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November 25, 2013

Via Email Only

Mayor Joanne Servais and Members of the Township Committee
Fairfield Township
P.O. Box 240
Fairton, NJ 08320

Re: **Investigative Report- Various Complaints**

Dear Mayor Servais, and Members of the Township Committee:

The independent investigative report of Ms. Gaskill has been completed. By copy of this letter I would request that Ms. Smith please distribute this to members of the governing body.

With respect to this matter, I would note that in summary that there was insufficient evidence to support complaints of racial harassment based upon the intent of the speakers and the various incidents concerning the complaints. I would defer to the specific findings of Ms. Gaskill, but generally speaking the majority of these complaints were found to be based upon "a long standing and deep routed political feud," rather than any racial animus.

That said, it is noted that there were some recommendations in the report. Among these were recommendations that the Township would be "well-served by taking a strict stance on any future references, casual or otherwise." Additionally it was noted that based upon the disruptive nature of the public meetings which was clear from listening to the audio tapes that a "policy of warning the residents in attendance at

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meeting against remarks outside of the public comment portion of the meeting... will go far in restoring the more respectful tone at Township Committee Meetings to the benefit of all and hopefully avoid further incident such as this."

In summary, I believe that the results of the investigation should be utilized in a positive manner for the Township in the future, including setting forth strict policies in relation to those two items.

I would be happy to discuss this at the next meeting. Should you have any questions please contact me.

Sincerely,

/s/ George R. Saponaro

GEORGE R. SAPONARO

GRS/amc
Dictated, not read
Cc: Leo Selb, Twp. Administrator

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November 20, 2013

Leo Selb, Township Administrator
Township of Fairfield
70 Fairton-Gouldtown Road
P.O. Box 240
Fairton, New Jersey 08320

RE: Complaints by Committeeman Michael Sharp
Complaint by Benjamin Byrd
CONFIDENTIAL REPORT

Dear Mr. Selb:

This independent investigation is being undertaken pursuant to the authority granted under the Township of Fairfield Resolution No. 118-2013, dated August 20, 2013, which authorizes an investigation into the complaints of Township Committeeman Michael Sharp, and Township resident Benjamin Byrd, Sr., which allege violations of the Township of Fairfield's civil rights policy as set forth in the City of Fairfield Resolution 169-2012.

The Township of Fairfield's civil rights policy provides, in relevant part, that:

No official, employee, appointee or volunteer of the Township by whatever title known or any entity that is in any way a part of the Township shall engage, either directly or indirectly, in any act including a failure to act that constitutes discrimination, harassment or a violation of any person's constitutional rights while such official, employee, appointee, volunteers or entity is engaged in or acting on behalf of the Township's business or using the facilities or property of the Township.

The aforementioned complaints filed by these two individuals allege the following:

I. Racially derogatory remarks allegedly were made to Township Committeeman Michael Sharp, which he maintains were uttered in a racially insulting and demeaning manner and which he feels have created a hostile work environment for him. The three (3) incidents, which form the basis of his complaint, are as follows:

- A. the use of the word "boy" in direct reference to him at the Township Committee meeting of May 14, 2013 by Joseph Servais;
- B. the use of the word "boy" in direct reference to him by Russell Price on June 12, 2013 while in the Township's Town Hall; and
- C. the use of the word "boy" in direct reference to him by Richard Servais on July 5, 2012 while in the Township's Town Hall.

II. Racially derogatory remark made in reference to Benjamin Byrd, an African-American candidate for Township Committeeman, by Russell Price, on June 7, 2013 while in the Township's Town Hall, allegedly referring to said candidate and his African-American running mate as "monkeys."

I. Complaints of Committeeman Michael Sharp

A. Incident of May 14, 2013- Fairfield Township Committee Meeting

Committeeman Michael Sharp alleges that while acting in his official capacity as a member of the Fairfield Township Committee, and doing the course of an exchange between himself and Mayor JoAnn Servais, a direct remark was made to him, referring to him as a "boy," by Joseph Servais, the mayor's son, who was seated in the audience. This remark occurred while the Committee was in session and not in the public comment portion of the meeting. Committeeman Sharp is an adult African American man, and Joseph Servais is a white adult man. Committeeman Sharp maintains that this "boy" reference is a racial slur used to demean and humiliate him in violation of the Township's civil rights policy. Joseph Servais is a member of the Township's Planning Board.

