



STAFF REPORT

Report To: Board of Supervisors

Meeting Date: December 6, 2018

Staff Contact: Ryan Henry, Bond Counsel for Carson City (Sherman & Howard LLC)

Agenda Title: For Possible Action: To grant a waiver of conflict of interest by executing a proposed waiver as requested by Sherman & Howard, LLC, bond counsel for the City and contract counsel for the Carson City Finance Department, relating to the law firm's concurrent representation of Verizon Wireless in matters relating to cell towers and real estate.

Staff Summary: Rule 1.7 of the Nevada Rules of Professional Conduct prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest unless each client gives informed consent, confirmed in writing. The Reno office of the law firm Sherman & Howard LLC represents Carson City on finance matters and as bond counsel. The firm's Denver office also represents Verizon Wireless on cell tower and related real estate matters, and such business may come before Carson City in the future. Sherman & Howard is requesting that the Board waive the firm's concurrent conflict of interest with its representation of both Carson City and Verizon Wireless. The waiver, if granted, would only apply to the negotiation of a cell tower master lease agreement and zoning related matters, and would not extend to litigation or dispute resolution regarding such matters. Sherman & Howard is requesting that the Board waive the firm's concurrent conflict of interest with its representation of both Carson City and Verizon Wireless. Verizon has similarly waived the conflict.

Agenda Action: Formal Action/Motion

Time Requested: 10 mins

Proposed Motion

I move to grant the waiver of conflict of interest of Sherman & Howard, LLC by executing the proposed waiver as requested.

Board's Strategic Goal

N/A

Previous Action

N/A

Background/Issues & Analysis

The Reno office of Sherman & Howard LLC has been the City's bond counsel on finance-related matters since the mid-1970s. Sherman & Howard's Denver office represents Verizon Wireless in connection with negotiating master lease agreements with cities and towns throughout the country to help them place small cell nodes (i.e. small antennas on light poles, traffic poles, utility poles and stand alone poles) in public rights-of-way. Such agreements will be necessary to accommodate upcoming new technologies (i.e., 5G) that may substantially increase capacity. Along with the master lease agreement negotiation, municipalities may re-write their zoning codes to ensure an application and permitting process is in place for the nodes in the rights-of-way. At this time, Verizon Wireless has no specific plans involving Carson City but has directed Sherman & Howard to open a file in preparation for negotiating a master lease agreement and code review in the future. Sherman & Howard currently has approximately 75 of these type of files open throughout the country, mostly in the West.

Applicable Statute, Code, Policy, Rule or Regulation

Rule 1.7 of the Nevada Rules of Professional Conduct

Financial Information

Is there a fiscal impact? Yes No

If yes, account name/number:

Is it currently budgeted? Yes No

Explanation of Fiscal Impact: N/A

Alternatives

1. Decline to grant waiver of conflict of interest.
2. Refer matter back to Staff.

Board Action Taken:

Motion: _____

1) _____
2) _____

Aye/Nay

(Vote Recorded By)

SHERMAN & HOWARD

633 Seventeenth Street, Suite 3000, Denver, CO 80202-3622
Telephone: 303.297.2900 Fax: 303.298.0940 www.shermanhoward.com

November 15, 2018

Board of Supervisors
Carson City, Nevada
201 North Carson Street
Carson City, Nevada 89701

Re: Request for Waiver of Conflict of Interest

Dear Members of the Board of Supervisors:

I am sending this letter to request that Carson City, Nevada (the “City”) waive a concurrent conflict of interest that will exist under Rule 1.7 of the Nevada Rules of Professional Conduct because of the following representations:

(1) Sherman & Howard has represented the City on municipal finance matters for many years. The City is currently a client of the Firm.

(2) For some time, Sherman & Howard has represented Verizon Wireless (“VZW”) with regard to various cell site matters including lease negotiation, drafting, and amendment to existing leases, zoning matters and environmental review of new and existing cell tower sites. These matters often involve cell tower sites in which the property is owned and leased by municipal entities.

(3) VZW has requested Sherman & Howard to assist it in working with the City to achieve a Master Lease Agreement or similar agreement to place small wireless facilities on City facilities and City owned properties, and also assist with zoning issues related to such facilities. We have no doubt that such discussions would be cordial and productive, but, as the City would be on the other side of the table for such discussions, it must be viewed as being “adverse” to Verizon.

Under Rule 1.7 a concurrent conflict of interest would exist because Sherman & Howard would be representing one client (VZW) in a matter in which another client (the City) is adverse. Rule 1.7 prevents the Firm from representing VZW for the contemplated discussions without obtaining the informed consent from the City to the conflict. Accordingly, we are requesting the City’s consent to the Firm’s representation of VZW as outlined herein, including, but not limited to, discussions and negotiations relating to small cell facilities. This waiver would not, however, pertain to the unlikely event of litigation between VZW and the City.

Rules 1.7(b)(4) further requires that the City's consent to a waiver be "informed." Initially, this requires a consideration of the material risks of granting the waiver. One risk is divided loyalties, where questions may arise as to why the City's law firm has chosen to be adverse to the City on cellular matters. Another risk is that the Firm might have confidential information from its current and past work for the City that could be used to further the position of VZW during the discussions.

