



State of New Jersey
Commission of Investigation

PUBLIC MATTERS, **PRIVATE INTERESTS**

**An Inquiry into Local Government
Ethics and Integrity Issues in the
Borough of Edgewater**

May 2023

*State of New Jersey
Commission of Investigation*



**PUBLIC MATTERS,
PRIVATE INTERESTS**
**An Inquiry into Local Government
Ethics and Integrity Issues
in the Borough of Edgewater**

SCI

50 West State St.

P.O. Box 045

Trenton, N.J.

08625-0045

609.292.6767

www.state.nj.us/sci



State of New Jersey

COMMISSION OF INVESTIGATION

50 WEST STATE STREET

PO Box - 045

TRENTON, NEW JERSEY 08625-0045

Telephone (609) 292-6767

Fax (609) 633-7366

Tiffany Williams Brewer

Chair

Robert J. Burzichelli

Kevin R. Reina

John P. Lacey

Commissioners

Chadd W. Lackey

Executive Director

May 2023

Governor Phil Murphy
The President and Members of the Senate
The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M-1 to -20, herewith submits its final report of findings and recommendations stemming from an investigation into questionable local government ethics and integrity issues in the Borough of Edgewater. ¹

Respectfully,

Tiffany Williams Brewer
Chair

Robert J. Burzichelli
Commissioner

Kevin R. Reina
Commissioner

¹ Commissioner John P. Lacey, who joined the Commission in January 2022, was formally recused from this matter and did not participate in any aspect of the inquiry.

TABLE OF CONTENTS

<i>Introduction</i>	<i>1</i>
<i>Summary of Key Findings</i>	<i>4</i>
Local Officials With Financial Ties to the Developer	8
Municipal Actions or Inactions Benefitting the Developer.....	12
Illicit Business Practices/Questionable Financial Transactions.....	25
<i>Referrals and Recommendations</i>	<i>30</i>
<i>Appendix.....</i>	<i>A-1</i>

Introduction

For the past 50 years, the New Jersey State Commission of Investigation (SCI or the Commission) has repeatedly exposed waste, abuse and corruption in local government, revealing how questionable employee payments, outrageous perks and other inappropriate municipal actions needlessly burdened taxpayers or failed to protect their best interests.

Over the years, the Commission has returned to areas where a pattern of dubious practices and poor governance continues to fail residents. The SCI last wrote about corruption in Edgewater Borough in 1992 after the town's former mayor was convicted on federal charges for taking payoffs from organized crime associates to speed approvals for a luxury condominium project.² In its latest investigation, the SCI found problems persist in the Bergen County municipality, particularly concerning the local government's oversight of real estate and development matters.

The Commission's investigation found Borough officials repeatedly abdicated their sworn responsibilities to safeguard public tax monies and the interests of *all* residents, to protect their own personal and financial concerns and those of private developer Fred Daibes. The politically savvy businessman, who transformed much of the Hudson River waterfront town over the last two decades into an upscale enclave for Manhattan commuters, grew up in Edgewater and still lives there. SCI investigators found some local officials received personal perks and economic

² In 1989, former Mayor Thomas Tansey pled guilty to taking \$20,000 in bribes from Genovese organized crime family associates to secure municipal approvals for the Shelter Bay complex. See ***Local Government Corruption (1992)*** <https://www.state.nj.us/sci/pdf/lgco.pdf>

benefits from the developer, which raised questions about the motives behind official actions favorable to Daibes.³

The SCI found Daibes' power and influence within Edgewater were so strong he even held sway in local political decisions and other municipal concerns. Numerous examples showed local officials took questionable municipal actions to benefit Daibes, one of the town's largest landholders and a major employer as the owner of Daibes Enterprises. The inquiry also revealed troubling findings related to Daibes' business operations, associates and efforts to circumvent particular government regulations. Some of the government actions taken in Edgewater to benefit Daibes would come at a high cost for local taxpayers, public coffers and the community's reputation. Meanwhile, municipal officers who took official actions unsupportive of the developer faced political and professional retribution.

The Commission carried out this investigation in accordance with its statutory mandate to identify and uncover corruption and government laxity, reveal tax dollar waste and protect the integrity of government operations.⁴ During the course of the inquiry, also consistent with our mandate, the SCI uncovered evidence of the reasonable possibility of criminal wrongdoing and information indicating unspecified payments to organized crime associates or their relatives.⁵ An extensive and multi-faceted investigation, the report was delayed, in part, by the COVID-19 pandemic and necessary referrals of findings of potential criminality to appropriate prosecuting authorities. To conduct the inquiry, the Commission issued more than 100

³ The former chairman of the North Jersey-based Mariner's Bancorp, Daibes in April 2022 pled guilty to making false entries in books and records of an FDIC-insured bank.

⁴ N.J.S.A. 52:9M-1 to -20

⁵ N.J.S.A. 52:9M-11

subpoenas, analyzed scores of financial records, conducted interviews and obtained sworn testimony from more than 50 local and state officials, business owners, housing advocates and individuals and employees of entities engaged in suspect or illicit conduct.

This report is a cautionary tale concerning the inherent dangers of enabling an influential, politically-connected and unelected private citizen to hold outsized power in government concerns. The failure of elected and appointed officials to honor their oath of office and put the needs of their constituents above their self-interests when conducting the people's business came at a steep price in Edgewater, negatively impacting local finances and public trust.

The Commission recognizes that most of those serving in local government in New Jersey are committed to protecting the public interest. But the findings made in this inquiry underscore the need for stricter statewide regulation and guidance for elected and appointed local government office holders on matters concerning ethics, including instituting mandatory ethics training and more comprehensive financial disclosures. The first step should be strengthening the Local Government Ethics Law, the primary legal mechanism guiding standards of ethical conduct for municipal and county employees, which has not been substantially updated since its enactment 30 years ago. Additional recommendations include the adoption of safeguards to keep cleanups of environmentally contaminated sites less vulnerable to contractor abuse and manipulation and a study to determine if state oversight of affordable housing mandates should be re-established in New Jersey.

A detailed presentation of the Commission's core proposals for reform, along with other common-sense recommendations, can be found at the end of this report.

Summary of Key Findings

The Commission's findings fall broadly into three major areas:

- **Local Officials with Financial Ties to the Developer**
- **Municipal Actions or Inactions Benefiting the Developer**
- **Illicit Business Practices/Questionable Financial Transactions**

Local Officials with Financial Ties to the Developer

- The Commission found some local elected officials received economic benefits – often not publicly disclosed – from Daibes, raising questions about the integrity, ethics and motives behind government actions to aid the developer or his commercial entities.
- More than half of Councilman Jose Luis Vidal's business revenue – totaling more than \$2.6 million between 2015 and 2018 – was provided by Fred Daibes and his business partner for flooring projects. Vidal voted in favor of numerous measures beneficial to the developer and his business interests, including giving Daibes' firm Waterside Construction the contract for a major municipal park renovation.
- Edgewater Mayor Michael McPartland received below market, payment-deferred and interest-free rent at a luxury apartment building owned by Daibes.⁶ The arrangement began months after McPartland's appointment as mayor in January 2015.

⁶ The rent was repaid without interest or penalty.

- Former Mayor James Delaney’s wife was a long-standing employee at a Daibes-owned restaurant. However, her employment ended abruptly after her husband spearheaded the Borough’s effort to sue Daibes for allegedly ruining the renovation of a municipal park.

Municipal Actions or Inactions Benefiting the Developer

- The Commission found Daibes’ influence extended to weighing in on general municipal issues and local political decisions. More recently, his longtime business attorney was appointed as the Edgewater Borough Attorney.
- The Borough’s construction official ignored information that tenants appeared to be already living in a Daibes-built high-rise before receiving a certificate of occupancy and missed an incomplete fire exit above a steep cliff. The subordinate inspector who discovered and reported the unfinished exit later told the Commission he faced retaliation by Borough officials.
- The Borough failed to effectively evaluate Waterside’s “excessively low” bid, oversee its work and manage the fallout from the firm’s alleged toxic dumping that occurred during the renovation of a public park. The park project ended up costing taxpayers \$28 million – nearly three times the initial estimate – and increased local property taxes. Legal fees for the still unresolved matter have cost Borough residents \$1.1 million so far.
- Former Mayor Delaney testified he was effectively pushed out of office after he urged the Borough Council to sue Daibes over the botched field project. Delaney and his wife testified that the mayor’s public actions opposing the developer

caused him to lose political support, made the family pariahs in the community, ended his wife's employment and resulted in them moving out of the town.

- The Borough Council authorized the use of eminent domain to seize 615 River Road, one of the last undeveloped sites on the town's waterfront and a potential tax ratable worth \$12.3 million annually, to construct a public works facility and for other municipal uses. The decision occurred not long after Daibes – who unsuccessfully sought to buy the tract – told a zoning board member he opposed a rival developer's plan to build high-density housing at the site.
- The Commission found Edgewater officials enabled Daibes to secure a kind of "double dip" benefit by authorizing him to receive direct payments from other developers to build affordable housing units in local projects in which he already received a government tax break to construct. Daibes never informed government authorities of this additional funding despite the legal requirement to do so to maintain his \$2 million tax subsidy under the Low Income Housing Tax Credit Program.

Illicit Business Practices/Questionable Financial Transactions

The Commission uncovered other financial activity concerning Daibes and his corporate entities, including illicit business practices, the questionable collection of unemployment insurance benefits and nonspecific payments to associates of organized crime. As required under the Commission's statutory authority, all evidence of a reasonable possibility of criminal wrongdoing was referred to appropriate law enforcement authorities.

Cash Payroll

- More than \$3.9 million in payroll for Waterside Construction was given to employees in cash for at least 18 months, enabling the Daibes-owned business to avoid its legal responsibility to pay state and federal employment taxes. The SCI's findings were referred to the Office of the United States Attorney for the District of New Jersey and the Division of Criminal Justice in the New Jersey Office of the Attorney General.

Potential Unemployment Insurance Fraud

- Three Daibes employees appeared to have inappropriately collected tens of thousands of dollars in unemployment insurance from the State of New Jersey while simultaneously collecting a salary or payments from his firms. The findings were referred to the New Jersey State Department of Labor and Workforce Development and the Division of Criminal Justice.

Unspecified Payments to Associates or Relatives of Organized Crime Members

- The Commission found Daibes wrote more than a dozen personal checks for unspecified payments totaling more than \$100,000 to the son and daughter-in-law of a high-ranking Genovese organized crime family member who was a key operative in an illegal gambling ring in northern New Jersey in the 2000s. When asked by the SCI about the nature of the payments, both Daibes and a beneficiary of the payments invoked their Fifth Amendment right against self-incrimination.

- Robert Fischetti, a former Councilwoman’s husband and a longtime Genovese crime family associate with a history of gambling convictions, lived rent-free in a Daibes-built and owned apartment building from 2005 until 2018. Fischetti’s costless living arrangement ended shortly after the SCI issued a subpoena seeking financial records related to Daibes.⁷

Factual Findings

LOCAL OFFICIALS WITH FINANCIAL TIES TO THE DEVELOPER

Lucrative Contract Work for a Councilman

When longtime Edgewater Councilman Jose Luis Vidal launched a new business venture connected to his flooring firm around 2013, he needed to borrow money because he had no credit with suppliers to get materials. Instead of going to a local bank, his friend, the late Edgewater Mayor Bryan Christiansen, loaned him the cash.⁸

Vidal, a councilman since 2008, told the Commission he paid back the tens of thousands of dollars in interest-free loans the former mayor provided to him, added employees and began working on commercial and residential projects primarily in Bergen and Hudson counties. Soon, Vidal would have more than half of his business revenue – more than \$2.6 million between 2015 and 2018 – provided by entities owned by Daibes and the developer’s longtime business partner

⁷ Although Daibes sold the building in February 2014, financial records indicated checks from his firm Waterside Construction paid Fischetti’s rent until March 2018.

⁸ A review of financial documents indicated at the time of the loans, Christiansen regularly received payments from Daibes’ entities from his involvement in several lucrative business ventures with the developer.

James Demetrakis.⁹ The Commission's review of financial records found Vidal's business, Celtic Logs & Lumber, received \$1.25 million from the Daibes-owned firm Waterside Construction alone. Financial documents reviewed by SCI investigators revealed Celtic Logs & Lumber received the funds for flooring installation projects from businesses owned by either Daibes or Demetrakis. Those projects included Waterford Towers, a senior housing complex built by Daibes in Edgewater, and the Duchess, a luxury apartment building project for which Celtic and Waterside Construction had a contractual agreement.

Edgewater residents likely never knew of the Councilman's financial ties to Daibes because the state law that guides the ethical conduct of municipal and county officials – The Local Government Ethics Law – does not require public disclosure of income derived from clients, even when the circumstances could reasonably present a potential conflict of interest. Local public officers must annually file financial disclosure forms reporting the name and address of each source of income, earned or unearned, received in the prior calendar year above \$2,000. However, the ethics law does not mandate reporting individual client fees, customer receipts or commissions on transactions received through a business organization.¹⁰ Therefore, Vidal's only income sources for that period were the Borough of Edgewater and Celtic Logs & Lumber.

Lacking any legal requirement to disclose finances related to client payments means this information can be kept private, even in cases where such fiscal arrangements could present a potential conflict of interest for a public official. Local officials are effectively on their own in

⁹ Financial records reviewed by the Commission found payments were either from entities owned by Daibes, the developer's longtime business partner Demetrakis or other entities based at his former headquarters at 1000 Portside Drive.

¹⁰ N.J.S.A. 40A:9-22.6 (a) (1) Local officials must also report an immediate family member's income source, earned or unearned, if it exceeds \$2,000.

deciding whether to go beyond the law and publically disclose the information to avoid any appearance of impropriety. By comparison, employees who work for the State government are subject to the New Jersey Conflicts of Interest Law, which provides detailed advice on managing ethical matters.¹¹ Unlike local government officials, state employees and officials also undergo mandatory ethics training.

Edgewater Mayor Michael McPartland told the Commission fellow municipal officials with concerns about potential conflicts of interest should conduct their own due diligence by reporting any matters of concern to the Borough attorney. In Vidal's case, he testified he thought his business relationship with Daibes was disclosed to the Borough attorney at the time but could not be sure. Vidal did not recall ever receiving a written legal opinion from the municipal counsel to determine if it was appropriate for him to vote on matters related to Daibes. He told the Commission he recalled abstaining from voting on some issues related to the developer. Even though he believed his colleagues on the Council knew he received income from the developer's firm, Vidal testified he never made any formal announcements or issued any statements disclosing that information to them or the public.

Despite Vidal's initial testimony that he abstained from voting on local government matters concerning Daibes and his business interests, his voting record proved otherwise. A review of Borough Council resolutions since 2012 showed Vidal voted affirmatively on multiple measures that directly benefited Daibes, including awarding Waterside Construction a Borough contract to renovate Veterans Field in June 2012. Vidal also voted in favor of liquor license renewals for Le Jardin, the restaurant Daibes once owned at 1257 River Road, and for zoning

¹¹ N.J.S.A. 52:13D-12 to -28

changes allowing high-density housing at Daibes-owned properties, thus enabling the developer to increase the number of units in specific projects significantly and potentially make them more lucrative.

