

Comments of David Walters on January 25, 2024 RE: Proposed “Board Resolution Regarding Indemnification:”

*WHEREAS, Section 31 of the Grand Haven Board of Light and Power (the “BLP”) Bylaws (the “Bylaws”) provides in relevant part that a “. . . Board member shall be indemnified by the BLP as of right to the fullest extent now or hereafter permitted by law in connection with any actual or threatened civil, criminal, administrative, or investigative action, suit, or proceeding, **which is brought against the member because of the Board member’s position on the Board**”*

This WHEREAS statement leaves out the following sentences from Section 31 of the BLP Bylaws, **“This right to indemnification does not apply to those actions, suits, or proceedings brought by or on behalf of the BLP and/or the City against the Board member. Persons who are not Board members of the BLP may be similarly indemnified with respect to their service for the BLP to the extent authorized at any time by the Board.”**

Section 13 of my employment agreement also states:

“The General Manager shall be indemnified by the BLP as right to the fullest extent now or hereafter permitted by law in connection with actual or threatened civil, criminal, administrative, or investigative action, suit, or proceeding, which is brought against Mr. Walters because of his employment hereunder, or in which he is witness because of his employment. This right to indemnification does not apply to those actions, suits, or proceedings brought by or on behalf of the BLP and/or the City against Mr. Walters. **This indemnification will be consistent to that provided the “Board of Light and Power” in Section 31. of its by-laws as amended from time to time.**”

In other words, the Board has an obligation to indemnify and defend me, if individual Board members, and/or City Council Members, outside of official actions of the Board, or City Council to direct them, “threatens” administrative action (i.e. terminating the employment agreement), for reasons the Board, as a whole, finds “without merit.”

WHEREAS, the General Manager has stated that the purpose of his FOIA request for these records of Director Hendrick pertain to her position on the BLP Board, because the General Manager believes these records of Director Hendrick will show that he has been constructively discharged by the BLP Board.

Where did I ever state my “*purpose*” of this FOIA request was to “*show that*” I have been “**constructively discharged,**” or that I will use the documents I receive from Board Member Hendrick to bring a “civil, criminal, administrative, or investigative action suit, or proceeding,” **against Ms. Hendrick?**” Apparently, this is the “belief” of the City Attorney, whom, it is my understanding, drafted this rather flawed resolution for the Board to consider.

The “breach of contract” claims I have made are clearly “**against the Board,**” the counterparty to my employment contract, and as I have clearly stated, I believe it is the

Board's obligation to fully investigate these claims, as it is the Board's obligations to ensure its members comply with the requirements of the FOIA.

As the Board knows, I appealed to the Board at its November meeting, to require its members, and the City Attorney, to follow the clear direction of the FOIA, and the BLP's September 6, 2023 response (attached) **"Granting" my request for public records under the FOIA**, and stating applicable public documents will be provided to me *"within a reasonable period of time after they are provided to the BLP by Ms. Hendrick and then are reviewed by the BLP attorney (the City Attorney) to determine their coverage under the FOIA."*

The Board of Light and Power has already approved spending more than \$10,000 in legal fees to the City Attorney to ensure Board Member Hendrick's First Amendment Rights have not been violated in granting access to these public records.

It is my understanding, the City Attorney completed this review prior to the Board's November meeting, and he determined that there was additional applicable "public documents," that were required under the FOIA to be provided, in such "a reasonable time" thereafter. More than two months have now elapsed since that determination was made by the City Attorney. What are we waiting for? Why has the Board not simply directed its attorney to turn over documents he has reviewed consistent with these statements (and commitments of the Board) contained in my September 6, 2023 response from the BLP? Wasn't this the findings of the Board in answer to my appeal in November?

Where in the FOIA does it allow for a further delay for another review by a private attorney, that the Board needs to pay for? If so, what Section of FOIA contains these provisions?

Wasn't this same response, and commitment, also provided to Mr. Lystra and Ms. Wilhelm by the Board?

Apparently, now the City Attorney, who is the only representative of the Board that has seen all of these documents and made these determinations, is now suggesting the Board needs to defend one of its members (potentially against actions that the Board is being requested to perform). Why all the fuss if these documents only contain statements of Board Member Hendrick, consistent with her First Amendment rights, in personal e-mails? Why not provide the documents so that the public can decide for themselves? Why was this information not provided before the election?

My "purpose" and intention has then been very clear all along, **"I intend to review these documents myself, and then turn them over to the Board,"** to more fully investigate any Board Member misconduct, or any individual Board Member actions contrary to the Board's obligations and responsibilities under my employment agreement, the Board's employment policies and practices, the Board's by-laws and City Charter, and/or state or federal laws." **It is the Board not completing this review,**

as is no doubt appropriate under these circumstances, that is at the center of my claims.

As I have stated on multiple occasions, I do not believe it is my responsibility, obligation, or desire, to investigate or prove misconduct by individual Board members, nor do I need these public records to show **the Board** as a whole, through actions of its individual members, and inaction of the Board as a whole to address these actions, created a “hostile work environment,” through subsequent “**divisive, dysfunctional, and non-transparent**” **governance practices**, contrary to the intent and purpose of the employment agreement, and individual provisions of it, and the BLP’s policies and employment practices, and potentially state and federal employment statutes.

I have already made these claims to the Board privately and have provided the Board more than adequate information to begin a further review of their own, and I have additionally offered my full support and cooperation to provide further documents in the course of that “independent” review. The suggestion otherwise by the City Attorney, or anyone else, is false.

