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December 16, 2015

Mr. Patrick Von Dohlen
President of the San Antonio
Family Association
45 Northeast Loop 410, Set 100
San Antonio, Texas 78216
Via E-mail to Patrick@SanAntonioFamilyAssociation.com

RE: Review of the Legal Opinion of Mr. S. Mark White, Esq., Dated October 7, 2015

Dear Mr. Von Dohlen:

Pursuant to your request, I reviewed the legal opinion of Mr. S. Mark White, Esquire, contained in his letter titled "Review of Zoning & Permitting, 2140 Babcock" and dated October 7, 2015. My review is enclosed.

For the reasons explained in the enclosed, I conclude that Mr. White's opinion constitutes the unauthorized practice of law in the State of Texas which could subject both his law firm and him to an enforcement action by the Texas Supreme Court's Unauthorized Practice of Law Committee. I further conclude, respectfully, as follows: (a) that Mr. White was retained by the City to provide an opinion in support of the City's action and not as an independent reviewer; (b) that Mr. White's unlicensed opinion is incorrect and Planned Parenthood is permitted improperly at 2140 Babcock.

In reaching my conclusions, I have been unable to meet with the City's staff over the substance of its decision-making process regarding Planned Parenthood. Unlike the access that Mr. White claims he was afforded to the City's staff, the City Attorney's office denied me similar access when writing in an e-mail of October 7, 2015, that staff "will not specifically discuss (*sic*) issues related to 2140 Babcock Road."

Sincerely,

Dennis J. Drouillard

Enclosure

Scope of Assignment

At the request of the San Antonio Family Association, I reviewed the legal opinion of Mr. S. Mark White, Esquire, contained in Mr. White's letter titled *Review of Zoning & Permitting, 2140 Babcock* and dated October 7, 2015. The purpose of my review is to determine whether Mr. White's legal opinion is correct or incorrect under Texas law.

To accomplish this purpose, I formulated the scope of the assignment to review matters bearing on the accuracy of Mr. White's legal opinion. Generally, these matters fall into four categories that concern Mr. White's: (a) credibility; (b) objectivity; (c) legal analysis; and (d) methodology. This review contains analysis formulated under each category.

In addressing Mr. White's legal analysis and methodology, I placed emphasis on the crux of his key points and not upon ancillary or superfluous points he raised.[1]

Credibility: The Unauthorized Practice of Law

In Texas, the practice of law includes "the giving of advice or the rendering of any service requiring the use of legal skill or knowledge".[2] That definition "is not exclusive" and the judiciary has the inherent power to define further the practice of law.[3] The judiciary has defined the practice of law as embracing "all advice to clients and all action taken for them in matters connected with the law."[4]

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[1] For example, Mr. White's legal opinion appears crafted as a rebuttal to allegations in a petition of a dead (or, non-existent) lawsuit. In Texas, a petition is required to provide fair notice to allow an opposing party "to ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant." *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896 (Tex. 2000). Mr. White appears unaware of the Texas standard of pleading as he presumes to write a rebuttal about items to a dead suit in which discovery was incomplete before it died. Accordingly, Mr. White seeks to address a petition that was crafted before the completion of discovery could have prompted amendment of the petition. There is no need to address the points of a dead lawsuit.

[2] TEX. GOV'T CODE § 81.101(a).

[3] *Id.* at § 81.101(b); *Unauthorized Practice Comm. v. Cortez*, 692 S.W.2d 47, 50 (Tex. 1985), *cert denied*, 474 U.S. 980 (1985).

[4] *Green v. Unauthorized Practice of Law Comm.*, 883 S.W.2d 293, 297-98 (Tex. App.—Dallas 1994, no writ).

In order to practice law in Texas, the person must be a member of the State Bar of Texas or fall under an exception not applicable in this case.[5] To enforce this requirement, the Legislature enacted provisions for the creation and authority of the Unauthorized Practice of Law Committee under the direction of the Texas Supreme Court.[6] That Committee may have local committees and may file suit as an enforcement action against someone engaged in the unauthorized practice of law.[7]

From about 2006 to 2008, I served on a District Subcommittee of the Texas Unauthorized Practice of Law Committee. In that capacity, my colleagues and I investigated allegations regarding the unauthorized practice of law within the San Antonio Metropolitan Area and, on occasion, we authorized enforcement actions against those violating Chapter 81 of the Texas Government Code.