The Mayor's Rent Arrangement

SCI investigators found Mayor McPartland had an undisclosed arrangement that enabled him to live at one point for free and, later, at a significantly below market rate in a luxury apartment building owned by the developer. The arrangement occurred within months of his January 2015 appointment as mayor. From July 2015 until January 2016, McPartland lived in the model apartment, a one-bedroom studio at The Alexander, a luxury hotel-style housing complex, without paying monthly rent. The terms were set under a verbal agreement with Daibes' sister, the property manager.

An SCI review of financial records indicated McPartland eventually paid the deferred rent in February 2016 by issuing a \$21,600 check, absent interest, from his personal checking account. McPartland did not write out the check payable to The Alexander or a management firm, often responsible for handling rent payments for housing complexes. Instead, he made out the check to Fred Daibes personally. In sworn testimony before the Commission, McPartland said he made the payment directly to Daibes "to make sure that everybody knew that I paid." The mayor testified he paid off the owed rent after signing a contract for a larger apartment in the complex.

Financial records reviewed by SCI investigators indicated that the mayor made subsequent monthly rent payments to The Alexander. However, the Commission found the rent paid by McPartland was significantly below the market rate at the upscale residence. A financial review of checks paid by McPartland to The Alexander revealed the mayor paid \$1,940 less than

the stated monthly market rate for the apartment in 2019, according to information provided to the Commission by a representative for The Alexander.¹² A review of McPartland’s financial disclosure forms found he reported neither the initial \$21,600 benefit nor the continuing rent discount.

* * *

The Commission also found former Mayor James Delaney had a financial link to Daibes through his wife’s employment at the now-shuttered Le Jardin restaurant, owned by the developer. However, the economic tie was quickly severed after a public falling out between the two men. More details about what occurred when Delaney took a public stance against the developer, how his wife’s longtime service at Daibes’ business ended abruptly, and the political and personal fallout arising from those circumstances are detailed later in this report.

MUNICIPAL ACTIONS OR INACTIONS BENEFITING THE DEVELOPER

The Commission found Daibes had access to elected and appointed officials in the Borough and held influence in municipal concerns despite the fact he was an unelected private businessman. Former Mayor Delaney told the SCI he spoke regularly with Daibes to discuss various matters, not just those related to real estate and development.

In certain instances, SCI investigators found there was questionable Borough oversight of Daibes and his employees on development projects in Edgewater. When a Daibes firm was

¹² McPartland and Daibes notified the Commission that the below market rate was due to the apartment’s position above trash dumpsters.

completing the construction of the St. Moritz high-rise apartments in the early 2000s, the Borough Construction Official ignored information from a subcode official that tenants appeared to be already unlawfully living in the units before the building's receipt of a certificate of occupancy. During a building inspection, the Construction Official also missed an incomplete fire exit "onto non level ground above a steep cliff with no access to a public way." This mistake put tenants in even greater jeopardy in an emergency. The exit to nowhere – discovered during a follow-up inspection two years after the building's opening – left residents seeking safety in the event of a fire with the option of either scaling a cliffside or jumping down 15 feet to flee the complex. Charles Batch, the fire subcode official who flagged and reported the error, had battled with Daibes on safety-related issues throughout the project. He told the Commission that when he retired a few months later, the Borough refused to pay him earned sick time pay, alleging he abused overtime. Batch testified that it was retaliation for reporting the violations. Batch later settled with Edgewater after filing a whistleblower suit against the Borough, spending \$45,000 in legal fees to get his payout.

The following examples further illustrate some of the favored treatment Borough officials gave Daibes and the negative impact those actions had on the community.

Veterans Field

Veterans Field, Edgewater's premier waterfront park, had been closed for months in 2011 following the discovery of environmental contamination, leaving local kids without access to athletic fields and other recreation. In June 2012, Daibes' Waterside Construction won a \$7.1 million Borough contract to clean up and renovate the park, the place where he once played

baseball and football as a child. At the time, Daibes told a local newspaper, “I grew up in Edgewater. This is where I want my legacy to be.”

Daibes’ lasting legacy at Veterans Field would be marred by allegations of mismanagement, negligence and fraud after his firm’s employees were observed dumping unknown material and mixing it with clean fill at the site. The costs to clean up the contamination, finish the job and pursue legal remedies against Daibes rose to more than \$28 million, nearly triple the initial estimate for the project.¹³ Local property taxes increased due to costs associated with the field fiasco.

In May 2012, Edgewater sought public bids for an extensive renovation and remediation of the waterfront park, estimated to cost \$9.7 million.¹⁴ The remediation component of the project required the removal of five soil “hot spots,” areas that environmental testing indicated had elevated levels of contamination. The fill material used to grade the field at an earlier point was found to be contaminated, prompting its closure in September 2011.¹⁵ Environmental regulators also believed the site was once covered by water from the Hudson River. The contaminated areas required removal or capping with clean material under state Department of Environmental Protection (DEP) testing guidelines. Along with the site remediation work, renovations for the 27.6-acre park included upgrading the athletic fields and other recreational amenities.

¹³ Additional expenses in the \$28 million total included expanding the scope of the park project after Waterside was terminated.

¹⁴ State Green Acres and Bergen County Open Space grants funded approximately \$1.7 million of the project.

¹⁵ Environmental tests found polycyclic aromatic hydrocarbons, or PAHs, were elevated in the park’s historic fill well above the government standard levels for residential areas. Polychlorinated biphenyls, or PCBs, were also slightly above acceptable levels.

Of the five public bids submitted, Waterside Construction's proposal was approximately \$2.5 million below the project estimate and substantially less than the next lowest bidder. Among the differences in the bids were the amounts budgeted for importing certified clean fill to replace contaminated soil at the site. Waterside Construction estimated its costs to import clean fill at \$833,000 – nearly half a million dollars less than its closest competitor. Waterside Construction's fees for excavation work were also only \$25,000, approximately a tenth of the cost in the proposal from the next lowest firm. The Director of Construction for Neglia Engineering Associates, the Borough's firm, testified he initially balked at the Waterside Construction bid because it was "excessively low." Despite those concerns, after Borough officials contacted Waterside Construction to verify the bid documents were accurate, they agreed the firm was the lowest responsible bidder, and the Council voted 5-0 to award the \$7.1 million contract to Daibes' company.

Once the work began, disputes began almost immediately at the worksite over the material Daibes wanted to use for the fill. Within the first month of the project, Daibes was already asking about bringing in unsuitable material and the possibility of using it with clean fill, according to testimony from Ronald Dooney, owner of TERMS Environmental Services, hired by Borough officials to supervise the remediation. He described a meeting in Daibes' office discussing the matter.

...That was what the meeting was because he was trying to bring in fill that – the initial pile he wanted to bring in was from his construction yard and it was full of debris and this was supposed to be clean fill coming into the site to cap the dirty stuff and there were things sticking out of it, drums and what not [sic].

In the early stages of the work, Daibes had access to certified clean fill material from a nearby construction site that another contractor allowed him to take free of charge, according to testimony from multiple witnesses involved in the project. But once that source dried up, the developer was left scrambling to find appropriate fill material. It quickly became apparent Daibes had no reliable source for clean fill yet was unwilling to pay to obtain it from a quarry. Dooney explained:

And then the question[s] started coming up about we got to find material and, you know, how are we going to do this? Why can't we bring in stuff that's contaminated as long as it goes deeper, so it was, you know, from that point, I realized this was going to be an ongoing battle to keep them – just go to the quarry. We said it numerous times, go to the quarry and get quarry material. And his answer was, numerous times, that's never going to happen. That's going to cost way too much.

In New Jersey, private individuals like Dooney are certified by the state as licensed site remediation professionals (LSRPs) to oversee environmental remediation projects. However, the Commission found Dooney's firm was assigned an unusual task on the Veterans Field project. The Borough paid TERMS to test material brought in by the Daibes firm and ensure it was clean under DEP standards – a responsibility typically assigned to the contractor importing the fill. Soon, a regular pattern emerged. Daibes would identify fill material and expedited tests – at an elevated cost – were ordered to determine its quality, and then TERMS would often reject it based on unsuitability. Tensions grew at the job site. One fall day in 2012, things reached a boiling point between Daibes and a TERMS supervisor who refused to allow unclean fill on the job site. The same supervisor had also repeatedly warned the developer that dust monitor readings showed unhealthy air quality levels at the field after Waterside Construction failed to provide a water

truck to hose down the site.¹⁶ After the two men argued at the job site, Dooney testified he went to the field to speak directly with Daibes about the situation.

And that's when I went out and I met Fred Daibes at the site and he started screaming at me, you know, nobody tells me what to do in my town. And I said, you can't bring this stuff in. Well, I want that guy off of here.

Dooney told the Commission a representative with the Borough's engineering firm advised him the town would terminate TERMS' contract if he insisted on keeping the supervisor who clashed with Daibes on the job. Days later, he reassigned the supervisor "to keep the peace."

The project was already well underway when Superstorm Sandy hit on October 29, 2012, destroying much of the earlier work and inflicting more than \$200,000 in damages. Waterside Construction needed to redo prior work, raise the grade at the field and perform other measures to improve drainage and prevent erosion. The revisions increased project costs by more than \$500,000 and required another almost 30,000 cubic yards – more than 1,500 truckloads – of clean fill.

Under its agreement with the Borough, TERMS needed to test and approve any fill material before it was used at the field. Field notes from Jason Menzella, chief inspector for Neglia Engineering, indicated that on August 8, 2013, Waterside Construction brought in loads of fill material when TERMS was not present at the field. The log entry read, "Waterside on site @ Vets Field in Edgewater. Waterside is recieving [sic], spreading, and compacting materials brought in by tandem. Terms is not on site." It would not be an isolated event.

¹⁶ After the TERMS employee complained about the dust problem, Edgewater officials sent a Borough water truck to the site.

The Disputed Dumping Incident

No work was scheduled to take place on September 7, 2013 – a Saturday – so Menzella told the Commission he was surprised to see a fleet of trucks and machines going back and forth at Veterans Field as he drove through town on his way home from a baseball game.

Pulling into the job site, he witnessed unsupervised laborers dumping materials, specifically recycled concrete aggregate – untested crushed concrete – and then covering it with clean stone. When he asked the laborers what was going on, Menzella testified they said, “I don’t know, I just work here.”

Subsequent testing revealed the materials trucked into the site contained extremely elevated levels of PCBs, a probable cancer-causing substance. Still, it would take nearly a month before TERMS shut down the job site while Daibes’ employees continued to work and deliver more fill to the site. Initially, the Daibes firm denied knowingly dumping toxic material at the site. Days later, in a local news story, a Daibes representative claimed the crushed stone brought to the field was from a demolished structure at the former Alcoa site, an aluminum plant on River Road then owned by the developer that had undergone an environmental cleanup in the 1990s. The spokesman claimed both the DEP and TERMS had approved reusing materials from the Alcoa site, a claim the environmental firm has denied.

The Price of Opposition

Former Mayor Delaney testified he and his family faced political and personal reprisals after he led the municipality’s effort to sue Daibes over the Veterans Field project.

Initially, Edgewater Borough officials were willing to allow Waterside Construction to clean up its mess as permitted under the terms of its contract. Delaney publicly defended the

developer, saying the project was Daibes' "pride and joy" and that municipal personnel did not intend to fire him. However, behind the scenes, Delaney told his colleagues he wanted to remove Waterside Construction, a move that started a rift between the mayor and other governing body members even though the Council later approved suing Daibes for breach of contract in August 2014.

The mayor testified he soon lost political allies and support in the town, making him a lame-duck mayor. At one point, two council members visited his home to inform him he effectively had no say in Borough matters. Not long after that, the Council declined to reappoint two of Delaney's preferred professional service contractors – the municipality's longtime engineering firm, Neglia Engineering, whose employee first discovered the dumping at the field, and the Borough Attorney. Other Council members asked him when he planned to resign. Delaney declined to comment on Daibes' actions specifically but told the Commission, "I would say he had control over the town for a long time."

His wife, Bridget, who worked at the Daibes-owned Le Jardin restaurant for 14 years, testified she felt blindsided when informed by her manager that she could no longer work there due to the discord between her husband and Daibes.¹⁷ She told Commission counsel under oath that her family, including the couple's children, became outcasts in the community.

Q: *Did you feel pushed out of town?*

A: *I absolutely felt, I felt abandoned. I felt beyond pushed. I mean, I – the people that I like considered my closest friends, okay, who I considered my closest friends, nobody talks to me.*

¹⁷ Gus Lita, the manager and part-owner of Le Jardin who has had financial ties with Daibes for more than two decades, told the Commission when Mrs. Delaney gave her two weeks' notice, she cited personal problems as the reason for ending her employment at the restaurant.

The fallout from Veterans Field prompted Delaney to end his political career and lifelong residency in Edgewater. In December 2014, he resigned as mayor and shortly thereafter moved his family out of town.

Almost a decade since the dumping occurred at the public park, the Veterans Field saga is still not over. No resolution appears imminent in the Borough's lawsuit against Daibes and environmental regulators for negligence. While the municipality seeks to recover costs from the field debacle, so far the effort has resulted in additional financial burden on local taxpayers with more than \$1.1 million already spent on legal fees related to the matter.¹⁸

615 River Road

The former oil tank farm known as the Hess property, located at 615 River Road, was among the last large vacant parcels on Edgewater's waterfront, a former industrial area now dotted with upscale condominiums and shops on a strip of land called the Hudson River Gold Coast. Its redevelopment promised to bring millions of dollars in tax revenues to the municipality.

A private developer purchased the property in 2014 with plans for a sprawling multi-use development; however, the project remained stalled for years as local officials and its owners engaged in a costly legal dispute over its future.

Fred Daibes had once tried to purchase the 18.7-acre site – even at one point allegedly asking the Borough to reach out to Hess at his behest – but later lost out to 615 River Road Partners.¹⁹ Still, Daibes – the owner of the adjacent properties – would factor prominently in the

¹⁸ The Commission's review of Borough legal bills found the municipality paid \$1.1 million to an outside legal firm to handle the Veterans Field litigation between 2016 and 2021.

¹⁹ A copy of a letter of intent to purchase the property is appended to this report.

prolonged battle over the tract. Borough officials claimed the project proposed by 615 River Road Partners was too large and would overburden the local roads and schools, despite projections it would generate \$12.3 million in tax revenue and add affordable housing units. Edgewater said the zoning board did not review the project due to incomplete paperwork filed by the private developers; 615 River Road Partners insisted the board refused to meet on the matter.

A local zoning board member – and longtime Daibes employee – sought his input on the rival developer’s proposal. Not long after Daibes told his former employee he opposed the project, Borough officials finalized a plan to use their government powers to seize the privately owned property through eminent domain and use it to build a public works facility.²⁰ The idea to use the prime real estate for a public works garage surprised former Mayor James Delaney, who told the Commission there had been talks about constructing a public works building behind the Exxon gas station on Old River Road but not at the Hess property. Delaney testified: “Never did we talk about putting a DPW on the Hudson River, you know?”

In December 2017, 615 River Road Partners filed a lawsuit alleging corruption and collusion between Borough officials and Daibes to block the multi-use development on the former industrial site claiming it would compete with the developer's properties. The lawsuit cited a litany of questionable dealings and conflicts of interests concerning Daibes and local elected officials, claiming that the developer essentially controlled high-density housing in the municipality and that those serving on the local governing board were beholden to him.

