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## MEMORANDUM

To: The City of Blue Ridge—Mayor and City Council

From: Ken E. Jarrard, Esq. and Megan N. Martin, Esq.

Date: February 2, 2016

Subject: Investigation: Phase One Findings

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On November 10, 2015, the Blue Ridge City Council appointed the law firm of Jarrard & Davis, LLP to undertake a review of the City of Blue Ridge’s policies and practices with respect to governmental operations, to identify areas where the City of Blue Ridge is not or may not be complying with pertinent local or State law, to identify any elected officials that are acting in a manner inconsistent with pertinent local or State law, and to otherwise make recommendations regarding the improvement of City operations.

Jarrard & Davis, LLP proposed a two-phased approach to performing this review. The first phase consisted of a series of interviews with senior staff and officials for purposes of issue spotting. Phase Two, if authorized, will consist of a thorough investigation of the issues identified in Phase One that were considered worthy of additional inquiry. This report will serve as a summary of the efforts undertaken during Phase One along with recommendations and the “Master List”—a distilled list providing the scope of the recommended topics warranting further inquiry. During Phase One, Jarrard & Davis, LLP, through attorneys Ken Jarrard and Megan Martin, met individually on December 1, 2015 with the following individuals:

- Council Member Rodney Kendall;
- Council Member Angie Arp;
- Council Member Bruce Pack; and
- Council Member Harold Herndon.

Additionally, Ken Jarrard and Megan Martin met individually on December 2, 2015 with the following individuals:

- Police Chief Johnny Scearce;
- Council Member Rhonda Thomas;
- Office Manager Barbie Gerald;
- City Clerk Kelsey Ledford;
- Finance Director Alicia Stewart;
- Zoning Administrator Roy Parsons; and
- Mayor Donna Whitener

During these interviews, the Interviewees were advised that Jarrard & Davis, LLP has not entered into an attorney-client relationship with the City or the individuals being interviewed. Each Interviewee was asked a pre-set list of questions and provided the opportunity to identify any specific concerns regarding improper or problematic operations within the City of Blue Ridge's government. To ensure fairness and consistency in the interview process, all Interviewees were read the same preamble statement and asked the same list of pre-set questions. Some Interviewees also chose to share documents or other information with the Jarrard & Davis, LLP attorneys relating to their personal concerns regarding the City's operations and the actions of City officials. It must be emphasized that not all complaints or issues raised during the interviews are distilled into the Master List; as many of these issues are more properly characterized as personality disputes, political disagreements or other like matters that do not merit investigation or inquiry. Such issues, though perhaps unfortunate, are nonetheless not suggestive that the implicated City official or employee is acting in a manner inconsistent with pertinent local or State law. Those sorts of issues exist in every government. Furthermore, we acknowledge at the outset that certain matters relating to allegedly improper actions by former and current officials are being investigated by the Fraud Investigation Division of the Office of Commissioner of Insurance. Any allegations relating to this matter are, therefore, subject to review by a State agency and will not be considered as part of the investigatory process undertaken by Jarrard & Davis, LLP.

Most, if not all, Interviewees reported a strained environment within the City due to personality conflicts between the Mayor and City Council members. Although not illegal and not subject to further investigation as part of the contemplated "Master List", it is this office's opinion that many of the problems identified with the City of Blue Ridge's government stem from a breakdown in professionalism and courtesy amongst the City's elected officials. City employees reported feeling that the personality conflicts amongst leaders made their jobs difficult to perform and that this oftentimes led to confusion in knowing which tasks to perform – and the associated priority of tasks - due to different guidance being provided by the separate factions within the local government's current slate of elected officials. Many Interviewees indicated that they felt the City of Blue Ridge faces significant challenges to being efficiently and professionally run due to the lack of communication and/or hostile communication amongst Council Members and the Mayor. We strongly recommend that the City's officials come together and work diligently to ensure that discourse is handled in a professional and respectful manner, irrespective of the form of communication. Council Members and the Mayor are reminded that they are the face of the City of Blue Ridge's government and that name calling,

personal attacks, improper insinuation of misdeeds, and unfounded accusations should have no place in the operation of a local government. These behaviors appear to have significantly disrupted the City's ability to provide quality municipal services to the citizens of the City of Blue Ridge and are an impediment to this City's success.

