

Begin forwarded message:

From: "Malcolm Harris" <mharris@hmwlaw.com>

Subject: Peterson Response to Cole Ethics Complaint

Date: October 31, 2016 at 3:49:21 PM PDT

To: <eglick@ewlaw.net>

Cc: <upstage@olympus.net>, <crobinson@cityofpt.us>, <msandoval@cityofpt.us>, <kristennelson@me.com>, <johnw@olympus.net>, <kclow@cityofpt.us>, <dtimmons@cityofpt.us>, <dpeterson@cityofpt.us>, <MHoskins@cityofpt.us>, <ptwelch@me.com>, <rmsepler@cob.org>, <dkingpt@gmail.com>

OOPS. Wrong version was sent. Here is the correct version.
Sorry for the ongoing confusion.

Mal Harris

Dear Mr. Eglick:

I sent all of Mr. Peterson's Responses on Friday. I am resending one of them, the one entitled "Peterson Response to Cole Complaint." After sending it on Friday I realized that a few sections were incomplete, that the Exhibits had not been attached and that references to some of the Exhibits were incorrect. I also made a few minor revisions to clear up statements that may have been unclear.

Attached is a revised version of that one document.

Mal Harris

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Peter J. Eglick eglick@ewlaw.net
All respondents

Re: Response to Cole Complaint

Dear Mr. Eglick:

This letter responds to Mr. Cole's Complaint of June 23, 2016, as well as to his follow-up information dated October 7, 2014. First is a general response and information related to the Complaint. Following that are specific responses to the numbered items that apply to me. My attorney, Malcolm Harris, will also be submitting comments on my behalf, including documents which provide information about the civil lawsuit that Mr. Cole filed back in 2013.

Mr. Cole's Complaint speculates that I received personal gain and special privileges and exceptions as a result of my position with the City. He claims that I lied and abused City services. He claims that City staff somehow assisted me in the dispute between Mr. Cole and myself. I deny all of those allegations. I note that:

- Applications for my building projects were routine building permits that requested no exceptions to codes or special conditions. Structural drawings that were submitted were designed and stamped by a licensed structural engineer.
- I notified the City Manager of my intent to submit building permit applications and he notified the City Clerk and Council by email.
- None of the staff who process building permits report to me; in fact they are in a different department. Therefore, it was determined by the City that because of this arms length relationship that routine building permit applications could be submitted to the City building department and that outside review was not warranted.
- Application for a temporary storage unit in the City lot adjacent to the Terry Building was processed through standard City processes with full disclosure that it was associated with my building. No special privileges were granted. I had no City role in the approval and other options were available if it was not approved.

- That fact that I was involved in a landlord/tenant dispute and lawsuit was disclosed to City officials. The City has no role in such a dispute. There were no other discussions with City staff, other than disclosure, regarding this situation, and certainly no assistance or collusion on their part.

Jurisdictional Issues

Statute of Limitations. As a threshold matter, I note that Mr. Cole's Complaint was submitted on June 23, 2016, more than three years after the occurrence of most of the incidents cited in the Complaint. The actions of which he complains occurred in May and the first two weeks of June of 2013. The City Code of Ethics 2.80.110 C. states "Any action taken under this Code must be commenced within three years from the date of violation." Not only were there no violations of the City Ethics Code, any actions prior to June 23, 2013, should not even be a part of the review.

Failure to State a Claim. In his letter of October 6, 2016, Mr. Cole states "Peterson lied and misused city services and processes." This is untrue. He speculates about "an appearance of impropriety and the possibility of complicity"; however, Mr. Cole provides no evidence to support the allegations of "complicity. He merely imagines what he thinks might have occurred. "Appearance" and "possibility" are not proof that such actions occurred. Mr. Cole states that I received "less scrutiny than appropriate." This is solely Mr. Cole's conjecture. My applications to the City Building Department received no less scrutiny than others receive. Mr. Cole has not alleged any facts to demonstrate that I received less scrutiny or any sort of special treatment.

