

From: [Emily Masson](#)
To: [Tiffany Kavanaugh](#); [Clerk Comments](#)
Cc: [Charles Price](#); [Todd O. Creel](#)
Subject: Comments for TOT THA Meeting June 4, 2024
Date: Wednesday, May 29, 2024 10:43:19 AM
Attachments: [Advisory Complaint-Final.pdf](#)

Dear TOT THA,

I understand that important housing issues will be discussed at the June 4, 2024, Town Council meeting by the THA. I am attaching a copy of our Request for an Advisory Opinion, for which we still do not have an answer. Based on the information in the Request, we ask the Telluride Housing Authority members to have a public discussion and vote on Mr. Enright's conflict of interest under:

1. CRS 24-18-108.5 prohibits "A member of a board, commission, council, or committee" who receives no compensation other than for performing "an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.

Or

2. CRS 24-18-109 (3) (a) "A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter."

Or

CRS 24-18-202. Interest in sales or purchases. Public officers and local government officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

Please include this email along with the attachment in the official record.

Sincerely,
Emily Masson

To: [Tiffany Kavanaugh](#), Town Clerk
[Scott Robson](#), Town Manager
135 W. Columbia
Telluride, CO 81435

From: Charles Price,
Todd Creel, and
Emily Masson

Re: Summary Of Fact And Law Regarding Advisory Opinion On Ethical Issues Involving
Town Council And The Telluride Housing Authority

We, the complainants, have received your April 3, 2024 letter. Thank you for clarifying some of the legal issues and procedures that apply. Please accept this as our submission regarding the facts and laws applicable to our concerns.

INTRODUCTION

This Memorandum provides (i) an analysis of the legal standards applicable to participation by Council members in the Telluride Town Council (the “**Town Council**”), and participation of the Commissioners in the Telluride Housing Authority (the “**THA**”);¹ (ii) an analysis of violations of these ethical obligations as applied to Town Attorney Kevin Geiger, and Councilperson Dan Enright; (iii) a request for instruction to all THA Board members on the legal prohibitions from any member renting or buying housing in a (“Project”) participated in by the THA.²

We provide this memorandum to the Town of Telluride (the “**Town**”) seeking an “advisory ruling on conflicts of interest” (“**Advisory Opinion**”) regarding the issues presented.³

¹ The THA is a “quasi-governmental entity created by the Town of Telluride that is charged with providing affordable housing and overseeing the Town’s affordable housing program.” Telluride Town Code, Section 2-247. It is governed by a Board of Directors comprised of the same members of the Town Council, and its budget is encompassed under the Town’s budget. *See* DOLA Website – Town of Telluride, <https://dola.colorado.gov/dlgportal/filings.jsf?id=57014>. According to the 2022 Town Audit, the THA provides housing for employees who work within the boundaries of the Telluride R-1 School District, which includes the Shandoka Apartments, Virginia Placer units, and Sunnyside units, and there are separate sub-funds in the Town’s budgets for each project.

²² CRS §§ 29-4-207, and 29-4-203.

³ TMC § 2-5-20 allows “any person” who has a question regarding the applicability of “any provisions of Article 4 of this chapter or Section 2-5-10 above” may “apply in writing to the Town Attorney for an advisory opinion.”

SUMMARY OF ALLEGATIONS

The overriding issue is Town Attorney Kevin Geiger (“**Mr. Geiger**”) applying dual ethical enforcement standards, depending on which Council member has the potential conflict. When it comes to Councilperson Dan Enright (“**Mr. Enright**”), with whom Mr. Geiger appears philosophically aligned, his enforcement of the ethical standard for conflicts of interest was non-existent.

However, when it comes to enforcing ethical standards regarding Councilperson Ashley Von Spreecken, Mr. Geiger repeatedly and improperly places his figurative thumb on the legal scale to obtain the result he appears to desire, *i.e.*, the recusal of Councilperson Ashley Von Speeche (“**Ms. Von Spreecken**”) from all discussions regarding the contentious issue of the Diamond Ridge purchase, rezoning, possible development, either as part of the Town Council or even privately with the Town Council members.⁴

While Mr. Enright had ethical lapses, of which he knew or should have known, the primary issue we see is Mr. Geiger's failure to perform his job in a fair and unbiased manner properly and to properly advise the Town Council and the Telluride Housing Authority (“**THA**”) Board.⁵ A Town Attorney must be an unbiased advisor to the Town Council, allowing them to reach a consensus and stay within the legal and ethical requirements.

Mr. Geiger oversees all the Town Council, Town Boards, THA meetings, and THA subcommittee and reports only to the Mayor and the Town Council, who change constantly. If a Town Attorney controls (1) who is and who is not allowed to be involved in policy decisions; (2) what information is obtained by the Town Council; (3) what legal advice is presented as true; (3) and what legal information is not provided; (4) what topics are placed on the various agendas; (5) and which topics are not, the Town Attorney *effectively reports to no one*.

When the Town Attorney takes over control of the Town Council through dual standards to manipulate certain personal objectives, the proper function of the Town Council is placed upside-down, and the Town Attorney *effectively runs the Town*.

Based on comments made by Councilpersons’ desiring to move into “Projects” reviewed and approved by the THA, it appears Mr. Geiger has not properly advised the THA Board members regarding the state law prohibitions against any member of a Housing Authority Board from subsequently renting or buying any unit in a “project” (“**Project**”) overseen by the THA board.⁶ This statutory prohibition must be made clear to all THA

⁴ [THE LAST DOLLAR COLLECTIVE \(Dec. 22, 2023\)](https://lastdollarcollective.com/the-diamond-ridge-gamble/), <https://lastdollarcollective.com/the-diamond-ridge-gamble/>.

⁵ [THC § 8.1](#).

⁶ “HOUSING AUTHORITY LAW” [CRS § 29-4-201](#).

Commissioners so their decision-making is not influenced by their own possible Financial Interests (“**Financial Interest.**”)

SUMMARY OF REQUESTED ACTION

We ask for (i) a reprimand for Mr. Enright and removal from the THA Board due to his conflicts; (ii) all the remaining THA Commissioners should be instructed regarding the legal prohibitions on renting or owning property defined as Projects under the Housing Authority Law;⁷ (3) as to Mr. Geiger, we ask that at a minimum, he be recused from any further discussions and work regarding housing projects for both the THA and the Telluride Town Council. We also believe the Ethics Committee should consider recommending to the Town Council that it is time for Mr. Geiger to move on to other private endeavors outside the Town of Telluride staff.

FACTUAL BACKGROUND

For 18 years, Mr. Kevin Geiger has been Telluride’s Town Attorney.⁸ This is the only legal job Mr. Geiger held after graduating from law school in 1999, other than a brief job as an assistant attorney with the County of San Miguel.⁹ The only employee in Town who matches this timespan is Lance McDonald, who oversees all housing project construction for the Town of Telluride. Countless Town Managers have come and gone over these 18 years, and many more Council members have done the same. However, Mr. Geiger remains.

Mr. Enright was elected to the Telluride Town Council on November 30, 2021.¹⁰ When he was sworn in as a Town Council member, he was also placed on the Telluride Housing Authority Board (THA) pursuant to CRS § 29-4-205 (2) allowing all members of a Town Council to be automatically on the Housing Authority Board.¹¹ Mr. Enright asked to be placed on the THA Subcommittee, on which he was also placed.¹² He served on the THA Board and Subcommittee from his swearing-in to the present, and he is now the Vice Chair of the THA subcommittee.

⁷ CRS § 29-4-207, “No commissioner or employee of an authority shall *acquire any interest, direct or indirect, in any project* or in any property included or planned to be included *in any project.* . .” (*Emphasis added*). CRS § 29-4-203 “Project” means all . . . buildings and improvements. . . be acquired or constructed pursuant to a single plan or undertaking. . .” Further “[t]he term “project” also applies to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.”

⁸ LINKEDIN, *Kevin Geiger*, <https://www.linkedin.com/in/kevin-geiger-74a26224/>.

⁹ *Id.*

¹⁰ *Ex. 27, TELLURIDE TOWN COUNCIL BUDGET, Meeting Minutes*, (Nov.30, 2021).

¹¹ *Ex. 28, TELLURIDE HOUSING AUTHORITY, Meeting Minutes*, (Nov.30, 2021).

¹² *Id.*

Mr. Dan Enright has resided in the town-subsidized housing facility in an apartment complex called Shandoka, which is overseen by the THA, for approximately ten years.¹³ For reference, a two-bedroom, one-bath unit in Shandoka currently rents for \$1281 per month,¹⁴ which is approximately 28% of the estimated market rate cost of a two-bedroom apartment in Telluride, according to Zillow.¹⁵

Complainants believe Mr. Enright resides in his Shandoka unit with a person who can be classified as a personal interest under the TMC (“**Personal Interest**”).¹⁶ Complainants assume Mr. Enright lives in a two-bedroom apartment, but are not aware of the size.

The price of a two-bedroom, one-bath unit in Shandoka is currently \$1,281 per month. Although originally designed to achieve an Average Median Income (“**AMI**”) level of 72%, the current rental price is now affordable to as low as 57% of AMI, due to not being increased to account for inflation or job income growth.¹⁷

Not only has the rent for these units not kept paced with inflation, the THA also discovered the current *average AMI was 132%* but rose all the way to *170% AMI* in some cases. To take the extreme, a couple could be making 170% of AMI (\$135,660), who could afford \$3,816 per month in rent, but are living in a rent-controlled unit costing \$1,281 (or 1/3 the cost of what they could afford under THA guidelines.)

Based on many of the comments, Mr. Enright is clearly at the upper end of the AMI income spectrum for Shandoka units. Therefore, he has a strong vested interest in the housing policies that will directly affect his apparently extremely good current deal in rental pricing in Shandoka.

According to the Town of Telluride website, 190 people are currently on the THA waiting list looking for units in Shandoka, Virginia Placer, the Tiny Homes, Sunnyside, and VooDoo (although the number is likely higher).¹⁸ Mr. Enright often votes in ways that are in his Financial Interest.

Our collective concerns are that: (1) Mr. Enright has repeatedly failed to disclose his obvious Financial Interests to the Town Council and THA; (2) Mr Geiger continues to allow Mr. Enright’s repeated Financial Interest conflicts without reprimand or recusal; (3) Mr. Geiger applied an entirely different standard of review to the possible conflict of Ms. Von Sprecken showing substantial bias of Mr. Geiger in how he enforces the ethical rules of conduct.

¹³ TOWN OF TELLURIDE, *Telluride Housing Department*, <https://www.telluride-co.gov/440/Telluride-Housing-Department>

¹⁴ *Id.* p. 5.

¹⁵ ZILLOW, *Telluride, CO Rental Market*, <https://www.zillow.com/rental-manager/market-trends/telluride-co/?bedrooms=2>

¹⁶ TMC § 2-4-20.

¹⁷ COLORADO HOUSING AND FINANCIAL AUTHORITY, *2023 Rent and Income Limits*, p. 29, (May. 22, 2023), <https://www.chfainfo.com/getattachment/76fc6334-528d-4efd-b90d-1d49b412a2f4/2023-Rent-and-income-limits.pdf>

¹⁸ *Ex. 1, Mia Rupani, Town of Telluride’s Diamond Ridge Affordable Housing Project*, THE TELLURIDE DAILY PLANET (Mar. 14, 2024), <https://www.telluride-co.gov/440/Telluride-Housing-Department>.

PROCEDURAL HISTORY

The complainants first notified the Town of Telluride regarding these potential conflicts on March 19, 2024. The matter was placed for hearing before the Town Council the following week. The complainants asked to refer this matter to the Telluride Ethics Committee and not the Town Council. We also asked for an Advisory Opinion on these topics.

An April 3 letter from the Town stated the THA is a separate legal public entity and is, therefore, not subject to the Telluride Ethics Code. Therefore, the THA ethics rules are controlled by state statutes and constitutional provisions.

Therefore, identical claims against Mr. Geiger and Mr. Enright have been sent to the Independent Ethics Commission (“**IEC**”) under Constitution Article XXIX, § 5, along with filing this letter with the Town so that all matters can be raised properly in the correct forum. Complainants will ask for the IEC for a stay of the proceedings under I.E.C.R.P. § 5 (G) while this matter is handled by the Town of Telluride.

STATEMENT OF LAW REGARDING TOWN COUNCIL PARTICIPATION

As a home rule municipality, the Town is governed first by the Constitution for the State of Colorado (the “**Constitution**”), second by the Telluride Home Charter (the “**THC**”) (so long as the Charter does not conflict with the Constitution), and third by the Telluride Municipal Code, (the “**TMC**”) and fourth by State statutes to the extent they concern matters of statewide concern or do not conflict with the Charter.