Closing remarks from David Walters October 21 Public Statement:

“It is no secret that both of these Board members (Hendrick and Knoth) have openly expressed their desires to replace management leadership since the day they were sworn into office on the Board, contrary to the actions of four members of the Board that voted to renew my employment contract for the period from July 1, 2022 to December 31, 2026 (4 ½ years), as a result of successfully achieving all of the Board established goals for management at that time (consistent with my employment agreement).

Divisive, dysfunctional, and non-transparent Board actions of this nature (i.e two Board members actively working inside and outside the Board room, against Board majority actions to direct the General Manager), ***driven by two Board members who suggest they are advocates for “positive change” at the utility are the reason for our employee discontent with the direction of that change, and the reason for my desire to pursue early retirement before the conclusion of my contract.***

Quotes from my December 22, 2023, e-mail to Chairman Westbrook:

“As far as I am concerned, the Board is at a crossroads, and it needs to make two decisions.”

“The first is, whether or not the Board is going to initiate a more thorough review, investigation, and public hearing if necessary, assisted by independent legal counsel as may be appropriate, into claims of misconduct by two Board members, and three City Council members, relating to BLP matters, as raised now by myself (for almost two years), Mayor McNally, two past Mayors, and Cecil Bradshaw (among others).”

Why are these claims being treated any differently than the so called “whistleblower” claims that had little or no merit, nor any real direct evidence or specific allegations associated with or supporting it?”

You all suggested you take such claims of misconduct “very seriously.”

“The second is, whether or not this alleged Board member conduct (or more appropriately misconduct), which quite frankly we all know has occurred, has impacted the Board’s contractual relationship with me, and whether or not I have been harmed from it. You all know the “toxic and hostile” work environment Hendrick, Knoth, Cummins, McLaughlin, and Lowe have created. Is this really even in dispute? Or are we just trying to determine its full extent? The Board doesn’t need to prove misconduct, establish discrimination, or convict Board and City Council members of a crime to recognize what is happening, the harm that it is causing individuals and the organization, and act to resolve and remedy the concern, so the organization can move forward.”

I offered an opportunity for us all to avoid this process through a confidential “alternative dispute resolution” process, with a goal to reach a mutually acceptable, equitable and fair, early retirement agreement. Apparently, that settlement or process is not acceptable or desirable to the Board at this point. So let’s get on with the process that the Board has been avoiding for years.

WHEREAS, the General Manager’s FOIA request, and the subsequent FOIA requests, are so broad that they cover not only “public records” as defined by the FOIA, but they also cover records that could be personal to Director Hendrick and thus exempt from FOIA, as well as records that could be subject to Director Hendrick’s rights under the First Amendment to the United States Constitution and thus exempt from FOIA, as well as records that could be exempt from FOIA for other lawful reasons.

WHEREAS, because the General Manager’s FOIA request, and the subsequent FOIA requests, are so broad that they will only be partially granted and partially denied, and because determining which of Director Hendrick’s documents are subject to FOIA and which are exempt from FOIA will of necessity involve interpretations of applicable law and constitutional provisions, Director Hendrick has incurred and will continue to incur legal expenses in order to respond to the FOIA request.

I see no reason whatsoever to include these “determinations” by the Board, that they have never reviewed or made from my understanding, that are now contradicted by the findings of the City Attorney, that the Board spent over \$10,000 in legal fees to obtain.

Is not the City Attorney now holding documents, by his own admission, provided by Board Member Hendrick, that he has found to be public records that pertain to and address the BLP General Manager, and resided on Board Member Hendrick’s private e-mail, contrary to BLP’s policies and procedures requiring Board Member Hendrick to

use her BLP e-mail address to conduct BLP business? Why else would she be discussing the BLP General Manager, if it was not in performance of her Board duties and responsibilities?

Documents that may display misconduct in the performance of her BLP duties and responsibilities are no doubt “public records” under FOIA, and are simply not exempt “personal” records, nor protected documents under her First Amendment rights.

As I have said previously, and I will say again here, the only reason my FOIA request has been determined “so broad,” or “invasive” by those that are defending Board Member Hendrick’s rights as an employer to “harass” an employee, is because she is doing so on her private e-mail server, by her own choice, to avoid any public scrutiny. If she was appropriately using the BLP e-mail sever to conduct (or “misconduct”) her responsibilities as a Board member, a BLP staff member would be able to perform the required search of public records on our server and could undoubtedly do so within the 15-business day requirement of FOIA, regardless of the volume of public records pertaining to the request.

In other words, Board Member Hendrick’s poor decision to use her private e-mail server and address, to inappropriately conduct her BLP business, is the sole reason she now suggests she needs to be “indemnified” from appropriate review by the Board, into such misconduct. It would seem, if Board Member Hendrick didn’t have anything to hide in these regards, she would be a bit more cooperative in clearing her name. Isn’t this truly in the public’s interests if these documents do not reveal misconduct or “improprate behavior” inconsistent with her past statements?

Why then does the Board in this resolution try to cast blame for Board Member Hendrick’s unfortunate circumstances on the FOIA requesters (including members of the public and a past Mayor), who are simply requesting public documents they are entitled to under state law? How are they responsible in any way for Board Member Hendrick’s poor governance decisions and actions? How can the City Attorney now suggest, on behalf of the Board, in this resolution, that the requesters are essentially wasting public dollars, when the responsibility for such waste no doubt rests solely with Board Member Hendrick. Why should the public now be asked to waste even more dollars defending such poor choices on her behalf?

I am more than pleased to allow others, including the Board, to take over the responsibility of reviewing these matters. And if the Board does so, they are under no obligation to indemnify Board Member Hendrick, consistent with the clear language of the Board’s Bylaws, that, for some reason, wasn’t included in the proposed resolution.