A recurring theme observed during Phase One of the inquiry was that a considerable amount of the City's business is being conducted solely by the Mayor who – it is alleged – does not provide timely updates and reports about the City's business to the Council. It became apparent during the interviews that all of the functions currently being managed by the Mayor may be too burdensome for any one individual to handle and certainly too much to administer while otherwise endeavoring to manage and run a demanding personal business. This preliminary observation should not be interpreted as suggesting that the Mayor is not attempting to perform the duties she has assigned to herself—in fact; the opposite appears to be true. However, neither the Mayor nor any other City official can simultaneously fill all the roles for which are currently assigned to the Mayor – irrespective of who is responsible for so much being assigned to one person. This is especially true given that the Mayor and all of the Council Members have obligations outside of their roles as elected officials. Moreover, because City staff appear to be routinely engaged by (and receiving directives from) certain elected officials, this has resulted in City staff being placed in the middle of what appears to be an ongoing power struggle between the competing Council factions. It is strongly and emphatically recommended that the City of Blue Ridge implement a City Manager or City Administrator recruitment process. The City of Blue Ridge needs a professional, full time executive employee to carry out the policies established by the City Council and to oversee the City of Blue Ridge's day-to-day business operations. This individual should report directly to the Mayor and City Council, and should serve as a liaison between the City's Departments (including employees), the Mayor and Council. Additionally, this individual should be charged with ensuring the opening of communication lines between Council and the Mayor. The appropriate individual should be experienced in building consensus in a fractious government environment wherein that government is struggling due to a breakdown in communication amongst elected leadership. It cannot be stressed enough that a professional municipal staff – reasonably buffered from political considerations - is the gold standard for good government. It is our opinion that the City of Blue Ridge should promptly make an investment in a professional City Administrator or City Manager. Though there is a cost associated with creation of such a position, we believe it will more than pay for itself with the greater office-place efficiencies and increase in morale it will create.

In the context of bringing forward a strong executive to run the City's day-to-day business operations, a review of the City's structure and the role of Council Members as leaders of particular City Departments should be addressed. It is apparent that many of the current City Council members sought elected office because they believed they would oversee certain City Departments in "Commissioner" roles. For example, Council Member Pack expressed a very strong desire to work with the City's Park programming and in fact ran for office as the Parks Commissioner. However, since taking office he has been stripped of these duties and the Mayor as the Chief Executive has assumed the liaison role for all City Departments. A review of the City's history reveals that this is inconsistent with past administrations and years of political

history in Blue Ridge. This centralization of all responsibilities appears to have harmed the collegiality of Council Members who feel that they are not being allowed to fulfill their duties and obligations to the citizens who voted for them. This has led to low morale amongst Council Members and to the Mayor being consumed with too many duties and obligations. It is recommended that Council Members again be assigned as liaisons or “Commissioners” to the City’s Departments and provide feedback to the Mayor and the appointed City Manager/Administrator regarding their work with the Departments on a routine basis. Each Commissioner should be charged with the obligation to report about the state of affairs in each of their Commissioner roles on a timetable that is to be mutually agreed upon. We recommend a return to the “Commissioner” structure as follows:

- Council Member Harold Herndon (Police Commissioner);
- Council Member Rodney Kendall (Water and Sewer Commissioner);
- Council Member Rhonda Thomas (Streets Commissioner);
- Council Member Angie Arp (Office Commissioner); and
- Council Member Bruce Pack (Parks Commissioner).

Likewise, it is imperative that the Mayor provide regular reporting of the state of affairs of the City of Blue Ridge. This need for information should not be used as a bludgeon against the Mayor; being raised only to point out deficiencies in the Mayor’s performance. Instead, this regular reporting should be done because otherwise the remaining Council members have no means to understand the issues the City is facing – and the agenda items they are being asked to vote on. Currently, there is no regular process by which the Council receives updates from the Mayor as to her efforts on behalf of the City. Candidly, this need for written reports by the Mayor would be lessened if not removed if a City Administrator/Manager were retained. Until such time, a written policy indicating the frequency for such reporting, the required content of the reporting (e.g., meetings with local officials, state of financial affairs, communications from local authorities) and the format that such reporting should take (written report or verbal report) should be formalized. It is also imperative that the Mayor’s report be presented in Open Meetings so that the citizens can understand the work being undertaken by the Mayor on the City’s behalf and be able to stay abreast of current affairs. Council Members may question the Mayor about the report during said meeting to elicit information about the City’s operations; however, it should be stressed that the manner in which Council Members and the Mayor interact when discussing these items should be civil, professional and based on factual inquiries that serve no purpose other than to understand the City’s day-to-day business and pending or future agenda items.