The following individuals, all of whom were in attendance at the Township Committee meeting of May 14, 2013, were interviewed in regard to this incident: Mayor JoAnne Servais, Deputy Mayor Viola Thomas-Hughes, Township Committeeman Donald Taylor, Township Committeeman Michael Morton, Township Committeeman Michael Sharp, Township Administrator Leo Selb, Acting Municipal Clerk Carla Smith, Pat Conhey, Joseph Servais, Richard Servais, Marion Kennedy, Cynthia Zirkle, Ernest Zirkle, Benjamin Byrd, and Russell Pierce.

The audio recording of this Township Committee meeting is partially drowned out and is unclear as to what was said and by whom. However, both Joseph Servais and Richard Servais have provided statements that Joseph Servais told Committeeman Sharp "You better get your facts straight boy." As Joseph Servais is the party being accused in this complaint, his admission shall be conclusive on the subject on what was said by Joseph Servais. Notwithstanding, the content of that remark was corroborated by several witnesses (Committeeman Michael Morton, Pat Conhey, Marion Kennedy, Benjamin Byrd, Cynthia Zirkle and Ernest Zirkle). It is noted however that other witnesses did not

hear the term "boy" in Joseph Servais' remark (Mayor Servais and Committeeman Don Taylor), while others could not attribute this comment which they heard to any particular person (Administrator Selb). Another witness attributed this remark to Richard Servais (Carla Smith) or heard something along the lines of "shut up or be quiet, boy" by an unidentified person (Deputy Mayor Hughes). It was noted by Carla Smith that Joseph Servais was also trying to calm his father down who she heard say to Committeeman Sharp "Who are you to tell me I can't turn my business over to my son."

Joseph Servais, in his defense, indicated that his outbursts from the audience was precipitated by the fact that Committeeman Sharp was attacking his mother, Mayor Servais, in a heated exchange between them in regards to the business registration and ownership of J&R Servais, LLC, an entity which has done business in the Township and affiliated in some fashion with the Servais family. This business registration issue has been reported as being a longstanding issue between Committee Sharp and the Servais family with possible political underpinnings. Joseph Servais maintains that the word "boy" was not used by him in a racially derogatory way, but was used rather to emphasize that the Committeeman Sharp's conduct was childish and immature. This characterization of the remark as being non-racial in nature was shared by Richard Servais.

Committeeman Sharp indicated that upon hearing this remark directed at him, asked that the remark be repeated. He was looking at Joseph Servais who he claims repeated the remark again to him. It was reported by Ernest Zirkle that Committeeman Sharp banged the dais and was looking at Joseph Servais when he inquired "What did you say?" Both Ernest and Cynthia Zirkle, who were seated in close proximity to Joseph Servais indicated that in recounting what was said to Committeeman Sharp, Joseph Servais said "get you facts straight" and Richard Servais added "boy." This account was corroborated by Marion Kennedy who was sitting to the right of Joseph Servais, and who indicated that in this second remark, Richard Servais joined in with his son when they said "get your facts straight boy."

All witnesses reported that after the remarks were made, Committeeman Sharp questioned whether any action would be taken for these remarks, then left the dais and the meeting room in haste, which most witnesses maintained was an effort to calm down and collect himself, and later returned to the dais.

In assessing whether the use of the term "boy" by Joseph Servais in the context of this incident is a violation of the Township's civil rights policy, guidance is taken from the United States Supreme Court decision in Ash v. Tyson Foods, Inc., 546 US 454 (2006) which held that

While the word "boy" is not always evidence of racial animus, it does not follow that the term, standing alone, is always benign. The speaker's meaning

may depend on various factors including context, inflection, tone of voice, local custom and historical usage.

