

Honorable Mayor Mickelson,

I am writing to request that Councilman Rob Zotti be investigated for misconduct with respect to his involvement in the Bitter Creek Restoration Project (BCRP).

In April of 2020 the City of Rock Springs (City) asked local engineering firms to submit engineering proposals for the BCRP. Three firms submitted proposals. Those firms were JFC Engineers (JFC), Western Engineers (Western), and William H. Smith and Associates (WHS).

The proposals were reviewed by a selection committee comprised of city staff. The selection committee initially chose JFC's proposal.

Brandt Lyman, president of Western, complained to Mr. Zotti about the selection committee's choice. At the time, Mr. Zotti represented Western in a professional context. Mr. Lyman has testified that Mr. Zotti was Western's insurance broker at all times relevant hereto.

Mr. Lyman told Mr. Zotti the selection process was tainted because Mr. Kaumo was the mayor. Mr. Lyman supported his accusation by pointing out the difference in cost between JFC's proposal and Western's proposal.<sup>1</sup>

Mr. Zotti took Mr. Lyman's complaint to city council and was pivotal in convincing City Council to vote against awarding the professional services contract for the BCRP to JFC. Mr. Zotti obtained Western's proposal and disseminated the proposal to City Council so City Council could conduct an independent review of the selection committee's decision.

A second selection committee was assembled after JFC's proposal was voted down, and all three engineering firms submitted updated proposals. Proprietary information was taken from JFC's original proposal and used in the revised proposals. Up until the selection committee made its decision, Mr. Zotti continued to assist and advocate for Western.

Mr. Zotti shared confidential city documents with Western, to include the first selection committee's score sheets and tabulations. Per Mr. Lyman's testimony, he received documents before Western submitted its second proposal.

Mr. Zotti, concerned the second committee would also select JFC's proposal, tried to delay the second selection process. After the first selection process Mr. Lyman filed a complaint against JFC with the Wyoming Board of Engineers (State Board). The

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<sup>1</sup> Law enforcement investigated Mr. Lyman's claim and found no evidence of malfeasance. Western's proposed services were cheap; but JFC's proposed cost were in line with what the City expected to pay for professional services on a project of this size.

second selection committee was set to make a decision before the State Board resolved Mr. Lyman's complaint. Mr. Zotti, acting on Mr. Lyman's behalf, sent an email to city personnel wherein he proposed postponing the second selection committee's decision until Mr. Lyman's complaint was settled. In his email Mr. Zotti feigned disinterest and acted like he knew very little about Mr. Lyman's complaint, even though he was listed as a point of contact in the actual complaint.

Pursuant to W.S. § 16-6-118, it is unlawful for a councilman to represent a company, either as agent or otherwise, with respect to an application for a contract on which he may be called upon to vote. A councilman violates this law unless he discloses the nature and extent of his relationship with the company, does not participate in the considerations or vote, and does not act, directly or indirectly, for the city in the inspection or administration of the contract.

Mr. Zotti advocated for his client, Western Engineers, with respect to the BCRP. Mr. Zotti did not disclose the nature and extent of his relationship with Western, despite being aware of his obligation to do so. Mr. Zotti participated in all of the considerations and votes concerning the BCRP. Mr. Zotti also acted directly for the city when he involved himself in the inspection of the contract, circumvented the selection committee, and obtained Western's proposal for City Council's review.

**A councilman who violates W.S. § 16-6-118 is subject to removal from office.** I respectfully request that this option be considered. Mr. Zotti violated State Statute and his Sworn Oath of Office. The Rock Springs City Council has a duty to act on this violation of which all evidence has been proven.

Best regards,

Timothy A. Kaumo

cc: Richard Beckwith, City Attorney

### Discovery Background – Evidence found from investigation:

7-14-20 10:29 am – Brandt Lyman (Western) finds out JFC was awarded the contract or engineering of the Bitter Creek Restoration Project.

7-14-20 – afternoon – Lyman contacts Zotti to complain

7-16-20 – Zotti meets w/ Paul to go over process. Goes over to Lyman's office. Waits at office. Ends up meeting with him next day.

7-17-20 – Zotti meets w/ Lyman in the morning. Lyman raises concerns about price difference. Zotti sends email objecting to the price difference at 5:02 pm. Basis for thinking price diff is unjustified based on Lyman's complaints

Zotti said he was contacted by WHS – this is inconsistent w/ statements from WHS. WHS said they were contacted by Zotti.

7-20-20 – Zotti obtains Western's proposal. Greene sends it to City Council. Likely knew that was against Council policy. Likely knew it would make proposals public records.

7-20-20 – Zotti obtains RFP, Eval Form, and Score Tab from Kauchich

7-21-20 – Zotti votes on proposal

8-3-20 – Lyman files complaint

8-10-20 – Zotti involved in illegal quorum meeting at Sidekicks bar and did discuss the Bitter Creek project as per Greene's response when questioned by a reporter.

9-8-20 – Zotti tries to delay decision based on Lyman's complaint to State Board.