CONSTITUTION

Article XXIX, § 1 of the Constitution

“The people of the state of Colorado hereby find and declare that: (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust.” Towns with Home Rule Charters must still comply with constitutional provisions.¹⁹

Section 1(c) of Article XXIX also requires covered individuals “to avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated.”²⁰

“Appearances of impropriety are generally referred to as ‘perception issues’ or ‘violating the smell test.’ They can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law.”²¹

¹⁹ [COLO. CON. ART, XXIX § 1.](#)

²⁰ *Id.*

²¹ [INDEPENDENT ETHICS COMMISSION, Advisory Op. 12-1 Conflict of Interest, p. 4.](#) (2012)

TELLURIDE CHARTER ETHICAL PROVISIONS

The Charter prohibits any “Councilperson or appointed member of a Board” from having “any material or significant Financial Interest, direct or indirect,” regarding the Councilperson's official work. Further, “in the event that any such person, or any member of his/her family, has or could potentially be construed as having such interest, said person shall declare such interest.”²²

TELLURIDE MUNICIPAL CODE ETHICAL PROVISIONS

When a Councilperson “or anyone with whom the Town official has a close personal or business relationship” that could be “adversely affected by or benefit from the performance of the official duty,” a conflict of interest may exist.²³ However, there is a “safe harbor” relating to *legislative actions* only:

A conflict of interest shall not arise as to any action or recommendation as to legislation of general applicability in which a Town official or employee shares the same personal or Financial Interest as the entire membership of a common class of citizens or residents of the Town, or owners of property in the Town, including by way of example only and not of limitation, the following classes: water, sewer and trash users; owners of property subject to general ad valorem taxes or property taxes or assessments; owners or tenants of property which is (sic) included in a residential-type zone district; and business licensees.²⁴

“Proper democratic government requires that Town Officials and employees be independent, impartial and responsible to the people of the Town; that decisions, policies and laws be made through proper government channels; that public office or employment not be used for personal gain; and that the public have confidence in the integrity of its government.”²⁵

“Town officials and employees are bound to uphold . . . the Home Rule Charter of the Town, to carry out impartially the laws of the Nation, State and Town, and to observe the highest standards of integrity and fairness. They must discharge the duties of office and employment faithfully, regardless of personal considerations. Their conduct must be above reproach, and they should avoid even the appearance of conflict of interest or improper influence in the performance of official duties.”²⁶

“Town officials and employees should attempt to minimize and avoid any conflict of interest and the appearance of any conflict of interest. To this end, a Town official or employee should be fully aware of the extent of his or her personal or

²² THC § 4.18.

²³ TMC § 2-4-20.

²⁴ *Id.*

²⁵ TMC § 2-4-30 (a).

²⁶ TMC § 2-4-30 (e).

Financial Interest and, where possible, should avoid, dispose of or minimize such interest which could result in conflicts of interest.”²⁷

“A Town official or employee should disclose any conflict of interest of any other official or employee when he or she has a good faith belief that such a conflict may or does exist. The disclosure should be made to the chairperson of the board or commission, or to the Town Manager, as appropriate.”²⁸

“A Town official . . . shall not knowingly misrepresent or *willfully fail to disclose any conflict of interest or any personal or Financial Interest*, when such disclosure is required by this Article or as a condition of appointment to a Town office or of employment.”²⁹ (emphasis added.)

“In the event that a Town official has an actual or potential conflict of interest in any matter proposed or pending before the governing body of which he or she is a member, he or she shall declare such interest in a public meeting to the governing body of which he or she is a member. In the event that any Town official could be reasonably perceived as having an actual or potential conflict of interest, he or she shall disclose such conflict of interest to the governing body of which he or she is a member.”³⁰

The Charter provides “[t]he Town Attorney shall be the legal representative of the Town, and shall advise the Council, the Manager and Town officials in matters relating to their official powers **and duties**. . .” (emphasis added).³¹

TOWN COUNCIL DISCUSSIONS REGARDING LOT L DEVELOPMENT

At the December 13, 2022, Town Council meeting, Mr. Enright properly recused himself from the discussion regarding Lot L, a parking lot directly in front of Mr. Enright's Shandoka apartment. This recusal was based on his “proximity” to the property, meaning he lives within 75 feet of Lot L and has done so for over ten years.³² Under the TMC, owning or residing within 75 feet of the property under consideration means he has both a Financial Interest and was an “Interested Party.”³³

²⁷ TMC § 2-4-30 (e) (1).

²⁸ TMC § 2-4-30 (e) (4).

²⁹ TMC § 2-4-50 (c).

³⁰ TMC § 2-4-60.

³¹ THC § 8.1.

³² TOWN COUNCIL REGULAR MEETING 12/13/2022 (Dec. 13, 2022), <https://www.youtube.com/watch?v=Pb20zp60vw&t=19730s> at 1:11:24, and TMC § 2-4-20 prohibiting involvement of a council member who lives within 75 feet of property at issue.

³³ *Id.*

TMC RECUSAL REQUIREMENTS

When a Council member recuses themselves, the Town official “shall leave the hearing or meeting room and shall refrain from participation in any manner in the deliberations of the governing body on the matter.”³⁴

As stated by Town Attorney Geiger at the February 20, 2024, Town Council meeting “if there's a conflict of interest . . . that would then result in recusal of that council member for all Town determinations on that issue . . . it would apply if a disqualified member tries to approach a fellow council member and have a discussion with them about that matter; that conflict of interest would prohibit that contact at that point in time.”³⁵

IMPERMISSIBLE PARTICIPATION

However, following this recusal, Mr. Geiger allowed Mr. Enright to stay in the meeting room for all the discussions against TMC § 2-4-70 (b) requirements and Mr. Geiger’s comments above. Not only did Mr. Geiger allow Mr. Enright to stay in the room, he allowed Mr. Enright to speak as a “member of the public” to the other Councilpersons:

“I just want to start by saying broadly I am in support of this [Lot L] project of putting some sort of facility there. It will greatly benefit the Town as a whole. I just want to add the small caveat that no single project should try to be the answer to every problem facing the town. And to somewhat add my calls for balance to consider the neighborhood residents that currently live there and make sure that we don't overly burden that.

Obviously, any new construction will have some level of impact. And as a direct neighbor who's going to look directly over that, I understand that I appreciate that, and I'm able to see the larger picture. But I'm just adding my call for balance and thoughtful consideration. I love the phrase, ‘Don't buy a promise.’

And so when we talk about other developments that might happen in this area, there are still promises, and I just want to make sure that what we do now doesn't necessarily completely disconnect the residents . . . almost all full-time working residents and make sure that we don't cut people like myself off from the mountains, from the real reasons we moved here. To be connected with nature, be part of a living and working community. And other than that, I'm excited to see what council comes up with, and I think we're going to have a positive impact.”³⁶

³⁴ TMC § 2-4-70 (b).

³⁵ TOWN COUNCIL REGULAR MEETING (Jan. 20, 2024), [HTTPS://WWW.YOUTUBE.COM/WATCH?V=YLBGxIHMC&t=2762s](https://www.youtube.com/watch?v=YLBGxIHMC&t=2762s) at 00:43:34 and Ex. 11, *transcript of hearing*.

³⁶ TOWN COUNCIL REGULAR MEETING (Dec. 13, 2022), <https://www.youtube.com/watch?v=Pb20zp60vw&t=19730s> at 01:54:21.

In short, Mr. Enright shared his concern that a major development at Lot L next to Shandoka where he lives, might seriously impact the reason he moved to Telluride in the first place. Mr. Enright wanted a balance of interests between the development and those who live around the area, like himself.

Leaving aside the irony of this NIMBY concern, the much bigger issue is that Mr. Geiger allowed Mr. Enright to make these comments in front of the Town Council when Mr. Enright had already recused himself from all consideration. Mr. Enright was required to not be present at the meeting or talk to councilpersons on the topic. Sec. 2-4-70 (b). This was a serious ethical breach by Mr. Geiger to allow these comments to occur and not to instruct Mr. Enright he was prohibited from talking to the Town Council on this issue.

INCONSISTENT RECUSAL OF COUNCILPERSON ASHLEY VON SPREECKEN BY TOWN ATTORNEY KEVIN GEIGER

PRIOR HISTORY OF MR. GEIGER’S INVOLVEMENT WITH DIAMOND RIDGE

In June 2020, the County of San Miguel and the Town of Telluride started working together, looking at a possible purchase of property for housing called Diamond Ridge.³⁷ The people initially involved in the discussions were County Commissioner Hilary Cooper, County Manager Mike Bordogna, and Special Projects Manager Lance McDonald.³⁸

Mr. McDonald’s conversations continued through October 2020,³⁹ and then resumed after a brief break in July of 2021.⁴⁰ The discussion heated up, and many emails were exchanged between the seller, the Town “Special Project Manager” Lance McDonald, and County Manager Mike Bordogna.⁴¹ While the sellers were sending proposed legal language directly to Mr. McDonald,⁴² it does appear as if Mr. McDonald was acting as the conduit for information to Mr. Geiger.⁴³

Complainants are informed and believe the first meeting where Diamond Ridge was discussed with the Town Council occurred at an executive session on November 15, 2021.⁴⁴ Notably, the agenda item stated in full “Affordable Housing - Executive Session To Discuss the Purchase, Acquisition, Lease, Transfer, or Sale of Real, Personal, or Other Property Interest Under C.R.S. Section 24-6-402(4)(a) and Section 4.6.A of the Telluride Home Rule Charter.”⁴⁵

³⁷ Ex. 47, *Diamond Ridge Emails*, at p. 2-4.

³⁸ *Id.*

³⁹ *Id.* at p. 7.

⁴⁰ *Id.* at p. 8.

⁴¹ *Id.* at p. 10, *Sample email among many*.

⁴² *Id.* at p. 11.

⁴³ *Id.* at p. 12, Email of Mr. McDonald setting up a phone call for Mr. Geiger.

⁴⁴ Ex. 50, *TELLURIDE TOWN COUNCIL, Item 12*, p. 4, (Nov. 15, 2022)

⁴⁵ *Id.* Failure to provide the property’s name regarding the executive session violates open meeting rules. See *Guy v. Whitsitt*, 469 P. 3d 546, 553, ¶ 27 (2020)

In late December of 2022, Mr. Geiger starts appearing regularly on the group email chains for this project.⁴⁶ Mr. Geiger was involved in over two hundred emails since December 2022 on the topic of purchasing Diamond Ridge, defending the litigation, arranging financing through the THA, paying off the THA loan when DOLA funds were denied, and more.⁴⁷

Ultimately, the Town and County filed a joint application for rezoning of the Diamond Ridge property for workforce housing and then closed on the purchase of the property in June of 2022. This was a massive undertaking for both entities.

PRIOR LITIGATION

Before Ms. Von Spreecken became a Councilperson for the Town of Telluride, Ms. Von Spreecken's family was involved in litigation against the County of San Miguel and the Town of Telluride.⁴⁸ Pamela Bennett and Ms. Von Spreecken's stepfather, Scott Bennett, were lead plaintiffs in the action, along with 30 or so other Plaintiffs. Several of the plaintiff LLCs owned land on Deep Creek Mesa.⁴⁹

All of this land is more than 75 feet from the Diamond Ridge property, jointly owned by the Town and County. Councilperson Von Spreecken had ownership interests in some of the LLCs that were plaintiffs in this action but was not a named plaintiff.⁵⁰

On August 23, 2022, the Court granted a motion to dismiss all claims against Jack Vickers, the property's prior owner, and his entities. The case continued against the County and Town.⁵¹

On December 21, 2022, the Court ruled in favor of the plaintiffs finding the County of San Miguel conducted illegal spot zoning on the subject land, and that Commissioner Hilary Cooper improperly participated in the hearing when she had a clear bias on the issue, having been a primary backer of the purchase of land and creating the CH zone to apply to the land.⁵²

Further issues of personal bias in Mr. Geiger's actions are shown in comments made following a June 14, 2022, Town Council meeting, at which a resolution was presented allowing the town to enter into a contract to purchase Diamond Ridge.⁵³ The resolution passed 4-2 with Council members Lars Carlson and Jessie Rae Arguelles voting against the resolution.⁵⁴ Complainants are informed

⁴⁶ Ex. 47, at p. 13.

⁴⁷ Ex. 13, *Summary of emails involving Kevin Geiger and Diamond Ridge*.

⁴⁸ Ex. 43, PL. FIRST AMD. COMPL., Case No. 2022CV30023, (Jun. 22, 2022).

⁴⁹ *Id.*

⁵⁰ Ex. 32, SAN MIGUEL PROPERTY FINDER INFORMATION SAN MIGUEL <https://tinyurl.com/SMC-Property>.

⁵¹ Ex. 33, ORDER RE: MOT. TO DISMISS, OR IN THE ALT., TO STAY, Case No. 2022CV30023, (Sept. 27, 2022).

⁵² Ex. 34, ORDER RE: PET. FOR REVIEW PURSUANT TO C.R.C.P. RULE 106(A)(4), Case No. 2022CV30023, (Dec. 21, 2022).

⁵³ Ex. 35, TOWN OF TELLURIDE TOWN COUNCIL, *Memorandum*, (Jun. 14, 2022).

⁵⁴ Ex. 36, TOWN OF TELLURIDE TOWN COUNCIL, *Minutes Adopted*, p. 9, (Jun. 14, 2022).

and believe from sources told by one of the Council members present that Mr. Geiger came up to Council members Lars Carlson and Jessie Rae Arguelles after the vote and told them, “you’d better get on board with Diamond Ridge because it’s happening,” or words to that effect.