The term "boy" as used by Joseph Servais, a white male, in direct reference to Committeeman Sharp, an adult African-American male, *may* be viewed as being racially suspect from an historical perspective. Referring to Committeeman Sharp as a "boy" while he was acting in his official capacity as a member of the governing body of Fairfield Township and while that governing body was in session, evidences a complete disrespect for Committee Sharp, and clearly appears to be an effort to diminish his position on the Township Committee, and to otherwise demean him. Joseph Servais' outburst appears to be based in anger as Mr. Servais' claims he was responding to what he perceived as Committeeman Sharp's attacks on his mother so any claim that its use was conversational in tone cannot be supported. The witnesses in close proximity to Joseph Servais, Marion Kennedy (sitting two seats away from him to the right), and Ernest Zirkle (one seat from Joseph) and Cynthia Zirkle, maintain that there was a pause before Joseph Servais utter the word "boy" to emphasize it. Lastly, Committeeman Sharp's response to this remark reflects that it was highly offensive to him given the historical context of that term and its use in this particular instance. It is to be noted that the other African-American members on the Township committee, Deputy Mayor Hughes, Committeeman Don Taylor and Committeeman Michael Morton, as well as acting Municipal Clerk, Carla Smith, indicated that they did *not* find the comment offensive. Other African-Americans in the audience were reported to have been offended by this comment.

Given the current and historical context of this remark, the speaker's tone and reported inflection, it would be difficult to conclude that the remark by Joseph Servais was benign in nature, and not intended to diminish and disrespect Committeeman Sharp. It is inconclusive, however, whether the remark in this instance was delivered with racial animus. What is clear from the record is that the use of the term "boy" to Committeeman Sharp was received by him as being highly offensive and racially demeaning in nature and all who witnessed these events were put on notice of that fact. From the nature of the exchange, it would appear that the intended remarks were more likely the result of long standing and deep rooted political divisions as opposed to being racial in nature. That being concluded however, the continued use of the term "boy" in direct reference to Committeeman Sharp would constitute racial harassment as he has made it abundantly clear that this remark is racially offensive and demeaning to him.

The Fairfield Township civil rights policy prohibits a volunteer from engaging in acts which constitutes discrimination or harassment. Harassment can include racial slurs, or offensive or derogatory remarks. Harassment is illegal when it becomes so frequent or severe that it creates a hostile work environment. Joseph Servais as a member of the Township's Planning Board is subject to the Township's civil rights policy. There

appears to be no reported incidents that Joseph Servais continued to call Committeeman Sharp a "boy" other than in the May 15th incident when the offense was duly noted by Committeeman Sharp. Without more, one cannot conclude that this isolated remark, while unquestionably disrespectful, rose to the level of racial harassment and a violation of the Township's civil rights policy.

As an aside, I must note that in listening to the audio tapes of the Township Committee of May 15th, I could not fail to notice what appears to be a practice of residents shouting remarks to the governing body from the audience outside the public comment portion of the meeting. Such a practice does not afford the proceedings and the individuals constituting the governing body the respect that is their due and creates the type of climate where remarks like this incident can and do occur. More importantly, these outbursts disrupt the conduct of business on behalf of the residents of Fairfield Township. A policy of warning the residents in attendance at meetings against remarks outside of the public comment portion of the meeting and removing the non-compliant resident will go far in restoring a more respectful tone at Township Committee meetings to the benefit of all, and hopefully avoid further incidents such as this. Although not called upon by the task at hand, the Committee would be wise to adopt a "no tolerance policy" toward continued outbursts by the audience and its own members when they are out of order.

B. Incident of June 12, 2013- Fairfield Township Town Hall

Committeeman Michael Sharp alleges that on June 12, 2013, while visiting the Town Hall, he was called a "boy" by Russell Pierce several times. Specifically, Committeeman Sharp noticed that a blue Jeep Cherokee, which he knows belongs to Township volunteer, Russell Pierce, was parked in what Committee Sharp maintains is a fire lane. He previously advised Mr. Pierce against parking there. He confronted Russell Pierce and advised him that the vehicle needed to be moved or he was going to file a complaint with the State Police. According to the Township Administrator, this parking lane is marked by yellow paint, but no ordinance has been enacted making it a fire lane. In the course of the exchange that followed, Committee Sharp alleges that Russell Pierce said the following to him: "Look boy", "I do what I want boy" "I am telling you boy," "I am going to get you out of this town boy." Mr. Pierce has reported that he is of African American ancestry. Taking this account by Mr. Pierce therefore, in this instance, both the alleged offender, Russell Pierce, and the victim are African American men.