Based upon my experience in investigating the unauthorized practice of law in Texas—combined with a plain reading of existing statutes and case law—I conclude that Mr. S. Mark White has engaged in the unauthorized practice of law in Texas.

Points that lead to this conclusion include the following:

- Mr. White's letterhead identifies him as a member of a Law Group known as White & Smith, LLC and as an attorney admitted to practice law in Missouri and North Carolina.

- Mr. White addresses his letter to the Acting First Assistant City Attorney of San Antonio.

- Mr. White claims that in reaching his conclusions, he reviewed:

    - An administrative appeal to the Board of Adjustment (May 15, 2015)
    - Chapters 1, 2, 6, and 10 of the San Antonio City Code
    - City of San Antonio Ordinance Nos. 2011-12-01-0984, 75863
    - City of San Antonio Unified Development Code
    - Pleadings and filings from a Texas lawsuit numbered as Cause No. 2015-CI-00039 before the 288th Judicial District Court of Bexar County, Texas
    - Deposition testimony of Trenton Robertson and Margaret Pahl
    - Numerous provisions of the Texas Administrative Code
    - At least one Texas statute

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[5] *See* TEX. GOV'T CODE § 81.102.

[6] *Id.* at §§ 81.103-104.

[7] *Id.* at §§ 81.104-104.

- Throughout his opinion, he cites to codified law and case law[8], including but not limited to, reported decisions of the:

    - United States Supreme Court
    - United States Fifth Circuit Court of Appeals
    - United States District Court of New Hampshire
    - United States District Court of Rhode Island
    - United States District Court for the Northern District of Ohio
    - United States District Court for the Western District of Louisiana
    - Supreme Judicial Court of Massachusetts

- The engagement letter between the City and Mr. White references his hourly fee as being that of outside legal counsel and references his supervision as being under the City Attorney's Office.

- Mr. White's letter is replete with legal interpretation and application of case law—including interpretations of the City's Municipal Code and other ordinances—that result in legal conclusions.

- Mr. White's engagement specifically is as outside legal counsel for the City of San Antonio and he agrees not to take clients adverse to the City over the subject matter of his representation.[9]

- On December 7, 2015, the Acting First Assistant City Attorney wrote a letter to the Texas Attorney General seeking to stop a release to the public of communications between Mr. White and the City, apparently in part, based upon an alleged attorney-client relationship that Mr. White has with the City.

[8] Most of the case law he cites is irrelevant to a determination of the issues; however, he still cites to it.

[9] Interestingly, the City has held Mr. White out as being "independent"; however—and respectfully—those representations seem incorrect. Mr. White was not retained by other stakeholders—only the City. His engagement did not require that he forego conflicts with other stakeholders—only with the City. The City hired Mr. White and sought to protect only the City's interests in the engagement letter. Therefore, he was operating in the service of the City and not in the service of all stakeholders. In essence, he was hired as outside counsel to safeguard the interests of the City. Claiming that an outside counsel is *independent* conflates the concepts of a *contracted non-staff attorney* with *independence*. That conflation is incorrect and could result in misleading the public.

Under the totality of the points above, it is clear that Mr. White was hired to provide a legal opinion and legal advice to the City of San Antonio and serve as the City's outside legal counsel; however, the State Bar of Texas does not record Mr. White as a licensed attorney in Texas. Therefore, Mr. White's letter, engagement by the City, and concomitant legal advice to the City constitutes the unauthorized practice of law. Mr. White's conduct could subject both he and his law firm to an enforcement action in state district court by either the Unauthorized Practice of Law Committee (UPL) or its appropriate subcommittee.

Though it is concerning that an out-of-state lawyer issued an unlicensed legal opinion—it is equally serious that licensed lawyers in the City Attorney's Office sought and encouraged Mr. White's unauthorized practice of law.

The underlying premise of the City's publication of Mr. White's opinion was that the opinion itself had gravitas and was lawful. In fact, the opinion was unlawful and could be the subject of by the UPL Committee of the Texas Supreme Court.