Further, given all Mr. Geiger's work regarding Diamond Ridge, he was no doubt unhappy with the court's December 2022 decision overturning the rezoning he had worked so hard and closely with the County of San Miguel to obtain.⁵⁵

The court heard various other motions, but on September 27, 2023, it issued a final decision on all other matters.⁵⁶ Some of the Plaintiffs in the original action filed an appeal regarding the Vickers’ claims and the “irrebuttable presumption” issue, which only involved the County of San Miguel’s Land Use Code (the “LUC”).⁵⁷

However, neither Councilperson Von Sprecken’s family nor any of the LLCs in which she has a partial small ownership interest filed an appeal.⁵⁸ Her family’s involvement in the case ended entirely as a matter of law, with the statutory deadline to file an appeal running on November 22, 2023.⁵⁹

On March 19, 2024, the Court of Appeal issued a dismissal of all remaining issues.⁶⁰

Entirely unrelated to Ms. Von Sprecken or her family, several other residents of Deep Creek Mesa filed a complaint against the Town of Telluride and the County of San Miguel seeking clarification of what property is included in a 1991 PUD Agreement regarding Deep Creek Mesa.⁶¹ Part of this claim involves the Diamond Ridge property, as well as many other parcels of land.

⁵⁵ Ex. 34, ORDER RE: PET. FOR REVIEW, (Dec. 21, 2022).

⁵⁶ Ex. 38, ORDER RE: DEF. MOT. FOR ENTRY OF JUD. PURSUANT TO C.R.C.P. 54(B), Case No. 2022CV30023, (Oct. 3, 2023).

⁵⁷ Ex. 39, NOTICE OF APPEAL, Case No. 2022CV30023, (Nov. 21, 2023).

⁵⁸ *Id.*

⁵⁹ COLO. R. APP. PROC. 4.

⁶⁰ Ex. 44, ORDER OF DISMISSAL, (Mar. 10, 2024).

⁶¹ Ex. 45, PLT. FIRST AMD. COMPL., Case No. 2023CV30044, (Jan. 4, 2024).

TOWN COUNCIL RACE AND DIAMOND RIDGE

The topic of Diamond Ridge was a major issue during the November 2023 campaign. For example, then-candidate Elena Levin stated during an October 3 interview on KOTO the following position:

“I would love to reopen the conversation with Diamond Ridge. I feel it was a big loss to have that project sort of struck down. I don’t think that the way the process got halted was fair necessarily by having people vote on it who weren’t appointed by the electorate.

And so I think we should revisit that parcel of land. And I think annexing properties outside of town into town for development projects is an essential part of solving our housing issue.”⁶²

Ms. Von Sprechen ran on the opposite side of this contentious issue stating her position at

“As most people know, my family has been deeply involved with the proposed Diamond Ridge project. And I think the Diamond Ridge project represents a failure of collaboration and a failure of transparency. My ultimate wish, hope, and desire is we, as a community, open ourselves up to working with neighbors and landowners and figuring out a solution for that.

I think right now the rezoning of that property has been overturned. So as an affordable housing property, it’s not viable at this time. Currently, you could build three houses on the three 35-acre parcels. So my hope would be the Town and the County sell that property and reinvest into property that is already buildable.”⁶³

On November 30, 2023, Councilperson Ashley Von Sprecken became a Telluride Town Councilperson.⁶⁴

OFFERS TO PURCHASE DIAMOND RIDGE BY COMMUNITY MEMBERS

In October 2023, a group of community members put together an offer to purchase the Diamond Ridge property from the Town of Telluride and the County of San Miguel.⁶⁵ The person named on the offer to purchase was Ms. Von Sprecken’s mother, Pamela Bennett, and it included an acceptance deadline of November 2, 2023.

⁶² *Off The Record*, KOTO RADIO, <https://tinyurl.com/OTR-10-3-23>, (Oct. 3, 2023) at 00:44:47.

⁶³ *Off The Record*, KOTO RADIO, <https://tinyurl.com/OTR-9-26-23>, (Sep. 26, 2023) at 00:44:47.

⁶⁴ *EX. 28, TELLURIDE TOWN COUNCIL, Minutes* (Nov. 30, 2023).

⁶⁵ *EX. 41, CONTRACT TO BUY AND SELL LAND*, (Oct. 20, 2023).

During the pendency of this offer, Ms. Pamela Bennett followed up with Mayor *Pro Tem* Meehan Fee. On October 24, 2023, Ms. Fee told Mr. Bennett she talked to Town Manager Robson and the Diamond Ridge matter was going to be placed on the calendar for a *public discussion* on November 28, 2023.⁶⁶ Additionally, *Pro Tem* Fee told Ms. Bennett she had asked for *outside legal counsel* to handle this discussion.⁶⁷

However, when the November 28, 2023, agenda was published, there was *no public meeting* on Diamond Ridge; instead, an executive session was noted and Mr. Geiger was present for the entire meeting and executive session that *Pro Tem* Fee said she asked for outside counsel to handle.⁶⁸

On December 5, 2023, Mr. Dirk dePagter, through his real estate business, submitted a second community-based offer to purchase Diamond Ridge to the Town and County. Councilperson Ashley Von Sprecken occasionally works as a real estate agent through Mr. dePagter's company.⁶⁹

At the December 13, 2023, meeting one of the executive session items included a discussion of the Diamond Ridge offer to purchase.⁷⁰ Ms. Von Specken was concerned the current offer for purchase was made by her employer and that it would constitute a Financial Interest under the code.⁷¹ As a result, Ms Von Sprecken *voluntarily recused* herself from the discussions.⁷² On December 20, 2023, the Town and County publicly rejected the offer for the purchase of Diamond Ridge.⁷³

TELLURIDE CHARTER DUTY FOR TOWN ATTORNEY

“The Town Attorney shall be the legal representative of the Town, and shall advise the Council, the Manager and Town officials in matters relating to their official powers **and duties**. . .” (emphasis added). While a Town Attorney's client is the Town itself,⁷⁴ the Town Attorney has the obligation for fairness regardless of personal beliefs.⁷⁵

⁶⁶ Ex. 48, *Notes of conversation by Pam Bennett*. See also THC § 5.1, Mayor *Pro Tem* to have all powers of Mayor. THC § 5.2, the powers of the Mayor include preparing and causing to be posted, and agenda items to be considered at the meeting.

⁶⁷ *Id.*; CRE 803(3).

⁶⁸ Ex. 25, TELLURIDE TOWN COUNCIL, *Agenda Item 14* (Nov. 28, 2023) — “**Diamond Ridge** - Executive Session To Discuss the Purchase, Acquisition, Lease, Transfer, or Sale of Real, Personal, or Other Property Interest Under C.R.S. Section 24-6-402(4)(a) and Section 4.6.A of the Telluride Home Rule Charter.

⁶⁹ Ex. 42, CONTRACT TO BUY AND SELL LAND, (Dec. 5, 2023).

⁷⁰ Ex. 19, TELLURIDE HOUSING AUTHORITY, *Minutes – Adopted*, (Dec. 13, 2022).

⁷¹ TMC § 2-4-20.

⁷² Ex. 19, TELLURIDE HOUSING AUTHORITY, *Minutes – Adopted*, (Dec. 13, 2022).

⁷³ New Release, *Officials decline offer on Diamond Ridge property*, THE TELLURIDE DAILY PLANET (Dec. 21, 2023), <https://www.telluridenews.com/news/article44eb3bca-a06b-11ee-b0bf-3fcf292bae06.html>.

⁷⁴ Colo. RPC. 1.13.

⁷⁵ THC § 8.1.

Town officials and employees are bound to uphold the “Constitution of the United States, the Constitution of the State of Colorado and the Home Rule Charter of the Town, to carry out impartially the laws of the Nation, State and Town, and to observe the highest standards of integrity and fairness. They must discharge the duties of office and employment faithfully, regardless of personal considerations. Their conduct must be above reproach, and they should avoid even the appearance of conflict of interest or improper influence in the performance of official duties.”⁷⁶

An attorney is charged with a fiduciary's duty to act in his client's best interest, which in this case is owed to the Town and all its citizens.⁷⁷

RULE OF PROFESSIONAL CONDUCT

A lawyer shall not knowingly: “(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel. . .”⁷⁸

“In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues, and advance arguments in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it and on the candor of the lawyer. For this reason the lawyer must conform to Rules 3.3(a)(1), 3.3(a)(3), 3.3(b), 3.3(c), and 3.4(a) and (b) in such representation.”⁷⁹

The ABA Model Code clarifies the duties of a government lawyer stating that “[a] government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and he should not use his position or the economic power of the government to harass parties or to bring about unjust settlements or results.”⁸⁰

While Mr. Geiger does not have a direct attorney-client relationship with the Council members, his obligation of fairness, being above reproach, and avoiding even the appearance of a conflict, regardless of personal considerations, existed in full force.⁸¹

⁷⁶ TMC § 2-4-30 (c)

⁷⁷ See *Weigel v. Hardesty*, 549 P. 2d 1335, 1337 - Court of Appeals, 3rd Div. 1976.

⁷⁸ COLO. RPC. 3.3 *Duty to Tribunal*.

⁷⁹ COLO. RPC. 3.9 *Advocate in Nonadjudicative Proceedings, comment [1]*.

⁸⁰ ABA MODEL CODE ETHICAL CONSIDERATIONS, p. 50 EC 7-14.

⁸¹ TMC § 2-4-70.

Additionally, while the Town of Telluride appears to have no written ethical rules of conduct for the Town Attorney, numerous other Colorado cities include ethical prohibitions of performing duties as a prosecutor during an administrative action or proceeding before any board or commission while *also* serving as legal advisor on the same matter.⁸² The reason for these ethical rules is obvious. The Town Council is unable to determine if Mr. Geiger is being a prosecutor charged with proving a case, or an unbiased legal advisor to all Council members.

FEBRUARY 20, 2024, TOWN COUNCIL MEETING

A Diamond Ridge legal cases discussion was placed on the Town Council calendar for February 20, 2024.⁸³ As of this date, Ms. Von Spreecken’s family no longer were part of the continuing litigation and no Financial Interest as defined by the TMC.⁸⁴ The only issues on appeal—that did not involve her or her family in any way—had to do with claims against Mr. Jack Vicker’s and the County’s CH Zone language, but nothing to do with the Town of Telluride.⁸⁵

At 11 pm the night before the hearing, Ms. Von Spreecken wrote a letter to the Town Council and Mr. Geiger stating she no longer had a conflict of interest, as her parents were no longer involved in any litigation.⁸⁶ She stated that neither she nor her family has any Financial Interest as defined by the TMC. Although not stated in her letter, there was also no pending offer to purchase Diamond Ridge from her part-time employer, which was known to Mr. Geiger.⁸⁷

She asked Mr. Geiger to “refrain from bringing any claim of conflict of interest or bias against me in ANY matters related to the Diamond Ridge property.”⁸⁸ However, according to metadata in the PDF file provided by Mr. Geiger to the Town Council on February 20, 2024, Mr. Geiger started preparing his cross-examination of Ms. Von Spreecken at about 1 pm on *February 16, 2024*.⁸⁹ This means Mr. Geiger prepared an involuntary recusal examination four days *before* the February 20, 2024, hearing and three days *before* Mr. Von Spreecken wrote her letter to him.

⁸² Ex. 54, City of Colorado Springs, Office of the City Attorney Legal Ethics Guidelines, (May 2014).

⁸³ Ex. 40, TELLURIDE TOWN COUNCIL, *Minutes – Adopted*, (Feb 20, 2024).

⁸⁴ Ex. 39, NOTICE OF APPEAL, 2022CV30023, (Nov. 21, 2023).

⁸⁵ *Id.*

⁸⁶ Ex. 6, *Von Spreecken Email*, (Feb. 19, 2024).

⁸⁷ Ex. 42, CONTRACT TO BUY AND SELL LAND, (Dec. 5, 2023).

⁸⁸ Ex. 6, *Von Spreecken Email*, (Feb. 19, 2024), emphasis in original.

⁸⁹ Ex. 7, *Metadata review of slides created by Mr. Geiger*, (Feb. 16, 2024).

Under the Telluride Town Charter, Mr. Kevin Geiger has a duty to advise councilpersons as to their “official powers and duties.”⁹⁰ As stated *supra*, Mr. Geiger appears to have both professional and personal interests in the Diamond Ridge Project, which should prevent him from being involved in a recusal of a Council member on this topic.

Without informing Ms. Von Sprecken beforehand, Mr. Geiger proceeded to act as a prosecutor and cross-examine her regarding her parents' involvement in the Diamond Ridge lawsuit and her family's ownership of land on Deep Creek Mesa. All of this was publicly available information that Ms. Von Sprecken never denied or hid in any manner. This substantially contrasts with Mr. Enright, who has never been questioned regarding his numerous Financial Interest conflicts by Mr. Geiger.⁹¹

During the discussion, Mr. Geiger was asked, “Kevin, as Ashley has stated, and I believe she is accurate in saying so, that she is not party to the appeal.”⁹² This question called for a simple answer that neither Ms. Von Sprecken, nor her family, were any longer part of any legal action or the appeal.

However, Mr. Geiger gave a word-salad answer, telling the Council it was up to them to decide if the action was still active.⁹³ This was misleading, as Mr. Geiger knew Ms. Von Sprecken’s parents were no longer part of any litigation and should have stated it as such.⁹⁴

Mr. Geiger then let the Town Council freely associate the concept of ethical conflicts without directing them to the actual TMC requirements, pointing out their errors, or the safe harbor provision for legislative actions. Mr. Enright started, without seeing the irony, as follows:

⁹⁰ THC.