Summary and Overview

I am employed as the City Engineer for Port Townsend. In my private capacity I am the Manager of Tailor Made, LLC, a limited liability company ("the LLC") which owns the Terry Building in Port Townsend. I am not a Member of the LLC, but I am one of the beneficiaries of a family trust which is the sole Member of the LLC. The LLC purchased the Terry Building in 2008, at which time the Upstage was already a tenant in the basement level of the Terry Building. There are two floors above the lower level: first floor street level storefronts on Washington Street and offices on the second floor. (See Building As-Built Plans attached as Exhibit "C")

The legal issues between Mr. Cole (the owner of the Upstage) and the LLC surrounding Mr. Cole's damage to the building and the termination of the Upstage tenancy were the subject of a civil lawsuit that was commenced in 2013 and later settled in 2014. Upstage, Cole, the LLC and I all agreed that the claims and Counterclaims were fully settled and compromised. As part of that settlement Mr. Cole relinquished all rights as a tenant in the property. The materials submitted by Mr. Cole in this proceeding relating to the lease, the termination of the lease, and

my plans for a restaurant in the Terry Building have absolutely nothing to do with the City. Furthermore, those civil claims have been fully settled. The City was not a party in that litigation and City employees provided no testimony or assistance to me in the litigation. Nor was there any discussion with City staff regarding the litigation except that I disclosed to the City the fact that there was a lawsuit between myself and my tenant. The misfortune that Mr. Cole brought upon himself had nothing to do with any actions taken by the City. They were the result of his multiple breaches of the Upstage Lease Agreement and the fact that he caused extensive damage to the leased premises.

There were no discussions with City officials asking for any kind of position to be taken on matters related to the lease and lawsuit. There were no “closed door sessions” with City staff regarding the Upstage lease. There was no collusion, wrongful gain, intent to harm, dishonesty or abuse of power regarding the events surrounding the termination of the Upstage lease at the Terry Building. There was no “insider information” to assist in a lease dispute.

Communications with City staff from my contractor or me were related to routine building permit applications submitted to the building department for work undertaken on my behalf, as well as disclosure to City officials that there were potential legal issues with the tenant of the building that might be brought into the public forum. Communication and notification was with appropriate City staff.

My Role at the City and City Organization

As the City Engineer for the City of Port Townsend, I manage Capital Projects and Engineering which is currently within the Public Works Department and I report to Ken Clow, Public Works Director. I currently have a staff of 8. I have responsibility for overseeing capital improvement projects for transportation, utilities and Facilities. My group also reviews and inspects the infrastructure improvements for new private development in the public right-of-way.

The City Building Department is a separate department under the jurisdiction of the Planning and Development Services Director, or in 2013, called the Community Services Department. I have no management responsibility or authority over the staff, actions or decisions of the Building Department, which reviews and processes all building permit applications and inspections..

Terry Building Improvements

The Terry Building at 923 Washington Street was purchased by the LLC in 2008. During the time we have owned the building, all improvements that have been undertaken are to the building itself. There have been no utility development permits. Building permits have been obtained for all work performed on the building. All structural work on the building has been designed by licensed engineers and their stamped drawings were submitted for approval. All work has been designed to appropriate building codes. Construction work undertaken on my

behalf has been performed by Todd Hulbert who in 2013 was President of Tollefson Builders and currently owns his own company, Hulbert Custom Construction. All work has been permitted and inspected by the City Building Department. Structural work has also been inspected by the engineer who designed the improvements. Work on the building continues to this day. There have never been any requests to vary or be exempt from building codes or engineered drawings. There have never been any reduced standards applied to the design or permitting for the building. I have never been personally involved in reviewing or issuing building permits. There have been no utility or street improvement permits related to the building which would have involved my department at the City. There was a request and approval for a temporary storage shed in a parking space that I had no input in and was handled by the police department and public works director. The request was made by Mr. Tim Roth on our behalf. The City was fully aware of my ownership of the Terry Building when that permission was granted.

Attached to this letter is additional information in support of my statement, a chronology of events with photographs, and specific detailed responses to each of Mr. Cole's items that apply to me.

Yours Respectively,

David Peterson

EXHIBITS

- A. Specific Responses to Cole Complaint and October 7 Submittals
- B. Tracy Gudgel Inspection letter of June 27, 2013
- C. As-built Drawings of Terry Building Floor Plans
- D. Plan Showing Damage in Upstage Kitchen Area
- E. Tollefson Statement
- F. City Permit Regarding Fire Suppression System, Issued June 7, 2013.

COLE COMPLAINT – SPECIFIC RESPONSES TO COMPLAINT SECTIONS

1A Statement of Violations of Port Townsend Ethics Code

2.80.030 - Improper Use of official position

A. At no time did I engage in a transaction or use my position or for personal gain or profit. Through my agents or myself, building permit applications were submitted as would be submitted by any other applicant. No exceptions to building codes were requested. There were no special privileges or exceptions secured as a result of my position in the City. The discussions with the building department and other City officials, either by me or my representatives, were about what should be included in applications and when permits or approvals might be received. A request for approval of a permit for structural repair of a rotted building column that was unforeseen and the response of the building department was no different than in any other party is dealt with in an emergency situation. There was no special treatment owing to my position for any permit application, and certainly no personal gain.

