-81) Ms. Kelly claims this statement was made at the public hearing on October 17, 2017 in which she lodged her ethics complaint. However, this is not what was stated at the hearing. Rather, Mr. Schifano stated that the SBI may be called to investigate Ms. Kelly’s ethics complaint, not that the SBI would be called to investigate Ms. Kelly. This allegation is without merit.

Ms. Kelly claims that Mr. Schifano intimidated her in the September 15 meeting with him by making her feel as though she could not share her opinions as a resident and telling her she was a “trouble maker.” Mr. Schifano responded to Ms. Kelly’s questions in a direct manner and stated that he changed his tone when he realized Ms. Kelly felt he was being rude. Ms. Kelly admits that his behavior was “not so much intimidating” as not being open minded. She claims that she felt more intimidated at the Town Council meeting where she made her ethics complaint. Trans. pp. 137-140.

Based on the statements by Ms. Kelly and Mr. Schifano regarding the meeting on September 15, 2017, I do not find evidence supporting Ms. Kelly’s description of Mr. Schifano’s behavior as “intimidating.” This allegation is without merit.

In the Town Council meeting on October 17 when Ms. Kelly presented her ethics complaint, Mr. Schifano repeatedly asked Ms. Kelly to state factual support for her claim of ethics violation. This is not intimidating behavior.

Ms. Kelly claims that the tone of Mr. Schifano’s e-mails with her was hostile because he stated that the Town may implement charges related to her public records request. However, N.C. Gen. Stat. § 132-6.2(b) provides that a municipality may charge a fee where a public records request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved. Accordingly, Mr. Schifano’s statement complied with this statutory language and supports no ethical violation.

E. Allegations of Violation of N.C. Gen. Stat. § 160A-75.

Ms. Kelly claims that N.C. Gen. Stat. § 160A-75 was violated. This statute provides, in part:

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or 160A-388(e1). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

² This allegation regards alleged behavior that occurred after Ms. Kelly drafted her written complaint alleging bullying and harassment.

Ms. Kelly has not provided any evidence or supporting factual allegations that any of the accused parties have violated this statute. In the absence of a financial interest or official conduct on which the member is prohibited from voting, council members are required to vote, or their abstention may be counted as an affirmative vote.

Ms. Kelly has not provided any evidence that any member has voted in any matter prohibited by N.C. Gen. Stat. § 160A-75. Accordingly, this allegations is not substantiated.

F. Allegations Regarding Ms. Kelly's Public Records Requests

Ms. Kelly claims that the Town did not sufficiently respond to her public records request.

On September 15, 2017, Ms. Kelly met with Mr. Schifano to discuss the project and to pick up a drive containing documents responsive to her public records request. During the meeting, Mr. Schifano told Ms. Kelly that he was spending a lot of time responding to her public records requests and explained that if she asked for specific items, he would be able to retrieve them more easily for her.

After meeting with Mr. Schifano, Ms. Kelly went to meet with Joni Powell, town clerk, regarding her concerns. Ms. Kelly asked Ms. Powell for all of the different plans over the years for the village district and traffic. Ms. Powell allowed Ms. Kelly to download "anything [she] wanted" from her PC. Trans. pp. 27-28.

Ms. Kelly received and reviewed the response to her Public Records Request provided by Mr. Schifano. Trans. pp. 25-35. On September 20, 2017, Ms. Kelly met with Kendra Parrish, Director of Engineering, regarding her questions about the plans. Trans. pp. 43- 46. Ms. Parrish explained that the plans had been an action item at the 2015 town council retreat and that the draft transportation plan had been vetted by multiple town departments and administration. Ms. Parrish further explained that the draft plan allows more downtown parking, improves dangerous intersections, is more pedestrian friendly, and is an improvement from a public safety standpoint. Trans. p. 44.

Ms. Kelly made a second public records request on September 20. This second public records request grew out of Ms. Kelly's concern that Mr. Schifano had omitted information responsive to her first public records request because she did not receive an e-mail dated "September 12, 2017" as a part of the information provided pursuant to her request. (Trans. pp. 47-48) However, as explained by Mr. Schifano, the September 12 e-mail would not have been provided because the e-mail was dated after her request was made (September 6), meaning it was never requested in the first public records request because it did not exist at the time of the first request. Trans. p. 49.

Nonetheless, on September 20, Ms. Kelly requested e-mails from all Town staff containing the following terms: VDAP, Comprehensive Traffic, Raleigh Street, Grigsby Avenue, Rogers Street, Master Plan, Town Hall Commons, road closure, Christine Kelly, Kimley-Horn, SAPI,

political capital, gain votes, downtown development, October 17th, NCGS 160A-299, parking deck, and car wash.

On October 3, 2017, Mr. Schifano requested that Ms. Kelly specify the e-mail addresses applicable to the query she supplied for the public records request. Ms. Kelly did not respond to Mr. Schifano's request. Accordingly, Mr. Schifano ran the query on all Town e-mails based on the key words provided by Ms. Kelly. 00183.

