stafford PLLC

Mark A. Stafford
Attorney at Law

March 6, 2025

Via first-class mail and
email to danielpeterson@parkerpoe.com

Mr. Daniel E. Peterson
Parker Poe Adams & Bernstein LLP
620 South Tryon Street, Suite 800
Charlotte, NC 28202

Re: Cabarrus County's Breach of Contract with Michael K. Downs

Dear Daniel:

This firm represents Michael K. Downs, former County Manager for Cabarrus County. I understand that you are now the attorney for the County. Please let me know if this is incorrect.

As you likely are aware, Mr. Downs was abruptly and publicly terminated from his position without notice on January 21, 2025. Shortly thereafter, the County's then-HR Director Lundee Covington informed Mr. Downs that she had been instructed not to honor Mr. Downs' employment contract, specifically his guaranteed severance payment.

Mr. Downs' agreement with the County, as amended, provides that Mr. Downs is entitled to severance, which "shall be paid in a lump sum comprising eighteen (18) months of salary and associated benefits." That lump sum should have been included in the County's January 31, 2025 payroll (less standard withholdings). Consequently, interest is running at the North Carolina legal rate of 8 percent from that date; *i.e.*, the date of the contract breach.

The bonus provision (set forth in the first, second and third contract amendments) mandates that Mr. Downs receive a $30,000 guaranteed bonus, paid quarterly. He is therefore entitled to a pro-rated share of such amount, calculated through the date of his termination.

I have been retained to obtain all such sums, through litigation if needed. However, in an attempt to avoid formal resolution of this matter through the courts, I relay the following:

The "With or Without Cause" severance provision of Mr. Downs' contract was approved by the Commissioners multiple times. In her conversation with Mr. Downs, Ms. Covington indicated that she had been told that the severance terms were "illegal," purportedly because the payments are to be paid if the County terminates Mr. Downs "with or without cause."

As a preliminary matter, this provision was an express term agreed to by the County Commissioners beginning in Mr. Downs' initial employment agreement dated November 21, 2011, and reiterated and/or incorporated by reference in each of three approved subsequent amendments. Thus, the Commissioners agreed to this provision intentionally, on multiple occasions over multiple years, as an incentive to ensure that Mr. Downs remain in his position. And such a provision is in no way prohibited by law.

<u>There was no valid "cause" for Mr. Downs' termination in any event</u>. The "with cause" component of the agreement is actually irrelevant to Mr. Downs' termination, because there was in fact no proper cause for the action. The pretext for the firing of this 63-year-old employee is patently false: The Chairman of the Commissioners, Christopher Measmer, in his undated termination letter to Mr. Downs, asserted that the basis for the termination was an alleged failure by Mr. Downs to inform the state Local Government Commission ("LGC") of a lower appraisal for the ACN property that the County was purchasing. Specifically, Mr. Measmer alleged:

> [W]hat was not disclosed to the LGC was the existence of a $24 million appraisal.
> . . . .
> Failing to disclose this appraisal to the entity responsible for assessing and approving financing to local governments damages the credibility of the County in applying for its financing in this project.
> . . . .
> Either you were directly involved in failing to disclose the $24 million appraisal to the LGC or you lacked oversight and accountability over the deputy county manager involved."

Publicly asserting that these allegations provide cause for termination of Mr. Downs goes far beyond the bounds of professionalism, good faith, and the law. While Mr. Downs was in fact present in many of the meetings with the LGC and staff, presentations to the LGC Board were headed by then-Chairman Steve Morris. With the assistance of County staff, it was Mr. Morris–*Mr. Downs' supervisor*–who addressed the Board at all meetings relating to the ACN building purchase—The first being on July 9, 2024, followed by subsequent presentations and question-and-answer sessions on September 10, 2024, and October 1, 2024.

Consequently, if Mr. Measmer has a grievance of some sort relating to information (or the purported lack thereof) relayed to the LGC or the timing of same, he should direct his ire toward his predecessor, not Mr. Downs.

One thing I can confirm, however, is that Mr. Downs was the one who personally mailed some 200 pages of documents relating to the purchase–including discussions of the $24 million appraisal–to each and every member of the LGC Board.

Mr. Measmer's accusation that the LGC was not informed of the lower appraisal as part of its consideration of the purchase is an outright lie: He knew so at the time he signed the termination letter.

At the October 1, 2024 LGC meeting, the Board spent more than an hour debating and questioning Mr. Morris regarding the reasons for a large difference between the $24 million and $54 million appraisals. *Mr. Folwell noted on the record that Mr. Measmer was present to hear the discussion*.

Mr. Measmer therefore knew that the LGC was well informed and had fully vetted the appraisal issues at length. He knew that one board member even dismissed the lower appraisal because none of the sales of supposed comparable property was even located in Cabarrus County. Mr. Measmer also knew that, unlike prior meetings where the Board or staff needed more time to consider the second appraisal, not one objection was raised during the Board discussions to any lack of notice of the earlier appraisal.

The proposal passed because, thanks to Mr. Morris, Finance Director Jim Howden, Assistant County Manager Kelly Sifford, as well as Mr. Downs, the LGC Board knew at the end of its October 1, 2024 discussions that it possessed *all* relevant information–and sufficient time to consider same–before voting by a substantial (six-to-three) majority to approve the proposal.

For anyone who believes that Mr. Downs or anyone else in Cabarrus County Government pulled the wool over the LGC's eyes, I commend to their viewing the video of the October 1, 2024 LGC meeting, which can be found at https://www.youtube.com/watch?v=huygbJeZl_0. Discussion of the purchase of the ACN building and the two appraisals begins at minute 40:10 and continues until 1:47:35.

Mr. Measmer of course needs no such education: he heard every word as it was spoken.

Mr. Downs is owed gross severance and bonus sums totaling $464,834.40. Mr. Downs' 18-months' severance totals $434,834.40, and the amount of his contractually mandated bonus is $30,000.00, resulting in a total principal sum due of $464,834.40, less applicable withholdings.

In addition, interest is accruing on the overdue severance amounts at the legal rate of 8 percent per annum from January 31, 2025, which was the payroll date next following the date on which the County fired Mr. Downs. We will verify the amount of withholdings on the severance and the resulting interest due following receipt of payroll detail on the above sums. Mr. Downs' $30,000.00 bonus is guaranteed in full without condition, although in prior years it has been transmitted in quarterly payroll deposits. Assuming payment as set forth below, we will not seek interest on the bonus sum.

Consequently, please have the County remit the full 18-months' lump sum severance payment less withholding but with the addition of the appropriate amount of interest through the date of payment by either wire, direct deposit, or certified funds no later than end of business March 14, 2025. Remittance of the full $30,000.00 bonus (less withholdings) by that date will assist the parties in making a "clean break" from one another and minimizing subsequent disputes.

Finally, the first amendment to the contract provides that "associated benefits" are to be paid as part of the severance. Consequently, Mr. Downs reserves his rights as to any failure by the County to make its required 401(k) contributions to Mr. Downs' qualified account, to any refusal by the County to remit the appropriate state retirement plan contributions for Mr. Downs, or to any interference by the County with his rights to ongoing health care coverage, all as required by applicable state and federal law.

Thank you for your attention.

Sincerely,

Mark A. Stafford

cc: Mr. Michael Downs