Certain Interviewees complained that the Mayor has acted in a manner inconsistent with the City’s Charter on various occasions. We have reviewed the City’s Charter and those actions that allegedly violated the Charter’s provisions (e.g., failure to provide regular updates as to the City’s state of affairs to Council). We recommend that legal counsel for the City of Blue Ridge undertake a review of the Charter to update this document so that it is consistent with current practices within the City of Blue Ridge. Like all other municipalities in Georgia, the City of Blue Ridge has home rule power and may modify its own Charter – or – solicit the assistance of the General Assembly to implement certain changes. We recommend the Council give strong

consideration to doing so. The Charter needs to be updated to reflect the changing face of municipal government given that the current version was substantively drafted in 1989 (over a quarter century ago). Upon revision of the Charter, it is the obligation of all Council Members and the Mayor to gain an understanding of the Charter's provisions and to rely on legal counsel for interpretative guidance of this foundational document that serves as the bedrock for the City of Blue Ridge's government. It should be noted that the City is represented by capable legal counsel. Certain Interviewees complained that the Mayor often chose to not follow legal counsel's direction. This failure to follow advice of counsel was alleged to show a pattern of waste of money on legal fees for opinions or recommendations that were not heeded by City officials. As with any attorney-client relationship, the City is not bound to follow the advice of legal counsel. No local government attorney in Georgia has the power to force their will on the elected officials they serve; moreover, oftentimes a local government attorney will make recommendations among multiple lawful options. Which option the local government chooses is up to it. The Council is the City's legislative and policy-making body. Council can make the decision to follow advice of legal counsel or to not follow advice of legal counsel. Likewise, the Mayor may choose to follow advice of legal counsel or to not follow advice of legal counsel relating to areas for which she is responsible. The key is whether the legal advice given best serves the City and not the individual elected officials who seek legal advice. The City Attorney ultimately represents the City and all officials should be reminded of this when considering the advice provided. As public officers, each and every City official serves as a trustee and servant to the citizens of Blue Ridge and must remain accountable to the citizenry in their individual decision making. With that being said, based upon the information presented by the Interviewees, we cannot recommend further inquiry into allegations that an elected official is "not following the City Attorney's advice;" as moving in that direction – and becoming mired in the intricacies of the attorney-client relationship (as it relates to the City of Blue Ridge) - could generate more problems for the City than it solves. Ultimately, the citizens of the City of Blue Ridge will determine whether its elected officials are acting in the best interests of the City – and will vote accordingly. That is where the power and authority on that issue should remain.

Another recurring allegation against the Mayor is that she does not live in the City of Blue Ridge and that her apartment/loft residence above her furniture store was improperly permitted. Furthermore, it has been noted that the Mayor cast the tie breaking vote in changing the City's zoning code to allow apartment/loft homes above retail spaces. Arguably, the Mayor should have recused from this vote due to the appearance of impropriety as her own loft/apartment was implicated by her vote. However, "having the appearance of impropriety" is not illegal, per se, though a conflicted vote on a zoning matter may render the approved zoning void. We have made informal inquiry as to any available permitting records relating to the Mayor's residence; however, thus far those attempts have not revealed any documentary evidence to support or disprove the allegations made against the Mayor on this issue. The City's Zoning Administrator was unable to find any documentation regarding the permitting of the Mayor's apartment/loft. The Mayor candidly acknowledged that she is aware of these allegations and has documentation showing that her loft was properly and legally permitted. This office did not, however, receive these documents to review prior to the drafting of this report. Issues pertaining to the Mayor's residence and loft permitting are not resolved, are worthy of resolution, and are in need of some degree of closure.