Edgewater Borough and 615 River Road Partners settled the dispute over the property’s redevelopment in December 2019. Under the agreement, the developer consented to transfer

²⁰ The local government appropriated \$25 million to purchase the property from the private owners in August 2017.

the deed for the western parcel of the property to the municipality to build a new school, create traffic relief measures and scale down the project. The project approved by Edgewater's planning board in December 2021 permitted the construction of 1,200 market-rate units including 180 affordable units built in three 25-story towers, 20,000-square feet of commercial space and a park.²¹ Yet, as of April 2023, numerous matters related to the agreement remain the subject of ongoing legal actions between the parties. Although the agreement allows the town to receive land for a school, recreational space and much-needed affordable housing, it came at a steep price for Edgewater. The lawsuit cast the municipality in an unflattering light by exposing the cozy relationships between local officials and Daibes. According to an SCI review of records, it was also costly for taxpayers, incurring nearly \$1.2 million in legal fees for the Borough between 2016 and 2021 alone.

Manipulation of Low Income Housing Tax Credits

The Commission found Edgewater officials enabled Daibes to secure a kind of "double dip" benefit where other developers paid him to build affordable housing units in local projects in which he previously received a government tax break to construct.

In New Jersey, every municipality is legally required under the *Mount Laurel* legal doctrine to provide their "fair share" of their region's affordable housing needs.²² Municipalities can require new housing projects to include below-market units to help meet that mandate. The market-rate housing usually subsidizes the costs of building those units. However, developers

²¹ Shortly after the settlement, a nearby business and Cliffside Park Borough filed a lawsuit against Edgewater Borough, claiming the 615 River Road development will block their skyline views and accusing Edgewater officials of reaching the agreement to avoid addressing corruption allegations. The matter was resolved, according to court filings.

²² Southern Burlington County NAACP v. Mt. Laurel, 67 N.J. 151 (1975)

who show that the market-rate homes cannot generate enough income to pay for affordable units can seek financial assistance from the government. The Low Income Housing Tax Credit (LIHTC) Program provides federal tax credits to developers to encourage the acquisition, construction and rehabilitation of affordable units.

Only a small percentage of developers receive the tax credits each year. According to the New Jersey Housing and Mortgage Financing Authority (NJHMFA) website, which administers the program, demand for the program exceeds the available funding by a margin of about three-to-one. It provides a dollar-for-dollar reduction in tax liability and acts as a catalyst to attract private investment into the affordable housing market.

In 2010, the NJHMFA approved Daibes for a \$2.3 million tax break – approximately \$235,000 annually over 10 years – to build 38 COAH, a new four-story apartment building in Edgewater with 38 units available for below-market rate rent.²³ A review of municipal resolutions showed the Borough Council also authorized at least \$1.5 million in payments to Daibes from five developers to build affordable units at 38 COAH between 2005 and 2013, with some monies received after the building's projected completion. He did not disclose the payments, which substantially changed Daibes' costs for the project, to the NJHMFA, as lawfully required to remain eligible for the credits as previously calculated.²⁴ When contacted by SCI investigators, an NJHMFA official said their review of records indicated Daibes was in compliance with the terms of the program with no history of any sanctions for 38 COAH. "At no time was the NJHMFA aware that Mr. Daibes had received payments from other developers for the 38 COAH/Vreeland

²³ The property is alternatively referred to as 38 COAH, the Vreeland Park Residences, Vreeland Park and the Vreeland project in various documents.

²⁴ N.J.A.C. 5:80-33.31

project,” an NJHMFA representative stated in written correspondence to the Commission. The failure to disclose changes to the project’s costs meant Daibes continued to reap the full benefits of the tax credit program while also collecting monies from other developers creating the inappropriate double dip situation.

The Commission found that Daibes attempted to secure a similar arrangement in Fort Lee several years later. However, the effort largely fizzled when the NJHMFA clawed back a portion of the tax credit award after learning other developers paid for the construction of units in the project. In 2013, the Assad Y. Daibes Memorial Foundation For Special Needs Urban Renewal, Inc. qualified for \$1.9 million in annual tax credits for 10 years to build a 141-unit multifamily high-rise at 69 Main Street. In August 2018, after learning of additional funding sources, project delays and other issues, the NJHMFA wrote a letter to Daibes, who had not disclosed the payments, informing him it was reducing his annual tax credit by a half-million dollars. Several months later, one of the firms that paid Daibes \$2.7 million to build 20 affordable units in the building sued him to get its money back after Fort Lee officials declared the Foundation in default for failing to complete the project on time.

By failing to disclose the builders’ payments, Daibes took advantage of a government program with finite resources and evaded his legal obligation to report the additional funding. The circumstances also raised questions about municipal officials’ responsibility to oversee affordable housing built within their communities. Although it is legal for developers to deposit funds into a municipal trust account covering their share of affordable units owed to a town instead of constructing the units themselves, the process requires tight regulation. Moreover,

municipal affordable housing obligations are not supposed to be sold between builders, according to a fair housing advocate.

ILLICIT BUSINESS PRACTICES/QUESTIONABLE FINANCIAL TRANSACTIONS

During the course of the inquiry, the SCI found other financial activity concerning Daibes and the operation of his corporate entities, including illicit business practices, questionable collection of unemployment benefits and nonspecific payments to organized crime associates. The Commission is statutorily required to refer information and evidence of a reasonable possibility of criminal wrongdoing to appropriate administrative agencies and law enforcement authorities. Over the years, this collaboration with law enforcement has resulted in numerous criminal prosecutions that likely would not have occurred absent the SCI's investigation.

Cash Payroll

The Commission identified more than \$3.9 million in Waterside Construction's payroll that was handed out to employees in cash for at least 18 months, enabling the Daibes-owned business to avoid its legal responsibility to pay state and federal employment taxes.

During a review of the financial records, the Commission found thousands of canceled checks from Waterside Construction made payable to a Hudson County check-cashing business between February 2017 and August 2018. The checks were issued to about 75 individuals weekly, averaging between \$600 and \$1,100.

SCI investigators discovered Waterside Construction was a longtime client of the check-cashing business and had established a weekly routine with the firm. Each week, a Waterside

Construction representative sent a fax to the check-cashing firm with a list of names and the face value of the check designated for each individual. After creating an envelope for each person on the list, the check casher placed the money inside. A Waterside Construction employee would later deliver the endorsed checks to the check-cashing firm and then take the envelopes containing the cash. In total, the Commission identified 111 individuals who received payments from Waterside Construction via this method.

Other factors made the cash payouts appear suspicious. Nearly all the checks were for amounts in whole dollars, such as \$600, or sums ending in 50 cents, such as \$750.50. Normally distributed payroll checks typically have varying amounts of cents. Further, there were no federal IRS W-2 or F1099 forms on record in either 2017 or 2018 for any Waterside Construction employees who received their salary in cash.²⁵

In July 2018, Waterside Construction stopped frequenting the check-cashing business. The arrangement ended around the same time Daibes curtailed spending and other business practices leading up to his federal indictment for bank fraud in October 2018.

While the investigation uncovered the use of cash payroll during a limited 18-month period, the Commission found evidence suggesting Waterside Construction had conducted this unlawful practice for far longer and had utilized another cash-checking establishment for similar arrangements. As noted earlier, the Commission's findings in this matter were referred to the Office of the U.S. Attorney for the District of New Jersey and the Division of Criminal Justice.

²⁵ Although the employees endorsed the checks, Waterside Construction paid the fee for cashing the checks.

Questionable Collection of Unemployment Benefits

The Commission also uncovered evidence that three Daibes employees inappropriately collected unemployment insurance from the State of New Jersey while collecting a salary or payments from the construction firm. A review of records from the state Department of Labor indicated one individual collected \$17,000 in unemployment benefits from July 2016 to January 2017 while simultaneously receiving \$31,000 in payments from Waterside Construction. When confronted by the SCI about the concurrent payments, the individual invoked his Fifth Amendment right against self-incrimination. The Commission's review of records found two other Daibes employees appeared to have inappropriately collected unemployment insurance benefits during the first quarter of 2019.

The Commission referred its findings regarding the inappropriate collection of unemployment benefits to the appropriate Labor Department and state law enforcement authorities for further review.

Unspecified Payments to Associates or Relatives of Organized Crime Members

The SCI's review of financial records revealed documentary evidence that Daibes wrote personal checks totaling more than \$100,000 over four years to family members of a now deceased organized crime figure. Multiple witnesses told the Commission the late mob member was a semi-regular visitor at the developer's former office at 1000 Portside Drive in Edgewater. To obtain more information about this financial relationship, the SCI subpoenaed Daibes and one of the individuals who received the payments to appear before the Commission to answer questions under sworn testimony regarding the nature of the payments. In response to every

question posed by SCI counsel regarding these payments, Daibes and the other individual chose to invoke their Fifth Amendment rights against self-incrimination. The following is a summary of the findings made by the SCI regarding the payments:

- Daibes wrote more than a dozen personal checks for unspecified payments totaling more than \$100,000 to the son and daughter-in-law of a high-ranking Genovese crime family member who was a key operative in an illegal gambling ring run by the organized crime group in northern New Jersey in the 2000s.
- The checks issued between 2016 and 2019 were for amounts ranging from \$1,500 to \$50,000.
- The son previously worked for several Daibes-owned entities. The Commission found some of the wages he received from Daibes' businesses between 2014 and 2016, totaling \$113,000, appeared unreported to the state Department of Labor.

* * *

The Commission also found Daibes provided free housing for 13 years at one of his luxury Edgewater properties for the husband of a former councilwoman, a financial perk worth hundreds of thousands of dollars.²⁶ Robert Fischetti was not only married to a local government official, but he also happens to be a longtime Genovese crime family associate who was involved in illegal gambling for decades.

²⁶ Fischetti's wife, Duane, served on the Edgewater Council from 2015 to 2019. Fischetti testified that he and his wife have lived separately for decades. Duane Fischetti's son Robert Travers is the Edgewater Borough Attorney.

Fischetti has been linked to mob-affiliated illegal gambling activity for decades, running numbers in the 1960s before becoming a significant gambling operative in Hudson and Bergen counties in the 2000s. He served a prison term for extortion during the 1980s and served another term for contempt and related charges in the 1990s.

In sworn testimony, Fischetti, now in his 80s, told the Commission his relationship with Daibes began forty years ago when the developer was a young man who sometimes visited an Italian restaurant he once owned in Edgewater. At that time, he said Daibes was working as a bar back at the nearby Binghamton's ferryboat restaurant owned by developer James Demetrakis. Fischetti testified the two never conducted any business together – either legitimate or unlawful – but became “friendly.”

Fischetti also attributed his arrangement with Daibes that allowed him to live rent-free for more than a decade to friendliness. He told the SCI: “Well, we became very friendly. He knew things weren't good for me, so he said, you know, don't worry about it...”

Fischetti testified he never paid for rent after moving into a swank apartment owned by Daibes on Edgewater's Hudson River Gold Coast from 2005 until 2018. Instead, a Daibes entity paid his rent. A review of records from Waterside Construction uncovered nearly \$170,000 in checks written from the account between 2014 and 2018 alone to the Riello, formerly St. Moritz. Some checks included a written notation indicating the funds were rent payments for Fischetti's apartment.²⁷ The payments from Daibes' Waterside Construction stopped not long after the SCI issued a subpoena inquiring about the expenditures.

²⁷ Commission testimony revealed both Robert Fischetti and an Edgewater councilman often dined for free at Le Jardin.

Referrals and Recommendations

In addition to the referrals already made to the Office of the Attorney General of New Jersey, the United States Attorney for the District of New Jersey and the New Jersey State Department of Labor and Workforce Development, the Commission refers the entirety of its findings to those agencies and the New Jersey Department of the Treasury, Division of Taxation, the New Jersey Department of Environmental Protection, the United States Internal Revenue Service, United States Department of Labor and the New Jersey Housing and Mortgage Financing Authority, for whatever action is deemed appropriate.

• • •

1. Strengthen the Local Government Ethics Law

When the Local Government Ethics Law was enacted in 1991, the Commission applauded it for shining a light on the financial arrangements of local officials and setting basic standards for ethical conduct. Although the SCI mostly praised the law in the September 1992 *Local Government Corruption* report, it noted several areas where it did not go far enough and needed further fine-tuning regarding its scope, oversight and penalties for violations. Despite the Commission's recommendations to make the law more effective, as well as those from other reform-minded advocates, the law has remained substantially unchanged since it took effect three decades ago. Some municipalities and other government entities have adopted more restrictive ethics codes or created local boards to address ethics matters. Yet, little has occurred to comprehensively, uniformly and consistently address ethical concerns on the local level.

Expand Financial Disclosure

- Local officials who are professional service providers or conduct business with firms seeking public contracts should be required to identify any clients who paid them or their firms more than \$10,000 in annual fees on their annual financial disclosure statement.

Mandatory Ethics Training

- Unlike counterparts serving in state government and some other public entities, municipal employees and local government officials do not undergo ethics training. The Commission recommends mandatory ethics training for all local public employees and elected officials. Online learning modules and webinars are now widely used in the private sector and across government in New Jersey to provide training, removing obstacles associated with in-person sessions, extending the reach of the content to a broader audience and making it available on demand. The state Division of Local Government Services already uses this technology through a webinar to assist individuals in online filing of their financial disclosure forms.

Increase Penalties for Violators

- In the September 1992 *Local Government Corruption* report, the Commission noted that fines for violations of the newly enacted Local Government Ethics Law, set at “not less than \$100 nor more than \$500,” should be increased. Thirty years later, the fines for violations remain unchanged. In contrast, any

state officer or employee found guilty of violating the New Jersey Conflicts of Interest Law or an agency Code of Ethics can be fined between \$500 and \$10,000 and/or suspended from office or employment for one year for each violation. Further, the State Ethics Commission, which oversees ethics issues in the Executive Branch, can also order restitution, demotion, censure or reprimand for an ethics violation. The Commission recommends increasing the fines to align with the law that governs ethics for state officers and employees

2. Create a Conflicts of Interest Law for Local Government

The Commission recommends the creation of a conflicts of interest law for local government employees and elected officials similar to the New Jersey Conflicts of Interest Law that applies to State and Legislative branch employees. That law explicitly defines conduct that is prohibited for public employees as well as circumstances that present potential conflicts of interest and merit public disclosure. In lieu of creating a separate law specifically applicable to local government, New Jersey legislators should consider expanding the existing conflicts of interest law to include municipal employees and officials.

3. Improve Environmental Site Remediation Oversight

The Site Remediation Reform Act was enacted in 2009 to expedite cleanups of environmentally contaminated sites. It enabled Licensed Site Remediation Professionals (LSRPs) to step in for the DEP to manage the day-to-day oversight of site cleanups. The law was significantly updated in 2019, adding numerous changes in responsibility for LSRPs and, in most

cases, reducing the circumstances when the State may take direct oversight of sites, if a project is on time and advancing appropriately. According to the DEP, the Site Remediation and Waste Management Program has successfully restored nearly 60,000 contaminated properties to productive use since its inception.

The Commission recommends changes to the program's management to strengthen and protect it from manipulation. The DEP should establish clear rules concerning the LSRPs' duties and clarify that the environmental professional holds authority over all cleanup activities at the site as a state government representative. Further, any funds designated for LSRPs for a specific project should be kept in a trust fund controlled by a neutral third party or the DEP until remediation is complete. This arrangement essentially creates a firewall removing the payment mechanism from the party that hired the LSRP, eliminating any misconception that the environmental professionals are accountable to the hiring entity rather than serving in their intended role as a stand-in for state regulators.