Mr. Cole (page 7 –a.) alleges I “secured special privileges and exceptions”. However, no exceptions were requested or granted. Cole states I received “reduced scrutiny and regulation and inappropriate assistance” but provides no facts as to what reduced scrutiny I received or what in appropriate assistance. The hood system for the building was designed by a licensed fire hood system installer – Alpine Fire. I did not dictate their design and they provided their typical full design submittal package to the Fire District and Building Department. Structural plans were prepared by a licensed structural engineer to meet building codes. The actions of the City were related to review and approval of routine matters. Mr. Cole states that from 6/18 I received benefit from “collusion with CM.” That is a serious allegation that has absolutely no evidence to support. There were never discussions regarding Upstage Lease issues except disclosure of the fact that a dispute was occurring. There was no assistance requested on the part of me or my representatives nor granted by the City that any different than any other applicant would have received.

2.80.030 B. At no time did I use City resources for my benefit. There was no one under my control or direction at the City who was involved in permitting or approvals. No employee or resource of the City was used for my personal gain or benefit.

Mr. Cole states (page 8 – a.) that I “used City resources ...for personal gain”, however, provides no facts as to what these specific resources were, nor is there an explanation of what was my “personal gain”.

2.80.040A Conflict of Interest

I was not beneficially interested in any transaction involving the City and received no compensation or reward.

A.1 I had no influence in the conduct of business between the City and any entity in which I had a financial interest. Regarding the Upstage, I had no say in any matters between the Upstage and the City, for example business licensing. None of the matters cited by Mr. Cole influenced an activity between the Upstage and the City. And there was certainly no lessened scrutiny.

A.2. I received no gifts or favors and Mr. Cole provides no specifics.

A.3. I received nothing of value from an official or employee. I do not know what “see #34” alludes to so it appears there is not specific allegation to address.

A.4. Again, this is an allegation with no proof provided.

A.5. At no time did I use any information not available to the general public in order to financially benefit myself. The City in no way assisted me in private litigation matters; we never had any discussion whatsoever to that matter. Mr. Cole also states I used “knowledge of permitting loophole” but does not say what those loopholes are. I have no idea what those would be. He also states I used knowledge that I would be “wrongfully under-supervised.” Quite the contrary, as City Engineer and employee of the City I knew I was under extra scrutiny and therefore adhered to open procedures at all times.

2.80.040 B. Disclosure

I disclosed to City Manager David Timmons in March 2013 that I would be applying for building permits for work in the Terry Building. Mr. Timmons followed up with an email notification to City Council and the City Clerk (March 19, 2013 – Item 19 in Cole’s October 7 submittals). Mr. Timmons email states that for any permit which is largely ministerial then permitting by City staff would be appropriate.

2.80.040 .2 Reporting.

The only permit that was initially issued by the City Building Department was FPP013-005 on June 7, for replacing a hood in the Upstage kitchen. (See Exhibit “F”) This was a minor permit with a routine design, whose details were dictated by the Fire Marshall and Alpine Fire who was the system designer and installer. The permit for emergency structural repairs was issued on June 23, 2013, (BLD013-048). Mr. Timmons followed up with reporting to City Council by email on July 3, 2013 (Cole Complaint page 32 and 33).

Subsequently, reporting of the status of litigation between the Upstage and myself is not a matter where the City has an interest and is not subject to disclosure or reporting. The

landlord/tenant dispute was a private matter. Eviction of a tenant for breaches of a lease is not a matter that comes before the City or any City official for any kind of action or determination.

2.80.070 Confidential Information

There was no confidential information provided by the City to my attorney. The only information obtained by my attorney from the City was obtained through a public records request in which he asked the City to produce the same documents that had been requested by Mr. Cole's attorney.

1B. Statement of Violations of Personnel Policies

Page 16. Mr. Cole states "there is an appearance of an agreement" and "they intended together to indirectly affect the outcome of DP's court proceedings." There is no evidence to support these grossly inaccurate statements.

"Obstruction of Justice" is a serious allegation that Mr. Cole provides absolutely no evidence to support. The claim that I or anyone else was attempting to impair court proceedings is a wild claim with absolutely no basis in fact.