While it does appear that financial policies were largely non-existent or incomplete in years past, the City's current Finance Director Alicia Stewart has worked to implement purchasing policies that are compliant with the law. In fact, during the summer months of 2015 comprehensive policies were enacted that addressed spending limits and purchasing authority. It should be noted that the City's Finance Director displayed a strong understanding of local government finance and many issues brought up by other Interviewees (e.g., hotel/motel tax issues, spending thresholds, and competitive procurements) have been addressed by Ms. Stewart since she has assumed the Finance Director role. Specific accusations of financial improprieties related to paving projects appear to have occurred more than seven years ago and other than vague, generic allegations of impropriety - no evidence has been brought forth demonstrating systemic and ongoing financial malfeasance in capital improvement projects undertaken by the City. At this point in the inquiry process, the only area of alleged financial improprieties warranting further investigation does not relate to the Council or the Mayor. Instead, we were advised of potential financial irregularities involving a City Department and particularly matters pertaining to the liquidation of certain pieces of City property and the use of proceeds from certain annual sales events. We do recommend that a review of certain, discrete financial transactions relating to this Department be undertaken to ensure that all transactions are properly recorded in accordance with applicable law. We are not making a finding here. Far from it. We are suggesting that an allegation be further reviewed.

This office heard much discussion by and between Council Members and the Mayor involving zoning matters. Currently, one such matter is being litigated and has been the source of much discord amongst the Council and the Mayor. We note that much of the discord regarding zoning could have likely been avoided through adherence to generally recognized principles that apply to land use decisions and through consistent application of the City's zoning ordinances. The City's officials must attempt to reach compromise and work in accordance with the City's zoning policies and procedures. Heavy handed actions that have forced matters to litigation could have been avoided had Council and the Mayor expressed a willingness to work together in reviewing petitions. This should not occur. Divisiveness such as this leads to litigation and public distrust. A focus on education and conflict resolution must be a priority for the City of Blue Ridge moving forward.

It is highly recommended that all current Council members and the Mayor obtain additional training on ethics and professionalism in local government. This training should address basic precepts of ethics and also touch on issues that were highlighted during the inquiry conducted by this office:

- Conflicts of interest in all matters with special attention given to the importance of transparency and fair dealings in zoning and land use matters;
- An understanding of the mandatory conflict of interest rules under the Zoning Procedures Act, including mandatory abstention in certain situations;
- Refraining from utilizing information obtained during one's work as

- an elected official for personal gain due to “insider information;” and
- Conflict resolution. The City’s interests must be first priority; personal interests or score-settling have no place in government service.

Lastly, it is imperative that a clear chain of command for employee instruction and supervision be formed and followed. Many employee Interviewees admitted they were not sure who ultimately was the “boss” for their work assignments. In fact, many of these same individuals recounted having been provided contradictory instruction by different City elected officials and feeling that they did not have clear direction on how to best perform their jobs. This is regrettable and has led to low morale and will almost certainly lead to the loss of valuable talent if not addressed immediately.

### **Recommendations**

1. The City’s Charter should be reviewed and updated to ensure that it reflects the modern municipal structure for the City of Blue Ridge;
2. A City Administrator/City Manager should be hired to take charge of the City’s day-to-day business operations;
3. The Council and the Mayor should immediately seek dedicated ethics training provided by the Georgia Municipal Association or similar organization;
4. Council Members should be returned to their previously held “Commissioner” roles; and
5. Council Members and the Mayor should act immediately to improve their communication with each other and to put the City’s best interest first while putting aside and resolving the personal “rifts” that have developed between them. Updates on City business to the Council – in open session - by both the Mayor and, in the future, the City Manager should be routine and thorough.

### **Master List**

1. Further investigation into the financial accountability of a City Department regarding reported, irregular liquidation of City assets and accounting of cash transactions should be undertaken;
2. The ongoing questions regarding the Mayor’s legal place of residence – to include permitting - should be further investigated to definitely conclude the matter once and for all; and
3. A review of whether City officials are (or have in the recent past) utilized City resources for personal gain or the betterment of their friends and families (e.g., Council Members allegedly providing gravel or other City-provided improvements to family members or friends) warrants further review

### **Conclusion**

It must be noted that the efforts undertaken to date show regrettable levels of unbecoming behavior by certain City’s elected officials. Whether it be in threatening and abusive emails or

by allowing inappropriate comments to be made in open meetings, this lack of professionalism should be immediately discontinued so that the citizens of Blue Ridge can have renewed trust and confidence in their elected officials. At the core of good government is the belief by the citizens that elected officials are making decisions based upon the public good, and not affected by personal vendettas, personal agendas, personal gain, or other personal interests that have no place in the running of an efficient and ethical local government. Other elected officials have chosen to remain silent as the City's operations have faltered - so as to avoid getting involved in the "rifts" or disagreements. This failure to act has likewise harmed the City's government. The fissures that have festered between the City's officials should be addressed through better communication and a commitment to come together for the good of the community.