⁹¹ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024). <https://www.youtube.com/watch?v=YIBGxIhmlc&t=2760s> at 00:10:02, Ex. 11, p. 2.

⁹² TELLURIDE TOWN COUNCIL MEETING, *supra* at 00:24:55, Ex. 11, p. 11.

⁹³ *Id.* at 00:25:20, and Ex. 11, p. 2, “Kevin Geiger: “So it gets a little bit complicated on this. I want to make sure everyone has the same information. There was originally a district court proceeding filed in June of 2022 involving some of the parties that we just worked through. And then in the fall of last year, there was an appeal filed from some of those parties. But the parties that did not move forward with that appeal are the same parties. We were briefly just talking about it, that litigation, while the Court of Appeals action has been dismissed against the Town and the County on a variety of issues, there are still some lingering issues that are subjects of litigation between some of the private parties, in particular the Vicker’s parties that have been named. **So, that lawsuit is not completely dismissed, even if the Town and the County have been dismissed out of it. I also think that the Council should consider whether the litigation is actually active or not. It still applies to the relationship or the personal interests of the parties involved and directly to the Town of Telluride.**”

⁹⁴ COLO. RPC § 3.3 *Candor to a Tribunal.*, Comment [2], Comment [4] “duty to disclose directly adverse authority in the controlling jurisdiction.”

Dan Enright: “I have this provision I specifically want to look at, of course, with regards to recusal and what constitutes a conflict of interest under § 2-4-20 of our municipal code.

It says a conflict of interest shall only arise when a Personal Interest or Financial Interest is the origin of either a quasi-judicial matter or a matter where an employee or a Town official would be adversely affected by or benefit from the performance of an official duty.

So I think we agree that Town Council members are Town officials and then the question is whether or not, by performing their official acts as a Councilperson, there is either an adverse effect or a benefit to them. On this issue, I think it’s pretty clear, that by filing the lawsuit and being a party to the lawsuit initially, that is self-evident that Ashley and her family believe that there would be an adverse effect to her and her family.”⁹⁵

Councilperson Geneva Shaunette then chimed in with the following free-association of ethical rules untethered to actual conflicts of interest rules:

Geneva Shaunette: “There is the close blood family or marital relationship or any other close personal relationship which imparts the appearance to a reasonable person of undue partiality or undue influence.

And I think that’s where Ashley or her family’s names are specifically on the current proceedings, there is an appearance to a reasonable person of undue impartiality or undue influence based on the history and the actions that have been taken to this point.

Also I think it’s under the municipal code 2-4-60, it says in deciding whether or not a town official or any other employee has a conflict of interest of Town, official or employee, the governing body, which is us, shall consider, among other things, the following: the effects of the Town official’s participation on public confidence in the integrity of the governing body in the town government. I think that goes hand in hand with the appearance of a conflict from a reasonable person, from the public.”⁹⁶

⁹⁵ TELLURIDE TOWN COUNCIL MEETING, *supra* at 00:22:59, Ex. 11, p. 10. The irony being that Mr. Enright failed to identify his own constant Financial Interest in THA decisions over rental decisions.

⁹⁶ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024) *supra* at 00:27:55, Ex. 11, p. 12.

Mr. Kevin Geiger failed to correct Ms. Shaunette that Ms. Von Spreecken’s family was not part of any “current” proceedings, nor did *bias* have any relevance to a legislative action recusal. He allowed these misstatements and misunderstandings to remain unchallenged. Ms. Shaunette continued in her free association with the TMC rules, stating that the First Amendment-protected activity of Ms. Von Spreecken’s parents bringing a lawsuit against the government for redress of grievances should disqualify Ms. Von Spreecken for any involvement by itself.⁹⁷

Geneva Shaunette: “I don't think that [the Diamond Ridge lawsuit filed by her parents] is something you can take back and say, well, it's over now. It's not over now. That's it. I don't think that the way to correct or if you think something is going wrong with the government is to sue them. I think the correct way is to become an activist and become involved personally.”⁹⁸

Ms. Shaunette stated “I do not think it's appropriate for [Ms. Von Spreecken] to utilize that method and then later say that it doesn't affect your impartiality.”⁹⁹ Mr. Kevin Geiger failed to inform Ms. Shaunette the potential conflict has nothing to do with impartiality, which only applies to quasi-judicial actions.

Mayor Errico followed up on Ms. Shaunette’s misunderstanding of the TMC, stating he “agrees with Geneva. It's tough for me to say you were, your family was involved in the lawsuit because it's over or they took their names off it. Then all of a sudden, the perception and again, part of what was brought up on the slides or how that acts with the Town in Telluride.”¹⁰⁰ Councilperson Fee then jumped to the conclusion that Ms. Von Spreecken had a Financial Interest under the TMC when Mr. Geiger knew she did not.

⁹⁷ The failure by Mr. Gieger to correct this misimpression of law and fact was a violation of [COLO. RPC § 3.3 Candor to a Tribunal](#), Comment [2], Comment [4] “duty to disclose directly adverse authority in the controlling jurisdiction.”

⁹⁸ Ms. Shaunette’s argument that bringing a legal case should forever prevent a Councilperson from being involved in legislative decisions is wrong under the law, and simply unconstitutional. Notably, only Mayor Errico, who is not a lawyer, pointed out that Ms. Shaunette was “off-topic.” Mr. Geiger *never* expressed concern that a councilperson could be recused simply because of an old, now resolved, lawsuit that would clearly violate First Amendment protections. See [Roberts v. US Jaycees](#), 468 US 6098, 622 – “An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed. . . . Government actions that may unconstitutionally infringe upon this freedom can take a number of forms. Among other things, government may seek to impose penalties or withhold benefits from individuals because of their membership in a disfavored group, e.g., [Healy v. James](#), 408 U. S. 169, 180-184 (1972).”

⁹⁹ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 00:28:19, [Ex. 11, p. 15](#).

¹⁰⁰ To be clear, complainants do **not** contend that the Council inappropriately determined that Ms. Von Spreecken *might* appropriately be recused from discussions regarding the actual case her parents bought and resolved. Complainants are concerned that Mr. Geiger failed to distinguish between that case and a totally unrelated 106A claim that never involved her parents and was also on the same agenda item. Complainants are even more concerned about how Mr. Geiger expanded this recusal to include any discussions of Diamond Ridge by Ms. Von Spreecken ever with Councilperson’s inside or outside of meetings.

Mr. Kevin Geiger failed to correct Ms. Shaunett that Ms. Von Spreecken’s parents filing a lawsuit was a constitutionally protected activity that cannot, in and of itself, be used as a basis for recusal. There is no “scarlet letter” that continues forever without any actual Financial Interest for her or her family.¹⁰¹

Meehan Fee: “The language that I am most concerned about that is in our conflict of interest code is whether the town official would be adversely affected by or benefit from the performance of the official duty in a manner so substantially different than the public generally.

If your family did not own these LLCs, if you did not have an interest in the LLC, I wouldn't have a problem with you sitting in that room. However, for better or worse, if Diamond Ridge is developed, according to many of the experts that I have spoken with, it will **adversely financially affect** the [property] values because of the compression the development will create as to the property surrounding it.”¹⁰²

Mr. Geiger failed to inform the Town Council that only property within 75 feet of the land at issue creates a Financial Interest under the TMC.¹⁰³

Ms. Von Spreecken then tried to clarify the issue, asking, “I feel like, again, nobody has answered my question. Are we just talking about these lawsuits or are we talking about the entire Diamond Ridge issue?”¹⁰⁴

Mayor Errico: “I think right now we're talking about the lawsuits. They're all related. I don't think you can take them and separate them. And what it comes down to is whether we determine [there] is a Financial Interest, **which you disclosed there is some.**”¹⁰⁵

Or you want to talk about the personal relationship with people who were part of a lawsuit that are blood relatives. I, for one, am trying to look at the facts of our code and our ethics, and it has nothing to do personally with what your opinion may or may not be, who you are or what those circumstances.”

Mr. Geiger failed to correct Mayor Errico that no Financial Interest as defined by the TMC or THC existed.¹⁰⁶ Mr. Geiger then went on to describe the effect of a recusal in an odd manner.

¹⁰¹ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024) *supra* at 00:32:00, .

¹⁰² TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 00:35:39, *Ex. 11, p. 15.*

¹⁰³ *Colo. RPC § 3.3 Candor to a Tribunal*, Comment [2], Comment [4] “duty to disclose directly adverse authority in the controlling jurisdiction.” *COLO. RPC § 3.8, Special Duties of a Prosecutor*; comment [1] “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”

¹⁰⁴ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 00:34:34, *Ex. 11, p. 17.*

¹⁰⁵ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 00:40:04, *Ex. 11, p. 18.*

¹⁰⁶ Violation of *Colo. RPC § 3.3 Candor to a Tribunal*, comment [2], comment [4] “duty to disclose directly adverse authority in the controlling jurisdiction.”

Kevin Geiger: “So the conflict, if there is one that's determined, the conflict is that individual who conflicted out, *unless it's a proximity concern, which is not what we're looking at here*, I think we're talking about a Personal Interest. If there is a conflict of interest there, that individual cannot have contact with the remaining members of the decision-making body, which in this case would be Town Council.”¹⁰⁷

Here, Mr. Geiger appears to be creating an exception that allows a Councilperson with a “Proximity” issue to continue discussions with other members on the subject while preventing a Councilperson with a Personal Interest from doing the same.¹⁰⁸ This makes no sense under logic, reason, or the TMC. Mr. Geiger was certainly aware *Mr. Enright* had repeatedly talked to the Town Council members regarding “Lot L” development when Mr. Enright was recused for “Proximity” issues. There is no support in the TMC for this distinction made by Mr. Geiger.¹⁰⁹

Ms. Von Sprecken again asked for clarification. “I want clarification on that. Is that regarding the litigation, the lawsuits that we're talking about going into executive session today, or all Diamond Ridge?”¹¹⁰

Mr. Geiger, then stated, “I think the observation has been made, and I wouldn't necessarily disagree with it, that the lawsuits are about the use of the property and the use of the property is still likely to be an issue that's going to be discussed among the various entities that own it, the county and the town likely to be the subject of public discussion in public meetings as well.”¹¹¹

There is no basis under the TMC to transform prior participation in a fully resolved lawsuit into preventing future participation in legislative matters absent an actual Financial Interest, which did not exist.¹¹²

¹⁰⁷ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 00:41:44, Ex. 11, p. 18. (emphasis added.)

¹⁰⁸ TMC § 2-4-20.

¹⁰⁹ Violation of *COLO. RPC § 3.3 Candor to a Tribunal.*, comment [2], comment [4] “duty to disclose directly adverse authority in the controlling jurisdiction.”

¹¹⁰ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 00:42:45, Ex. 11, p. 19.

¹¹¹ Violation of *Colo. RPC § 3.3 Candor to a Tribunal*, comment [2], comment [4] “duty to disclose directly adverse authority in the controlling jurisdiction.”

¹¹² TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 00:43:15, Ex. 11, p. 18.

FINANCIAL INTEREST

First, Mr. Gieger failed to correct the numerous misimpressions of the TMC stated by Town Council members regarding Financial Interests. Mr. Geiger knew the TMC definition of a Financial Interest did not include either Ms. Von Spreecken or her family. However, Mr. Geiger intentionally did not make that clear and stated:

Kevin Geiger: “But that's for you to decide through this consideration of whether there's a conflict of interest. And to make sure we're all on the same page, I think we're really talking about the definition under conflict of interest, of a personal interest. It divides conflict of interest into two different subsets, one being a financial interest and one being a personal interest. **And the personal interest is the one that probably demands the most attention**, probably from Town Council on this issue.”¹¹³

This statement obviously leaves open the possibility of a Financial Interest that he knew or should have known did not exist under the TMC definitions. Faced with the numerous misstatements on this issue, Mr. Geiger failed to inform the Council on the issue properly.

This failure was compounded by Mr. Gieger's failure to correct the obvious confusion of the Council between legislative and quasi-judicial matters. Council members repeatedly quoted sections of the TMC that apply only to quasi-judicial proceedings as a basis for recusal in a legislative matter.¹¹⁴

The “appearance” of a conflict only applies to quasi-judicial determinations, and it makes no sense in the legislative arena. Council members are free to have any strong opinion or have parents who have strong opinions regarding any legislative matter considered by the Town Council. In short, they are free to be as biased as they want and have parents who are as biased as they are. The appearance of a conflict applies only to *possible or perceived bias*, which is prohibited when acting like a judge in a quasi-judicial matter. Mr. Gieger knowingly allowed the Council Members to refer to sections of the TMC that do not and could not apply to legislative matters.

¹¹⁴ For an example of other members using the wrong standard for legislative action: Ms. Geneva Shaunette “her close personal relationship which imparts the appearance to a reasonable person of undue partiality or undue influence” (TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 27:18:02 and 28:19:28); Ms. Meehan Fee “that we have a conflict, even when the conflict is so minimal, I think we have to on the side of caution in order to protect what I think is the most important thing, which is that the public continues to trust this Council to act in its best interest.” (*Id.*, at 36:27:12).