This verbal exchange started in the hallway of the Town Hall outside the Construction Office and the following individuals were witnesses to the exchange that followed: Mayor JoAnn Servais, Bob Hulitt, Carla Smith and Administrator Leon Selb, and all of whom were interviewed for this investigation.

Russell Pierce originally indicated to Committee Sharp that he would not move the vehicle, then he agreed to move it. Russell Pierce indicated that he could have said the word "boy" to Committeeman Sharp. He also indicated that he is black and the use of this word was not racial. He reported that Committeeman Sharp himself has made racial remarks about having a white woman for mayor when there are four blacks on the Committee. He indicated that he was 65 years of age and Committee Sharp is 35 years of age and he is a boy to him.

Part of this exchange occurred outside the office of Mayor Servais and Bob Hulitt, both of whom have no recollection of the used of the term "boy" by Russell Pierce in that exchange. Mayor Servais also indicated that Mr. Pierce often uses the term "boy" in a non-racial, casual way, such as "Got my boys on the street." The Municipal Clerk witnessed part of this exchange, but could not remember what was said as there was so much yelling. Lastly, this exchange occurred outside Administrator Selb's office and the Administrator did advise Mr. Pierce that the language was inappropriate. He also recalls that Russell Pierce stated to Committeeman Sharp after he was warned of its inappropriateness "that's right, I am calling you boy" The Administrator Selb also recalls that Mayor Servais warned Mr. Pierce to stop and said "don't you see that they are trying to get you in trouble."

In summary, there are conflicting accounts as to whether Russell Pierce called Committeeman Sharpe a "boy" in this exchange, however, it is noted that in this interview when questioned Russell Pierce did not deny that he may have called Committee Sharp a "boy." Administrator Selb's version of the events was memorialized in a memorandum to the file dated June 12, 2013 prior to the initiation of this investigation and appears to be a credible account.

While the racial slur in using the term "boy" to an African American adult male is usually seen in the context of a white to black verbal exchange, the disparagement can still occur in a black to black exchange. It is inconclusive whether Mr. Pierce's frequent use of that "boy" in reference to Committee Sharp was a racial slur constituting racial harassment. Mr. Pierce's frequent and indiscriminate use of the term "boy" in a number of non-racial contexts was reported by several sources. Mr. Pierce admits using the term but denies any racial animus. There is evidence that his use of the term "boy" occurs in many instances to establish his political clout and a form of political one-upmanship as Mr. Pierce is reported to wield considerable political influence behind the scene in the Township. He refers to his political underlings as his boys, and Mr. Pierce is reported to have run a past campaign of Committeeman Sharp.

Russell Pierce as a Township volunteer is subject to the Township civil rights policy and the record is inconclusive as to whether his conduct here constituted racial harassment. Accordingly, there is insufficient evidence to support a finding that Mr. Pierce violated the Township's civil rights policy. That having been concluded, Mr.

Pierce knows that the term "boy" in direct reference to Committeeman Sharp is racially offensive to him, and perhaps to other African Americans, and he should now be on notice that as a volunteer that his continued use of the term "boy" in this context will be grounds for a potential harassment complaint against him if his practice continues.

C. Incident of July 5, 2013- Fairfield Township Town Hall

Committeeman Sharp alleges that the use of the racial slur "boy" in reference to him continued in the exchange that occurred on July 5, 2013 with Richard Servais, the mayor's husband, in the mayor's office at Town Hall. Richard Servais is a white man. Present at that incident in the mayor's office were Mayor Servais, Richard Servais, and Russell Pierce. The Township Administrator Leon Selb was also a witness to this incident. All of the above were interviewed as part of this investigation.

Committeeman Sharp maintains that he was in the Town Hall when we heard Mayor Servais, Richard Servais and Russell Pierce in the Mayor's office loudly discussing this investigation. Committeeman Sharp addressed the Mayor and advised her that the discussion of the Township's business with her husband and Russell Pierce was inappropriate. Committeeman Sharp stated that Richard Servais responded by saying the following: "I will do whatever I want boy" "If you don't like it boy, get out" and "I will call you a boy if I want to." While Richard Servais was making these comments, Mayor Servais was telling him to be quiet. Richard Servais later apologized to him, but Committeeman Sharp refused to accept the apology as he felt that this was not the first time for Mr. Servais and he wanted these incidents investigated.