1C. Violations of WA State Code of Ethics

Mr. Cole's stated violations to WA State Code of Ethics mimic his allegations for the City Code and the answers above apply. At no time did I use my position for special privileges or exemptions. In fact, my representatives and I went out of our way to be clear that we were not asking for any special privileges.

2. Brief Timeline of Events

Page 19

Email stated on 3/10/13 was dated March 19, 2013. This notice is in line with the Ethics Code. Mr. Cole's conjecture as to the reason for the notice, where in the last sentence he states "seems", is conjecture. Notification was to clarify current and potential future activities at the Terry Building.

4/3/13. The application on April 3 did not include structural upgrade to the Terry Building. It contained layout drawings of the first floor of the Terry Building to obtain initial comments on the first floor, such as number of bathrooms, ADA accessibility and other issues. Structural plans for the lower floor space were not prepared until May 22, 2013.

5/22 Mr. Hoskins had indicated he may have some time in his schedule for review; however it turned out not to be the case. One of the reasons the structural work in the Upstage space was canceled with Tollefson Construction on June 3 was that it appeared the permit would take a while to review and approve.

5/31/13 MOA. Mr. Cole refers to the MOA between the Upstage and DP that is included in his Item 9 of his October 7 submittals. This MOA represents a landlord/tenant issue and was the subject of the lawsuit and settlement; therefore it should have no place in Ethic Code review other than perhaps for background purposes.

Page 20

6/5/13. Mr. Cole's characterization is inaccurate. The Eviction was not planned from the start, and the nature of the work was not hidden. Mr. Cole was made fully aware of the change in plans. This is indeed the plan that was undertaken as evidenced by the permit that was received on June 7.

6/7/13 FFP013-005. Mr. Cole speculates that the permit was "expedited" whereas this was a routine permit. Steve Bounds from Alpine Fire had been in discussions with Fire District staff prior to the submittal as to the design of the system and what was needed for the permit.

6/10/13 DP letter. Mr. Cole misstates when he claims "He discovered it (that is, extensive damage) while performing demolition for his structural upgrade." As described below and in the attached Chronology, the contractor was not undertaking a structural upgrade. There was no permit to do so. The damage was "extensive", was well beyond what was anticipated, and in fact was well beyond limits of work even if we had proceeded with any structural work. Note that Mr. Cole does not deny that there was damage. He only disputes the extent of the damage. The modifications for structural work might have been in the 5/22 letter but they were not the work contemplated on June 10 nor permitted by the City. The letter of 6/10/13 was in fact proper notification to the Building Department of changed and unexpected field conditions.

Page 21

6/12/13 – Demolition **does not** match "the plans submitted" as Mark states. The bracing had to be added quickly as the contractor did not intend to remove load bearing walls.

6/17/13 Cole states this communication to the City is the first time that postponing or abandoning restaurant plans was considered. This is grossly false and evidence of its inaccuracy is provided throughout this response. Building Department notice of withholding review at the building department was a procedural step in my change of plans and postponing of plans. I had no permit to do any structural upgrades at this point in time.

In paragraph 5 Mr. Cole states "one column did show impairment but was bolstered by over twenty feet of bearing wall and flooring." And "No structural failure was evident or likely." This is nonsense and contrary to the opinions of the Engineer and Contractor. The wooden column carried the center load from the building, it was entirely rotten from water damage from the dishwashing operations, and the adjacent wall did not bear the building loads.

6/18/13. Cole states “it appears all hell broke loose” and “the probable scenario is.....” A probable scenario in Mr. Cole’s imagination does not create a violation of Ethics Code. The storage unit was approved through typical City protocols and procedures and I was not involved in the determination of whether permission would be granted or denied.

6/18/13 to 6/24/13 and the rest of the headings. Mr. Cole imagines and presumes cover ups that do not exist.

3. City of Port Townsend Building Department Activity Log Events

Actual permit activity logs are included in Mr. Cole’s Complaint and speak for themselves.

4. City Manager Emails

Regarding the storage shed, The MOA stated “a container will be rented to store the contents of the Upstage.” Tailor Made paid for the cost of the unit. Tim Roth arranged for the storage unit. I had no part in locating, calling or requesting any City approvals (which are through the Police Department) for the unit in the Back Alley. City officials knew I was involved in the project and therefore made sure there was no special treatment to me and that it would be treated the same as any other applicant’s request. If the unit had not been approved for location in a parking space, other alternatives were available including locating on the property.