Mr. Geiger never made it clear that only council members or their parents with direct “Financial Interests” in the legislative matter and who are not members of a class of citizens with similar Financial Interests are excluded. This compounded Mr. Geiger’s intentionally failing to correct other members of Council that only property within 75 feet makes the Councilperson both an Interest Party and/or having a Financial Interest in the discussions.

In short, Mr. Geiger knew full well that there is no conflict under the TMC absent an actual Financial Interest that is not shared by others in a similar manner. Yet he allowed and encouraged this misunderstanding to flow throughout the hearing, to the detriment of his advisee, Ms. Von Sprecken.

CREATING A RECUSAL STANDARD NOT SUPPORTED BY THE TMC

Importantly, the Town Council's future decisions regarding Diamond Ridge must only be legislative in nature since the County controls land use applications for the property. This means there is no quasi-judicial requirement to be *unbiased*.¹¹⁵

Mr. Geiger is well aware that *bias* is not a basis for recusal from legislative matters. Councilpersons and their close family and friends who share the same beliefs are allowed to express strong feelings as they like, and no recusal is appropriate. Mr. Geiger is well aware that only a Financial Interest to the Councilperson or her family is sufficient for recusal from a legislative matter.

While it is true, the TMC includes *its least well-written* section in 2-4-20, where it states “[a] conflict of interest shall only arise when a personal interest or Financial Interest is the origin of either: a Quasi-judicial matter; or a matter where the Town official or employee (or anyone with whom the Town official has a close personal or business relationship) would be adversely affected by or benefit from the performance of the official duty.”¹¹⁶

This section is confusing because it is unclear how a Personal Interest may apply to a legislative action that could “benefit” a close family member or business relationship.¹¹⁷ The definition of Personal Interest includes two main categories of possible conflict: (1) whether it imparts “the appearance. . . of undue partiality”; or (2) residency of that Personal Interest within seventy-five (75) feet of property.

¹¹⁵ As happened in the November election, Elena Levin was free to express and run on her support of Diamond Ridge, and Ms. Von Sprecken was free to run on a platform that Diamond Ridge was a bad idea and the money should be spent elsewhere. So bias is not a basis for forced recusal in legislative matters.

¹¹⁶ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 00:27:55, Ex. 11, p. 13.

¹¹⁷ TMC § 2-4-20, “Personal interest means close blood, family or marital relationship, or any other close personal relationship which imparts the appearance, to a reasonable person, of undue partiality or undue influence, or residency within seventy-five (75) feet of property which is contiguous, adjacent or diagonally adjoining to property which is the subject of an application before the governing body. Such distance shall be measured by excluding any intervening public rights-of-way or waterways.”

The first section clearly refers to *an appearance of bias* that is irrelevant to legislative actions. The second definition is the same Financial Interest, as living within 75 feet of the property at issue.

So, while a Personal Interest can be the basis of a legislative recusal, *only the second factor regarding a Financial Interest* of living within 75 feet of the property at issue will support such a recusal.

Any interpretation that allows the first section of Personal Interest which “imparts the appearance. . . of undue partiality,” *cannot* be the basis of a legislative matter, where the *appearance* of possible bias is irrelevant. Would it mean Ms. Von Sprecken would make her mother “happy” if the Diamond Ridge property were sold? Complainants are sure the answer to that question would be yes, as would many other people in the community.

However, even more important than parsing out a badly written TMC section is the fact that Mr. Geiger never pointed out the sentence immediately following the one that Ms. Shaunette read aloud,¹¹⁸ which is the safe harbor provision Mr. Geiger relied upon in telling Mr. Enright he had no conflict:

A conflict of interest shall not arise as to any action or recommendation as to legislation of general applicability in which a Town official or employee shares the same personal or Financial Interest as the entire membership of a common class of citizens or residents of the Town, or owners of property in the Town, including by way of example only and not of limitation, the following classes: water, sewer and trash users; owners of property subject to general ad valorem taxes or property taxes or assessments; owners or tenants of property which is included in a residential-type zone district; and business licensees.¹¹⁹

Mr. Geiger’s failure to point this section out to the Town Council that could be used to allow Ms. Von Sprecken in discussions of Diamond Ridge possibly appears intentional. This exception was the alleged exception to allow Mr. Enright to do as he pleased regarding matters in which he had a direct Financial Interest. Yet Mr. Geiger never informed the Town Council to consider this key “safe harbor” provision. This was either intentionally trying to put his thumb on the scale to find a conflict or grossly negligent.¹²⁰ There is no other explanation.

¹¹⁸ [Ex. 7, Metadata review of slides created by Mr. Geiger](#), (Feb. 16, 2024). Mr. Geiger did put the section into his PDF that he created four days before the hearing, but he never read it out loud or directed the Town Council’s attention to the matter.

¹¹⁹ [TMC § 2-4-20](#).

¹²⁰ Violation of [Colo. RPC § 3.3 Candor to a Tribunal](#), comment [2], comment [4] “duty to disclose directly adverse authority in the controlling jurisdiction.”

Although the Town Council never appeared to have a consensus on the scope of the recusal, Mr. Geiger stated his own conclusion that it applied to everything.

“The lawsuits are about the use of the property, and the use of the property is still likely to be an issue that's going to be discussed among the various entities that own it.” The scope of the recusal is obviously of the utmost importance to Ms. Von Sprecken, as she had to understand what she was and is allowed to talk to Council members about outside of the meetings. ¹²¹

EX PARTE COMMUNICATION IN A QUASI-JUDICIAL DETERMINATION

Although complainants have no knowledge as to whether conversations occurred between Mr. Geiger and some of the other Town Council members prior to the February 20, 2024 hearing, it certainly appeared that Ms. Shaunette and Mr. Enright had prior discussions with Mr. Geiger based on their citations to various provisions of the ethics code, they had no chance to review before the hearing, if they found out about the issue at the hearing itself. The Councilpersons certainly know if Mr. Geiger talked to them before the hearing or not, and if so, this would be a serious breach of ethical duty to speak to the “judges” prior to a quasi-judicial determination. ¹²²

THE MARCH 12 TOWN COUNCIL MEETING

Unfortunately, the evidence of Mr. Geiger’s bias toward Mr. Von Sprecken is not over. On March 12, 2024, Ms. Von Sprecken wanted clarification in the minutes from the prior February 20 meeting on whether she was only recused from any discussion of the litigation, or recused from all matters involving Diamond Ridge

Mayor Errico agreed there was “some murkiness on that.” ¹²³ The Council members were also unclear on the extent of the recusal and many said it really is a case-by-case basis and that the Council would have to discuss it later.

Ms. Von Sprecken asked for a clear understanding of whether she was recused from any discussions with other Council members on *just* the litigation or regarding the entire subject of Diamond Ridge.

¹²¹ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024) *supra* at 00:43:34, Ex. 11, p. 19.

¹²² COLO. RPC § 3.5 *Impartiality And Decorum Of The Tribunal*: A lawyer shall not: (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law; (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order, or unless a judge initiates such a communication and the lawyer reasonably believes that the subject matter of the communication is within the scope of the judge's authority under a rule of judicial conduct.

¹²³ TELLURIDE TOWN COUNCIL MEETING, (Mar. 12, 2024), <https://www.youtube.com/watch?v=XkNJY1LOoK4&t=659s> at 03:19:01, Ex. 12, p. 2.

Mr. Geiger stated, “so agenda item one, and that's what it references agenda item one, that citation included all the litigation citations *as well as the discussion on the property aspects.*”¹²⁴ Mr. Geiger had to know this statement was false because a general discussion on the property *could not be part of an executive session* since it is not within the categories allowed as such.¹²⁵ The agenda stated:

15.a. **Diamond Ridge** - For a Conference with the Town Attorney For The Purpose Of Receiving Legal Advice On Specific Legal Questions Under C.R.S. Section 24-6- 402(4)(b) And Section 4.6D Of The Telluride Home Rule Charter.¹²⁶

Mr. Geiger knowingly misrepresented the scope of the agenda item before the Town Council in order to *expand the scope* of Ms. Von Spreecken’s recusal to include any future discussion regarding the property that was not part of the agenda item. Mr. Kevin Geiger, having improperly expanded the scope of the recusal then states the decision is final and cannot be revisited:

Kevin Geiger: Yeah, I'd make a couple of points on it. One is the ethics code is pretty clear the decision is final. It doesn't say it's final for six months and then you revisit it doesn't say that it's for a temporal period of time. If there's some argument that there's something new, something has changed that results in a reconsideration of it or reexamination of that conflict of interest, I think it's incumbent to understand what that new information is on this issue.

I would point out everything we were looking at was the relationship that was started by the parties back in May of 2022, and had existed all the way through basically December when the first recusal happened and necessarily had changed from that point until the vote in February, except for the new information that came out as the express ownership interest that I think the council member recalled in three, the LLC, that were directly plaintiffs in the litigation.¹²⁷

Having expanded the scope of the recusal beyond what Mr. Geiger knew could legally be included in an executive session, he then suggested that only “new evidence” could change the “final” decision and that, by definition, there really could be no new evidence.

¹²⁴ *Id.* at 03:19:46, Ex. 12, p. 2.

¹²⁵ CRS § 24-6-402 (4).

¹²⁶ Ex. 56. TELLURIDE TOWN COUNCIL MEETING, *Minutes* (Nov. 28, 2023).

¹²⁷ TELLURIDE TOWN COUNCIL MEETING, (Mar. 12, 2024), *supra* at 03:26:26, Ex. 12, p. 5. This comment by Mr. Geiger is also extremely problematic. It insinuates that Ms. Von Spreecken's small partial ownership interest in some of the plaintiff LLCs was an actual Financial Interest. It *sounds* like a Financial Interest of some kind, but it is clearly **not** under the TMC. Mr. Geiger never explained how partial ownership of property *more than 75 feet* from Diamond Ridge creates any Financial Interest under the TMC. Many other people own property near Diamond Ridge closer than Pam Bennett and her sister’s.

Mr. Geiger was fully aware that, Ms. Von Spreecken’s only legal remedy to overcome his declaration of a final recusal from all matters related to Diamond Ridge is to file a 106A action challenging the quasi-judicial determination. As Ms. Spreecken apparently did not file such an action, and so this final determination by Mr. Geiger can never be contested.

Additionally, for someone whom Mr. Geiger has a duty to advise, his failure to obtain a clear determination from the Town Council on the scope of recusal is a serious breach of his duty. While *Mr. Gieger* interpreted the recusal to include matters that were specifically **not** included in the 1A agenda item (i.e., the future use of the Diamond Ridge property), the Town Council was all over the map on whether the recusal only applied to the litigation or *any* discussion of Diamond Ridge.

So, while Mr. Geiger concluded in a manner that sounded like a final “ruling” on the merits, such a “ruling” was not based on any consensus of the Town Council regarding the actual scope of recusal. Such “ruling” was also based on Mr. Geiger either negligently or intentionally expanding the scope of the February 20, 2024 executive session as “include[ing] all the litigation citations as *well as the discussion on the property aspects.*”

This statement was false, and this discussion could not possibly be held in an executive session. Mr. Geiger’s “ruling” was contrary to the expressed desire of Ms. Von Spreecken, whom Mr. Gieger is legally required to advise fairly. It was not supported by the Town Council determination or the factual basis given. Ms. Von Speecken continues to this day to have no clarity on the scope of the recusal; perhaps she is not allowed to discuss it with any other Council members or risk disciplinary procedures, or perhaps she is. This is not how you fairly, impartially, and honestly advise and protect a client.

FIRST AMENDMENT PROTECTED LITIGATION

Another serious failure to direct proper deliberation by the tribunal was Mr. Geiger’s failure to explain that prior and concluded litigation against the Town cannot properly be considered as a conflict regarding legislative determinations.

Ms. Von Spreecken and her family exercised their constitutional right to petition the government for redress by filing a lawsuit against the Town, which is protected First Amendment activity.¹²⁸ So long as the case is active, recusal may well be appropriate for *discussing that actual litigation case.*

¹²⁸ U.S. CONST. AMEND, I.; See also [Roberts v. US Jaycees](#), *supra*, at 622.

If a legal matter has been resolved, there is no legal argument Ms. Von Spreecken should be prohibited from participating in the legislative policy discussion regarding that very topic sued upon. Otherwise, you are chilling a First Amendment right to redress with serious consequences of properly invoking that right.

Now, if Ms. Von Spreecken also had a Financial Interest in addition to her parents filing the lawsuit, such as living within 75 feet of the property under discussion, she would be recused. But that recusal would not be based on the prior finalized case but upon her current and existing “Financial Interest.”¹²⁹

APPLICATION OF DIFFERENT STANDARDS BY MR. GEIGER

The conclusion of favoritism by Mr. Geiger toward those who support all development is apparent. Mr. Geiger engaged in obvious breaches of fiduciary duty toward Ms. Von Spreecken, but yet he showed complete tolerance for Mr. Enright’s repeated failure to identify his Financial Interests and rescue himself. Mr. Geiger also allowed Mr. Enright to testify as a “member of the public” when he was recused from the Lot L matter.