Mayor Servais indicates that Richard Servais and Russell Pierce were in her office discussing an unrelated matter, a letter from a John Mason. Russell Pierce had walked over to the Administrator's office with a request to look up the word "boy" and Russell was given a dictionary by the Administrator. Mr. Pierce returned to the Mayor's office and the Administrator followed him into the office and was standing at the door. At this time, Mayor Servais maintains that Committeeman Sharp came into her office and was yelling that he was going to report her to the ethics committee for discussing the investigation. Mayor Servais recounts that Richard Servais told Committeeman Sharpe "That you better watch what you are saying, boy. You are getting out of control." Mayor Servais maintains that her husband's use of the word "boy" was not racial in nature, and that he uses it frequently, i.e. "playing cards with the boys."

Richard Servais indicates that Committeeman Sharp came into the Mayor's office charging the Mayor with discussing the investigation. He was pointing his finger at her and had scared her. Richard Servais maintains that he said "Boy you better stop accusing me of things I have not said" and "You keep saying things about me and my son

and you better stop boy, I am tired of it.” Richard Servais also maintains that the use of the word “boy” was not meant as a racial slur as he uses it with everyone. He denies saying “I will call you a boy if I want.” Richard Servais, at the suggestion of Russell Pierce, apologized to Committeeman Sharpe by stating “that if I have offended you, I apologize.” Administrator Selb maintains that Richard Servais stated to Committeeman Sharp during this exchange “Boy, who better stop boy. I am tired of you.”

In assessing this incident, I note that while Richard Servais was not part of the May 14th complaint by Committeeman Sharp, three (3) witnesses indicated that he joined in with his son in recounting what was said by calling Committeeman Sharp a “boy” after it was apparent that Committeeman Sharp took offense from the first remark. Having attended that May 14th meeting, Richard Servais should now be aware of how offensive the term “boy” was to Committeeman Sharp. Notwithstanding, Richard Servais continued to use that term in this exchange with Committeeman Sharp at least one more time (Mayor’s version) knowing its impact on him. It appears as though this again is the result of a long standing and deep rooted political feud, exacerbated by the complaints regarding Mayor Servais business license and Mr. Sharp’s allegations of Township violations regarding the same. His continued use of the term “boy” was clearly done in a heated exchange, and in a manner that had the capacity to upset Mr. Sharp. However given the overall totality of the circumstances, including his attempted apology, the broader context of the political feud, and all other factors, there is insufficient evidence to support the conclusion that there was racial animus or that this exchange constituted racial harassment. In the future however, knowing how racially offensive Committeeman Sharp found the term, any reference to Committeeman Sharp as a “boy” cannot be overlooked, and again Mr. Servais should be advised that any such future direct reference by him to Committeeman Sharp will likely be viewed as racially motivated. I do not know whether Richard Servais’ attempted apology mitigated the offense to Committeeman Sharp, but I would suggest that there would be a benefit derived from an apology if Mr. Sharp is willing to meet with Mr. Servais.

Finally I would note that the application of the Township Civil Rights policy to Richard Servais lacks foundation as he is reported to be neither an official, employee nor volunteer of the Township, and accordingly, the Township has no jurisdiction to take compliance/enforcement action in this incident.

II. Complaint of Benjamin Byrd, Sr.- Incident of June 7, 2013

Benjamin Byrd, Sr., a Township resident and a candidate for the Township Committee, has filed a complaint against Russell Price, a Township volunteer, for allegedly referring to him and his running mate, Troy Pitt, Sr., both of whom are African-American men, as “monkeys.” Mr. Byrd maintains that this reference is a racial slur used

to demean and humiliate him in violation of the Township's civil rights policy. As noted previously, Mr. Pierce also reports that he is an African-American. Also, as noted previously, Mr. Pierce is a Township volunteer, and accordingly the Township's civil rights policy would be applicable to him.

