

Date: May 9<sup>th</sup>, 2022

From: Michael A. Levin  
3<sup>rd</sup> District Planning Commissioner

To: Chairman Ed Eilert  
Board of County Commissioners  
Johnson County Planning Commission Members  
Ms. Peg Trent – County Legal  
Jay Leipzig – Planning Director

Re: My Potential Disqualification in the Utility Grade Solar regulation development.  
Lack of Fairness and Procedural Transparency

I write to express my deep concerns and disappointment in the Ethics Advisory Board's May 5, 2022 Advisory Opinion and Recommendation and my potential disqualification.

For approximately 28 years, I have been a proud member of the Johnson County Sheriff's Office. I have never been accused or suspected of inappropriate conduct. During my tenure, I have been provided a variety of opportunities to serve my community. One of those opportunities was working alongside Commissioner O'Hara to promote cleaning up the abandoned Kulhman Diecast Plant.

In April of last year, Commissioner O'Hara honored me with another opportunity to serve my community by nominating me to the Planning Commission as the 3<sup>rd</sup> District Representative. From the start of my participation, I have taken great strides to ensure my professionalism, decorum and, especially, the appearance of fairness. By way of example, I provided and reaffirmed my personal email address, and contact information on several occasions:

- April 12<sup>th</sup>, 2021 – Application
- December 10<sup>th</sup>, 2021 – Email to Sherry Cross, PLN
- December 14<sup>th</sup>, 2021 – Email to Richard Lind, LGL
- February 4<sup>th</sup>, 2022 – Email to PLN-Planner on Duty (“Karen”)
- March 31<sup>st</sup>, 2022 – Email to Richard Ford, LGL

I did so to ensure I am not associated with the Sheriff, law enforcement in general, or as a county employee while working on the Commission. In fact, until this issue arose, the majority of my fellow Planning Commissioners had no idea I worked with the Sheriff's Office. Regardless of my efforts, Ms. Trent and Mr. Ford, along with Planning employees continue to use my work email address for Planning Commission business, demonstrating their incorrect presumption that I am inextricably associated with the Sheriff's Office. Their incorrect assumptions appear to form the basis for the possible perception of inappropriate conduct on my part.

The entire argument supporting my recusal is based solely on conjecture and a preconceived presumption of impropriety. This is readily apparent by the way the issue has been considered and handled from the beginning. Please consider the following:

Issue: Based on the comments made by Calvin Hayden, should I recuse myself from further participation in the Utility Grade Solar regulation development.

The Johnson County Legal department believes, based on the public comments made by Sheriff Hayden on November 16<sup>th</sup>, 2021, that he opposes a solar farm being placed in Johnson County. And that by doing so, it creates a purported or actual conflict of interest with my serving on the Johnson County, Kansas Planning Commission, specific to this matter.

Ref.: Email submitted by JoCo Legal Richard Lind, (dated December 12<sup>th</sup>, 2021 – 8:52pm):

“During the public hearing before the Johnson County Planning Commission on November 16, 2021, Sheriff Calvin Hayden made a statement as to his opposition to the solar farm regulations currently being proposed.”

Ref.: Email submitted by JoCo Legal Robert Ford, (dated March 21<sup>st</sup>, 2022 – 1:48pm):

“You will no doubt recall Rick Lind’s Advisory Opinion, attached, to you regarding the Planning Commission conflict that arose after Sheriff Hayden appeared before the Planning Commission to voice his opposition to solar farm regulations.”