Mr. Geiger appears to have created an exception regarding “proximity” on the fly at the February 20, 2024 hearing stating “so the conflict, if there is one that's determined, the conflict is that individual who conflicted out, unless it's a proximity concern, which is not what we're looking at here. . . that individual can not have contact with the remaining members of the decision-making body.”¹³⁰

This appears to allow Mr. Eright to comment all he wants as a “member of the public” when he has a Proximity Interest but does not allow Ms. Von Spreecken the ability to do so when neither she nor her family had or has any Financial Interest or Proximity Interest. There is no fair way to parse this comment than anything other than discrimination between the two members by Mr. Geiger. Imagine if Ms. Von Spreecken decided to “publicly comment” to the Town Council regarding her views to “balance the interests” of those living near Diamond Ridge.

As Mr. Geiger has a substantial role in the Diamond Ridge project, which had its rezoning repealed by a court of law, Mr. Geiger’s personal interests in this matter are fairly clear. Colorado Rules of Professional Conduct § 1.7 prohibits attorneys from putting their interests before that of the client or person they advise under the law, but that was not done in this case.

¹²⁹ TMC § 2-4-20.

¹³⁰ TELLURIDE TOWN COUNCIL MEETING, (Feb. 20, 2024), *supra* at 00:41:44, Ex. 11, p. 18.

CONFLICTS OF INTEREST WITH THE TELLURIDE HOUSING AUTHORITY BOARD

CONSTITUTION

Article XXIX, § 1 of the Constitution

“The people of the state of Colorado hereby find and declare that: (d) Any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that trust.”¹³¹

Section 1(c) of Article XXIX also requires covered individuals “to avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated.”¹³²

“Appearances of impropriety are generally referred to as ‘perception issues’ or ‘violating the smell test.’ They can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law.”¹³³

STATUTES

As an independent Authority, the THA is guided by state statutes rather than the TMC or THC.¹³⁴

“Housing Authorities,” such as the THA are statutorily created under the Colorado “Housing Authorities Law.”¹³⁵ “Authority” or “housing authority” means a corporate body organized in accordance with the provisions of this part 2 for the purposes, with the powers, and subject to the restrictions set forth in this part 2.¹³⁶ State statutory provisions allow home rule towns to use the Housing Authority to effect the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs pursuant to a multijurisdictional plan.¹³⁷

¹³¹ [COLO. CONST. ART. XXIX § 5.](#)

¹³² *Id.*

¹³³ [INDEPENDENT ETHICS COMMISSION, Advisory Op. 12-1 Conflict of Interest, p. 4. \(2012\)](#)

¹³⁴¹³⁴ Although the Town concedes the TMC does not apply to the THA Board, it raises an additional concern regarding Mr. Geiger who applied [TMC § 2-4-20](#) to the recusal of Ms. Jessie Rae Arguelles on September 10, 2019, and not state statutory authority. [See Ex. 29](#), THA minutes. “Attorney Geiger reviewed Telluride Municipal Code Article 4 Ethics Code, Section 2-4-20 *Conflict of Interest* and responded to questions from the Telluride Housing Authority (Authority).”

¹³⁵ [CRS § 29-4-201, et. seq.](#)

¹³⁶ [CRS § 29-4-203 \(1\).](#)

¹³⁷ [CRS § 29-1-204.5.](#)

The Commissioners acting for the Housing Authority, “shall receive no compensation for [their] services but shall be reimbursed for actual and necessary expenses incurred in the performance of [their] official duties.”¹³⁸ The Housing Commissioners “may call upon the corporation counsel or chief law officer of the city for such legal services as it may require, or it may employ its own counsel and legal staff.”¹³⁹

“A member of a board, commission, council, or committee who receives no compensation other than a per diem allowance or necessary and reasonable expenses shall not *perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial Financial Interest.*”¹⁴⁰ As none of the THA Commissioners receive compensation for being on the THA Board, this section applies to all the Commissioners.¹⁴¹

Further, local government officials are prohibited from any action where such member “has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.”¹⁴²

In essence, state law *prohibits* Board members from participating in any matter for which they have a Financial Interest. The only exception is when a member's participation is required to make a quorum, which is not the case here.¹⁴³

¹³⁸ CRS § 29-4-205 (1).

¹³⁹ CRS § 29-4-205 (5).

¹⁴⁰ CRS § 29-4-207, *emphasis added*. While there are no reported cases in Colorado interpreting § 29-4-207, at least two other states with identical statutory language have done so. Connecticut has an identically worded statute stating “[n]o commissioner or employee of an authority shall acquire any interest, direct or indirect, in any housing project or in any property included or planned to be included in any project. . .” The Connecticut Attorney General found such language “bars a tenant of a housing authority from serving as a commissioner of the housing authority in whose project he resides.” *Housing Aut. v. Dorsey*, 164 Conn. 247, 249 (1973). The Conn. Sup. Ct. upheld this interpretation. The *Dorsey* court identified Mr. Enright’s exact conflict: “The task of fixing rent charges is such that a tenant commissioner might be called on to vote to increase his own rent in order to amortize and service the housing authority’s debt obligation. If he is reluctant to increase rents which include his own, the housing authority might fail to pay its bonded indebtedness and permit unchecked physical depreciation of the properties.” *Id.* at 823. See also *Brown v. Kirk*, 335 NE 2d 12, Sup. Ct. (1976), regarding language almost identical to CRS § 29-4-207, also found that persons renting units under the control of the Authority were prohibited from serving on the Housing Authority Board. While these results are harsh, they appear justified in light of the obvious Financial Interest conflict and the statute’s language.

¹⁴¹ *Id.*

¹⁴² CRS § 24-18-109 (3) (a).

¹⁴³ CRS § 24-18-110, *emphasis added*. When a quorum is needed, such officials “**shall make the disclosure in writing to the secretary of state**, listing the amount of his Financial Interest, if any.” (*emphasis added*)

Complainants are informed and believe Mr. Enright never made a disclosure to the Secretary of State before or after joining the THA Board or the THA Subcommittee as required under state statutes when a Financial Interest exists.¹⁴⁴ Complainants are informed and believe Mr. Enright need not participate in the THA board in order to have a quorum. As such, he is legally prohibited from voting on matters where he has a direct Financial Interest.

TOWN ATTORNEY GEIGER

As allowed under state statute, Mr. Geiger, as the Town Attorney, provides legal advice to the THA Board, including regarding issues regarding conflicts of interest.¹⁴⁵ Therefore, it is Mr Geiger’s duty to identify and resolve conflicts for the THA Board.

TELLURIDE HOUSING AUTHORITY OCTOBER 13, 2022. MEETING

During a Telluride Housing Authority meeting on October 13, 2022, the topics included whether to raise the rental prices on deed-restricted rental units, including Shandoka. Mr. Enright had a direct “material or significant Financial Interest” (“**Financial Interest**”) as he lives in the building.¹⁴⁶ The person classified as a Personal Interest of Mr. Enright also had a “material or significant Financial Interest” in the determination of the rent increases.¹⁴⁷

Therefore, Mr. Enright was required to declare this Financial Interest “in a public meeting to the governing body of which he or she is a member.” This disclosure is required for any Town official who could be “reasonably perceived as having an actual or potential conflict of interest.”¹⁴⁸ Councilpersons “should avoid even the appearance of conflict of interest or improper influence in the performance of official duties.”¹⁴⁹ This was never done. Mr. Geiger also never advised Mr. Enright that he needed to raise the issue with the Town Council for determination.

Mayor Delany told the Town Council that “over the past five years, HUD income change has gone up 18%, but our rents have only gone up 5%.”¹⁵⁰ Therefore, to be even with the AMI increases over the last five years, a 13% increase would be necessary.

¹⁴⁴ Ex. 14, COL. SEC. OF STATE, <https://www.coloradosos.gov/pubs/elections/ConflictOfInterest/conflictOfInterestHome.html>. A screenshot of the search result shows that no person named Enright has filed any financial disclosure.

¹⁴⁵ Ex. 29, TELLURIDE HOUSING AUTHORITY, *Meeting Minutes*, (Sep. 10, 2019.)

¹⁴⁶ THC § 4.18.

¹⁴⁷ THC § 4.18 and TMC § 2-4-20.

¹⁴⁸ TMC § 2-4-60.

¹⁴⁹ TMC § 2-4-30 (c).

¹⁵⁰ TOWN COUNCIL BUDGET (Oct. 13, 2022), <https://www.youtube.com/watch?v=vKRioguEzI&t=10081s> at 2:25:05.

Mr. Geiger stated, “this is just the rent increase number. We actually had, I think two-months of free rent. We did for all Town housing during the pandemic, so that's not even factored in here at all if you took that in. So it'd be in negative territory at that point when the HUD number is at 18%.¹⁵¹

Mr. Robson agreed, “When you run the numbers, we're in the ballpark of ranging all the way down to 58% of AMI for Shandoka rents right now. So we are very, very low in comparison to our national and even regional standards at this point.¹⁵²

Councilperson Christy stated, “58% of AMI is super low” and “these projects are built, as Lance mentioned, with the target AMI and we should be in that target. That's how they were financed. It's fiscally irresponsible for us not to be doing that.”¹⁵³ She also asked if the rents in Shandoka included the cost of water, and Mayor Young affirmed the rent included the water costs, so the Shandoka occupants were already shielded from the 7% that applied to all others in Town.¹⁵⁴ Shandoka residents also did not have to incur a 20% hike in the wastewater fee paid by others in town.

Additionally, Shandoka only requires working between 22-25 hours per week to be eligible for housing,¹⁵⁵ so if you are at the higher end of earnings per hour, it would allow a couple to live in an apartment that costs about 50% of market rates while working part-time. Mayor Young pointed out that such a situation is likely only for *outliers*, and most people work multiple jobs.¹⁵⁶

Mr. Enright appears to be one of these “outliers” with his statement “I believe there is a responsibility among us here to allow people like myself to give a lot to teach children for the Telluride Academy who work in our local government, who participate in our theater and art scenes. We're out on the ski hill every single day during the winter to have that opportunity to continue to participate and it requires housing. It requires that development. It requires density in this region.”¹⁵⁷

¹⁵¹ *Id.* at 02:32:39.

¹⁵² *Id.*

¹⁵³ *Id.* at 02:41:10.

¹⁵⁴ *Id.* at 02:41:49.

¹⁵⁵ *Id.* at 02:44:33.

¹⁵⁶ *Id.* at 02:45:31.

¹⁵⁷ SAN MIGUEL COUNTY EAST END MASTER PLAN HEARING, (Oct. 19, 2023), <https://tinyurl.com/Oct-19-EEMP> at 09:01:04.

Mr. Enright also stated at the November 28, 2023, Town Council meeting that “I live in an older Shandoka building with older appliances. Again, it's not the nicest in the world, but it has afforded so many opportunities. It's the reason I'm here. It allows me to take jobs that *allow me to be flexible and prioritize my passions in life*. . . And that's a great asset. That is a wonderful experience that I get to be here, and the only way I can do it is because I can afford not to work 3 to 4 jobs all the time and be here, and so well, again, I am ready to move up.”¹⁵⁸

Councilperson Arguelles stated the obvious: Perhaps the Town should increase the requirement to full-time since it would not affect anyone if everyone is already working full-time or more. Apparently troubled by the direction of this conversation, Mr. Enright then jumped in, “like I feel like that’s a separate conversation,” and was able to change the topic away.

Town staff stated the Consumer Price Index for that period was up 8%.¹⁵⁹ Councilpersons Carlson and Christy said they could agree with an 8% increase, and Ms. Shaunette agreed with higher increases. Then, the following exchange occurred.¹⁶⁰

Dan Enright: “It's obviously hard for me to disconnect this from my own housing because this is important.”

Jessie Rae Arguelles: “Oh you have to recuse yourself?”

Dan Enright: “I was asking Kevin and Kevin doesn't believe I have. . .”

Mayor Delay: “It affects everyone else equally. It's and Virginia Placer and. . .”

Dan Enright: “And I guess I'm okay with 5% [increase in his rent] and I, I give that a strong thumbs up. I definitely hear both sides of this. And this is where I'm very conflicted because, yes, we want to make sure that this investment is maintained for future users and that we're not deferring costs and taking on that. But I also know I have neighbors and I know people that have multiple kids and one income and that are multi or at least \$100, \$120 a month increase is going to be a substantial hit.”

¹⁵⁸ TOWN COUNCIL REGULAR MEETING (Nov. 28, 2023), <https://www.youtube.com/watch?v=M7uarWIP9ck> at 04:50:38.

¹⁵⁹ TOWN COUNCIL BUDGET MEETING (Oct. 13, 2022), <https://www.youtube.com/watch?v=vKRioguEzI&t=10081s> at 02:24:27.

¹⁶⁰ *Id.* at 02:52:25.

First, it does appear that Mr. Enright was “asking” Mr. Geiger about his conflict at this meeting for the first time. However, regardless of when Mr. Enright disclosed this conflict to Mr. Geiger, it is undisputed that Mr. Geiger never directed the conflict to the attention of the Town Council.¹⁶¹ Nor did the Council ever determine if Mr. Enright was within the “safe harbor” provisions for legislative action.¹⁶² This constitutes a breach of fiduciary duty by both Mr. Enright and Mr. Geiger.

Second, Mr. Enright’s serious Financial Interest in this discussion is astonishing. Mr. Enright confirmed that a seven or eight percent increase would be a “huge hit” to people, so it is also a significant Financial Interest. He advocated for an increase below the Consumer Price Index even when Shandoka residents were not assessed increases in water or sewer fees as all other residents and businesses were subjected.¹⁶³

In reviewing the video, viewers can see that it was difficult for other Councilpersons to advocate higher rents since Mr. Enright would be personally affected by the decision. For all these reasons, Mr. Geiger’s allowing Mr. Enright to participate in these conversations was a serious breach of his duty to the Town Council.