4. Study State Supervision of Affordable Housing Mandates

The findings in this investigation demonstrate that affordable housing mandates and associated public funding mechanisms are vulnerable to manipulation and abuse. Since 2015, no state oversight mechanism has existed to oversee municipalities' legal obligation to provide their fair share of affordable housing in New Jersey. Before that time, the Council on Affordable Housing (COAH) administered the state's affordable housing mandate. However, the New Jersey Supreme Court removed its authority after COAH failed to meet court-imposed deadlines updating the number of affordable units each municipality needed to provide. That action came

following years of political infighting at the local and state levels and legal battles over the affordable housing rules. The courts now approve plans from towns seeking to demonstrate compliance with affordable housing mandates.

While this arrangement has moved New Jersey forward in meeting affordable housing obligations, it provides no administrative oversight to guide local government bodies in the process, hold them accountable for following the rules or to ensure the units are actually built. The Commission recommends the creation of a task force to study whether New Jersey should re-establish state oversight for affordable housing-related issues. Members of the task force should include local and state government representatives, housing advocates, land use, planning and zoning authorities, environmental experts and others with knowledge and expertise in affordable housing-related issues.

APPENDIX



DAIBES ENTERPRISES

July 9, 2013

Cushman & Wakefield, Inc.
One Meadowlands Plaza, 7th Floor
East Rutherford, N.J. 07073
Attention: [REDACTED]

Dear [REDACTED]:

I enclose herein our proposed form of Letter of Intent to purchase the Hess properties located in Edgewater, New Jersey which we ask you to forward to your client for their review, comment and consideration.

The offer and general terms are consistent with other similar transactions we have successfully concluded and am presently involved, such as with the former 'Alcoa Plant' property which we remediated and developed as a residential site, and presently preparing for the remediation of the 'Quanta Site' for which Honeywell International is the primary responsible party, also located in Edgewater. We have purchased this site and entered into a remediation contract with Honeywell and anticipate the start to commence by year end as all Federal and State compliance requirements have been executed and approved.

In the event you require any verification or recommendations, please advise and we will forward contact information to your or your clients attention.

Please keep us advised and if you are in need of any additional information.

Thank you.

Very truly yours

A handwritten signature in black ink, appearing to read 'M. [REDACTED]', written over a blacked-out name.

N.J.S.A. 52:9M-12.2 provides that:

- a. The Commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.*
- b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.*
- c. Any person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the Commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the Commission may redact from the response any discussion or reference to a person who has not received notice under subsection a. of this section.*
- d. Nothing in this section shall be construed to prevent the Commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.*
- e. Notwithstanding the provisions of R.S. 1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.*

The following material was submitted pursuant to those statutory requirements.

LINDABURY, MCCORMICK, ESTABROOK & COOPER, P.C.
53 Cardinal Drive
P.O. Box 2369
Westfield, N.J. 07091
(908) 233-6800
Attorneys for Respondent
Ronald R. Dooney, LSRP

IN THE MATTER OF THE	:	STATE COMMISSION OF INVESTIGATION
INVESTIGATION OF EDGEWATER	:	DISSEMINATION NO. 22-11-002
REAL ESTATE	:	
	:	
	:	
	:	CERTIFICATION OF RONALD R. DOONEY
	:	

Ronald R. Dooney, being of full age, hereby swears and affirms, under oath, as follows:

1. I am the principal of TERMS Environmental Consulting, Inc. (“TERMS”), and as such, am fully familiar with the facts and circumstances of this matter.
2. The State Commission of Investigation (“SCI”) has forwarded to me redacted excerpts of a proposed Commission report (the “Report”) concerning real estate dealings in the Borough of Edgewater, New Jersey.
3. Pursuant to N.J.S.A. 52:9M-12.2, I am permitted an opportunity to respond to the excerpts pertaining to TERMS.
4. The proposed report concerns Edgewater’s governmental oversight of real estate and development matters concerning a particular local developer.
5. The excerpts provided by SCI mention TERMS in relation to our involvement with Edgewater’s Veterans Field Project (the “Project”). While those excerpts are not truly critical of TERMS’ involvement with the project, I offer this certification to provide some additional information and context regarding this matter.
6. This project was analyzed as one example of the dubious nature of the private

developer's actions and influence peddling in Edgewater.

7. As stated in the proposed report, TERMS was retained by Edgewater to supervise the remediation of the significant contaminated portions which prompted closure of the site in approximately September 2011.
8. Specifically, TERMS was retained by Edgewater in 2011 to conduct a Preliminary Assessment required under the Department of Environmental Protection's Green Acres program and to investigate surface and subsurface conditions at Veteran's Field.
9. TERMS' investigation in 2011 determined that Veteran's Field Project contained historic fill and hazardous substances, including several polyaromatic hydrocarbons ("PAHs"), extractable petroleum hydrocarbons ("EPH") and polychlorinated biphenyls (PCBs") at concentrations in excess of the New Jersey Department of Environmental Protection's residential direct contact cleanup standards.
10. Additionally, TERMS was retained by the Borough to provide additional oversight of the Veteran Field Park redevelopment project during 2013.
11. TERMS' oversight duties included overseeing the capping of historic fill at the site previously identified.
12. The NJDEP regulations/guidance require that the cap be in the form of impervious materials (*e.g.* Asphalt, concrete, buildings) or certified clean fill.
13. Here, the private developer in question was initially required to provide laboratory results that showed the material proposed for import met the NJDEP standards for classification as "Certified Clean Fill".
14. After several lab reports for proposed fill were submitted to the Borough Administrator, I was informed that the Borough wanted TERMS to conduct the

testing/analyses in order to ensure the integrity of the testing process.

15. The private developer was required to inform TERMS what materials they proposed to bring to the site, and subsequently, TERMS would collect samples of the proposed material and send them to the appropriate lab for testing.
16. TERMS never authorized (nor would ever authorize) soil brought to the site until lab results indicated the proposed fill met the applicable standards.
17. Throughout this process, TERMS conducted tests on a significant amount on unacceptable material.
18. The SCI report accurately indicates growing tensions between the private developer and TERMS concerning the site, particularly with a TERMS supervisor who refused to allow unclean fill material on the site.
19. As a consequence of that tension and due to the critical importance of our work, I made the business decision to replace the aforementioned supervisor due to the personality clash. However, I replaced him with a supervisor who was charged with the exact same directives and rules.
20. TERMS at all times is driven by the critical importance of our work and upholding the highest standards of professional ethics. TERMS stands behind its actions in rejecting any unauthorized fill material.
21. TERMS' only motivation concerning the project was completing our job and ensuring the appropriate regulations were followed.
22. As the SCI report indicates, unacceptable fill material (which was eventually determined to be crushed concrete from the former Alcoa site which was contaminated with PCBs) was brought to the site purposely on September 7, 20123, which was a

weekend when TERMS was not present.

23. TERMS never transported any material, including, but not limited to demolition debris from the former Alcoa Site to Veterans Field Park.
24. TERMS would not have authorized the usage of this fill if we had been on site.
25. After the fact, TERMS was informed that the material was spread throughout a fairly significant portion of the site.
26. Upon learning of this information, TERMS immediately prohibited any additional material from being brought to the site, and we commenced testing the soil to ascertain the extent of the unauthorized Alcoa fill.
27. While the report indicates that “still, it would take nearly a month before TERMS shut down the job site,” it was due to the private developer’s method of using unauthorized fill on a weekend that left TERMS unaware of the extent of the unauthorized fill issues at the site.
28. TERMS ultimately conducted testing to determine the scope of the problem caused by the unauthorized fill. Once TERMS completed its due diligence with as much as expediency as possible, we informed the Borough of the need to shut down the site.
29. While the private developer was permitted to continue other tasks at the site while TERMS conducted extensive testing, they were not permitted to conduct any soil work.
30. TERMS subsequently received the results of the laboratory analysis of the samples from the Alcoa debris which showed contamination levels above the acceptable standards.
31. It was at that point that TERMS notified the private developer that the Alcoa material was not suitable for the site and had to be removed.

32. To ensure that the complete extent of the fill issue was known, on September 30, 2022, TERMS' personnel collected an additional twenty-seven samples of material from the site and sent same for laboratory testing. These results were received by TERMS on October 3, 2013 and again demonstrated contamination.
33. The Borough requested that TERMS conduct additional extensive sampling at the site in October and November 2013. The Borough also requested that TERMS' results be validated.
34. Notably, it is a matter of public record that the Borough initiated litigation concerning this very project, in which TERMS is actively participating.
35. In the litigation, as well as with respect to the current SCI investigation, TERMS has never waived in the defense of our firm's adherence to the correct procedure, regulations, and highest ethical standards. TERMS willingly cooperated fully with the SCI investigators and provided responses to any and all requests for information.
36. As noted in the report, and as further articulated in the litigation concerning Veterans Field Project, TERMS has always and continues to unequivocally deny the false allegation that TERMS approved reusing materials from the Alcoa site.
37. The local news story referenced on the last page of the SCI report quotes a spokesman of the private developer who stated that both DEP and TERMS approved reusing the materials from the Alcoa site.
38. TERMS categorically denies the spokesman's claims. First, DEP was not involved in any aspect of the work at the site. Secondly, at no point prior to the unauthorized dumping of contaminated fill did TERMS test or approve the proposed soil to be used at the site.

39. Because of the surreptitious dumping by the private developer, no initial sampling was conducted by TERMS, and the private developer failed to follow the appropriate process with respect to fill soil.

40. In no way was TERMS complicit with any of the alleged dubious behaviors investigated by SCI. Rather, TERMS was an additional victim of the machinations and clandestine conduct of the private developer.

41. TERMS firmly believes that the litigation, as well as the findings of this report will clearly demonstrate TERMS' commitment to professional excellence, and proper adherence to the appropriate procedure and regulations governing this project.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 22, 2022



RONALD DOONEY

MATTHEW S. ROGERS
ATTORNEY AT
LAW

123 PROSPECT STREET
RIDGEWOOD, NEW JERSEY
07450

Tel: (201) 857-3700
Fax: (201) 857-3699

Email: msr@mrogerslaw.com
Website: www.mrogerslaw.com

March 17, 2023

Ms. Marian Galietta, Esq.
Chief Counsel, Commission of Investigation
State of New Jersey
50 West State Street
P.O. Box 045
Trenton, New Jersey 08625

Re: Louis Vidal
Dissemination Number 23-02-010

Dear Ms. Galietta,

As you are aware, I represent Louis Vidal in regard to the above referenced matter. This correspondence is submitted in response to the State Commission of Investigations (hereinafter "SCI") Notice of Proposed Report. Kindly attach this Response to the Report when it is released.

My client asserts that the assumptions upon which SCI relied to make its conclusions are inaccurate and misguided.

Thank you for your time and consideration in this regard.

Very Truly Yours,

LAW OFFICES OF MATTHEW S. ROGERS, LLC



By: _____

MATTHEW S. ROGERS

Dear Commissioners;

Today I write to you in response to the heavily redacted Report provided to me by the State Commission. Let me start by saying that responding to the report is made harder by the numerous and extensive redactions made on it. Whole sections of the report are taken out which makes it difficult to respond. I would also like to add that I have spent over 20 years as a Councilman in Bergen County, I stand very proud of that record. Never, in all of those years, has any vote I made been influenced by any outsider, and that includes Fred Daibes. While the SCI spent over three years on this project, not a single mention in the report shows that to be untrue, notwithstanding all the innuendo and shade thrown in my direction.

It continues to be disappointing that the Commission decided to rely on innuendo and unverified statements made by a former Mayor of Edgewater to form the conclusions found in the report. Additionally, it is equally distressing that allegations are made in the Report regarding my business income that are simply not true. The Commission failed to accurately calculate the sources of income for my company, also failed to deduct or consider costs of goods purchased by my company in order to provide the flooring services to customers and did not calculate the normal business operations expenses, taxes, employee costs that are a part of any business operation in New Jersey. Without qualification, the allegation that over half of my income in the four year period identified came from one source is not true.

By way of background, in 2008, I became a councilman in Edgewater for the first time. In my career I had spent significant time working in the financial industry. In the early 2000's I was working for my current company in the lumber industry. We were lumber importers from Europe and South America. Celtic Log and Lumber did not enter the flooring sales and installation business until much later.

First and foremost, I never did any business with Fred Daibes or his entities until late 2015. Prior to that I had no business relationship with him. In fact, I didn't start to do any business with Mr. Daibes until after I voted in favor of suing him for the damage he did to our park in town. The report suggests that I was doing business with him throughout my time as a councilman, and that is simply not true.

When the Borough was forced to build a new park in town, the town went through a bid process. I was not involved in the bid process in any way. The lowest responsible bidder was the project was a Daibes entity. . Ironically, the State has an entire statutory process, the Local Public Contracts Law, geared toward requiring municipalities to take the lowest bid and yet, in this report, the Commission is choosing to criticize our decision to do so. From what I can see there isn't a single fact or shred of testimony to show that the award of the contract was done improperly or illegally.

The cost overruns on the park started very early on when Hurricane Sandy occurred and the town knew at that time that the costs would become significantly higher. In addition to the damage on the field, regulations that the State issued required us to do other things to the plan following the Hurricane which also added to the cost. So, well before Mr. Daibes did any further contamination, the costs estimates were not going to work. Although I had no role in overseeing the construction, no councilman would, when we investigated the contamination, I was strongly in favor of suing all of the parties involved, including the contractor and the Borough's own engineer and LSRP.

While the contamination was a problem, it did present an opportunity for us to put forth a first class park, which we did and I am very proud of. The park gets tremendous use and we made the town better by having such a park.

All of this is to say that from 2008, through that entire time period, Celtic Log and Lumber did not work with any Daibes entity.

I do not get involved with preparing the agenda for council meetings. That work is done by the clerk and the administrator. I am provided with an agenda and often the resolutions in advance of the meeting. I do not remember ever voting on any resolution that involved Mr. Daibes directly. The resolutions you pointed out to me pertained to a liquor license extension. I do not review the backup data for those resolutions. They were all under corporate names, not Mr. Daibes individually, and there was no way for me to know if he owned a certain corporate entity.

I am also criticized for voting on zoning resolutions that inured to Mr. Daibes benefit. Again, when the planner provides a zoning amendment to the council, and the basis for such amendment, we are never told who owns the property or who has an interest in the property. Oftentimes, the amendment would affect several properties. I know that I never voted on any zoning amendments that benefited me personally. As I sit here today, I do not know for a fact who owns any of the properties affected by those zoning decisions, unlike an application to the planning or zoning board when the owners are disclosed to the board in advance of a hearing.

In fact, I have pushed the Borough to follow through with its lawsuit against Mr. Daibes regarding the field. We have followed the advice of our legal counsel on that case from the beginning and have, as I understand it, rejected several opportunities to settle the suit with Mr. Daibes. We have financed that litigation because it is the right thing to do for the town.