The comment in question occurred while Russell Price was in the Township's Town Hall on June 7, 2013, the day following a contested Democratic primary for Township Committee, in which Mr. Byrd's and his running mate defeated the other Democratic slate, which Russell Pierce supported. The comment was allegedly made by Mr. Price while in the Township's Code Enforcement/Housing office, and the following individuals were present with him and discussing that primary: Mayor JoAnn Servais, Robert Hulitt of the Township zoning and code enforcement, and Pat Conhey, acting Township's emergency management official. All of these individuals were interviewed with respect to this incident. Additionally, Township Administrator Leo Selb, who came into the office at some later point in that discussion, was also interviewed on this incident. There is no dispute as to the date and place where the comment occurred.

Based on the interviews conducted, there is also no dispute that Russell Price used the term "monkeys" in his comments that day. The specific words allegedly used by Russell Price vary from his own version ("I don't care what those monkeys do") to Mayor Servais and Mr. Conhey's version ("I am not going to worry about any of these monkeys. I have my own campaign to run") to the version recounted by Township Administrator Selb ("when those monkeys get in").

Whether any racial animus can be attributed to Mr. Pierce's use of the term "monkeys," like the use of the term "boy," can only be determined by an examination of the context of the discussion when the comment was made. It was noted by Mayor Servais that Russell Pierce was going to run a write-in campaign in response to the primary lost by his slate of candidates, and in review of reported results, I now understand that a write-in campaign was indeed run by an opposing slate for the November 5, 2013 general election. According to Mayor Servais, Mr. Pierce, Mr. Conhey and Mr. Hulitt, the discussion immediately preceding this "monkey" comment by Mr. Pierce was about various persons in the Township making contributions to the Byrd campaign to defeat the slate of candidates being supported by Mr. Pierce, which included the Township Administrator, the Zirkles, and Mr. Pierce's cousin, Dennis Pierce. According to these four (4) witnesses, the reference to "monkeys" was to those individuals, who were assisting an independent Democratic slate, and not to candidates Byrd or Pitts. No witnesses reported any direct reference to Mr. Byrd or Mr. Pitt made by Mr. Pierce. Administrator Seib's version of the Mr. Pierce's comment ("when those monkeys get in") however appears to make an indirect reference to Candidates Byrd and Pitt as only candidates "get in" presumably to office.

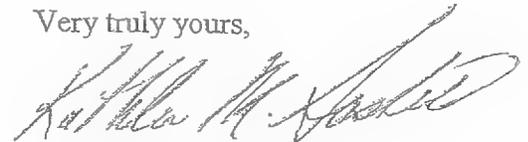
Based on the interviews undertaken, the preponderance of witnesses' testimony indicates that the term "monkeys" was not used by Mr. Pierce in a racially benign manner with the term appearing to refer to a group of contributors, both white and black, that were involved in the primary campaign, and not specifically to the African-American candidates. These witnesses were party to the entire discussion and the context of the "monkey" comment while Administrator Selb came in at the point in the discussion when the term was used. In judging the credibility of those witnesses, one must be cognizant of the fact that Mr. Pierce holds no official title in the Democratic Party of the Township, he appears to be somewhat of a behind-the-scenes power and influential in the selection of Township candidates and appointees. The statements by these witnesses may be tainted by the fact that they have either elective and appointive positions which could be jeopardized by statements averse to Mr. Pierce, however, there is no evidence before me of any such taint. As these witnesses heard the entire conversation, I must place more weight on their accounts (given their overall involvement in the entire discussion) than that of the Administrator as he was only present for that segment of the conversation preceding the "monkey" comment.

Based on the interviews taken in reference to this Complaint, there is insufficient evidence to support this complaint of racial harassment.

I must note that the Township's civil rights policy sanctions a failure to act in the face of discrimination and harassment as a violation itself of the civil rights policy, which places Administrator Selb in a very difficult position when words viewed to be racially charged are used, whether casually or with racial animus, by employees, volunteers and appointed and elected officials. The Administrator is duty bound to take action or to be found in violation of this policy himself. The Township would be well served by taking a strict stance on any such references, casual or otherwise, as their use, given the mandate that they be addressed and/or investigated, constitutes a wasteful diversion of the Township's resources and the Administrator's time, and creates unnecessary divisiveness in the community.

Thank you for the opportunity to assist you in the investigation of this matter. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,



Kathleen McGill Gaskill

KMG/em