Ultimately, the THA Board voted a small increase of 7% rather than the 8% increase in the CPI over that period, or the 18% increase in the HUD earning numbers.¹⁶⁴ The 5% increase advocated by Mr. Enright would have resulted in approximately a \$350 per year benefit to himself as opposed to the 7% increase. A 5% increase would also be approximately a \$2,100 benefit per year below the actual increase in wages during that same period of time.

¹⁶¹ TMC § 2-4-60 (b) and (d) – Requires disclosure of a conflict.

¹⁶² TMC § 2-4-20 – Safe Harbor provision for legislative action that applies equally to similar classes of citizens.

¹⁶³ New Release, *Telluride Brewing is moving production to Durango*, THE TELLURIDE DAILY PLANET (Apr. 14, 2024), <https://www.telluridenews.com/newsrelease/articled26a6be-f2cc-11ee-9b02-67ea3acce557.html>. The fact that deed-restricted units do not pay for water or wastewater necessarily means that others do. A few days ago, Telluride Brewery said it is laying off most of its employees and moving to Durango. Owner Tommy Thacher pointed to the 100% increase in wastewater costs and 45.3% in water costs since 2019. So, while people living in Shandoka for half market rent who do not pay for sewer or water increases enjoyed a 5% increase, others had to bear the brunt of those costs.

¹⁶⁴ TOWN COUNCIL BUDGET MEETING (Oct. 13, 2022), <https://www.youtube.com/watch?v=vKRioguEzI&t=10081s> at 03:00:07.

NOVEMBER 28, 2023, THA BOARD MEETING

At the November 28, 2023, THA Board meeting, Mr. Enright again failed to raise any personal conflict of interest regarding his financial situation. Before the discussion, Mr. Geiger also never raised the potential conflict with the Town Council. The issue being voted on included a lease agreement between the Town and THA regarding Building F Shandoka. Mr. Enright lives in one of the adjacent Shandoka buildings.¹⁶⁵

James Hooser stated that “there is a demonstrated need for units targeted at 120% AMI within the existing Shandoka program.”¹⁶⁶ Councilperson Geneve Shaunette followed up on the 120% AMI discussion stating that “I just want to touch on is the sort of the need for the 120% average is sort of what we would consider a tier two or a higher income bracket for rental than what Shandoka has been in the past will be more similar to what we have at Virginia Placer or some of the more expensive units at Sunnyside.”¹⁶⁷

She continued that the information obtained from the residents of Shandoka indicated that around half of them were “over income for what our guidelines say that you can make for your household.” She concluded “we need more of those next tier of more expensive units because we don't have enough other units for people who are making, who are over income in Shandoka currently to move into.”¹⁶⁸ Mr. Enright then stated as follows:

Dan Enright: “I'm a Shandoka resident and I'm one of those people making too much money now but I want out of Shandoka. You again have probably all heard me say it, I'm trying to move up I'm trying to move into something more suited to this position in my life and Town's working on those opportunities.”¹⁶⁹

The free market is more or less out of reach for me and most other working people in the town of Telluride. And so I still have a lot of hesitance. . .¹⁷⁰

I think we have other projects we could direct that those moneys those resources and our our staff time towards that would be much more effective and help take a bigger chunk or take bigger piece out of the affordable housing project problem that we have. And so I'm still highly skeptical about this.¹⁷¹

¹⁶⁵ TOWN COUNCIL REGULAR MEETING (Nov. 28, 2023), <https://www.youtube.com/watch?v=M7uarWIP9ck> at 04:50:38.

¹⁶⁶ TELLURIDE HOUSING AUTHORITY REGULAR MEETING (Nov. 28, 2023), <https://www.youtube.com/watch?v=M7uarWIP9ck> at 03:44:34.

¹⁶⁷ *Id.* at 04:22:53.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 04:33:37.

¹⁷⁰ *Id.* at 04:33:59.

¹⁷¹ *Id.* at 04:34:39.

And there are conversations to be had about AMI tiers and how do we acknowledge where people have gone and some of the incomes people are earning in there. . . I view those as separate conversations.¹⁷²

But the projects we're going to be building are going to be more suitable. And in my vision, the people that are over income, *myself included*, are going to be moving into Voodoo and Carhenge and Tower House that are being constructed,¹⁷³ those current higher prices and with nicer amenities and going to be moving them up and making room for some of the lower AMI tiers that we still are going to need more data.”¹⁷⁴

Geneva Shaunette: “And I believe 50% that this project is one of those incremental rungs that we can use to start that process. Yes, we have other projects down the pipe, but I don't love the idea of a family living in Shandoka making \$300,000 and still paying that rent. That feels fundamentally unfair.”¹⁷⁵

Dan Enright: “I live in an older Shandoka building with older appliances. Again, it's not the nicest in the world, but it has afforded so many opportunities. It's the reason I'm here. It allows me to take jobs that allow me to be flexible and prioritize my passions in life, like serving my community. And that's a great asset. That is a wonderful experience that I get to be here and the only way I can do it is because I can afford to not work 3 to 4 jobs all the time and be here. And so well again, I am ready to move up. Is anybody listening? I am trying to move out of Shandoka. Okay.”¹⁷⁶

Jessie Rae Arguelles: “It's not a teardown project, but it has brought up some bigger issues, you know, I'm not down for it to be 120%. AMI ever period. I don't think that's appropriate.”¹⁷⁷

Dan Enright: “But Jessie Rae with a COP [construction] bond. We are effectively tying our hands on what the rents are going to be like.”¹⁷⁸

¹⁷² Mr. Enright appears to use the “separate discussion” comment whenever his personal Financial Interests may be at stake in the “separate discussion.”

¹⁷³ *Id.* at 04:35:42. This statement alone should have resulted in Mr. Enright's immediate recusal from all discussions concerning projects like Carhenge, Tower House and Diamond Ridge. Mr. Enright is literally telling the THA Board that he is interested in moving up in life, and to do that, the Town should provide him with nice new housing at a high rate of subsidy so he can afford it.

¹⁷⁴ *Id.* at 04:40:41.

¹⁷⁵ *Id.* at 04:43:37.

¹⁷⁶ *Id.* at 04:50:38.

¹⁷⁷ *Id.* at 04:51:59.

¹⁷⁸ *Id.* at 04:52:44.

Geneva Shaunette: “So we know that half of our Shandoka residents are out of compliance. And we cannot be an organization that doesn't enforce our own rules because. . .”¹⁷⁹

Dan Enright: “Again, we're not talking about that.”¹⁸⁰

A summary of Mr. Enright’s opinion appears to be that no money should be spent on upgrading Shandoka because it will likely increase the current rent. Rather, Mr. Enright would like the money spent on new housing like VooDoo, Carhenge, and Canyonland, which he expressly stated he wanted to move into.¹⁸¹ This exchange could be a model discussion for why people who have a Financial Interest in the policy being discussed should not be allowed to participate in that decision-making process.

Mr. Enright finished by saying, “I can tell I'm losing this debate, that's fine. My please reconsider spending that money on a roof. The roof is not 30 years old. It has been replaced. Again, it was noted as being in remarkably good condition. That is a waste of money.”¹⁸²

The THA Board did not follow Mr. Enright’s repeated attempts to scuttle the reconstruction and to keep rent prices the same, voting 6 to 1 against him.¹⁸³

FEBRUARY 7, 2024, SUBCOMMITTEE MEMO ON RENTAL TIERS

On February 7, 2024, the THA Subcommittee identified that approximately half the people living in Shandoka were in violation of the AMI limits. THA rules prohibit anyone making more than five times the cost of the rental in gross income monthly.¹⁸⁴

Specifically, when looking at 2-bedroom apartments, the average AMI was 132%, while the THA rules only allow a 72% AMI or less. The proposal before the THA Subcommittee included a new “tiered” system for all Shandoka units, allowing up to 110% AMI to live in a 2-bedroom apartment. However, the rent would increase from \$1281 to \$2196, which is a \$915 per month increase (\$10,980).¹⁸⁵ The rule change could also *potentially* exclude all those making more than 110%, from the units.

¹⁷⁹ *Id.* at 04:55:25.

¹⁸⁰ Again Mr. Enright directs the conversation away from areas of concern for his personal Financial Interest.

¹⁸¹ *Id.* at 04:40:41.

¹⁸² *Id.* at 05:02:06.

¹⁸³ *Id.* at 05:06:39.

¹⁸⁴ Ex. 2, TOWN TELLURIDE HOUSING AUTHORITY SUBCOMMITTEE, *Memorandum*, p. 4 (Jan 10, 2024).

¹⁸⁵ *Id.* p. 5.

The complainants do not know precisely which AMI level Mr. Enright falls within, but they assume he has a 2-bedroom apartment in which he and a person classified as a Personal Interest reside.¹⁸⁶ Under the tiered plan, if he is making 110% or less, his rent will increase by \$915 per month. If he is making more than 110%, he risks being removed from his unit.

To the complainants' knowledge and belief, Town Attorney Kevin Geiger never informed Mr. Enright he was prohibited from participating in this THA discussion due to a Financial Interest as required by state law.¹⁸⁷

MARCH 6, 2024 MEETING

At the March 6 THA subcommittee meeting, the topics of discussion included an “[i]n-depth discussion of qualification policy (hours, income tiers, minimum income, earned income standard, qualified retired and qualified disabled, property ownership, assets) and distribution of unit tiers across housing projects.”¹⁸⁸

Town of Telluride Assistant Attorney Alexandra Slaten: “This is a continuation of conversations that have occurred at the last few meetings. the goal of today is really to get those questions answered at the end of the staff memo. If we can get these questions answered today, it's my hope that I'll have a first draft of the rental policies to you at the next meeting.”¹⁸⁹

Dan Enright: “The reality of the free market in Telluride makes it very complicated at this time. The least expensive free-market unit in Telluride is around \$800,000 or so for a small two-bedroom. Last time I looked. I could be slightly off on that.”¹⁹⁰

Meehan Fee: “Let's run some numbers. Are you okay with people making \$500,000 and living in Shandoka?”¹⁹¹

Elena Levin: “We need to have something like a stop in place. So, if somebody can afford to pay \$3,000 a month in rent instead of living in Shandoka, we can free up a unit for someone who can't afford \$3,000 in rent.”¹⁹²

¹⁸⁶ TMC § 2-4-20.

¹⁸⁷ CRS § 24-18-109 (3) (a).

¹⁸⁸ Ex. 5, TOWN TELLURIDE HOUSING AUTHORITY SUBCOMMITTEE, *Memorandum*, (March 6, 2024).

¹⁸⁹ Ex. 46, OFF THE RECORD, <https://spinitron.com/KOTO/show/259496/Off-The-Record> (Sept. 26, 2023) at 00:01:16.

¹⁹⁰ *Id.* at 00:02:05.

¹⁹¹ *Id.* at 00:02:48.

¹⁹² *Id.* at 00:02:57.

Radio Host: “Committee members take up another issue, which has proven contentious. Should Telluride charge higher-income earners more than lower-income earners for similar units?”

Dan Enright: “They are given a choice. Two things we discussed at the last meeting. If you move to this other unit that is more suitable to your life circumstances or if you choose not to take that, then your rent goes up to a proportional amount of what you would pay at that other unit.”¹⁹³

Meehan Fee: “I don't want to kick anybody out of their housing, but I want to create a policy where we are not being arbitrary, Dan.”

Dan Enright: “I'm not talking about being arbitrary. I'm having to look at this long-term. So many people have no other options, and the town is coming in and saying, ‘well, you're making more.’ You're trying to do everything we're all told to do. Well, guess who's taking more of that?”¹⁹⁴

Radio Host: “The . . . current town guidelines for renters are so out of sync with Telluride's economic reality that the Town has more or less given up on enforcing them. Fee pleads for more data, more information, more choices, and more pathways forward because, she says, the Town needs policies that work.”¹⁹⁵

Meehan Fee: “And if the policy is we don't have income limits, we don't have leases, stay as long as you'd like. Here's a breadbasket; that's fine, but we need to make an informed decision. And it can't just be. I don't want to kick people out, so we're not going to look at the numbers. We have to look at the data and then decide what makes the most sense for everyone.”¹⁹⁶

According to the Telluride Daily Planet, Council Member Fee stated some people living in Shandoka have “sizable incomes.”¹⁹⁷

Subcommittee member Levin said “[t]here comes a point where it’s no longer appropriate... for them to be staying in deed-restricted housing that is subsidized by our taxpayer dollars,”¹⁹⁸

¹⁹³ *Id.* at 00:03:29

¹⁹⁴ *Id.* at 00:04:16

¹⁹⁵ *Id.* at 00:04:23

¹⁹⁶ *Id.* at 00:04:59

¹⁹⁷ Ex. 1, Mia Rupani, *Town of Telluride's Diamond Ridge Affordable Housing Project*, THE TELLURIDE DAILY PLANET (Mar. 14,), <https://www.telluride-co.gov/440/Telluride-Housing-Department>.