5. “The Big Lie”

On the one hand, the circumstances related to the timing of work in the Terry Building and Upstage space should not even be under review under City Ethics Code, as this was a landlord/tenant dispute.

On the other hand, Mr. Cole’s assertions that I “lied” cannot remain unaddressed. Mr. Cole argues repeatedly that I had not changed the scope of the work with Tollefson Construction by the time the work began in the Upstage on June 9 and when Mr. Hulbert arrived on Monday June 10.

The plan absolutely did change and this is demonstrated by several facts including:

1. I met with my contractor on the evening of June 4 to review costs and schedule for the restaurant project. The proposed project was cancelled because costs were extensively higher than expected, the schedule would have taken all summer, the building permit for the structural work had not yet been received and was not likely to be, Mr. Hulbert did not have sufficient crew available, and there was only a two-week window in the first of June to do the work. We canceled the plan for structural upgrades in the Upstage Space, which also canceled plans for the restaurant to be located above the Upstage.

2. This change was reviewed with Mr. Cole, with plans to go forward with replacing the kitchen hood and repairing some flooring.
3. A press release was sent to the newspapers
4. Tollefson Builders had no shoring or similar materials on site. If the contractor had been mobilizing for structural work he would have had to have shoring and other items delivered to the site in advance of the work.
5. The only permit issued on June was for the hood (FPP013-005) valued at \$10,000. (See Exhibit “F”)

When the expected-to-be minor work on the kitchen was undertaken on June 9, it turned out not to be minor at all -- extensive rot and damage were discovered as the work progressed -- all of which was the result of the tenant’s activities. It was only after this extensive water damage was uncovered in the first week, that engineer Tracy Gudgel was brought back to the site, revised structural drawings submitted, and requests for the building permit were renewed because of the unexpected circumstances. The building permit for the structural repairs was approved on Friday June 21, two weeks into the project; and was only requested and issued because of the damage that was found during the week of June 10.

Mr. Hulbert who performed the work was also prepared to testify at trial as to the accuracy of these facts. His statement, which was provided to Mr. Cole during discovery in the civil action, is included as Exhibit “E”.

6. “Favoritism”

Page 38

Cole states that DP received “wrongful advantage” and

- ”Received reduced scrutiny
- Received preferential treatment
- Wrongfully advantaged loopholes
- Was not required to provide regular disclosures
- Was allowed to convey erroneous information
- Was assisted by City Council members”

None of these accusations have any truth to them. None are supported with allegations of fact that support such claims.

1. The email to Gudgel was based on building department workload that appeared to have a window of availability. This turned out to not be the case and no permit for structural work was received by June 5. The permit was only processed later in order to install the columns need for the structural emergency.

2. 6/5/13. Permit FPP013-005 was not expedited. It was basically an “over the counter” process because the fire Marshall had already approved it. Mr. Bounds at Alpine Fire had been in discussions with the Fire District regarding the contents of the permit prior to submitting the permit so it was a complete and full submission of over 35 pages. In addition, there was no grand scheme to use this permit to “disguise” activities for a structural upgrade under reduced scrutiny.
3. 6/10. Mr. Cole reads his own meaning and bases extensive conjecture off of a simple notice to the Building Department of the changed conditions at the site of the work, which is intended to keep the Building officials in loop, and completely counters Cole’s own assertion of “lack of supervision”.
4. The City Manager in no way intervened in any legal strategy.
5. An e-mail of disclosure does not constitute favored treatment
6. Privileged access. No one coordinated a story and Cole provides no proof of that occurring.

7. DP’s Contractor’s Letter

As explained in other parts of this response, “expediting” was a request from the contractor. The permit was not received by June 3 and that was one of the many reasons that the project became just a hood upgrade. The “structural improvements” did not get permitted by June 5 and were in fact removed from the contractor’s scope of work.

8. DP’s 6/10 Letter

The letter to the building department on June 10 that Mr. Cole refers to (page 5 in Cole Attachment 3) was submitted because the permit the City issued on June 7 was only for a new hood. New linoleum flooring and minor floor leveling could be done under that permit. When extensive rot of the subflooring was discovered on the morning of June 10 the contractor had to remove a back wall and the plumbing and electrical conduit attached to the wall. The City was appropriately notified of this additional work that was not contemplated nor planned to be done at this point in time and was not included in the 6/7 permit. This notice was given before the full extent of the damage was found later in the week, including the irreparable damage to a main building support column.