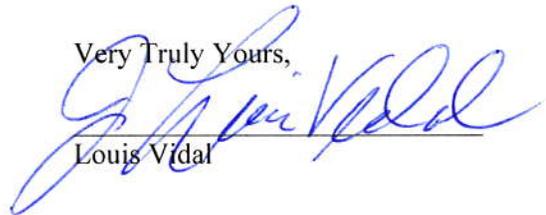
Although his name is blocked out (except in one section) it is clear that the testimony of the former Mayor James Delaney was a basis for the SCI's conclusions in this report. That is disappointing as much of the inferences accepted by SCI are flat out incorrect and inaccurate. Mayor Delaney had every opportunity to do the right thing as Mayor when it came to the contamination at the park. A portion of the report deals with a time when another council person and I went to his house, except the story he provided is fiction. I remember it very well. We went to his house to try and convince him to go directly to Fred Daibes and show some leadership as the Mayor. Our own developer who was supposedly so proud of the doing this project for the town and clearly damaged the field, and Mayor Delaney had an opportunity to fix it with him. We told him that he was the Mayor and he had an obligation to do so. When we told him he needed to meet with the Developer and fix it he said to us "na, na, na, he's gotta call me, I am not calling him first, he's gotta come to me". Delaney had no backbone.

The next thing we knew he resigned as Mayor and quit on the Borough. In fact, he never told any of us of his plan to quit and after he did, he wouldn't take any calls from anyone to explain why he did so. He never once talked to any of us about the pressure to give in to the Developer or do what the developer wanted. He never told any of us that he felt pressured to leave town. Now, so many years later, after showing no leadership and cowardly moving out of town, he testifies to the Commission with misrepresentations and about things he knows nothing about, like what happened with our eminent domain notice to 615. He wasn't there and has no idea what happened during that time.

As far as I know and have been advised, I did not violate any statutes in my time as councilman. I reported all sources of income I was required to. After 2015, when we first started to do work with Mr. Daibes, I never deliberately withheld that information. Had I been required to so disclose on some form I would have done so. In fact, I know of no resolutions or ordinances which benefited him specifically that I voted on. The report does not disclose any. The bid awarded to Waterside was done several years before I ever did any work for Daibes.

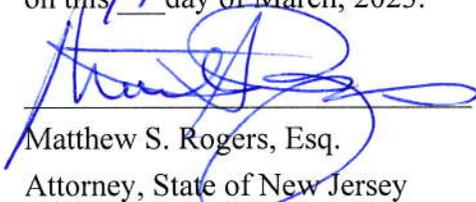
Lastly, even though the report says Mr. Daibes supposedly was against the 615 River Road project, the Borough resolved by way of an agreed upon Settlement a lawsuit about the development of that property which will directly compete with properties he owns, and in the process the Borough owns a multi-million dollar property for the Borough to use to solve its need for a school and other public uses.

Very Truly Yours,



Louis Vidal

Sworn to and Subscribed before me
on this 17th day of March, 2023.



Matthew S. Rogers, Esq.
Attorney, State of New Jersey



BOROUGH OF EDGEWATER
MUNICIPAL BUILDING
55 RIVER ROAD
EDGEWATER, NEW JERSEY 07020

Phone (201) 943-1700
Facsimile (201) 943-9242

EDGEWATER REACHES SETTLEMENT WITH 615 RIVER ROAD PARTNERS

Fair and equitable solution brings benefits to both parties

(EDGEWATER, NJ) November 13, 2019 - Today, Edgewater Borough Officials and 615 River Road Partners, LLC announced a settlement to litigation that has been pending since 2017 concerning the 18.7 acre Hess oil terminal property and its future redevelopment. **Most notably, the developer is transferring the entire western portion of the property valued at approximately \$12 million dollars at no cost.** The site is anticipated to be the home of a future public school as well as open recreational space.

"After years of litigation and contention, I am pleased to announce a settlement and path forward for the development of the Hess Oil Terminal Property," stated Edgewater Mayor Michael McPartland. "Finally, we can move forward with an exciting project that includes new housing, retail, and park amenities for Edgewater. Most importantly, we are securing the last viable property off of the riverfront to be developed into a new school for our children and open space for residents to enjoy. This is a great day for Edgewater and a common-sense solution."

Kerry Postma, the Superintendent of the Edgewater School District adds, "This is a tremendous opportunity for the town and the Board of Education to confidently look at our districts future and know that we are fully prepared to provide the best-in-class education for our children. We appreciate the Mayor and Council working with us to explore solutions that serve our community and keep our children's educational needs as a priority."

The Borough Council announced a settlement with the following terms:

- **The entire western parcel will be transferred to Edgewater for the future construction of a school and open space.** This will address an emergent Borough need as the Borough's schools are at or near capacity, and will provide additional space for the expected increase in school age children who will reside in Edgewater, including those who might reside at this development.
- The developer will undertake all environmental remediation of the property, improve transportation in the surrounding areas, including a new ferry stop, and the development of a new public riverfront park.
- Additional affordable housing units to satisfy the Borough's constitutionally required housing obligation, which leads to a likely conclusion of the affordable housing compliance action.

Under the terms of the settlement, the Borough will declare the property as an area in need of redevelopment and set the terms for redevelopment, 615 River Road Partners, LLC, who already owns the property, will be named the redeveloper under the terms of a redevelopment agreement and will be **allowed to build 960 to 1,020 market rate units and 180 to 240 affordable units,** for a total of a maximum 1,200 units, down from the originally applied for 1874 units.

"This settlement is a common-sense approach to move forward in the best interest of Edgewater residents and families," stated Mayor McPartland. "We are receiving a property that would otherwise cost millions to purchase, for free, as well as solving state mandated, affordable housing requirements, bringing our community a public riverfront park and walkway, and gaining much needed transportation improvements in Edgewater, with a new ferry stop and added green space. After years of contention, we came together to reach an amicable solution for all involved that protects Edgewater."

Paul Faugno
Member NJ Bar.
Federal Bar of NJ and DC

Of Counsel
Robert Cyruli
Russell Shanks
Member NJ, NY and CT Bar



120 State Street
Hackensack, NJ 07601

p: 201.342.1969
f: 201.342.2010

legal@faug nolawfirm.com
www.faug nolawfirm.com

Attorneys at Law

March 17, 2023

VIA E-MAIL mgalietta@sci.state.nj

Marian Galietta, Esq.
State Commission of Investigation
50 West State Street, 14th Floor
P.O. Box 045
Trenton, New Jersey 08625-0045

RE: In Re Robert Fischetti

Dear Ms. Galietta:

Please be advised that the undersigned represents Robert Fischetti in regard to the above-captioned matter.

Mr. Fischetti's first involvement in this matter was when he received a subpoena to testify before the Commission. It was at that time that Mr. Fischetti retained the undersigned. Mr. Fischetti, with counsel, fully cooperated with the Commission's subpoena. In fact, Mr. Fischetti appeared before the Commission and gave comprehensive and truthful responses. Mr. Fischetti only alluded to the Fifth Amendment in regard to one question, and answered a multitude of questions spanning several hours and at that point in February 2019 to the month of November 2022 neither Mr. Fischetti nor the undersigned heard anything about this investigation. The undersigned on November 10, 2022 received notification pursuant to N.J.S.A. 52:9M-12.2 that a report had been issued including criticisms of Mr. Fischetti. Pursuant to the above-referenced statute, Mr. Fischetti renders the following response.

The Commission, hereinafter referred to as "SCI" was legislative created and was given certain statutorily enumerated duties and powers. In particular, its object was to investigate organized crime and racketeering, to investigate the conduct of public officers and public employees and other management related to public peace, public safety and public justice.

The investigation for which Mr. Fischetti is purportedly criticized, is ostensibly predicated upon the SCI's desire to expose waste and abuse in local government. Clearly, the object of this investigation was to address potential wrongdoings by public officials. This object is set forth in the introduction section of the SCI report.

It is of utmost significance to note that Robert Fischetti has never held any public position, has never been an elected official appointed official in the Borough of Edgewater or any other municipality or State.

The SCI investigation herein, by its own assertions, targeted an individual by the name of Fred Daibes. It is clear that the entire focus of the investigation was to implicate Mr. Daibes in some form of wrongdoing as a precursor to a referral of such to the New Jersey Attorney General's office and/or US Attorney's Office.

It is respectfully submitted that the SCI in conducting its investigation and targeting Mr. Daibes took an overly broad and shotgun approach. In essence, they sought to uncover any personal and/or business relations that Mr. Daibes had with any individual and/or corporate entity either located in the Borough of Edgewater or affiliated with the Borough of Edgewater. Consequently, because Mr. Robert Fischetti has been a friend of Mr. Daibes since the time that Mr. Daibes was a juvenile, he has become a subject of the SCI investigation.

The criticisms that have been levied against Mr. Fischetti have primarily focused in two areas: 1) that Mr. Fischetti has been provided with rent free living arrangements by Mr. Daibes; 2) that Mr. Fischetti's wife, although they have been separated during all relevant time frames, was a council woman in the Borough of Edgewater.

The SCI's criticisms are premised upon the speculative conclusion that because Mr. Daibes provided Mr. Fischetti with rent free living, that this somehow was a quick pro quo to Fischetti's wife to extend favoritism to Mr. Daibes through her position as a council woman. This criticism is levied without an iota of evidence being provided to establish any connection between Mr. Fischetti's rental agreement and the actions of his wife whom he has been separated from for many years. In fact, the criticism is levied without any evidential and corroborating support that Ms. Fischetti acted in a biased and/or extended favoritism to Mr. Daibes. The report invites the public and/or any agency for which it is referred to conclude without evidence that such a connection exists.

Given the non-existence of evidence, the Commission engaged in a campaign to disparage Mr. Fischetti because of the prior criminal convictions which occurred many years ago and for which he has received his punishment. Further, the Commission fails to highlight that none of these convictions, although relevant from the outset, had any connection with public corruption. To wit, none of Mr. Fischetti's ancient convictions in any way relate to attempts to influence governmental officials.

Further, Mr. Fischetti is offended by the continued reference by the Commission and innuendo that Mr. Fischetti was involved in organized crime, going so far as to designate him as a "long time Genevese crime family associate..." This assertion by the Commission frankly is defamatory and slanderous. Mr. Fischetti is an elderly man in his 80s and was involved in admitted illegal gambling operations many years ago for which he accepted responsibility and served his punishment. To state that he is a long time Genevese crime family member without providing any corroborating or supporting evidence, is done for no other reason than to create some inference

that he provided Fred Daibes with some type of favoritism through his organized crime connections. These types of statements are very damaging to Mr. Fischetti's reputation.

The only factual involvement that Mr. Fischetti has with this investigation is his acknowledgement that he accepted free living arrangements from Mr. Fred Daibes. He provided a candid and comprehensive explanation of why this occurred. He indicated in substance that many years ago when he knew Mr. Daibes as a juvenile, he showed generosity towards him because of the fact that as a young man, Mr. Daibes came from a family with very little money and times were difficult for Mr. Daibes in his youth.

As this Commission knows, Mr. Daibes went on to be a successful developer and business man and accumulated substantial assets. Mr. Daibes is known as being a man who does not forget who his friends are and those who stood by him in his difficult youth. Mr. Fischetti testified that Mr. Daibes never forgot how Mr. Fischetti treated him as a young boy. When Mr. Fischetti found himself in difficult financial predicament, Mr. Daibes reciprocated. Mr. Fischetti testified truthfully that this is the reason why he was provided with rent free living arrangements. The Commission clearly perceived that the optics of this is unusual, but that perception is predicated upon the Commission not fully understanding the extent and gravity of Mr. Daibes' loyalty to those who treated him well when he was not a successful developer and business man. Irrespective of such, the reality is that this Commission has made various negative inferences regarding Mr. Fischetti without providing any proof that Mr. Fischetti committed any wrongdoing or that he in any way provided favoritism or illegal benefits to Mr. Daibes or that he in any way influenced his estranged wife to do so.

While Mr. Fischetti and the undersigned certainly respect the duties, powers and objectives of the Commission, and recognize that the Commission performs often times a very valuable service to society, we cannot ignore that Mr. Fischetti's name has been disparaged by the Commission's findings without any evidence presented of an illegal connection between Mr. Fischetti and Mr. Daibes.

Mr. Fischetti felt it important to set forth his sentiments and position as to the criticisms levied against him. It is also important for Mr. Fischetti to convey to this Commission that referral of his name to any agency should not occur because of the nonexistence of any evidence of any wrongdoing on the part of Mr. Fischetti. Mr. Fischetti should not be punished for his past wrongdoings, as he already has accepted responsibility for the same and been punished accordingly.

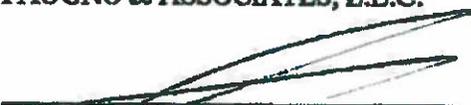
Mr. Fischetti will aggressively defend himself against any continued disparagement of his name based upon the Commission's findings.

Mr. Fischetti, by signing below endorses through oath and/or affirmation the statements made in this response to the SCI's criticisms.

Thank you for your attention to this matter.

Very truly yours,

FAUGNO & ASSOCIATES, L.L.C.


Paul Faugno, Esq.

PF/le

The undersigned attests to the truthfulness of the statements contained in this letter and recognize that any known falsity will expose the undersigned to penalties of perjury.



Robert Fischetti



LAWRENCE S. LUSTBERG
Director

Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Direct: (973) 596-4731 Fax: (973) 639-6285
llustberg@gibbonslaw.com

March 17, 2023

VIA EMAIL & REGULAR MAIL

Marian Galietta, Chief Counsel
Commission of Investigation
50 West State Street
PO Box – 045
Trenton, NJ 08625-0045
mgalietta@sci.state.nj.us

**Re: Response to State of New Jersey Commission of Investigation
Proposed Draft Report, pursuant to N.J.S.A. 52:9M-12.2(c)**

Dear Ms. Galietta:

As you are aware, this firm represents Fred Daibes. On November 8, 2022, Mr. Daibes received your notice pursuant to N.J.S.A. 52:9M-12.2(b), of a proposed State of New Jersey Commission of Investigation (“SCI” or “Commission”) report (the “Initial Draft Report”). On November 22, 2022, Mr. Daibes submitted a response pursuant to N.J.S.A. 52:9M-12.2(c) (the “Initial Response”), in which he identified numerous errors and misconceptions contained in the Initial Draft Report. Mr. Daibes’ Initial Response provided corrections, attached a number of corroborating documents, and offered additional documentation so that the Commission could conduct a thorough investigation that it should with regard to the allegations at issue in the Draft Report. Following the Initial Response, Mr. Daibes received a subpoena seeking documents relating to (i) his business relationship agreement with Jose Luis Vidal; (ii) bid proposals submitted by Mr. Vidal; and (iii) requests for bids, proposals, and awarded contracts for five properties. In response to that subpoena, Mr. Daibes produced a number of additional documents. *See Ex. 1.*

On March 2, 2023, Mr. Daibes received a second notice pursuant to N.J.S.A. 52:9M-12.2(b), of another proposed SCI report (the “Second Draft Report”). Though not provided to us in redline form, we have endeavored to compare the Second Draft Report to the Initial Draft Report in order to determine whether modifications were made consistent with the additional evidence supplied by Mr. Daibes. In fact, it appears that the Commission has made only grammatical corrections and other minor revisions,¹ and that the Second Draft Report is still replete with a false,

¹ For example, the Initial Response identified that footnote 2 of the Initial Draft Report falsely stated that Mr. Daibes became a convicted felon in April 2022 after pleading guilty to participating in an insider loan scheme at Mariner’s bank. The Initial Response explained that (i) Mr. Daibes’s plea has not yet been accepted by the court, and he is not

unsupported, and defamatory, allegations against Mr. Daibes that the Commission views as “raising questions” about the integrity of municipal officials. Mr. Daibes continues to reserve all rights to take legal action against the authors of this Second Draft Report should that Report issue in its current form.