??? – Lyman obtains the score sheets from the first RFP. Documents that Kauchich asked be kept confidential. Lyman later testifies that he received the score sheet before the second RFP. Lyman testified that he received the score sheet from Zotti.

10-6-20 – Zotti votes on proposal.

The BCRP First selection committee rightfully chose JFC's proposal due to the in-depth research and provided plan for the project. Lyman, of Western, complained about JFC receiving the contract. Lyman complained about JFC receiving the complaint immediately because Kaumo was the mayor. Kaumo had anticipated this and let Zotti know that he could expect a complaint from Lyman.

Lyman's complaint evolved. At first the complaint was that JFC got the proposal because Kaumo was mayor. After Lyman had the opportunity to review JFC's proposal, he complained due to the price difference. Zotti thought the price difference was suspicious, but it wasn't. The cost of the project was public information. Engineering is typically 10% of the cost. JFC's proposal wasn't high and was in fact, within the 10%. The other proposals were low.

Kaumo had nothing to do with the first selection committee. There was no evidence Kaumo was involved. Even so, Zotti took Lyman's complaints to City Council. Zotti claimed the price difference was an issue.

Zotti adopted and operated under Lyman's incorrect belief that Kaumo and the engineering dept colluded to award JFC the contract. Zotti did not discuss the perceived discrepancy with city staff, or the individuals who served on the selection committee. Instead, Zotti requested the other company's proposals so that he could compare them to JFC's proposal.

Zotti sent out a number of emails calling the award of the contract to JFC into question. Zotti also obtained Western's proposal and gave it to Greene to send out to Council.

Prior to the Council meeting on 7-21 Zotti went to Western's office twice to meet with Lyman. Zotti met with Lyman and communicated about the contract on several occasions.

At the 7-21 meeting JFC's contract was voted on. Zotti voted against awarding the contract to JFC. The contract was not awarded to JFC. Set out for second RFP.

Prior to the 7-21 CC meeting Zotti received score sheets, etc. from Paul Kauchich. Paul asked that the materials be kept private. Lyman later testified that he received the materials prior to the second vote. Lyman testified that it was Zotti who gave him the materials.

During August Council meeting Zotti makes statements indicating his support for awarding the contract to Western. Points out numerous times that 1.8 diff is insignificant. Suggests contract should go to second ranked proposal, which would have been Western.

On August 4 Zotti, Greene, and other city councilors meet at a wine bar. There is an unofficial quorum. Councilors discussed the BCRP.

On September 8, Zotti emails Kauchich and Beckwith and proposes delaying the second selection until Lyman's complaint to the Eng. board is resolved. Lyman filed a complaint w/ State board on Aug 3, 2020. In his 9-8 email Zotti claims he did not know about the complaint until Kaumo brought it up, despite Lyman mentioning Zotti by name in the complaint.

Zotti also delays the selection committee by raising his concerns at Council meeting. Finally, selection committee picks a company. Zotti once again votes.

The discovery received in Kaumo's case made it clear Zotti was very much involved in the process, and that he was working for Lyman (Western Engineers). The outstanding question was whether Zotti had a business relationship w/ Lyman, or if Zotti stood to receive a pecuniary benefit if Lyman's contract was selected.

This question was cleared up when Lyman took the stand at Kaumo's sentencing. Lyman was asked if Zotti provided Western with business insurance in 2020. Lyman responded that Zotti was providing insurance to Western and Western was a client of Zotti.

This shows that there is probable cause that Mr. Zotti committed official misconduct. Accordingly, I request that Mr. Zotti be investigated for crimes of official misconduct.

Wyo. Stat. Ann. § 16-6-118

(a) It is unlawful for any person, now or hereafter holding any office, either by election or appointment, under the constitution or laws of this state, to become in any manner interested, either directly or indirectly, in his own name or in the name of any other person or corporation, in any contract, or the performance of any work in the making or letting of which the officer may be called upon to act or vote. It is unlawful for any officer to represent, either as agent or otherwise, any person, company or corporation, in respect of any application or bid for any contract or work in regard to which the officer may be called upon to vote or to take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value, as a gift or bribe, or means of influencing his vote or action in his official character. Any contracts made and procured in violation of this subsection are null and void and the person violating this subsection may be removed from office.

(b) Notwithstanding subsection (a) of this section, an act shall not be unlawful under this section if any person who is interested in any public contract or who represents any person, company or corporation interested in any public contract discloses the nature and extent thereof to all the contracting parties concerned therewith, absents himself during the considerations and vote thereon, does not attempt to influence any of the contracting parties and does not act directly or indirectly for the public entity in the inspection, operation, administration or performance of any contract. This section does not apply to the operation, administration, inspection or performance of banking and deposit contracts and relationships after the selection of a depository.

- *The law should be applied evenly. Investigations should not target one individual over another. If there is evidence that someone committed a crime, that person should be investigated.*
- Law must be applied evenly.
  - For punishment to have the desired deterrent effect, all offenders must be investigated.
  - Trust in law enforcement and government hinges on investigation.