However, the actual unredacted comments made by the Sheriff as recorded and officially entered into the meeting minutes are as follows:

- Mr. Hayden: Hi Jim and company, and friends, neighbors. A lot of my neighbors out here. [gave name, address] I live right in the neighborhood of this mess. Guys, I want you to know, I’ve sat on these boards. Jim, I was on with you, on the zoning board for 18 years, and you’re absolutely right. Everything we try to do is to try...I mean, we’ve done rock quarries, done all these fights. What I don’t like about this is there have been people around making contracts two years down the road. Transparency is always a good thing, guys, and when you’re walking around out here making contracts with farmers and people two years before this thing starts, it’s wrong. You need to get community buy-in before you do it. Second thing I’ve got is I don’t understand why we’re in Johnson County, the economic engine of the State of Kansas, with some of the most expensive property in the State of Kansas, the highest producing...I can raise a cow on three acres. You go down to Montgomery County, it takes 10 or 12 acres to raise a cow, but we want to be right here in the top-producing property, and it doesn't make sense to me. There’s people looking for jobs out west. There’s property out there. The transmission lines go all over the place. Why are you here? That’s a problem for me. Now, you’ve come out to my neck of the woods. I’ve lived on Edgerton Road for 40 years. I had to move from De Soto to come out to rural Johnson County. Now I’ve got to try to move again, because you guys want to bring in a

bunch of industrial stuff. These things are made in China. You know it as well as I do. You've already brought them in. They're in a warehouse. You're acting like this is a done deal, and that's not right, Jim. That's not right. So I think there's a lot of issues. Wabaunsee County has put a moratorium on these. McPherson has put a moratorium on these. I think you guys need to follow the science here. We're talking about this global warming junk. Need I remind you, this used to be an ocean we're standing in? The climate changes. It does, and there's not a darn thing we can do about it. Thank you for your time. I wanted to end up with the Pledge of Allegiance, but I don't think I'm going to have time. I suggest you guys start with it. Thank you

The statements made by the Sheriff show this assumption is false. He never mentions or provides an opinion on solar energy. In fact, the Sheriff simply expresses his personal opinion about bringing development into the rural area where he lives and what he perceives as a lack of transparency between potential vendors and local participating landowners. He doesn't tie his comments about transmission lines to solar energy or energy production.

Per Mr. Lind's email dated December 12<sup>th</sup>, another potential issue was, "After Sheriff Hayden's statement, you reversed your original position that you took and voted upon at the Planning Commission meeting on October 26, 2021, thereby reducing the maximum area of a utility scale solar from 2000 acres to 1000 acres." First and foremost, as the meeting minutes demonstrate, I did not, "reverse" my position. Had Mr. Lind or any of the Johnson County Legal department inquired as to why I adjusted my posture, it would have been a quick and easy discussion. Some of the factors I considered:

- 1.) As new and updated information was provided, my understanding of how Utility Grade Solar Facilities function and how they are developed were enhanced.
- 2.) There was a tremendous amount of public comment made by local citizens. I took their comments, (both pro & con), into consideration.
- 3.) You will note, (per the recorded meeting minutes), that on multiple occasions, I inquire as to Douglas County's acre cap. This is because I was trying to seek out a "win-win" scenario for everyone. It was brought up on several occasions the belief 2,000 acres total was needed to make the development "profitable." If both Douglas Co and Johnson Co provided 1,000ac each, then the 2,000ac request could be met. This way, those who choose to utilize their land for this purpose can do so without the development overtaking the landscape.

It should also be noted that I was NOT the only commissioner who "adjusted" their posture at the November 16<sup>th</sup>, 2021, meeting. In previous votes related to this topic, the commission was split with members on both sides of the proposed motion. When the motion was made to reduce the project cap, (per the meeting minutes), the motion passed unanimously. Therefore, clearly demonstrating other commissioners also felt a change in direction was needed and appropriate.

In addition to this inaccurate presumption, please consider the following:

There is no actual conflict of interest. I have no direct personal financial or business interest in whether a solar farm is developed, which would properly trigger the conflict of interest

provisions of the Code. Given this lack of interest, I have no duty to disclose or recuse myself from considering or voting on any regulations related to solar farm developments in Johnson County.

Even assuming Sheriff Hayden's personal position on solar farm development could be considered some appearance of impropriety since I am employed by the Sheriff's Office, his clarification of his position would resolve the issue. To my knowledge, no effort was made to do so.