I. Business Relationship Between Waterside Construction Company and Councilman Jose Luis Vidal

The Initial Draft Report suggested that Mr. Daibes sought to influence Councilman Jose Luis Vidal’s votes by giving his company work for flooring contracts while Vidal served on the town council. *See* Draft Report at 4, 9-11 (stating that, from 2014-2018, more than \$2.6 million in Vidal’s business revenue “was provided by Fred Daibes and his business partner for flooring contracts” and that Councilman Vidal voted in favor of awarding Waterside Construction Company a borough contract to renovate Veteran’s Field in June 2012, and in favor of liquor license renewals for a restaurant Mr. Daibes once owned, as well as for zoning changes allowing high-density housing at Daibes-owned properties). In his Initial Response and attachments, as well as through his subpoena responses, Mr. Daibes explained why this is, quite simply, false. Yet the Second Draft Report section entitled “Lucrative Contract Work for a Councilman” contains no revisions reflecting this information.

By way of reminder with regard to the information conveyed to SCI but not included, Mr. Vidal first began bidding for work on construction projects for Waterside Construction approximately twenty years ago, well before he even lived in Edgewater, let alone contemplated running for local office there. In all instances, Mr. Vidal’s company was only awarded the contract when it submitted the lowest bid. When his bid was not the lowest, the contract went to whichever of his competitors was least expensive.² Mr. Vidal’s and Mr. Daibes’ business dealings were competitive and legitimate arms-length transactions, as to which there was complete public visibility.³ The truth, as well, is that Mr. Daibes had nothing to do with when and how Mr. Vidal voted.

a “convicted felon” until after his plea is accepted *and* he has been sentenced; (ii) he did not plead guilty to “an insider loan scheme”, and the public records reflect that Mr. Daibes pleaded guilty to making false entries in books and records of an FDIC insured bank, contrary to 18 U.S.C. § 1005; and (iii) he will receive a sentence of probation if the Court accepts his plea. *See* Dkt. No. 2:18-cr-00655-SDW (D.N.J.), ECF No. 67. The Second Draft Report corrects the charge, but does not include the fact that Mr. Daibes will receive a sentence of probation if his plea is accepted—a fact that is clearly favorable to Mr. Daibes and purposefully omitted in what can only be described as an effort to smear his reputation.

² For example, in 2016, Waterside Construction sought bids for a subcontractor to provide material and services for wood flooring for the Plaza 53 project, located at 1122 53rd St., North Bergen, NJ. Mr. Vidal’s company, Celtic Logs and Lumber, LLC, submitted a bid for \$529,879.65. [REDACTED] then-CEO of Waterside Construction, reviewed and rejected Vidal’s bid in favor of a less expensive competitor (Lita Brothers Construction, LLC, which submitted a bid for \$470,000). *See also* Ex. 1 (setting forth description of production documents and awards to Mr. Vidal’s company on where he submitted the lowest bid).

³ It was common knowledge in the Borough of Edgewater that Mr. Vidal was in the flooring business and was doing work for Waterside Construction and bidding on most projects in the area.

Mr. Daibes noted in his Initial Response that the SCI never even sought relevant bid documents related to Mr. Vidal's company, Celtic Logs & Lumber, LLC, which bespeaks the unfair process that was conducted, leading to the inaccurate and defamatory conclusions reached. But that process is not improved by requesting the relevant documents and then simply ignoring them, as the Commission appears to have done here.

II. Rental Agreement with Mayor Michael McPartland

In a very similar vein, both the Initial and Second Draft Reports suggest that Mr. Daibes sought to exert improper influence over Mayor Michael McPartland through charging him improperly discounted rent at a luxury apartment building owned by Mr. Daibes. Mr. Daibes explained to the Commission in his Initial Response that he did not suddenly seek to curry favor with the new mayor by offering him a free or deeply discounted apartment following his election. Rather, Mr. McPartland has long known the Daibes family, having been close friends with [REDACTED] (Mr. Daibes' brother) since childhood and continuing to the present day. In mid-2015, Mr. McPartland unexpectedly separated from his wife and temporarily stayed in the model suite at the Alexander, a building owned by Mr. Daibes, while going through the difficult process of trying to determine whether he and his wife would reconcile or divorce. When they determined not to reconcile and to make the separation permanent, it became clear that Mr. McPartland would not be returning home and would instead need a more long-term rental. Thus, in January 2016, he entered into a lease agreement at the Alexander for a 1540 square foot apartment, and issued prompt payment for the last six months during which he had temporarily occupied the model unit during a period of great personal uncertainty. The Second Draft Report provides none of this information, choosing instead to unfairly emphasize that there was no late penalty or interest charged on the rent paid in January 2016, which is, of course, only half the story.

Moreover, Mr. Daibes showed in his Initial Response that the apartment that Mr. McPartland rented at the Alexander was not, in fact, priced at a below-market rent. To be sure, the rental amount for that property is lower than that of other apartments in the building, but that is because it is directly above the garbage units for the building. One other apartment shares that positioning above the building's garbage facilities but, as the rent rolls from the date of Mr. McPartland's lease start date in January 2016 show, which were provided to the SCI as an attachment to Mr. Daibes's Initial Response, and the price of that apartments was identical to Mr. McPartland's, though the individual residing in the similarly situated apartment next to Mr. McPartland's unit was not a public official. Further, Mr. Daibes offered to make the property manager for the Alexander available to discuss the records he provided or any other records that the SCI might have as part of its investigation to date. The Commission did not take Mr. Daibes up on this offer. Instead, it has added a footnote that he "notified the Commission that the below market rate was due to the apartment's position above trash dumpsters." *See* Second Draft Report at n.12. While that is certainly correct that the Commission received such notification, it is also the case that this is (i) a verifiable fact; and (ii) a fact that vitiates the need for a subject in the report about "Rental Arrangements," about which there is absolutely nothing improper.

Regardless, neither the Initial Draft Report nor the Second Draft Report point to any evidence that Mr. McPartland acted inappropriately, or in Mr. Daibes's interests as opposed to in the interests of the Town and his constituents, and Mr. Daibes is aware of none. In his Initial

Response, Mr. Daibes requested that, to the extent the SCI has such evidence, it should disclose it to him immediately in order to permit him to appropriately respond as due process requires. Unsurprisingly, in the intervening months since this request, the Commission has supplied no such evidence. That is because there is none – only unfair insinuations.

III. Housing Support for an Elderly Friend, Mr. Robert Fischetti

The Initial Draft Report suggested that Mr. Daibes sought to influence a former councilwoman, who served on the town council from 2015 to 2019, by providing an apartment to her husband, whom the Initial Draft Report described as a longtime Genovese crime family associate. *See* Draft Report at 4-5, 13-14. In the Second Draft Report, the Commission appears to have merely deleted the same content about Mr. Fischetti and moved it to the end of its report under a section entitled “Unspecified Payments to Organized Crime Associates.”

Mr. Daibes strenuously objects to the inclusion of any of these allegations in the report. Neither the Initial Draft Report, nor the Second Draft Report, alleges any ongoing criminal activity by Mr. Fischetti, who is currently in his 80s, let alone any involvement by Mr. Daibes in any such activity. The repeated references to Mr. Fischetti’s criminal history are gratuitous and serve no other purpose than to provide inflammatory, but completely unfounded, suggestions that Mr. Daibes is involved in organized crime, a suggestion that is truly defamatory and wholly unwarranted.

As he transparently disclosed in his Initial Response, Mr. Daibes has provided housing for Robert Fischetti since 2005. He is aware of Mr. Fischetti’s criminal history, and is not ashamed that he supports offering second chances to individuals who have had paid their debt to society and are seeking to reintegrate into the community as law-abiding and productive citizens.⁴ Indeed, the Commission’s report supports this, citing Mr. Fischetti’s testimony that Mr. Daibes “knew things weren’t good for me.” (It seems, however, that such charity is now cause for allegations of criminality.) As Mr. Daibes reiterated – and as the Commission is aware from Mr. Fischetti’s own sworn testimony – Mr. Fischetti separated from his wife, Diane Travers, in 1976, and that the two have been effectively divorced and living separate and apart since that time. To Mr. Daibes’s knowledge, Ms. Travers has never lived with Mr. Fischetti in the apartment provided by Daibes, nor has she ever used it for any personal or town business. Mr. Daibes was simply providing housing to a friend in order to help him to obtain shelter following a period of incarceration; it had nothing to do with anyone on the town council. And the receipt of a subpoena from the SCI had absolutely no bearing on Mr. Daibes’s payment of Mr. Fischetti’s rent; indeed, Mr. Daibes could not imagine that the SCI would even care about this fact, let alone that it would use it to make the truly scurrilous allegations it has.

The unexplained references in the Initial Draft Report to payments from Waterside Construction, *see* Initial Draft Report at 14, persist in the Second Draft Report, *see* Second Draft Report at 27-28. Again, these references do not even mention Mr. Fischetti, and are in any event

⁴ This is not an isolated incident for Mr. Daibes, who is extremely charitable by nature and often seeks to help individuals in need in the local community, by, for example, offering employment to those with criminal records who might struggle to otherwise earn a legitimate living wage; there are numerous examples of him doing so, which he will gladly provide if the SCI is interested, as it certainly ought to be if it wishes to conduct a fair and thorough investigation.

so unclear and devoid of detail that Mr. Daibes is unable to ascertain to what the SCI is referring. His Initial Response requested clarification and additional information as to the specifics of these allegations in order to permit Mr. Daibes to properly and fully respond prior to publication, but SCI—apparently disinterested in meaningfully considering any response from Mr. Daibes based on the dearth of corrections made to the Initial Draft Report—has refused to provide such information.

But despite Mr. Daibes’s friendship with Mr. Fischetti and the truth with regard to Mr. Fischetti’s relationship with Ms. Travers, it certainly cannot be said that Ms. Travers was some rubber stamp who voted in favor of all applications that might benefit Mr. Daibes. Indeed, she voted against his interests on several occasions, including with respect to the settlement of litigation regarding the property located at 615 River Road. Both Draft Reports reference that Ms. Travers approved Edgewater to seize a prime waterfront property, located at 615 River Road, by eminent domain to build a new public works facility and for other public uses. *See* Initial Draft Report at 5, 6; Second Draft Report at 4. They further claim that Mr. Daibes initially sought to buy the property and that he later opposed a rival developer’s plan to build high-density housing at the site. *See* Initial Draft Report at 6; Second Draft Report at 4. The SCI is persistently wrong here. Mr. Daibes never sought to purchase the 615 River Road parcel, but he did oppose additional high-density housing on the site due to traffic concerns, and he did so publicly. *See* Initial Response, Ex. 7 at 2. The “rival developer” was pursuing its own commercial interests that were in opposition to those of the taxpayers and residents of Edgewater; indeed, it pursued those financial interests through significant litigation against the Borough in 2017, but opted not to sue Mr. Daibes; on information and belief, the rival developer brought its position to the attention of the SCI in an effort to obtain a report just like this one. There is nothing to suggest that Ms. Travers had anything but legitimate and impartial motivations when she voted in favor of reserving this land for town use as opposed to permitting greater development, and the Draft Report’s conclusions to the contrary appear to be nothing more than favoring one developer over another in a commercial dispute.

IV. St. Moritz Construction

The Draft Report suggested that Borough construction officials ignored information that tenants were living in a Daibes-built property (the St. Moritz) before the certificate of occupancy (CO) was issued and missed an incomplete exit on an upper floor. *See* Initial Draft Report at 5-6, 15. In his Initial Response, Mr. Daibes acknowledged that the St. Moritz did not have a final CO when it was occupied, but he explained that the building did have a temporary CO, which legitimately permitted residents to move into the building. The Second Draft Report continues to claim that residents were “already unlawfully living in the units before the building’s receipt of a certificate of occupancy,” which is patently false, as the Commission knows (assuming it read Mr. Daibes’ Initial Response). More to the point, if the Commission is truly investigating the Borough’s lack of diligence and making claims that this failure to provide sufficient oversight only applied to projects owned by Mr. Daibes, there should be some comparative analysis to show that this conduct by Borough officials was specific to Mr. Daibes and not just a function of general poor performance by local officials. Instead, there appears to have been a sample size of one used by the Commission’s investigation, resulting in an invalid analysis.

With respect to the allegations by code official Mr. Batch that he faced retaliation as a result of having “discovered and reported the unfinished exit,” Initial Draft Report at 6; Second Report at 3, in fact, he had been accused of “double dipping” – that is, he was charging the town overtime while he was getting paid as a fireman. He brought suit when the Borough refused to pay for his improper overtime submissions and claimed retaliation, as reported in the Initial and Second Draft Reports, as a means of distracting from his misconduct. Moreover, and in an event, there is nothing in either Draft Report to suggest that Mr. Daibes was in any way involved in a code violation or in influencing a borough official to overlook one. Mr. Daibes requested such information in connection with his Initial Response, but nothing was provided.

V. Veteran’s Field Project

Despite Mr. Daibes having provided substantial additional information in his Initial Response with respect to the Veteran’s Field project, this portion of the Second Draft Report also remains almost completely unmodified.

Specifically, the Initial Draft Report and Second Draft Report state that former Mayor Delaney’s wife’s employment at Le Jardin restaurant, which was previously owned by Mr. Daibes, “ended abruptly” after her husband “spearheaded the Borough’s effort to sue Daibes for allegedly ruining the renovation of a municipal park,” as a result of which they felt like “pariahs in the community” and decided to move out of town. *See* Initial Draft Report at 5, 6; Second Draft Report at 3, 4. Apparently, Ms. Delaney testified that she was terminated from her position at Le Jardin because of her husband’s political adversity to Mr. Daibes. *See* Initial Draft Report at 21; Second Draft Report at 25. In his Initial Response, Mr. Daibes conveyed that his counsel had interviewed ██████████ the manager of Le Jardin who supervised Ms. Delaney. ██████████ advised that the SCI never sought his testimony or requested any records related to Ms. Delaney or her employment. Had they done so, ██████████ would have explained that Ms. Delaney was absolutely not fired or asked to leave. To the contrary, ██████████ relayed that it was Ms. Delaney who terminated her employment, giving two weeks’ notice one day in 2015 without reason. When ██████████ sought to inquire further as to why she was resigning, she responded that she was having “personal problems,” and ██████████ did not pry further.

██████████ suspected the real reasons for her resignation, however, and shared as much with the Commission when, finally, he was interviewed. At the time, Mrs. Delaney was also doing bookkeeping for ██████████ construction company and real estate company. She gave notice for those positions at the same time, which was shortly after she was interviewed by the IRS related to those positions.⁵ In addition, the Delaneys had purchased their Edgewater home one year prior to their move and flipped the property for a profit of more than \$1.1 million, providing a strong financial incentive to relocate independent from whatever social issues they claim to have been experiencing in the community.