That same day, on October 3, 2017, Ms. Powell responded to a series of questions posed by Ms. Kelly. 00168-00169.

On October 6, 2017, Mr. Schifano reported to Ms. Kelly that her second public records request had produced 140 GB of e-mails and documentation. Mr. Schifano worked to download the files from the server for two days. Mr. Schifano estimated that it would likely take a week of his time to sort through the data and remove nonpublic records including personnel information, law enforcement data, or anything protected by attorney-client privilege. Mr. Schifano indicated that Town Council may want to bill Ms. Kelly for time spent responding to the public records request. 00183.

Ms. Kelly did not respond to Mr. Schifano's e-mail regarding the public records request. Mr. Schifano continued working on the response, but the result still produced 90 GB of data from over 100 different e-mail boxes. On October 11, Mr. Schifano reported that the data contained various nonpublic data which did not constitute public records and he would be required to go through all 90 GB to extract the nonpublic data. Mr. Schifano stated that the request was far too broad for the Town to comply and returned the external device provided by Ms. Kelly to the front desk. 00183.

Based on the Town's production of information, efforts to produce information, answering of her questions, and Ms. Kelly's failure to communicate with the Town to narrow her request so that the Town could reasonably respond to the request and provide the information that Ms. Kelly sought, I find no ethics violation in the Town's response to Ms. Kelly's public records request.

Finally, Ms. Kelly claims that Ms. Lee failed to respond to her public records request for text messages sent on September 5th and September 19th. Trans. p. 96. Ms. Kelly's public records request specifically states, "If you did not use your phone for texting during this time, please ignore this request." 00148. I contacted Ms. Lee and inquired as to whether she had text messages that would be subject to Ms. Kelly's public records request. Ms. Lee stated that she did not have any responsive text messages. Given Ms. Kelly's statement that Ms. Lee did not need to respond if she had not responsive messages, Ms. Lee's election to not respond is not an ethics violation.

G. Ms. Kelly's Claims that there an Ethics Violation Related to Campaign Contributions

Ms. Kelly alleges that Mr. Cobb, Mr. Sears, and Mr. Dickson violated Trust, Section D of the Ethics Policy due to their acceptance of certain campaign contributions. Ms. Kelly provided documentation supporting her claim. These documents are contained in Exhibit 9, 00379-00449.

There is no evidence in the record of a violation of this section. The documents produced by Ms. Kelly show that the candidates made required disclosures pursuant to Article 22A of Chapter 163 of the North Carolina General Statutes. Ms. Kelly concedes that there is nothing illegal about the contributions. Trans. p. 67. Furthermore, Ms. Kelly was not able to provide any specific factual allegations regarding her contention that any member violated the ethics policy related to the referenced campaign contributions. Trans. pp. 70-75. Ms. Kelly stated that she had a “hunch” about potential violations but offered no specific facts. Trans. pp. 73-74. Review of the contribution reports do not support any allegations of an ethics or other statutory violation.

H. Ms. Kelly’s Claims Regarding the Town’s Video Explaining the Development Process

Ms. Kelly alleges that a video posted by the Town explaining the development process was inadequate in that it did not include sufficient information for citizens regarding public hearings. Trans. pp. 88-89. However, the video points viewers to the Town’s website for additional information. The Town’s website contains a section entitled “Citizen Guide to Council Meetings” and includes information regarding meeting procedures, public participation in agenda items, the public comment period at each meeting, and public hearings. Ms. Kelly attributes alleged violations relating to the video to Cheri Lee because she spoke on the video and to Mr. Cobb and Mr. Dickson because they both shared the video on their Facebook pages. These allegations are without merit and support no ethical violation. Trans. pp. 88-89.

IV. Conclusion

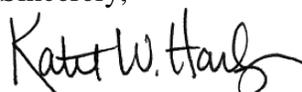
In conclusion, I have found no credible evidence of an ethics violation in this matter. Ms. Kelly admits that she has been frustrated with the development process and brought this complaint to delay the vote regarding the downtown project until there was further discussion about real traffic numbers and a modified VDAP plan. Transcript pp. 136-137, 142-143. Ms. Kelly admits that she could have re-thought some of her allegations. Trans. p. 144.

Based on the interview of Ms. Kelly and the documents she produced, I did not find that there was any evidence of an ethics violation against Mayor Sears, or Council Members Lee, Cobb or Dickson. Other than the question of Ms. Lee described in this report, I did not feel that interviews of Sears, Lee, Cobb or Dickson were necessary and would needlessly drive up the costs of this investigation. Accordingly, these witnesses were not interviewed.

I spoke with Mr. Schifano regarding Ms. Kelly’s claims. Based on the information provided by Ms. Kelly and Mr. Schifano, I do not find any ethics violation by Mr. Schifano.

I hope this report provides you with the information you need pursuant to Policy P-021.2. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Katie Weaver Hartzog

cc: Christine Kelly, via e-mail only
Charles Simmons, via e-mail only