Other considerations:

The presumption that I am being influenced or that there could be an appearance of unfair influence is unsupported and unreasonable. First, I am not required to, and in fact do not, report to the Sheriff in the course of my normal duties, either as a Commission member or a Detention captain. There are FOUR layers of supervision between Sheriff Hayden and myself, (Major, Bureau Chief, Chief Deputy, Undersheriff) This was incorrectly noted by JoCo Legal in their argument and confirms their preconceived prejudice. In fact, with my 28 years of experience, I have significant discretion and leeway in fulfilling my professional duties. I do not report to or interact closely with the Sheriff. As a result, there is no reasonable basis on which to believe we could collude, or he would even have the opportunity to influence me about my Commission recommendations.

In addition, there is no way the Sheriff would know my position or recommendations about this, or any other Commission business. My individual input is not identified in the Commission's recommendations to the B.O.C.C. It is not disclosed in any other way. Accordingly, the Sheriff has no way of knowing my input and I am free to act in the best interests of the County's residents, without fear of retribution by the Sheriff or others.

Furthermore, as a sheriff deputy, I am a civil service employee. I am specifically protected from arbitrary, unreasonable or improper termination discipline or retribution by Civil Service regulations. In other words, both the Sheriff and I know that he cannot terminate or discipline me for any action I take as a member of the Commission.

These important points should have been brought to the attention of the Ethics Advisory Board. The fact they were omitted demonstrates an effort to have them reach a foregone conclusion.

In addition, the Code of Ethics provides specific ethical standards for employees. None of them are violated simply because of Sheriff Hayden's actual or perceived opposition for a specific development. These include:

STANDARD 101: ALWAYS PUT LOYALTY TO HIGH MORAL STANDARDS AND TO THE COUNTY ABOVE ANY LOYALTY TO PERSONS, DEPARTMENT OR AGENCY, OR POLITICAL OR OTHER INTERESTS.

STANDARD 401: TREAT EVERY CITIZEN FAIRLY AND EQUALLY WITH COURTESY AND RESPECT AND MUST NEVER DISCRIMINATE UNFAIRLY BY DISPENSING OF SPECIAL FAVORS OR PRIVILEGES TO ANYONE, WHETHER FOR REMUNERATION

OR NOT; AND SHOULD NEVER ACCEPT FOR HIMSELF OR FAMILY, FAVORS OR BENEFITS UNDER CIRCUMSTANCES WHICH MIGHT GIVE THE APPEARANCE TO REASONABLE PERSONS AS INFLUENCING THE PERFORMANCE OF HIS GOVERNMENTAL DUTIES.

STANDARD 501: REFRAIN FROM MAKING ANY PROMISE, PRIVATE IN NATURE, THE PERFORMANCE OF WHICH WOULD REQUIRE HIM TO ACT BEYOND THE PROPER SCOPE OF THE DUTIES OF HIS OFFICE, OR TO ACT IN A MANNER WHICH WOULD OR COULD COMPROMISE THE INTEGRITY OF HIS PUBLIC OFFICE.

STANDARD 1001: AVOID THE APPEARANCE OF IMPROPER INFLUENCE AND REFRAIN FROM EVER RECEIVING, SOLICITING OR ACCEPTING GIFTS, GRATUITIES, FAVORS OR ANYTHING OF VALUE FOR HIMSELF, HIS FAMILY OR OTHERS, WHICH IS INTENDED OR HAS THE APPEARANCE OR AFFECT OF INFLUENCING THE PERFORMANCE OF HIS DUTIES; AND SHOULD NEVER HIMSELF LOBBY NOR ATTEMPT TO INFLUENCE OTHERS IN THE PERFORMANCE OF THEIR DUTIES BY ANY MEANS WHICH ARE NOT A PART OF HIS AUTHORIZED DUTIES.