The full extent of the Commission’s consideration of these facts is the addition of a footnote stating that “the manager and part owner of Le Jardin who has financial ties with Daibes[sic] for more than two decades, told the Commission when [Mrs. Delaney] gave [her] two weeks’ notice,

⁵ ██████████ was subsequently audited by the IRS after Mrs. Delaney concluded her employment.

[she] cited personal problems as the reason for ending [her] employment at the restaurant.” Second Draft Report at 17. But absent from the Second Draft Report is any identifiable letter, meeting, discussion or other reason to suggest that Mr. Daibes had anything to do with any purported changes in the Delaneys’ relationships with friends, their belief that they were “outcasts in the community,” or changes in Mayor Delaney’s relationship with political allies. *See* Draft Report at 21; Second Draft Report at 18.

The same failure to incorporate information obtained from Mr. Daibes is present in the portions of the Second Draft Report discussing the underlying municipal park renovation at Veteran’s Park. Mr. Daibes provided documentation evidencing that Waterside Construction submitted a complete and thorough responsive bid to perform the scope of work, as it then existed, for approximately \$7 million.⁶ *See* Initial Response, Ex. 8. As reflected in the Resolution awarding the contract, that bid was reviewed by the Borough Engineer and the Borough Attorney and was determined to be the lowest bid and within the funds allocated for the project. *See* Initial Response, Ex. 9 at 1. Indeed, Mayor Delaney supported the award at the time. Waterside Construction appropriately posted a performance bond and enter into a contract with the Borough. *See* Initial Response, Exs. 10, 11. Mr. Daibes offered to provide the SCI with the voluminous documents constituting the specifications issued by the Borough, in which the SCI was not interested, and requested that SCI disclose any impropriety in the bid process of which it was aware to support the statements in the Initial Draft Report, which SCI did not do. Nevertheless, the Second Draft Report continues to allege that the Borough “failed to effectively evaluate Waterside’s ‘excessively low’ bid,” *see* Second Draft Report at 3.

Mr. Daibes’s Initial Response also notified the Commission that the allegations of Waterside Construction having improperly imported material onto the site without authorization are incorrect, and the subject of ongoing litigation in which Mr. Daibes vigorously disputes these allegations. Specifically, and as documented at the time, the Licensed Site Remediation Professional (LSRP) assigned to the project was an individual employed by Terms Environmental Services, Inc. (TERMS), which exercised control over all environmental compliance issues on the site. Waterside Construction relied upon the expertise of TERMS and acted at its direction, instruction and supervision. Further, any crushed concrete imported by Waterside Construction was done at the direction and under the supervision of TERMS, and was, in fact, imported from a local construction site with a “no further action” (NFA) letter issued from the New Jersey Department of Environmental Control, indicating that clean-up was complete with respect to environmental hazards on the site. *See* Initial Response, Ex. 12. But even despite the prior authorization from the LSRP, when it became clear that the LSRP was taking a different position, Waterside Construction offered to remove and properly dispose of any materials in accordance with applicable NJDEP and Federal EPA guidelines to ensure that there would be no risks to public health and safety, and to absorb the cost for that work at no expense to the Borough of Edgewater. *See* Initial Response, Ex. 14. The Borough opted to declare default and terminate the contract instead and ultimately sue Mr. Daibes. *See* Initial Response, Ex. 13. Of course, it would be surprising if the Commission was not aware at the time of the Initial Draft Report that this litigation

⁶ Because they are voluminous, we have not here attached the eleven documents constituting the specifications issued by the Borough of Edgewater for the Veteran’s Field project. That said, we would be happy to transmit those via secure file transfer for review by the SCI; please advise us if that is something in which you are interested.

was ongoing; but what is truly shocking is that, after having been provided with this information by Mr. Daibes in his Initial Response, not a word of it has been incorporated into the Second Draft Report. Indeed, like many other facts provided by Mr. Daibes, it appears to have been completely ignored.

The only other update to this section was the addition of footnote 15. In his Initial Response, Mr. Daibes advised the Commission that the Initial Draft Report's suggestion that Waterside Construction submitted a low bid in order to win the contract, and that the costs of clean up and to complete the project actually totaled \$28 million, causing property taxes to increase, *see* Initial Draft Report at 16, was deeply disingenuous. The cost of clean-up related to the materials that Waterside Construction brought onto the site was a fraction of that amount – between \$1 to \$2 million, based on information exchanged in the litigation between the Borough of Edgewater and Waterside Construction. Furthermore, after the Borough of Edgewater terminated the contract with Waterside Construction, it redesigned the entire site with multiple upgrades and an entirely different scope of work. The Borough put the project out to bid again with new bid documents. Mr. Daibes requested that the SCI review those amended bid documents and compare them to the original bid documents, and he offered to make available a representative from Waterside Construction to walk through these changes and answer any questions at the convenience of SCI investigators. Rather than undertake any sort of rigorous investigation, the SCI merely added footnote 15, stating that “[a]dditional expenses in the \$28 million include the expanded scope of the park project after Waterside was terminated.” Second Draft Report at 12. It is incomprehensible how the Commission could think that this footnote cures the disingenuous nature of this report in light of the facts and supporting documents that Mr. Daibes has presented himself and to which he has directed the SCI for review.

VI. 615 River Road Property Development

With respect to the portion of the Draft Report pertaining to additional lawsuits against the Borough of Edgewater to which Mr. Daibes was not a party, it appears that the SCI has merely updated the procedural history to state that, as of February 2023, there is ongoing legal action between the parties regarding matters related to the settlement agreement.

The Second Draft Report does nothing to include the context that Mr. Daibes provided in his Initial Response, merely reiterating the allegations of corruption and collusion against Mr. Daibes made by a business competitor in litigation that reached neither summary judgment nor a finder of fact at trial. That context, again, is that 615 River Road Partners, the entity that purchase the property located at 615 River Road and sought to develop it into additional high-density housing, sued the Borough following the Borough's decision to seize the property by way of eminent domain so that it could be used for local government purposes and avoid additional traffic and congestion issues, which have continued to plague the Borough. *See* Initial Draft Report at 22-24. As previously noted, Borough officials had legitimate concerns about adding more high-density housing, some of which are still being addressed today as part of ongoing traffic and congestion studies. That matter was ultimately settled between the Borough and 615 River Road Partners, at which point a nearby business in Cliffside Park sued the Borough of Edgewater for the settlement it reached with 615 River Road Partners and the resulting diminution of the business's skyline views. *See* Initial Draft Report at 24.

The issue identified by the SCI is that this litigation “cast the municipality in an unflattering light by exposing the cozy relationships between local officials and Daibes.” Initial Draft Report at 24; Second Draft Report at 20. But we reiterate, though we doubt that the SCI will include this in its ultimate report, that Mr. Daibes was never sued by 615 River Road Partners.⁷ This means that he was unable to defend himself against the unsupported allegations of the rival private developer, which were never either proven or admitted by the Borough, given the settlement of the matter, an obvious compromise to avoid continued scorched-earth litigation, which the SCI inexplicably attributes to Mr. Daibes despite his lack of involvement.⁸

VII. Low Income Housing Tax Credits

As you are aware, the Initial Draft Report section on “Manipulation of Low Income Housing Tax Credits” was incorporated into the Second Draft Report without any substantive edits. Mr. Daibes reiterates his responses here and requests that the SCI review and incorporate them into its report:

The Initial Draft Report and Second Draft Report claim that Edgewater officials enabled Mr. Daibes to secure a “double dip” benefit because he received both a tax subsidy to construct affordable housing units and also sold credits for those units to other property developers. *See* Initial Draft Report at 6-7, 24-26; Second Draft Report at 4, 21-22. But this improperly conflates two separate government programs, neither of which precludes application of the other. Mr. Daibes has built affordable housing units as part of his property developments, at times in excess of what is required by the Borough to meet its *Mount Laurel* mandate. For those excess units, Mr. Daibes – as is the case with any developer of affordable housing – may sell credits for those units to other developers who wish to develop a property without affordable units. Separate from that process, developers of affordable housing units are able to receive tax credits to help subsidize that the units will ultimately result in below-market rent when completed.

The New Jersey Housing and Mortgage Financing Authority (NJHMFA) approved Mr. Daibes for one such tax subsidy in 2010 for a ten-year period. *See* Initial Draft Report at 25; Second Draft Report at 21. When contacted by SCI investigators, the NJHMFA responded that Mr. Daibes was in compliance with the terms of the program. *Id.* Indeed, Mr. Daibes has received multiple evaluations from the NJHMFA for the property referenced in the Draft Report, some of which are as recent as two months ago, and all of which have resulted in the highest rating available; Mr. Daibes provided copies of those ratings in connection with his Initial Response. *See* Initial Response, Ex. 16. The NJHMFA has not sought to rescind or otherwise claw back any tax subsidies for this property, and Mr. Daibes is unaware of any issues with his application or any

⁷ Mr. Daibes was also not a party to the litigation brought by the business in Cliffside Park Borough.

⁸ We have reason to believe that the Plaintiffs in that case sought to have the SCI investigate the Borough of Edgewater and Mr. Daibes as part of their efforts to pursue a lucrative development and that the SCI simply accepted their representations without looking to meaningfully investigate and refute them. Given the resolution of the litigation by way of settlement and the lack of any factual development as to any improprieties by Mr. Daibes or Borough officials with respect to this property, this portion of the Initial and Second Draft Reports reflect a questionable, but seemingly intentional, decision by the SCI to weigh in on a public dispute that has already been resolved.

ongoing receipt of tax credits. Obviously, these facts should have been – and should now be – fully considered by the SCI, lest its process be completely unfair.

Furthermore, Mr. Daibes reiterates his request for clarification with respect to the final paragraph of the Initial Draft Report on page 26 and the Second Draft Report on page 23, stating that “[a]lthough it is legal for developers to deposit funds into a municipal trust account covering their share, the process requires tight regulation,” and stating that a fair housing advocate disbelieves that affordable housing obligations should be sold between builders. Mr. Daibes remains unable to respond to these statements, as neither draft report sets forth what impropriety, if any, the Borough is alleged to have been engaged in and what involvement, if any, Mr. Daibes supposedly had in connection with that conduct. Counsel remains available at the SCI’s convenience to discuss, should the SCI wish to truly investigate this issue.

VIII. Payroll Taxes

Here too, the Second Draft Report repeats the Initial Draft Report verbatim, stating that certain employees of Waterside Construction were paid in cash for eighteen months, which enabled the company to avoid state and federal employment taxes. *See* Initial Draft Report at 27-28; Second Draft Report at 25-26. We note again that it remains unclear what – if any – connection these allegations have to municipal corruption in Edgewater and strengthening municipal government, the purported subject of this report. That aside, Mr. Daibes is aware that there has been, and may still be a federal investigation into whether a Waterside Construction manager had a practice of paying employees incorrectly. Mr. Daibes is not aware of whether that conduct was substantiated as part of the investigation, but as he has previously stated, any such conduct was not done under his supervision and, if occurred, that was entirely without his knowledge.

If the SCI has some evidence connecting this practice to Mr. Daibes, he requests that it be disclosed to him immediately so that he can appropriately respond. Absent any evidence to support it, which, again, has neither been provided nor set forth in either the Initial Draft Report or the Second Draft Report, Mr. Daibes demands that the SCI delete the statement suggesting that he directed Waterside Construction to cease this practice in anticipation of being indicted in July 2018, an allegation that has no basis in facts thus far provided.

IX. Payments to “Organized Crime Associates”

The only addition to this section in the Second Draft Report is the relocation of the Commissions allegations related to Mr. Fischetti; those are addressed in Part III, above, and will not be reiterated here. We do reiterate the information previously provided in Mr. Daibes’s Initial Response in the hopes that the SCI will reconsider its inclusion and the damage that will be done to its reputation for professionalism and conducting investigations of any rigor if it remains omitted.

Specifically, the Initial Draft Report and Second Draft Report state that the SCI has “found” that Mr. Daibes wrote checks to the son and daughter-in-law of a high-ranking Genovese family member. *See* Initial Draft Report at 8, 29-30; Second Draft Report at 5, 26. The SCI is simply incorrect with respect to the substance of these allegations. Mr. Daibes believes that this section

refers to the son and daughter-in-law of [REDACTED] a former friend of Mr. Daibes who passed away in March 2020. [REDACTED] son worked for Mr. Daibes for a brief period of time, and later became unemployed. Mr. Daibes assisted the young man financially at a particularly difficult time when his home was being foreclosed upon. Thereafter, [REDACTED] son and daughter started a business teaching driver's education, called AP Driving School, which Mr. Daibes supported to help them get the business up and running. The company is still operating in Bergen County. *See* <https://apdrivingschool.business.site/>. Contrary to the Draft Report's suggestion, Mr. Daibes was not making "Payments to Organized Crime Associates" but to this legitimate enterprise.

Finally, we reiterate that the references to Mr. Daibes having invoked his constitutional right during the pendency of an investigation and prosecution by the federal government is unconstitutional, outrageous and should be stricken.⁹ Initial Draft Report at 8, 29; Second Draft Report at 5-6, 26. It is very alarming that the SCI has chosen not to do so.

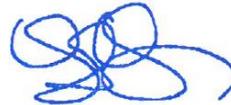
X. Unemployment Insurance

The Second Draft Report repeats the allegations that three Daibes employees appear to have inappropriately collected unemployment insurance from the State of New Jersey (though it changes the title of this section from "Potential Unemployment Insurance Fraud" to "Questionable Collection of Unemployment Insurance benefits," which we acknowledge is moderately more measured and certainly more appropriate). *See* Initial Draft Report at 7; Second Draft Report at 25. Mr. Daibes reiterates the request from his Initial Response: he is unaware of to whom this refers and requests additional information – including any alleged impropriety by him – in order to be able to respond to this allegation.

* * *

The offers to provide additional information and assistance contained herein and in the Initial Response remain open. Should the SCI wish to engage Mr. Daibes in any meaningful way or respond to his requests for more information so that he can fully respond to the allegations levied against him, we request that the SCI contact counsel at its earliest convenience. Thank you for your consideration of this submission.

Respectfully yours,



Lawrence S. Lustberg

⁹ Notably, the Draft Report only references Mr. Daibes's invocation of his Fifth Amendment right against self-incrimination with respect to the section on "Payments to Organized Crime Associates," suggesting that he feared prosecution for wrongdoing with respect to this topic, when in fact he chose not to speak with the SCI on any topic while a criminal prosecution was ongoing, on the advice of counsel, as the SCI well knows.

March 17, 2023
Page 12

I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

A handwritten signature in blue ink, consisting of a large, sweeping oval shape with a small vertical stroke extending downwards from the bottom left of the oval.

