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Via email to samimperati@icmresolutions.com

Samuel J. Imperati, Esq.
Institute For Conflict Management, Inc.
11524 SVacuna Ct
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**Re: Benton County Talks Trash Workgroup—Legal
Issues and Land Use Review Subcommittee**

Dear Sam:

I am writing to briefly recap and expand upon the points I made in our telephone conversation on November 15, 2022, explaining why I will not be participating in the work of the Legal Issues and Land Use Review Subcommittee. While I appreciate the opportunity to take part, I believe that the stated mission of the subcommittee is inappropriate under the circumstances, and that the participation of counsel for parties to a future quasi-judicial proceeding is potentially fraught.

The legal issues assigned to the subcommittee relate to conditional use criteria under Development Code Section 53.215. As I understand it, the goal is to clarify black letter law and state "common understandings" as to the meaning of code language, especially the scope of the impact area under Section 53.215(1), which requires the applicant to prove:

"(1) The proposed use does not seriously interfere with uses on adjacent property, with the character of the area, or with the purpose of the zone."

What we learn from a review of the so-called "black letter law" of conditional uses is that it is adjudicated case by case, based upon evidence placed on the record in the review of a specific land use application. In other words, it is fact- and evidence-dependent. It is never determined in advance. Doing so—developing "common understandings" of the law governing a specific conditional use—as to a hypothetical future application, would serve to pre-judge the case.

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As I further understand it, the subcommittee's work product would only be directed at interpreting code language as to one particular future application; the interpretation(s) would not affect unrelated applications. This simply reinforces my point above regarding the nature of conditional use review. Moreover, I am not sure that the county would be well-served down the road by the position that "we only meant it that one time." Such logic would not measure up to Benton County's longstanding quality standards.

At the same time, generating a code interpretation for use in evaluating Republic's future application could result in an appealable land use decision in and of itself. I do not think that is a laudable goal.

The reason for my using the word "fraught" above is that, assuming the subcommittee comes up with its own common understandings, any dispute over those understandings and their development which arises in the course of a quasi-judicial proceeding will necessarily involve the participation of counsel-as-fact-witness. *No thank you.*

Sam, I appreciate the difficulty of the mission assigned to this subcommittee. If I could find my way clear to trying to assist, I would do so. However, for the reasons stated, I see only a minefield, not a path.

Kindly place this letter in the record of the subcommittee and provide copies directly to all members of the WorkGroup, and to county staff and any members of the Board of Commissioners who have expressed an interest in the work of the subcommittee.

Very truly yours,



Jeffrey L. Kleinman

JLK:cme
cc: client