STANDARD 1101: NEVER ALLOW HIS JUDGEMENT TO BE COMPROMISED BY ANY PERSONAL, FAMILY OR BUSINESS INTEREST NOT A PART OF HIS GOVERNMENT SERVICE AND NEVER ACT UPON ANY MATTER IN WHICH HE, HIS FAMILY, OR BUSINESS HAS OR MAY HAVE ANY FINANCIAL OR BENEFICIAL INTEREST; AND SHOULD ALWAYS DECLARE AND DISCLOSE THE FULL NATURE AND EXTENT OF ANY PERSONAL, FAMILY, OR BUSINESS INTEREST IN ANY MATTER RELATED TO GOVERNMENTAL ACTIONS OR DUTIES.<sup>1</sup>

As long as the ethical standards are followed, the Sheriff's position on any given matter should not be relevant to my membership or participation on the Commission.

Further, the Code of Ethics is intended to guide the decisions and actions of the public officials and employees in the performance of their official duties and functions.<sup>2</sup> However, the Code makes clear that the standards are rules of reason and not rules of law, and they do not themselves seek to impose duties or obligations not otherwise required of public officials and employees.<sup>3</sup>

I reiterate that I am very concerned as to how this entire matter has been handled from the start. Shortly after receiving the email from Mr. Lind, I met with Ms. Trent and discussed the matter. My concerns covered the following:

- 1.) I expressed concern about receiving communications via my work email address as I was attempting to keep my professional life separate from my responsibilities as a Planning Commissioner. (I had provided Planning Staff with my personal email and contact information). She and others have constantly ignored this, improperly presuming my inseparable allegiance to the Sheriff in non-employment matters.

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<sup>1</sup> Code of Ethics, Article IV.

<sup>2</sup> Code of Ethics, Article V.A.

<sup>3</sup> *Id.*

- 2.) Why my initial contact with the Ethics Advisory Board was an Advisory Opinion via email. There was no effort to investigate several important points regarding the reasonableness of a violation or a perceived violation whatsoever.
- 3.) I had initially asked to receive an unredacted copy of the alleged, “complaint.” I was initially told that was not possible. When I pushed the issue, I was provided the copy of the inquiry, (not complaint.) Why did I need to go through this?
- 4.) The length of time the Legal Department was aware of and held onto the inquiry prior to initiating contact. (It was received December 7<sup>th</sup>, 2021)

During our discussion, Ms. Trent acknowledged the matter could have been handled differently. She advised her staff had limited experience in these matters and was working with them on ways to be more personable when contacting staff. We agreed a simple phone call would have been a better way to make the initial contact.

Ms. Trent advised at that time if I did not recuse myself as per her (and the Legal Department’s), opinion, the matter would be forwarded to an Ethics Board for review. I did not recuse myself and did vote on the proposed regulations that were forwarded to the Board of County Commissioners for consideration.

I received no further contact from the Legal department until Mr. Robert Ford’s email, (dated March 21<sup>st</sup>, 2022). In it, he advises his belief that the Utility Grade Solar topic will be brought back to the Planning Commission for further discussion. He restates Mr. Lind’s synopsis of the issue and states I need to provide him an immediate response regarding my recusal. I replied via email, (sent March 21<sup>st</sup>, 2022, 2:16pm):

- Good afternoon Mr. Ford.

Before I respond to your narrative below, I have taken great strides to separate my association with the Sheriff’s Office from my appointment to the Planning Commission. With that being said, moving forward, if email communication is your preferred method, please utilize my personal email address, [model40u@yahoo.com](mailto:model40u@yahoo.com), (it should be on file with the Planning Department as well.) Or you can always call me on my Cell Phone, (913) 669-6726.

As per your comments, there are several possibilities/unknowns that have not yet been realized. You stated, “It **appears** the Board of County Commissioners **may** at some point in the near future hold a hearing and it is **possible** the Board will send the matter back to the Planning Commission. At this point and time, I do not see a need for me to reply with any posture as the situation does not yet exist.

If and when we find ourselves in this situation, I would be happy to meet and discuss it with you further.