We believe that these risks are minimal or nonexistent, as the lawyers who are representing the City have done so for years and have developed a loyalty to the City. They do not represent VZW and will not have any role in the discussions. We also believe that the risk of misusing confidential information is minimal or nonexistent. The work that the Firm performs for VZW is done by members in our Denver office who do not have significant contact with the lawyers in our Nevada offices who represent the City. To be clear, we do not intend to disclose any client confidential information to any other client, and the Rules of Professional Conduct by which we are bound prevent us from disclosing such client confidential information. But the City must make its own assessment of these and any other risks in deciding whether to grant the waiver.

Another factor which must be considered for a waiver to be "informed" is the reasonably available alternatives to the waiver. We believe that, if the City is unwilling to waive the conflict, the only alternative would be for Sherman & Howard to decline to represent VZW in the small cell discussions with the City.

Assuming that the City agrees to waive the concurrent conflict of interest involved, I request that you arrange for a signature on a copy of this letter and that you have it returned to me.

We appreciate your understanding in this matter.

I have reviewed this letter. I agree to waive the conflict as describe and consent to the representation on the terms outlined.

By: _____
Signature

Title

Date

SHERMAN & HOWARD

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Ryan M. Christ
Direct Dial Number: (303) 299-8057
E-mail: rchrist@shermanhoward.com

October 16, 2018

VIA EMAIL

Ms. Donna B. Barrett
Verizon Wireless
19950 NW Tanasbourne Drive
Hillsboro, OR 97124

Re: Request for Waiver of Conflict of Interest

Dear Donna:

I am sending this letter to request a waiver of a concurrent conflict of interest under Rule 1.7 of the Nevada Rules of Professional Conduct because of the following representations:

(a) For some time, Sherman & Howard L.L.C. (the "Firm") has represented Verizon Wireless ("VZW") on cell tower and related real estate matters. VZW is a current client of the Firm.

(b) Also for some time, the Firm has represented Carson City, Nevada ("Carson City") in various municipal finance matters. Carson City is a current client of the firm.

(c) VZW's recent request that the Firm represent it regarding both zoning issues and a potential Master Lease Agreement (collectively, the "Zoning and MLA Matter") presents a conflict of interest for the Firm due to our on-going representation of both parties in their respective matters.

Rule 1.7 of the Rules of Professional Conduct prohibits the Firm from representing or advising one client (VZW) in a manner that is adverse to another client (Carson City), unless both clients provide informed consent to the representation, confirmed in writing. Accordingly, we ask that VZW agree to waive any conflict with respect to the Firm's representation of Carson City in its current and future matters which may be brought to the firm so long as they are unrelated to the work we do for VZW. If VZW agrees to grant the requested waiver, representation by Sherman & Howard of Carson City on its current and future matters that are unrelated to the work we do for VZW will not be grounds to request or obtain a disqualification of the Firm.

This waiver request is subject to certain conditions:

Ms. Donna B. Barrett
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(a) The waiver requested by this letter would apply only to the Zoning and MLA Matter.

(b) In the event of any litigation or other dispute resolution proceeding between Carson City and VZW relating to the Zoning and MLA Matter, the Firm will not represent either party in the litigation or proceeding.

(c) Upon the request of either party, Sherman & Howard will maintain ethical walls between its representation of VZW and its representation of Carson City. At this time, no such ethical walls are in place. If walls are requested, those walls would effectively prohibit and screen all lawyers advising VZW on their matters from accessing files relating to Carson City's matters, and from discussing any issues relating to your matters with lawyers advising VZW on any of its matters, and vice versa.

In deciding whether or not to consent, you should consider how our representation of Carson City, in a matter adverse to you, could or might affect you. In so doing, you should consider whether the arrangement that I have outlined above could or might affect the zealotness with which Sherman & Howard represents you. Similarly, you should consider whether our representation of clients adverse to you would place Sherman & Howard in a position to use your confidences or secrets against you. To be clear, we do not intend to disclose any client confidential information to any other client, and the Rules of Professional Conduct by which we are bound prevent us from disclosing such client confidential information.

The Rules of Professional Conduct also require that I advise you of the alternatives that you have to granting the waiver that we are requesting. You have the option of refusing to grant the waiver, in which case VZW would be required to seek other counsel.

A waiver of a conflict of interest implicates legal issues for you, including issues as to the nature and scope of the waivers and their potential significance for you. Sherman & Howard is not disinterested as to such issues, and therefore cannot advise you on them. I recommend that you seek advice of independent counsel on this matter if you have any questions.

After you have reviewed this, and assuming that you agree to waive the potential conflict of interest involved, I ask that you sign below confirming the waiver. I would be glad to respond to any questions or issues you may have with these matters. I appreciate your cooperation in this matter.

Ms. Donna B. Barrett
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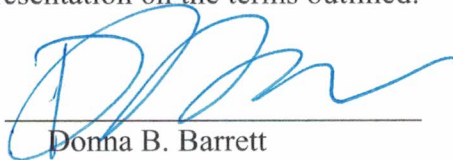
Sincerely,

A handwritten signature in black ink, appearing to be 'R. M. Christ', written in a cursive style.

Ryan M. Christ

I have reviewed this letter. I agree to waive the conflict as describe and consent to the representation on the terms outlined.

By:

A handwritten signature in blue ink, appearing to be 'D. B. Barrett', written in a cursive style.

Donna B. Barrett
Verizon Wireless

RMC/el
Enclosures