The scope of work for Tollefson Builders to begin work on Monday June 10 was to install a hood and new flooring. Counter to what Mr. Cole states on page 43 of the Complaint, there was no expectation of removing all kitchen equipment, there was no plumbing and electrical to be removed; there was no plan to remove a grease trap or a concrete floor – there was in fact no knowledge that an elevated concrete floor existed – Something Cole may have known but not disclosed. The reason for the permit modification letter of June 10 was that all of those damages were discovered Monday morning by Mr. Hulbert, it was totally unplanned, and the building department needed to be informed of this new situation.

To address other issues on page 43, in the bullets, there was no permit for phased review or structural activity because it never got approved before work was ready to proceed. That was why the Tollefson work effort was modified on June 3 and only a permit for hood replacement was received. All of the other work, including at the structural repairs later in the month, were only added on an emergency basis due to the extensive, unanticipated water damage that was encountered in the first few days.

Page 45 – the request for a permit for foundations and beams was not received and did not receive review by the building department by the time a decision was needed on June 3. For this reason and others related to cost and schedule, this structural work was eliminated. Only a permit for bullet item 3 - a new hood and foam system - was received on June 7. (See Exhibit “F”).

9. DP’s 6/17 Email to Hoskins

This e-mail is clear and needs no interpretation. By this point in time, replacing the rotted column had become a structural “emergency” due to the condition, as explained throughout this response and in the Chronology.

10. DP’s 6/21 email

This e-mail is clear without the need for Mr. Cole’s inaccurate speculation. I stand by the statements in this e-mail. The chain of events leading to this e-mail are described throughout my response.

11. Engineering Drawings and Permits – page 52

Concept plans for a restaurant on the first floor above the Upstage were submitted on April 3, 2013. These were general layout drawings to get preliminary input on bathroom sizes, ADA access and other similar issues. Structural, mechanical, electrical drawings were not developed yet. These were to see if concepts raised any building issues.

Preparation of structural plans got delayed for several reasons. They were submitted to the building department on May 23. I had not yet received cost or schedule information from my contractor as he was tied up on other issues. When we met on June 3 it was clear the City structural review would not be completed in time and that costs and schedule were well beyond our means. The only work that was permitted was for a hood replacement.

There were no “loopholes” available or used. I do not know what the “loopholes” are that Mr. Cole refers to. Nobody colluded to call the work “damages.” I characterized it as that and it was damages. The need for structural upgrade and rework in June was caused by the damages in the Upstage space caused by Cole. And all new work has to be installed to current codes, so the work had to await approval of engineered plans to go forward.

1. No City staff “assisted” me in the work; the permit applications on my behalf were handled in the same manner and timeframe that any other member of the public would receive ,
2. There was no coverup, because there were no errors to cover up.

12. DP’s “Eviction Strategy”

Cole states that “ “DP denied validity of Upstage lease and contemplated eviction before BLD 13-048.”

Mr. Cole was on a month-to-month basis, as a holdover tenant, subject to the terms of the Lease, due to his failure to give timely notice of intent to renew (twice). (Cole’s page 74, February 9, 2013 letter) I therefore had the right to terminate his tenancy at any time, upon giving 30 days notice. The options of renewing or renegotiating a new lease with the Upstage were on the table in my discussions with evaluating alternatives with Mr. Locklear, my business consultant.

Mr. Cole states that I was keeping all options open. That was my prerogative as a building owner with a tenant who is on month to month status. Landlord/Tenant relations and my thoughts and actions as a landlord are not the subject of or basis for a City Ethics Code review. There was no city involvement in those activities.

In the end it was the damage to the Premises from Mr. Cole’s operations that caused the problems in the first place. These were damages I had no idea existed. To think that I knew there were damages and created a long term eviction strategy around this knowledge is a distortion of the facts. The fact is, long term water damage from Mr. Cole’s kitchen operations and walk-in cooler seriously rotted and damaged the premises that had to be repaired. The damages which he caused, and his refusal to repair them or pay for the repairs, were defaults under the lease, whether or not he was a Lessee or a month-to-month tenant.

However, none of this is pertinent because the City had nothing to do with the tenancy issues at the Terry Building, and the Settlement Agreement resolved the lawsuits and Mr. Cole waived all claims relating to the lease.

In the attachments starting on page 54 Mr. Cole selectively included items from the building permit files.