Accordingly, Mr. White's conduct and opinion are illegal and not credible *ab initio*.

Objectivity: Advocacy Does Not Equal Objectivity

There is nothing wrong with a lawyer lawfully advocating for a client. There also is nothing wrong with the lawful publication of the advocacy. Nonetheless, there is something wrong with pretending to be someone you actually are not—such as a reviewer independent of the City's interest.[10] It is wrong to mislead the public as to the actual assignment of Mr. White.

If neither Mr. White nor the City claimed (or implied) that Mr. White were independent of the City's legal interests then there would be no need to assess Mr. White's objectivity. Instead, everyone could have declared him an advocate for the City and then moved forward. By claiming the existence of greater objectivity than any other outside counsel, both Mr. White and the City have placed White's objectivity at issue.

[10] It is beyond the scope of this assignment to determine whether Mr. White has subjected himself to the Texas Disciplinary Rules of Professional Conduct or whether any attorneys in the City Attorney's Office violated a Disciplinary Rule of Professional Conduct by pretending to the public that the City's hired outside counsel was hired independent of the City's interest. Accordingly, my assertion that deception is wrong is based upon common sense and not on a particular Disciplinary Rule of Professional Conduct.

I previously interviewed Mr. Michael Knuffke, an officer of the San Antonio Family Association, about a telephonic conversation he had with Mr. Mark White. I understand that the purpose of that conversation was for Mr. Knuffke to explain to Mr. White concerns over the City's action regarding Planned Parenthood. I understand that in the course of that conversation, Mr. White explained to Mr. Knuffke that White wanted to complete his opinion to the City so that he could look forward to more business with the City of San Antonio.

Additionally, Mr. White wrote in his letter that he was the "principal consultant charged with rewriting the 1987 UDC and leading the public outreach process which culminated in adoption of the 2001 UDC."[11]

An ideal example of true objectivity devoid of advocacy can be seen when retaining a mediator. To retain a mediator, both sides jointly agree to a particular mediator and split the payment of his fee. At mediation, the mediator facilitates negotiations, in part, by pointing out the strengths and weaknesses of both side's respective position without advocating for a particular side.

Similarly, in disputes over valuation of property, sometimes both sides agree to hire jointly an appraiser and be bound by the appraiser's opinion of value.

In contrast—and as already explained above—Mr. White was hired as counsel for the City and was not hired independent of the City's interests. He admitted to Mr. Knuffke his expectation of future employment by the City. He unwittingly explained in his letter his motivation and interest in defending the City's position on the UDC: that is, his previous authorship of the product he now seeks to defend. Mr. White was willing to practice law in a jurisdiction where he had no license merely to curry favor for more City business and to defend a product he previously wrote.

Accordingly, Mr. White does not have some unique level of objectivity or independence. Like many other lawyers on either side of an issue, Mr. White is just an advocate.

[11] Letter of Mark White, Oct. 7, 2015, at 3.

Legal Analysis:

Interpreting a Statute or Ordinance in Texas

In Texas, the rules to construe a statute are the same as those to construe an ordinance.[12] Under these rules, the legislative intent of a codification is drawn from the "plain meaning of the words chosen" for that codification.[13] Generally, whenever the codified "text is clear, that text is determinative of legislative intent".[14] Only in those instances where the "text is susceptible of more than one reasonable interpretation is it appropriate to look beyond its language for assistance in determining legislative intent."[15]

Accordingly, in those instances where the plain language of the City's Unified Development Code (UDC) is clear and without susceptibility to multiple interpretations, then the plain language would govern. When the plain language of the UDC governs then it neither would matter what the author intended nor what another interpretive device would show.

Ambulatory Surgical Centers Are Presumed Prohibited Uses

Under the City's Unified Development Code (UDC), a commercial use that is not expressly listed in Table 311-2 (the Nonresidential Use Matrix) is presumed to be a prohibited use by the City.[16] This means that if an ambulatory surgical center is not listed as a commercial use for a particular zoning district in Table 311-2, then it is presumed that an ambulatory surgical center is prohibited for the referenced zoning district.[17] A review of Table 311-2 indicates that an ambulatory surgical center is not a use listed at all.[18] Accordingly, under the plain language of the UDC an ambulatory surgical center is presumed to be a prohibited use in any zoning district.

