

August 29, 2007

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Christopher Cox
Chairman, Securities & Exchange Commission
100 F. Street, NE
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Dear General Gonzales, Director Mueller and Chairman Cox:

On August 25th we were both notified by U.S. Attorney James M. McDevitt of his decision to recuse himself and his office from the investigation of the charges we set forth in our August 19th letter. Given Mr. McDevitt's direct involvement in the fraudulent activities we allege, that was appropriate and welcome. But the delay, on his part, in removing himself and his office raises questions of diligence and obstruction in the federal investigation of the River Park Square case.

As we noted in our letter to him, and subsequent letters to each of you, the credibility and integrity of federal law enforcement is squarely at issue in this case because of Mr. McDevitt's extensive involvement (prior to his becoming a U.S. Attorney) and the lack of any discernible criminal investigation into River Park Square during the several years he has been the U.S. Attorney for the

Eastern District of Washington. For this reason we both welcome Mr. McDevitt's statement, to a Spokane newspaper, that in the event no charges are brought in this matter he would work to convene a public event at which he and/or the designated U.S. Attorney can explain the decision and answer questions about it.

We think the evidence warrants multiple indictments and, if you agree, the public announcement of those charges will suffice. In the event no charges are filed, we believe that, at a minimum, the Justice Department and/or the Securities and Exchange Commission should address the most obvious evidence of securities fraud, and why that evidence didn't result in indictments. A broad construction of the securities fraud evidence has already been presented by the Internal Revenue Services' Tax Exempt Bond Unit and is available to you in a June 22, 2004 report. A fuller sweep of the securities fraud evidence has also been compiled in a December 2003 "Omnibus Statement of Material Facts" prepared by Gary Ceriani, the lead attorney for Nuveen, Vanguard and other plaintiffs in the River Park Square securities fraud litigation that Judge Edward Shea has presided over. Both documents are copied on the compact disc attached to this letter.

The evidence is exhaustive. River Park Square was a sophisticated white collar crime involving conspiracy, money laundering, appraisal fraud and extensive public corruption. The two of us have been gathering documents for nearly eight years. O. Yale Lewis, the City of Spokane's former special counsel gathered evidence in 2000 and 2001 in support of his finding of a civil conspiracy to divert public funds for private use. The aforementioned IRS investigation and bondholder litigation (aided by numerous depositions and document discovery) produced volumes of additional evidence that corroborate our allegations.

At the appropriate time once the federal investigations get under way, the two of us would like to meet with federal investigators and present more of the evidence we've compiled. Please consider this letter a formal request for that meeting.

In the meantime, we think it useful to focus on what we regard as the ten clearest examples of fraudulent omissions and misrepresentations made to securities buyers. While it by no means presents the full sweep of the River Park Square crimes, it is nevertheless a useful microcosm of the corruption involved. As importantly, it's easy to check out. Here one simply needs to look at the September 15, 1998 official statement for the RPS garage bonds and the material facts that were omitted or misrepresented in a securities offering.

In our view, there are only three possible conclusions. One is that we (and Mr. Ceriani and his legal team) have not read the official statement closely enough. A second is that the omissions and misrepresentations are not really material, and could not credibly have influenced investors one way or another. The third is that the omissions and misrepresentations are material facts that were withheld from prospective investors, in violation of federal securities laws.

In the event you decide *not* to bring indictments, please explain how we and Mr. Ceriani and his legal team misread the official statement, or why you concluded the following omissions, misrepresentations, and failure to disclose did not pertain to material facts.

1) Material Omission #1: Betsy Cowles and her agents (River Park Square) were directly responsible for the creation of the Spokane Downtown Foundation, a Washington non-profit organization, whose sole purpose was to buy the River Park Square garage from River Park Square. Thus, in the RPS square garage transaction (to be financed by the investments of securities purchasers) the seller created the buyer. This was not disclosed in the official offering statement.

Had this fact not been omitted investors would have been put on notice that the buyer of the garage was created by the seller. This would have been a clear indication that the sale of the garage was not the arms length transaction required by Revenue Ruling 63-20, the federal rule that applies to transactions like the one the Spokane Downtown Foundation claimed it was engaging in when it bought the RPS garage for \$26 million “on behalf of” the City of Spokane. (See the IRS June 22, 2004 Report, at pages 10 to 14).

2) Material Omission #2: Lawyers for Betsy Cowles were directly involved in the creation of the Spokane Downtown Foundation and one of them, Duane Swinton, served as its registered agent for more than a year.

This fact, by itself, would have alerted investors to Material Omission #1 and Material Omission #3. As we documented in our earlier report delivered to Mr. McDevitt, (Exhibit Y in the attachments to the 8/19/07 reports) Mr. Swinton actively sought to suppress information related to River Park Square’s involvement in establishing the Foundation.

3) Material Omission #3: Betsy Cowles and agents for River Park Square controlled the Spokane Downtown Foundation by defining its purpose, selecting its board members, selecting its general counsel and bond counsel, and exercising control over the distribution of bond proceeds.