Respectfully,  
Mike Levin

Shortly thereafter, I received a phone call from Mr. Ford. He was very aggressive in his tone. He stated he was not going to wait for an answer and if I did not provide him one at that moment, he would take it to an Ethics Board. Keeping a calm and polite demeanor, I explained to him multiple times that at that point, there was no need to provide an answer as the matter had not yet been sent back to the Planning Commission. (The Public Hearing date was set for April 4<sup>th</sup>, 2022). I explained to Mr. Ford that I would provide an answer once we knew there was an actual issue to consider. Mr. Ford belligerently stated that was not acceptable. I told Mr. Ford that I would not be bullied into providing an answer. This ended the conversation. His entire demeanor was not objective or fair. Rather he presumed wrongdoing and that my participation was unethical apparently with no impartial investigation whatsoever.

After ending the conversation, I sent Ms. Trent an email requesting that she contact me so that we could discuss the matter.

Good afternoon,

Please review the email string below and then call me when convenient. My cell is (913) 669-6726.

Thanks,

Mike

She did not bother to respond. Apparently, she did not bother to investigate either.

Later that day, (approximately 20 mins. after our conversation), Mr. Ford sent the following email to Ms. Trent:

Peg:

I spoke with Mr. Levin and he will not recuse himself and so we'll need to tee up the Ethics Board to decide the matter and make a recommendation. I would expect that Rick's opinion will form the basis for the decision.

Bob

Based on this email, it is obvious that Mr. Ford was intent on pushing forward with an Ethics Board summarily insisting that there was unethical conduct or the appearance of unethical conduct on my part.

On March 25<sup>th</sup>, 2022, I again reached out to Ms. Trent via email, (9:06am), regarding this matter:

Good morning,

Can you kindly provide an update regarding your discussion with Chairman Eilert? Are you moving forward with the Ethic's Board at this time?

Respectfully,

Mike Levin

Again, she did not bother to respond or apparently, investigate anything to the contrary.

Having received no further communications from either Ms. Trent or anyone else from the Legal Department, and with the issue having little to no underlying factual basis in the first place, I believed the issue to have been resolved without moving forward to an Ethics Board.

You can imagine my surprise when I received the email from Ms. Trent, (dated 05/06/22, 4:44pm), advising the Ethics Advisory Board had already met and conferred, rendering an advisory opinion and recommendation regarding the matter. As the Board's letter states, it was appointed by the BOCC "for purposes of investigating and evaluating two complaints levied against" me. The Board's letter even states: "Following careful consideration of the available facts..." However, no one contacted me or made any inquiries of me whatsoever. I was provided no opportunity to submit any information, documentation or explanation as to why my conduct was not an ethical violation, and why I should not have to recuse myself from participating in making recommendations to the Board. It is readily apparent that the Advisory Board was provided the inaccurate, preconceived prejudices of County Legal attorneys. I wasn't even advised that an Ethics Advisory Board had been scheduled.

I am very concerned that this failure to investigate and objectively evaluate my conduct has already impugned my good name, reputation, and integrity. I am similarly concerned that any action taken based on this opinion and recommendation will unfairly stigmatize me and my career. I trust you understand that this underlying issue centers around public trust through transparency, yet the board itself "met and conferred" about my conduct without so much as notifying me or apprising itself of the above-discussed facts.

Another question that I believe needs to be addressed is:

- What changed? If the Johnson County Legal department truly believed there was a conflict issue, why did they choose to NOT move forward with an Ethics Panel during the initial development and voting phase? There was ample time and resources available to complete the entire process at that point.

As I stated earlier, the information provided to the Ethics Advisory Board was biased, one-sided and flawed. Therefore, I do not believe any panel utilizing that information provided by the Johnson County Legal department could come to an unbiased decision. I am formally requesting



an opportunity to present my arguments to another Ethics Advisory Board comprised of new members.

Respectfully,

Michael A. Levin  
3<sup>rd</sup> District Planning Commission Representative