¹⁹⁸ *Id.*

Subcommittee Member Enright “vehemently” (according to the Daily Planet) disagreed with Ms. Fee’s comment and stated, “[t]he least expensive free-market unit in the Town of Telluride at this time is around \$800,000.” According to the Daily Planet, “Enright was against income tiers within individual properties, but suggested tiering new builds to those earning higher incomes.”

Mr. Enright had approximately **10,980** reasons per year of Financial Interest in this discussion.¹⁹⁹ Mr. Kevin Geiger wrongly allowed Mr. Enright to participate in this THA matter.²⁰⁰ Mr. Enright also argued he should be allowed to stay in his current highly subsidized living arrangements, without any rent increases, until he can move into another more highly subsidized housing unit that meets his perceived position in life.

This would certainly be a nice arrangement if Mr. Enright could convince the THA Board to allow him to live in a rental unit and pay approximately one-third of what he should be based on existing THA rules.

OPINIONS OF THE INDEPENDENT ETHICS COMMISSION SUPPORT RECUSAL

The Colorado Independent Ethics Commission (“**IEC**”) has jurisdiction pursuant to Article XXIX, which sets forth “specific standards to guide [the] conduct” of public officials and employees “to ensure propriety and to preserve public confidence.”²⁰¹

The IEC has subject matter jurisdiction over “other standards of conduct” in state law, including statutory standards of conduct.²⁰²

The IEC clearly states that if a member of a governing body has a possible Financial Interest, they “shall” disclose Interest as a mandatory requirement.²⁰³ The ICE held “Mr. Flower was required to disclose both that one of the CCPHA employees was his spouse and how he would benefit from the vote. He did neither.” The fact the “commissioners knew” Mr. Flower’s wife was one of the CCPHA employees to receive the overtime pay was not an excuse. “[T]he disclosure requirement is not merely for the benefit of other voting members of the body” since it also “benefits the public and serves the public interest. . .”²⁰⁴

¹⁹⁹ To be clear, complainants do not know the cost of Mr. Enright’s specific unit or his AMI level; this number is an estimate that could be high or low.

²⁰⁰ *Id.*

²⁰¹ COLO. CONST. ART. XXIX § 1 (a), (e).

²⁰² COLO. CONST. ART. XXIX § 5, *see also Gessler v. Smith*, 419 P.3d 964, 969 (Colo. 2018).

²⁰³ Ex. 59, INDEPENDENT ETHICS COMMISSION, *Findings of Fact and Conclusions of Law, In the Matter of: Tom Flowers, Complaint 20-73*, p. 4, ¶ 26, (2022).

²⁰⁴ *Id.* at p. 4-5, ¶¶ 26 and 27.

Advisory Op. 21-02 examined the ethical requirements of a BOCC Commissioner who owned a Short Term Rental (“STR”) prior to the pandemic but stopped such operations with the pandemic and had no intent to resume. He properly filed a Financial Conflict of Interest with the Secretary of State and then asked the IEC for an opinion on his ability to participate in regulations of STR that would not affect him due to where it is located but might create an increased demand for his former STR as it would remain unregulated.²⁰⁵

The IEC found that because the Commissioner clearly stated they had no interest in allowing the unit to be an STR in the future, there was no financial conflict. However, the IEC cautioned that “if Requestor intended to continue operating his business, or if Requestor intended to only temporarily close his business, the analysis herein would be quite different.”²⁰⁶

In a similar situation, Advisory Op. 22-02, addressed a Planning Commissioner who also owned STRs, and instead of closing them, “[t]he Member appropriately recused herself from that vote and discussion” under 24-18-109(3)(a).²⁰⁷ However, the IEC found the Planning Commission could appropriately comment as a member of the public at *the BOCC* hearing on the matter.²⁰⁸

Taken together the standard of conduct for an elected official with a Financial Interest in a discussion or vote before the “governing body to which they belong is clear” under IEC opinions.

- First, the member is required to disclose personal Financial Interests to the public body in a public manner.
- Second, the member *shall not vote* on any matter where they have a private Financial Interest.
- If the member’s vote is required to meet a quorum, they must disclose and report the Financial Interest to the Secretary of State.

²⁰⁵ INDEPENDENT ETHICS COMMISSION, *Advisory Op. 21-02*, p. 2-3 (2021).

²⁰⁶ *Id.*

²⁰⁷ INDEPENDENT ETHICS COMMISSION, *Advisory Op. 22-02*, p. 1-2 (2021).

²⁰⁸ *Id.*

Mr. Enright failed to meet any of these legal requirements law to disclose and recuse himself from these votes. Mr. Geiger failed to advise Mr. Enright regarding his duties and failed to enforce the law if Mr. Enright did not comply.

The penalty for breach of the public trust for private gain pursuant to Section 6 of Article XXIX is “double the amount of the financial equivalent of any benefits obtained by such actions.”²⁰⁹

HOUSING AUTHORITY MEMBERS ARE PROHIBITED FROM HAVING ANY INTEREST IN ANY THA-CONTROLLED PROPERTY OR PROJECT

STATUTE

“Public officers and local government officials shall not be purchasers at any sale . . . made by them in their official capacity.”²¹⁰

Additionally, “No commissioner or employee of an [housing] authority shall *acquire any interest, direct or indirect, in any project* or in any property included or planned to be included *in any project*. . .” Housing Board Commissioners are under a “statutory duty to comply or to cause strict compliance with all provisions of this part 2. . .”²¹¹

“Project” means all . . . buildings and improvements. . . be acquired or constructed pursuant to a single plan or undertaking. . .” Further “[t]he term “project” also applies to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.”²¹²

It is an obvious financial conflict of interest in voting to use subsidized funds for developing projects for the Housing Commissioners and their families or close friends to rent or buy. Complainants believe Mr. Geiger has not properly informed the Commissioners of the THA Board in this regard.

Under this authority, any person who sits on the THA Commission is prohibited from later acquiring an interest, such as a rental lease or purchasing “any project” over which the THA approved, designed, or built under the THA.

²⁰⁹ COLO. CONST. ART XXIX § 6.

²¹⁰ CRS § 24-18-202.

²¹¹ CRS § 29-4-206.

²¹² CRS § 29-4-203, *emphasis added*.

The THA appears to have no written rules of ethical conduct, unlike most Authorities.²¹³

DIAMOND RIDGE EXCLUSION

In June 2022, the THA Board consisted of current members Mr. Enright, Mr. Shaunette, Ms. Fee, Ms. Arguelles, and former Mayor Delany Young.²¹⁴ On June 28, 2022, the Town of Telluride entered into a promissory note with the THA to provide \$2,500,000 in financing intended as a short-term loan to the Town until the DOLA funds were received.²¹⁵ This agreement was signed by Scott Robson on behalf of the Town and Mayor DeLanie Young on behalf of THA.²¹⁶ This is defined as “financing” of a project under Housing Authority Act rules.²¹⁷

Additionally, the THA paid \$2,500,000 on behalf of the County of San Miguel.²¹⁸ As Mr. Enright, Ms. Shaunette, Ms. Arguelles, Ms. Fee, and former Mayor Young were on the THA board at the time of the approval of the THA financing of Diamond Ridge, complainants request an such members be instructed they are prohibited from purchasing any land or renting any units at Diamond Ridge if developed.²¹⁹

²¹³ See for example, COLO. SPRINGS URBAN DEVEL. AUTH., *Conflict of Interest*, <https://www.csura.org/conflicts-of-interest.html>. “A conflict of interest exists when there is any personal or financial relationship that could influence or be perceived to influence the representation or conduct of business for, or on behalf of, the Urban Renewal Authority. A conflict of interest also exists when any improper and undue influence can be exercised, or be perceived to be exercised, concerning a direct action involving the Urban Renewal Authority. A conflict of interest may exist when there is an appearance of impropriety. Any Commissioner must disclose promptly to the Board any circumstances that might constitute a conflict of interest or appear to be a conflict of interest. If there is any matter before the Urban Renewal Authority which creates a conflict of interest or an appearance of a conflict of interest, that *Commissioner shall immediately recuse himself/herself from hearing or voting on that matter*. Colorado Revised Statutes 24-18-108.5 and 24-18-110 apply to members of boards and commissions and CSURA hereby adopts these statutes as it relates to rules of conduct and voluntary disclosure by Urban Renewal Board Commissioners.” (emphasis added.); see also LONGMONT HOUSING AUTH. § 5 https://longmont.primegov.com/meeting/attachment/54319.pdf?name=LHA%20Bylaws_FINAL; BY-LAWS OF THE CITY OF WHEAT RIDGE HOUSING AUTHORITY, ART. 5, § 3, *Conflict of Interest*, <https://www.ci.wheatridge.co.us/ArchiveCenter/ViewFile/Item/1450>.

²¹⁴ Ex. 31, TELLURIDE HOUSING AUTHORITY, *Minutes*, (May 10, 2022).

²¹⁵ Ex. 17, PROMISSORY NOTE FROM TOWN TO THA, (Jun. 28, 2022). As the DOLA funds were revoked, this loan had to be paid out of the Town General Fund.

²¹⁶ *Id.*

²¹⁷ CRS § 29-1-204.5.

²¹⁸ Ex. 18, PROMISSORY NOTE FROM SAN MIGUEL COUNTY TO THA, (Jun. 22, 2022). As the DOLA funds were revoked, this loan had to be paid out of the County General Fund.

²¹⁹ CRS § 29-4-207.

VOODOO EXCLUSION

On December 13, 2022, the THA Board voted to approve the VooDoo project funding of \$27,427,832.²²⁰ The building will include 3700 square feet of commercial space, a garage, and 27 units. The overall math works out to over \$1,000,000 per residential unit when all gross sf is included. The *average* per-rental unit subsidy for those VooDoo units is approximately \$175,000 each.²²¹ The commissioners for the THA voting in this matter were Ms. Shaunette, Mr. Enright, Ms. Arguelles, Ms. Young, Mr. Carlson, Ms. Christy, and Ms. Fee.²²²

Complainants hereby request the THA Board members be instructed they are prohibited from applying for or accepting housing in VooDoo when complete.²²³

TOWER HOUSE EXCLUSION

Although the property that will become the “Tower House” Project was purchased directly by the Town of Telluride, the THA subcommittee was deeply involved in planning the Tower House development.²²⁴ This constitutes the “planning and development” of the Tower House Project.²²⁵ Furthermore, when the project is complete, it will be overseen by the THA.

The complainants request the THA Subcommittee members involved in this Project's planning and RFQ phase, Ms. Shaunette, Mr. Enright, Ms. Young, and Ms. Christy, be instructed on their prohibition from living within such Project when it is completed.²²⁶

²²⁰ Ex. 19, TELLURIDE HOUSING AUTHORITY, *Minutes*, (Dec. 13, 2022).

²²¹ TELLURIDE HOUSING AUTHORITY HEARING, (Nov. 28, 2023), <https://www.youtube.com/watch?v=M7uarWIP9ck&t=17440s> at 3:46:41.

²²² Ex. 19, TELLURIDE HOUSING AUTHORITY, *Minutes*, (Dec. 13, 2022).

²²³ CRS § 29-4-207.

²²⁴ Ex. 53, TELLURIDE HOUSING AUTHORITY SUBCOMMITTEE, *Agenda*, (2022).

²²⁵ CRS § 29-1-204.5.

²²⁶ CRS § 29-4-207

CONCLUSION

The biggest concern in this matter is not whether Mr. Enright obviously should have recused himself from these decisions. Our biggest concern is that Mr. Geiger, the Town Attorney and the one required to advise the council members on their powers and duties, appears to have entirely failed to properly advise Mr. Enright, who is not a lawyer, on his obligation.

In contrast, when dealing with a Councilperson with whom he has a serious policy difference regarding Diamond Ridge, the laissez-faire attitude disappeared, and Mr. Geiger became the prosecuting attorney, grilling Ms. Von Spreecken in a manner to create an appearance of conflict for all the Councilmembers who are not trained in the law or familiar with the TMC of ethics.

This appears to be a clear violation of both his duty to Ms. Von Spreecken for fairness and unbiased advice and a breach of his duty to the tribunal in failing to correct obvious misstatements and conclusions by Council members when those misunderstandings appeared in his favor. He also misstated the scope of Ms. Von Spreecken's recusal, which had to be intentional since Mr. Geiger knows well that a "general discussion of the property" could not be part of an executive session under the law.²²⁷

We ask that another public hearing with the Town Council be held to determine Ms. Von Spreecken's conflict of interest regarding any discussions of Diamond Ridge that *do not* involve the actual cases filed by her parents and now resolved.²²⁸ The end result of this bias appears to be an intentional desire by Mr. Geiger to prevent public discussion on the feasibility of Diamond Ridge as a development.

We hereby confirm that the facts and allegations set forth in the complaint are true to the best of the complainant's knowledge, information, and belief. Thank you for your time and attention to this important matter.

Sincerely,
Charles Price,
Todd Creel, and
Emily Mason

cc:

Kevin Geiger
Teddy Errico
Meehan Fee
Dan Enright
Elena Levin
Ashley Von Spreecken
Geneva Shaunette
Jessie Arguelles
Andrew Mirrington, TDP Amy
Markwell, SMC Attorney

²²⁷ CRS § 24-6-402 (4).

²²⁸ Ex. 43, PL. FIRST AMD. COMPL., Case No. 2022CV30023, (Jun. 22, 2022).