See, for example, IRS TEB 6/22/2004 report at page 13-14; Mr. Ceriani’s Omnibus Statement of Material Facts, points 36, 37, 38, and 41. Additional supporting evidence available upon request.

4) Material Omission#4: The Spokane Downtown Foundation’s general counsel and bond counsel (Mike Ormsby and Preston, Gates & Ellis) worked for RPS on issues related to the sale of the RPS garage prior to representing the Foundation.

This was a clear conflict of interest that was not disclosed to prospective bond purchasers. According to legal filings by the board members of the Spokane Downtown Foundation, this fact was not disclosed to them either. (See Exhibit M in the attachments to our 8/19/07 reports to Mr. McDevitt).

5) Factual Misrepresentation #1: The SDF did not participate in negotiations to determine the garage purchase price.

On page 25 of the 9/15/98 Official Offering Statement, investors are told: “The purchase price of the Parking Facility of \$26 million is the result of negotiations involving the Foundation, the City and the Developer.”

This statement was untrue with respect to the Foundation whose board of directors had not even been selected at the time the purchase price was negotiated between the City and River Park Square. Moreover, Mr. Ormsby has testified that he did not participate in the negotiations of the purchase price on behalf of the Foundation. See Mr. Ceriani’s Omnibus Statement of Material Facts at points 37 and 38. Other supporting evidence available upon request.

6) Factual Misrepresentation #2: The garage purchase price was not, as the Official Offering Statement reported, “based primarily on two MAI appraisals commissioned by the City.”

This statement is materially false because the appraisal reports did not conform to Appraisal Institute (AI) standards either in how the reports were prepared or used by the City and River Park Square. Indeed, the evidence gathered by Mr. Ceriani (See point #15 in his 12/03 Omnibus Statement of Material Facts) supports what former Spokane City Councilman Orville Barnes told Mr. Connor in an April 2000 tape recorded interview, that these were *not* MAI appraisals as Mr. Barnes, a commercial real estate developer, understood that term. This is important because Mr. Barnes emerges in deposition testimony as the central decision-maker for the City in the key periods of negotiations between the City and RPS.

Moreover, one of the appraisers inserted, up front, the caveat that his report was not actually an appraisal but the result of a “consulting assignment” that relied upon fixed inputs. (This, by itself, is squarely at odds with AI Ethics Code E.R. 3-3: “It is unethical to accept or perform an assignment that is contingent upon reporting a predetermined analysis or opinion.”) The other appraiser planted unmistakable warnings throughout his report to alert readers to its unreliability, and then sought to finesse the ethical problems by presenting his value opinions in not one, but three scenarios. In sum, the appraisal reports stand the spirit and substance of the Appraisal Institute’s ethical code on its head. As the IRS Tax Exempt Bond Unit concluded on page 18 of its 6/22/2004 report: “The appraisals in reality were nothing more than a notch in post of public deception.” And that is an outcome that is expressly forbidden by the Appraisal Institute’s ethics code. (For additional information see the *Camas Magazine* series “Hocus Pocus” on the attached compact disc.)

7) Material Omission #4: The market value of the garage and the land was not disclosed to prospective bond purchasers.

The enormous difference (\$14 million to \$17 million) between the “market value” of the garage and the negotiated “investment value” is clearly material to investors evaluating the risks of the transaction. According to one of the appraisal reports cited in the Official Offering Statement, the market value of the RPS garage was \$12 million. (Appraisal report of Daniel E. Barrett, p. 74). More importantly, the City on September 1, 1998 (just two weeks before the Official Statement was finalized) received a memo from its national parking consultant, Walker Parking, that put the market value of the garage improvements at just over \$8.6 million and the land value at just over \$2 million. (Exhibit #5 in the attachments to our 8/19/07 letter to Mr. McDevitt. Those numbers were a material fact for prospective bondholders because it would have told them that, at market value, the City could reasonably have acquired both the garage *and* the land for less than half of the \$26 million negotiated garage purchase price. It would also have alerted them to the fact that the \$19.4 million in “Fixed Ground Rent” payments listed on page 21 of the Official statement was a thinly concealed pay-off to River Park Square that far exceeded any equitable consideration for value.

8) Material Omission #5: The Official Statement did not adequately disclose Coopers & Lybrand’s warning about a \$1.6 million expected revenue shortfall that was disclosed to the City on January 27, 1997.

The Official Statement summarizes the Coopers & Lybrand report on the parking garage on page 25. However, the OS simply omits the show stopper. On January 27, 1997, the Coopers & Lybrand project leader stood before the Spokane City Council and disclosed that there “may be a significant hole” in future parking garage revenues of at least \$1.6 million. This is because the car parks and length of stay assumptions were predicated on the continuation of a very generous parking validation program that all signatories to the bond issue knew was going to be discontinued. That much was made perfectly clear evening by Mr. Wenzell and Karen Valvano, the president of the Downtown Spokane Partnership that managed the parking validation program. “The issue becomes the year 2000,” Ms. Valvano said, in disclosing that the validation program would end in the year 1999. “The question is,” Mr. Wenzell pointed out, “where does the balance come from?” The OS essentially ducked the question and withheld the true nature of the uncertainty from investors. It reported, for example, “the validation program currently in place is revenue neutral; however, if any future program were to cost more than the revenue generated by additional parking, revenues generated by the Parking Facility could fall short of projections.” This effectively covered up the problem that was so vividly described by Mr. Wenzell and Ms. Valvano. As events unfolded, the “hole” Wenzell warned about would materialize just as he’d predicted and lead to a default on the garage bonds.

