

SCHLEMLEIN FICK & FRANKLIN, PLLC
66 S. Hanford Street, Suite 300
Seattle, WA 98134
Phone: (206) 448-8100 Fax: (206) 448-8514

1 Garth A. Schlemlein, ASBA No. 8602011
Schlemlein Fick & Franklin, PLLC
2 66 South Hanford Street, Suite 300
Seattle, Washington 98134
3 Phone: (206) 448-8100
Fax: (206) 448-8514
4 Email: gas@soslaw.com
Attorneys for Intervenor
5

6
7
8
9 BEFORE HEARING OFFICER FOR THE ASSEMBLY OF THE
CITY AND VOROUGH OF JUNEAU

10 KARLA HART,
11
Appellant,
12
v.
13
CITY AND BOROUGH OF JUNEAU
14 PLANNING COMMISSION,
15
Appellee.
16

Appeal Case No. APL 2023-AA01

17 **INTERVENOR’S OPPOSITION TO MOTION FOR HEARING OFFICER**
18 **DISQUALIFICATION**

19 Intervenor Huna Totem Corporation (“HTC”) responds to Appellant Karla Hart’s
20 (“Appellant”) *Motion for Hearing Officer Disqualification* (“Motion”). Scott Brandt-Erichsen was
21 appointed as the hearing officer in this matter.
22

23 **I. ARGUMENT AND AUTHORITY**


24 Each municipal officer holds office as a public trust, and any effort to benefit a substantial
25 personal interest or a substantial financial interest through official action is a violation of that trust.
26 CBJ Code 01.50.005. The public does not prohibit an officer from following independent pursuits,
27 so long as those pursuits do not interfere with the full and faithful discharge of an officer's public

1 duties. CBJ Code 01.50.005. A party may request the disqualification of a hearing officer or appeal
2 agency member by filing an affidavit, before the taking of evidence at the hearing, stating with
3 particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be
4 accorded. CBJ 01.50.100(b). The functions of hearing officers and those appeal agency members
5 participating in decisions shall be conducted in an impartial manner with due regard for the rights
6 of all parties, the facts, and the law, and consistent with the orderly and prompt dispatch of
7 proceedings. CBJ Code 01.50.230.

8 Appellant’s brief is rife with accusations based on Hearing Officer’s independent pursuits,
9 to which he has inherent rights to, and fails to show with any particularity how any of those
10 independent pursuits violate the public trust or create a true conflict of interest.

11 Standards of ethical conduct for municipal officers need to distinguish between those
12 inconsequential conflicts which are unavoidable in a free society, and those which are substantial
13 and material. CBJ Code 01.45.008(a)(3). City of Juneau Code reiterates, “there is no violation of
14 this code if as to a specific matter, a municipal officer’s (1) [p]ersonal or financial interest in the
15 matter is insignificant; or of a type that is possessed generally by the public or a large class of
16 persons to which the municipal officer belongs; (2) [a]ction or influence would have an
17 insignificant or conjectural effect on the matter; or (3) [a]ction consists of voting in favor of
18 introduction of an ordinance. CBJ Code 01.45.008(b). The Hearing Officer’s independent pursuits
19 related to the cruise ship industry are simply insignificant and conjectural as it applies to his ability
20 to be unbiased and impartial.

21 Contrary to Appellant’s wish that a Hearing Officer with no experience be appointed, CBJ
22 01.50.040 specifies that a *qualified*, unbiased, and impartial hearing officer may be assigned. The
23 Hearing Officer’s experience and proximity to the subject matter *qualifies* him to be the Hearing
24 Officer in this case. The fact that the Hearing Officer resides in Ketchikan instead of Juneau aides
25 in keeping with impartiality. The hearing Officer is not presiding over a matter in his geographical
26 area of interest or practice and yet he has subject matter exposure that can only aid him in
27 understanding the language in the submitted permit under review.

1 There are no former clients of the Hearing Officer involved in this  appeal.¹ The Hearing
2 Officer's general exposure and experience in the cruise industry does not rise to the level of a
3 conflict of interest under Alaska Rules of Professional Conduct in any capacity. Appellant is simply
4 attempting to delay the proceedings and forum shop. No evidence has been presented to suggest
5 the Hearing Officer has made any decision in the past that would be indicative of bias. The
6 assertions made are untenable in any real and practical way. Removing the current Hearing Officer
7 would only sever to delay the proceedings prejudicing the City and HTC.

8
9 **II. CONCLUSION**

10 The facts cited by Appellant do not meet the standard to disqualify the hearing officer.
11 For the foregoing reasons, HTC respectfully requests the assembly deny the Appellant's Motion
12 for Hearing Officer Disqualification.

13 DATED this 16th day of October, 2023.

14 SCHLEMLEIN FICK & FRANKLIN PLLC

15
16 *s/ Garth A. Schlemlein*
17 Garth A. Schlemlein, ASBA No. 8602011
18 66 South Hanford Street, Suite 300
19 Seattle, Washington 98134
20 Phone: (206) 448-8100
21 Fax: (206) 448-8514
22 Email: gas@soslaw.com
23 *Attorneys for Intervenor*

24
25
26
27

¹ See Order Denying Request For Voluntary Withdrawal of Hearing Officer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2023, the document to which this certificate is attached was served upon the following via the method indicated:

City Clerk:
City.Clerk@juneau.org
 Hand Delivery
 Legal Messenger
 U.S. Mail
 Facsimile
 E-mail

Appellant:
Karla Hart
karlahart@gmail.com
 Hand Delivery
 Legal Messenger
 U.S. Mail
 Facsimile
 E-mail

Appellee:
CBJ PC
Attn. Sherry Layne
Assistant Municipal Attorney
sherri.layne@juneau.gov
 Hand Delivery
 Legal Messenger
 U.S. Mail
 Facsimile
 E-mail

Counsel for Advisors for the Assembly:
Emily Wright
Robert Palmer
Emily.wright@juneau.gov;
robert.palmer@juneau.org
 Hand Delivery
 Legal Messenger
 U.S. Mail
 Facsimile
 E-mail

s/ Lacey Georgeson
Lacey Georgeson, Legal Assistant