Fred A. Daibes

Dated: March 17, 2023

Exhibit 1

January 5, 2023

VIA EMAIL SECURE FILE TRANSFER

Marian Galietta, Chief Counsel
State of New Jersey Commission of Investigation (“SCI”)
28 West State Street
Trenton, New Jersey 08625-0045
mgalietta@sci.state.nj.us

Re: December 20, 2022 SCI Subpoena [REDACTED] to Fred Daibes

Dear Ms. Galietta:

As you know, this Firm represents Fred Daibes in connection with the SCI’s ongoing investigation into real estate dealings and municipal corruption in Edgewater, New Jersey. Mr. Daibes received notice of the SCI’s draft report on November 8, 2022, and timely submitted a response pursuant to N.J.S.A. 52:9M-12.2(c). Following that November 22, 2022 response, Mr. Daibes received the above-referenced December 20, 2022 subpoena (the “Subpoena”). Enclosed please find the following documents, which Mr. Daibes has identified as responsive to your requests:

- Payment records, including invoices and a report showing amounts invoiced by and paid to Celtic Logs and Lumber by Waterside Construction LLC from 2015 to the present (Bates Range FD-SCI2-002389 to 2439), which is responsive to Subpoena requests 1 and 3b-e;
- Documents relating to the 125 River Road Suite 301 property, including a bid submitted by Celtic Logs and Lumber and a bid submitted by Brothers Carpet and Flooring, Inc.¹ (Bates Range FD-SCI2-002372 to 2374), which are responsive to Subpoena request 1;
- Documents relating to the Duchess property located at 7601 River Road in Edgewater, including bid correspondence, bids submitted by Brothers Carpet and Flooring, Inc., Celtic L&L Flooring LLC, and Hoboken Flooring LLC, and the

¹ No subcontract was entered into for this work, as is typical for projects that are either under \$10,000 or that will be completed in a very short period of time. As the Brothers Carpet & Flooring, Inc. bid was for \$12,120.59 and the Celtic Logs & Lumber, LLC bid was for \$6,761.39, Celtic Logs and Lumber, LLC was given the job as the lowest responsive bidder (\$6,761.39) for this work.

subcontract awarded to Celtic L&L Flooring LLC as the lowest responsive bidder (Bates Range FD-SCI2-002375 to 2388), which are responsive to Subpoena requests 1 and 3c;

- Documents relating to the Plaza 53 property located at 1122 53rd Street in North Bergen, including bid correspondence, a bid submitted by Celtic Logs and Lumber, LLC, and the subcontract awarded to Lita Brothers Construction, LLC at a lower price (\$470,000) than what Celtic Logs and Lumber, LLC bid (\$529,879.65) (Bates Range FD-SCI2-002442 to 22451), which are responsive to Subpoena requests 1, 2, and 3e;
- Documents relating to the Winterburn property located at 974 River Road in Edgewater, including bids submitted by Brothers Carpet and Flooring, Inc. and Celtic Logs and Lumber² (Bates Range FD-SCI2-002452 to 2453), which are responsive to Subpoena request 1;
- Miscellaneous communications related to requests for pricing³ (Bates Range FD-SCI2-002003 to 2371 and FD-SCI2-002440 to 2441), responsive to Subpoena requests 1 and 3b.

We are continuing to search for and collect documents responsive to your requests, including attempting to gain access to email accounts for employees who are no longer with the company; we are working expeditiously to resolve these access issues and will provide an update as soon as we are able. Please do not hesitate to call me if you have any questions or concerns with regard to this production. Thank you for your patience and consideration throughout the course of this matter and best wishes for a very happy and healthy New Year.

Sincerely yours,

s/Lawrence S. Lustberg
Lawrence S. Lustberg

Enclosures

cc: Fred Daibes (*without enclosures, via email*)
Anne M. Collart, Esq. (*via email*)

² No subcontract was entered into for this work, which was under \$10,000. As the Brothers Carpet & Flooring, Inc. bid was for \$6,370.24 and the Celtic Logs & Lumber, LLC bid was for \$4,956.43, Celtic Logs and Lumber, LLC was given the job as the lowest responsive bidder (\$4,956.43) for this work.

³ Please note that although Celtic L&L Flooring LLC was asked to bid on the property located at 521 Livingston Street in Norwood, that property was sold and no work was completed related to that bid request. Though asked to submit a proposal, Celtic L&L Flooring LLC did not submit a bid for the work to be completed on the property located at Cliff Street in Fairview.

MATTHEW S. ROGERS
ATTORNEY AT
LAW

123 PROSPECT STREET
RIDGEWOOD, NEW JERSEY
07450

Tel: (201) 857-3700
Fax: (201) 857-3699

Email: msr@mrogerslaw.com
Website: www.mrogerslaw.com

March 17, 2023

Ms. Marian Galietta, Esq.
Chief Counsel, Commission of Investigation
State of New Jersey
50 West State Street
P.O. Box 045
Trenton, New Jersey 08625

Re: Michael McPartland
Dissemination Number 23-02-009

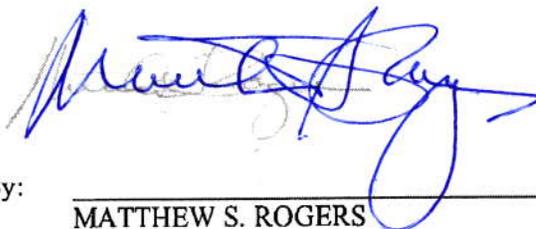
Dear Ms. Galietta,

As you are aware, I represent Michael McPartland in regard to the above referenced matter. This correspondence is submitted in response to the State Commission of Investigations (hereinafter "SCI") Notice of Proposed Report referenced above.

Also made part of my client's response is the attached Press Release which provides context into the 615 River Road litigation. Kindly include this Press Release as part of in my client's response. Thank you for your time and consideration in this regard.

Very Truly Yours,

LAW OFFICES OF MATTHEW S. ROGERS, LLC



By:

MATTHEW S. ROGERS

Michael McPartland, being duly sworn according to law and upon his oath, deposes and says:

I am a lifelong resident of Edgewater. I was born here, went to school here, was married and raised my family here. I was a trader and held a seat on the New York Mercantile Exchange during which tenure I was a member in good standing for over 20 years, all the while living in town. My father was a police officer in town and my mother was the municipal clerk. For most of those years, Edgewater was a sleepy town, with many industrial facilities. It had a small population and almost everyone knew each other. Over the years, I owned several properties in town. I have known most of the council people that I work with for as long as I can remember. Prior to running for Edgewater Mayor, I was never involved in politics but am proud to say I have been the Mayor for the last seven years.

I have known Fred Daibes and his family for 50 years. His brother Joseph and I grew up together. Most of us from that era know each other well. Mr. Daibes has been very successful. He owns or his businesses own many properties in town. He is one of, if not, the largest taxpayer in town. He and/or his buildings are the largest provider of affordable housing in town. He has owned restaurants and, for many years, owned the only full-service bank in the town. Of course, I have a relationship with him, as Mayor it would be ignorant not to. Notwithstanding that, in my capacity as Mayor I have never provided Mr. Daibes with any benefit he was not otherwise entitled to and take serious offense at the innuendo that I have.

In 2015, I moved into the residential building known as the Alexander. This building was owned by Fred Daibes. At that time, I was going through a divorce and my ex-wife had moved to a home near the Alexander. My children were young at the time, and I wanted a place to live that was within walking distance from my family's home. The Alexander was new at the time and they were looking to fill up the building. They were offering incentives to all persons to increase the residency in the building. At first, I rented the model unit. Thereafter I moved into another unit. I lived in the cheapest unit I could find on the first floor, with no view and directly over the garbage and recycling bins. I still live in that unit today. In the report it is stated that I pay \$1940 less than comparable units. I have no idea where that comes from. I am not privy to those rents but unless you compared the rents from apartments directly next to mine, with my view and above the garbage and recycling bins, then the comparisons are not viable.

As a tenant, I paid the amount that was asked for by the Alexander, and always have. The rent rolls and occupancy rates of the building is information I am not privy to so I don't know what other tenants are paying or what the average rent is in the building for my unit or if there are any comparable units to mine. I never had free rent. I have always been obligated to pay my rent. Anyone who has ever been through a divorce knows that when you first separate and have to pay for two places instead of one marital/family home, money is an issue. Contrary to the made by SCI in the Proposed Report, I never had free rent and was always obligated to pay the rent. I have known Fred Daibes and his sister who runs the Alexander for decades and they were sympathetic to my situation. I paid every bit of that rent, which I did shortly after I started living there. The SCI Report is inaccurate in stating I had "free" rent. It then contradicts itself and says I paid it back, it

can't be both ways. The truth is I have paid every dollar I owed for all of the time I have been at the Alexander. I never received any free rent.

As it pertains to the Veterans Field project, at the time this project went out to bid I was not the Mayor. When it was determined the field was contaminated and the litigation related thereto was filed, I was not the Mayor. My understanding is that the bid received by the town from Waterside Construction, the Daibes entity which bid on the project, was the lowest bid for the project, and as a result, was awarded the bid. Again, it was before my time as Mayor. The cost to rebuild and remediate the field was significant and since that time, the Borough has litigated this matter against Waterside and Daibes. As a result of the litigation, the Borough has received a judgment against one of the Daibes entities. During my tenure as Mayor, the Borough has consistently followed the advice of its outside counsel, Connell Foley, in that matter.

Most importantly, the litigation has caused the clean-up of Veterans Field which has become a great asset to the Borough since it was opened. Edgewater really only has one recreational site in town and we made it as nice as possible for the people of the town. We have received nothing but compliments on the field.

As to the 615 River Road site, the Proposed Report fails to understand the litigation and the eventual outcome. First, the developer/Plaintiff proposed to develop both the east and west sides of River Road into something akin to the Emerald City. The original development proposal filed with the Zoning Board of Adjustment sought approval for over 2000 residential units plus commercial units at the site. No part of the subject property was located in a zone district that permitted residential development. It was only in industrial, commercial or office uses that were permitted in the zone. A "Use" variance was required which is why the application was filed with the Zoning Board. The SCI report did not research the process of the application and its filing and simply assumed the allegations in the 615 Complaint. The Report states that 615 was deliberately held up by the Board which is not accurate. SCI failed to look into the reasons why the Board review determined that the application was deemed incomplete. What was not part of the SCI investigation was the history of the proposed development on the property and the earlier litigation that led up to the filing of the newer application. That litigation was tried before the Honorable Gregg A. Padovano, J.S.C. in Bergen County Superior Court in 2016 and in 2017. Judge Padavano ruled entirely in the Borough's favor, that 615 had failed to file a complete application.

After the ruling, Judge Padavono gave them time to complete their application and come back before the board. They failed to do so and instead instituted the federal litigation to try to strong arm the Borough into accepting their outlandish development proposal.

As it should have, the Borough fought the newly filed Federal litigation and ended up with what I believe is the one of the greatest settlements the Borough could have achieved. (See press release attached). Despite being sued for hundreds of thousands of dollars, the Borough was able to settle the litigation without paying any damages or Plaintiff's attorney fees. As a result of the Settlement, the Borough received a property worth every bit of at least fifteen million dollars (\$15,000,000.00) and gave up nothing other than its own attorney's fees which was necessary to defend this lawsuit. The Report inaccurately summarizes the settlement by declaring only that the

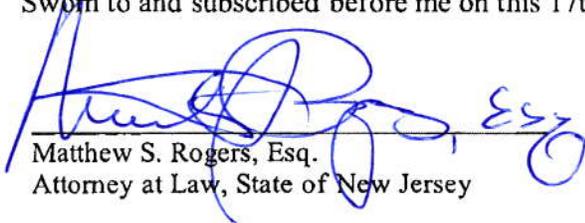
Borough received a "portion" of the western parcel when in fact the Borough received the entire western parcel. This parcel allowed Edgewater to satisfy a huge problem in the Borough, the need for a new school. The Borough had been sending its middle and high school children to the Leonia School District at great cost to the Edgewater taxpayers. The new school will allow us to keep the middle school children in Edgewater and provide the Borough with enough space to accommodate public education for our growing population. Additionally, the Borough negotiated a PILOT agreement with 615 for the development of the east side of River Road which will bring tremendous revenue to the Borough.

The Report also fails to objectively decide the motivation for honesty of the persons who were interviewed and questioned in this matter. As to the testimony of former Mayor James Delaney, the SCI pre-decided to accept his testimony as factually accurate. His tenure as the Mayor was short lived when he decided to voluntarily resign from that position. He was not present in the capacity as Mayor for any of the litigation with 615. He abandoned the town in 2014 and none of the issues dealing with the 615 River Road property ever involved his consideration, advice, or intellectual input. He literally had no idea what the Borough discussed, what the Zoning Board had done or what Judge Padavano decided. He provided no input into the what the Borough could do with the 615 property or where we would put the DPW or any other facility. However, SCI chose to give him credibility in alleging that the Borough intended to put the DPW facility on the Hudson River. Our eminent domain notice listed several possible uses of the entire property and we never intended to put that use on the River as Delaney allegedly said.



Michael McPartland

Sworn to and subscribed before me on this 17th day of March, 2023:



Matthew S. Rogers, Esq.
Attorney at Law, State of New Jersey



BOROUGH OF EDGEWATER
MUNICIPAL BUILDING
55 RIVER ROAD
EDGEWATER, NEW JERSEY 07020

Phone (201) 943-1700
Facsimile (201) 943-9242

EDGEWATER REACHES SETTLEMENT WITH 615 RIVER ROAD PARTNERS

Fair and equitable solution brings benefits to both parties

(EDGEWATER, NJ) November 13, 2019 - Today, Edgewater Borough Officials and 615 River Road Partners, LLC announced a settlement to litigation that has been pending since 2017 concerning the 18.7 acre Hess oil terminal property and its future redevelopment. **Most notably, the developer is transferring the entire western portion of the property valued at approximately \$12 million dollars at no cost.** The site is anticipated to be the home of a future public school as well as open recreational space.

"After years of litigation and contention, I am pleased to announce a settlement and path forward for the development of the Hess Oil Terminal Property," stated Edgewater Mayor Michael McPartland. "Finally, we can move forward with an exciting project that includes new housing, retail, and park amenities for Edgewater. Most importantly, we are securing the last viable property off of the riverfront to be developed into a new school for our children and open space for residents to enjoy. This is a great day for Edgewater and a common-sense solution."

Kerry Postma, the Superintendent of the Edgewater School District adds, "This is a tremendous opportunity for the town and the Board of Education to confidently look at our districts future and know that we are fully prepared to provide the best-in-class education for our children. We appreciate the Mayor and Council working with us to explore solutions that serve our community and keep our children's educational needs as a priority."

The Borough Council announced a settlement with the following terms:

- **The entire western parcel will be transferred to Edgewater for the future construction of a school and open space.** This will address an emergent Borough need as the Borough's schools are at or near capacity, and will provide additional space for the expected increase in school age children who will reside in Edgewater, including those who might reside at this development.
- The developer will undertake all environmental remediation of the property, improve transportation in the surrounding areas, including a new ferry stop, and the development of a new public riverfront park.
- Additional affordable housing units to satisfy the Borough's constitutionally required housing obligation, which leads to a likely conclusion of the affordable housing compliance action.

Under the terms of the settlement, the Borough will declare the property as an area in need of redevelopment and set the terms for redevelopment, 615 River Road Partners, LLC, who already owns the property, will be named the redeveloper under the terms of a redevelopment agreement and will be **allowed to build 960 to 1,020 market rate units and 180 to 240 affordable units,** for a total of a maximum 1,200 units, down from the originally applied for 1874 units.

"This settlement is a common-sense approach to move forward in the best interest of Edgewater residents and families," stated Mayor McPartland. "We are receiving a property that would otherwise cost millions to purchase, for free, as well as solving state mandated, affordable housing requirements, bringing our community a public riverfront park and walkway, and gaining much needed transportation improvements in Edgewater, with a new ferry stop and added green space. After years of contention, we came together to reach an amicable solution for all involved that protects Edgewater."



*State of New Jersey
Commission of Investigation*