It is indisputable that investors were misled. Consider how this issue played itself out in the deposition of former Spokane City finance director and

deputy city manager Pete Fortin, who became the lead city staff person on the garage transaction in 1998 and 1999. Mr. Fortin didn't trust the Walker Parking projections that drove the purchase price discussion up toward \$30 million. He made his views known and his advice--to limit the garage purchase price to no more than \$18 million--was accepted by the City Council until RPS negotiators rejected it. Only then did the City Council continue negotiating to get to the \$26 million purchase price. This was in November 1996. In September 1998, Mr. Fortin was asked to certify that "the proper officials of the City are familiar with the Feasibility Study [the Walker Parking projections of garage revenues] and believe that the assumptions used therein are reasonable and that the projections set forth in the Feasibility Study and the Official Statement are reasonable."

He signed even though he shouldn't have.

When asked in his February 2003 deposition in the RPS securities fraud case whether *he* actually believed the Walker assumptions to be "reasonable," Mr. Fortin replied. "No."

It's regrettable that Mr. Fortin became the City's fall guy for the bogus parking revenue projections, but the end result is that investors were clearly misled.

9) Factual Misrepresentation #3: Investors were told that "no application was made to any other rating agency for the purpose of obtaining an additional rating on the Bonds" and that was untrue.

On page 42 of the Official Statement, investors are told: "No application was made to any other rating agency for the purpose of obtaining an additional rating on the Bonds." But, as the Wall Street Journal reported in its November 12, 1998 edition in a story entitled, "Bond Agencies Give Issuers a Ratings Peek," the City of Spokane did approach Moody's Investor Services (and paid \$11,000) to get Moody's take on the RPS garage bonds. As the Journal reported, the City was told that, as the deal was structured, it would not give the bonds an investment grade rating. This was material information to bondholders in that Standard & Poor's did rate the bonds at its lowest investment grade of BBB-. It's clear from a December 1996 letter from Prudential Securities that Moody's was being paid for a bond rating. (See attached 12/4/96 John Moore letter)

10) Failure to Disclose the AMC Notice of Default and the Expected \$1.2 Million Drop in Garage Revenues.

After the \$31,465,000 in garage bonds were sold at the end of September 1998, but before the garage transaction was closed a year later, the lawyers and bond counsel for the Spokane Downtown Foundation proceeded to close the transaction even though they knew the revenue projections shared with bondholders had dropped dramatically. This was the so-called AMC crisis that is discussed, in some detail, in both the reports delivered to Mr. McDevitt on August 20th. Attorneys for garage bond purchasers argue that there was a continuing disclosure responsibility (See p. 38 of the Official Statement) to notify investors of Material Events. They also contend that a September 1999 certificate

from the Spokane Parking Public Development Authority disclosing the \$1.2 million “revenue shortfall” was not shared with investors, as it should have been.

As we noted in our earlier correspondence with Mr. McDevitt, this is where the securities fraud evidence dovetails with the broader public corruption case. Whether or not bondholders were properly notified is a securities fraud issue that should have prompted criminal indictments by now. Notwithstanding the evidence of securities fraud, one other thing is certain. The closure of the garage transaction under these circumstances was corrupt. Board members of the Spokane Downtown Foundation (the bond issuer) complain that their bond counsel (Mr. McDevitt’s former firm that was actually selected by River Park Square) did not adequately inform them of their option not to proceed with the transaction. As importantly, there’s clear evidence (including the illegal confidentiality agreement referenced in our 8/19/07 reports to Mr. McDevitt) that a conspiracy existed to keep Mrs. Rodgers and Mayor John Talbott in the dark about the AMC crisis and its effect on the garage financing plans. Had Mrs. Rodgers and Mayor Talbott known about these events, they could have blocked the transaction and avoided the subsequent political, civic, and financial crisis.

In closing, we reiterate our request that each of these allegations be addressed either with criminal indictments or public explanations as to why no law was broken. Again, we also request to meet with federal investigators on this matter when investigators have been assigned.

Sincerely,

Cherie Rodgers

Tim Connor

Attachments on CD

12/03 Omnibus Statement of Material Facts
6/04 Report of IRS Tax Exempt Bond Unit
Fraudville, USA article, Camas Magazine
Hocus Pocus series, Camas Magazine
Exhibit #5
Exhibit M
Exhibit Y
12/4/96 John Moore letter regarding bond ratings

cc. U.S. Attorney James A. McDevitt