- Page 57 – See Exhibit “F” related to this permit. This permit was for the fire suppression system that was issued on June 7, 2013. First is a clearer copy of the approved permit with dates (replace Cole page 57). This application submittal material was received by the City on June 5 and approved by the Fire Marshall, Chief Lowe, on June 6, 2013. Mr. Lowe, who works for the Jefferson Fire District, was the principal reviewer for fire suppression and hood systems. There were many more pages (over 30)

of shop drawing attachments that were submitted from Alpine Fire describing the hood and fire suppression. Representatives of Alpine Fire had been in town previously to meet and develop the plan for the hood system. Note FPP13-005 is the only permit that was issued on June 7 and the only work approved for installation.

RESPONSES TO COLE'S SUPPLEMENTAL INFORMATION

SUBMITTED OCTOBER 7, 2016

File 1 1. To Mr. Eglick and Respondents

2. Gudgel, Peterson, Hulbert emails

In paragraph 4 Mr. Cole postulates that eviction was “planned for some time.” This is not true. Mr. Gudgel was emailed on June 24 because additional rot and structural damage were detected in another area of the premises under the walk-in cooler in an area that support the stairs to the balcony and the balcony. Potential legal issues were identified at that time due the significantly greater damage to the premises identified at that time.

Mr. Cole's 5th paragraph refers to a schedule of work. This Preliminary Schedule (PETERSON 0474) included in Mr. Cole's attachments was shown to me on the evening of June 3 by Tollefson Builders. This schedule is one of several reasons that the project to perform structural work in the Upstage was canceled with Tollefson Builders on the evening of Monday June 3. The email to Engineer Tracy Gudgel later in the evening at 8:07 (next page of Cole submittal PETERSON 0475) confirms this change of plans as does the subsequent email. “We are gonna slow this down as it is not possible to get the work done in the window we have.”

Mr. Cole further states in this paragraph that Tollefson applied for an initial permit on May 21 (Mr. Gudgel's structural design plans were actually submitted on May 23). Mr. Cole states that “city issued a filed copy per Gudgel's specs on 5/23.” This is not true; the city did not issue anything on May 23. The “Field Copy” shown in Cole's next item, Attachment 3, are structural calculations submitted by Gudgel to support the engineered plans that were submitted and received by the City on May 23.

It is true that “approval for a ground floor fire suppression system is approved on 6/7.” This was the only work approved by the City to be undertaken on June 10, and Mr. Cole was fully aware of this change from the meeting between Cole and me on Wednesday June 5, and concurred with the plan to continue with the new hood that he needed for fire safety protection from his kitchen operations.

Mr. Cole is inaccurate in his second to last paragraph (7th paragraph). The letter to the building department on June 10 that Mr. Cole refers to (page 5 in Cole Attachment 3) was submitted because the permit the City issued on June 7 was only for a new hood. New linoleum flooring and minor floor leveling could be done under without a permit. When extensive rot of the subflooring was discovered on the morning of June 10 the contractor had to remove a back wall and the plumbing and electrical conduit attached to the wall. The City was appropriately notified of this additional work that was not contemplated nor planned to be done at this point in time and was not included in the 6/7 permit. This was before the full extent of the damage was found later in the week, including the irreparable damage to a main building support column.

Last paragraph – City Manager correctly describes the activities as a response to damages and emergencies as that is how I described it to him. At that point in time the premises were supported only by temporary shoring with a main column removed and quick action was needed by the Contractor to resupport the building. This was disclosure on my part to the City Manager; there was no reason for him to intervene in private matters between a tenant and landlord,

3. Peterson & Building Department Docs Part 1

These files and item No 4 are copies of materials from the Building Permit file submitted at several points in time. I did contemplate starting a restaurant in the first floor with Tim Roth which would require structural support below. However, on June 3 these plans changed when the nature of work was discussed with Todd Hulbert of Tollefson Builders.

The only requests to the City by me, or on my behalf by my contractor, were to review and approve building permit plans and applications, as they would do for any other applicant. The only emergency requests were related to the point when the main support column to the building was found to be irreparably damaged and the building was supported by temporary shoring that had to be put immediately in place without the benefit of structural design.

Structural plans were approved on June 21 due to the emergency nature of the situation; otherwise, there would have been no structural work undertaken at all in the Premises in June 2013. It was also fortunate that some structural design had already been completed and submitted which helped get the building resupported in a timely manner.

4. Peterson and Building Department Docs Part 2

There are part of the building permit files under item 3 above.

5. FIELD COPY BLD 13-048 52313 ENGINEERED COLUMNS

There are part of the building permit files under item 3 above.

6. Tim Roth Plans

These are Mr. Roth's drawings for a new kitchen in the Upstage, which only confirm that plans for a restaurant in the upper floor were abandoned. This information does not seem germane to allegations of City Ethics Code violations.

7. Legal and Court Documents

These documents of Termination of Tenancy and Attorney Replies were all mute based on the Settlement Agreement wherein Mr. Cole relinquished any rights to a Lease. In addition, these are only a small part of the legal documents. "The bid le" is addressed in the response to Item 5 of the Complaint above.

9. MOA May 31st 2013

The MOA is moot after the Settlement signed between the Upstage and Tailor Made LLC in which Mr. Cole waived all claims regarding the lease. The following responds to Cole's assertions:

1. Tim Roth coordinated finding, getting approvals for and having the storage unit delivered. I was not a party to any City approvals and City staff know this was related to the Terry Building and that I owned the building. This type of approval had been afforded to other downtown businesses. There were other options if this was not approved.
2. ..
3. Cole asserts that Upstage did not request hood improvement; however, Cole wrote the clarification addendum page PETERSON 0598 that states a hood will be provided and floor leveled.
4. Plans changed on June 5 and Cole was aware of, informed of, and in on that change.
5. Plans changed on June 5.

10. Storage Unit

The MOA states "a container will be rented to store the contents of the Upstage." Tailor Made agreed to pay for the cost of the unit. Tim Roth arranged for the storage unit. I had no part in finding, calling or obtaining any City approvals for the unit in the Back Alley. Cole put some of the Upstage items in this container and had a pad lock on it. After the termination of the lease, we awaited the removal of his contents before returning the container.

12. Valentine Interiors

The scope of Valentine Interiors was in response to Item 9 of the Memorandum of Agreement. This information should not be part of the Ethics Code review and has no bearing on it.

13. Online Permit Portal

This permit file had multiple submittals for different project phases and different projects over time, all related to the Terry Building, starting with a concept proposal in April 2013 for a restaurant. Building 13-048 was modified in 2014. A new set of engineered plans were submitted to DSD from a different engineer and for a different concept and analysis for the Terry Building. The Contractor is Hulbert Custom Construction. This was for a full seismic upgrade to the basement area. This is not the same work as was contemplated in 2013 and is more extensive. This was undertaken because removing the damage to the interior caused by the Upstage operations left the space open and available to undertake additional full seismic repairs.

In 2013 it was a repair and in June of 2013 it was an emergency because the building was supported by temporary braces once the rotten column was exposed.

14. Upstage Inspection and Photos

I submit as a counter to Mr. Cole's claims the assessment from my own experts and engineer that the stairway and balcony under the walk-in were unsafe and that the walk-in design and installation method was the cause of the damage (See Exhibit "B")

I do not know what City processes and procedures Mr. Cole alleges I misused. He does not state what those procedures are. City inspectors had no part in evaluating the safety of the rotted structural members around the walk-in cooler or in any declarations. Mr. Cole does not provide any specifics on how the City Manager's actions regarding the rotten walk-in assisted in my litigation. He had no role in it.

15. Tollefson Builder's Reports

See Exhibit "B" for documentation that the walk-in installation method was the cause of the damage.

There is no allegation that any of this material relates to a City Ethics Code Complaint.

The installed walk-in cooler had no insulation in the floor and had no insulation in the wall cavities. Other experts were scheduled to testify at trial as to the cause of the rot and the fact that ventilation was not the problem but was improperly insulated.

This is all moot with the Settlement.

16. Peterson/Locklear and Associates

Mr. Locklear was a business consultant I used to evaluate alternate business possibilities. Mr. Cole does not point out any specifics in these extensive communications related to Ethic Code. This material should not be part of the ethics review.

Mr. Locklear had no role in a decision to abandon plans for structural upgrades in the Upstage Space on June 3. This occurred at a meeting with Tollefson Builders.

Mr. Locklear was made aware that those plans changed on June 5. Note on pages PETERSON 0379 and 0380, toward the end of this submittal that the email confirms that I went over the new plan - which included only a new hood and not a long schedule of structural work - with Mr. Cole.

17. Peterson-Roth Communications

Mr. Roth was an associate I was working with to potentially start a restaurant. This material does not support any allegations of City Ethics Code violations.

18. Sandoval Facebook Exchange

I do not see anything on the Sandoval facebook pages that supports anything related to an Ethics Code violation.

19. Timmons 31913 Email to Council and City Employees

The permits for the Terry Building were “largely ministerial”, involving application of building codes and did not involve discretionary permits or waiver requests.