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[12] *Harris v. Laquinta-Redbird Joint Venture*, 522 S.W.2d 232, 234 (Tex.Civ.App.—Texarkana 1975, writ ref'd n.r.e.)

[13] *Texas Mutual Ins. Co. v. Ruttiger*, 381 S.W.3d 430, 452 (Tex. 2012).

[14] *Id.*

[15] *Id.*

[16] City of San Antonio Unified Development Code §§ 35-311(a)-(b).

[17] Though Mr. White uses less direct language than I use, he generally agrees with the position of this paragraph. *See* Letter of Mark White, Oct. 7, 2015, at 6, 9.

[18] *See* City of San Antonio Unified Development Code, Table 311-2.

An Ambulatory Surgical Center Is Prohibited at 2140 Babcock

When a use is not specifically listed in the Use Matrix, the City's Director of Development Services may make a determination of materially similar use whereby he ascertains whether a listed use "can reasonably be interpreted to fit into a use category where similar uses are described."[19] The Director's determination is not supposed to be based upon a whim; instead, it is to be based upon standards and limited by the express language of the UDC.

When making a similar use determination, the Director is to employ the Land-Based Classification Standards (LBCS) and, if necessary, the North American Industry Classification System (NAICS) to discern whether a proposed use is similar to a use listed in Table 311-2 (Use Matrix) of the UDC.[20] Generally, the LBCS and the NAICS classification systems contain land use categories placed in structured and hierarchical groups and subgroups. Those same classification systems may also define the categories referenced.

In order to visualize a listing of these categories and subcategories, in hierarchical order, excerpts from the LBCS classification system[21] are presented in the table below:

FUNCTION DESCRIPTION

• General Sales or Services (Function Code 2000)
  ○ Retail Sales or Services (Function Code 2100)
  ▪ Automobile sales or service establishment (Function Code 2110)
  • Car dealer (Function Code 2111)
  • Boat or marine craft dealer (Function Code 2114)
  • Gasoline service (Function Code 2116)
  ▪ Consumer goods, other (Function Code 2140)
  • Florist (Function Code 2141)
  • Mail order or direct selling establishment (Function Code 2144)
  ▪ Grocery, food, beverage, dairy, etc. (Function Code 2150)
  • Convenience store (Function 2152)
  ○ Finance and Insurance (Function Code 2200)
  ▪ Bank, credit union, or savings institution (Function Code 2210)
  ▪ Credit or finance establishment (Function Code 2220)
  ▪ Insurance-related establishment (Function Code 2240)

[19] City of San Antonio Unified Development Code § 35-311(b)(3).

[20] *Id.* at §§35-311(b)(3)-(4).

[21] Mr. White incorrectly cited one of these excerpts as "NAICS Function 2000". *See* Letter of Mark White, Oct. 7, 2015, at 7. The correct citation would have been LBCS Function 2000.

From the above table, one can see that *General Sales or Services* (Function 2000) is a broad function with a subset of *Retail Sales or Services* (Function 2100). That subset has additional subsets as one drills downward into the narrower, specific categories.

Under the plain language of the UDC at Section 35-311(b)(5), when a narrow use is listed in the UDC's Use Matrix, the Director is not allowed to declare similarity between a proposed use and a more broad category than what is listed in the Use Matrix. This rule of interpretation uses the word "shall" which means that the Director cannot ignore this UDC rule.

The UDC provides an example:

> *Example: NAICS 5413 (Architectural Engineering, and Related Services) is coded under "Office, General." Assume that the Use Matrix sets out a classification for "Laboratories, Testing," which is NAICS 54138 (a subheading of 54183). The latter 5-digit number is more specific than the 4-digit code. Accordingly, testing laboratories are not included within the same classification as general offices. However, if testing laboratories had not been separately listed, they would be permitted in all districts where general offices are permitted.*[22]

The UDC also requires the following of the Director:

> **If the use cannot be located within one of the LBCS classifications** pursuant to subsection A., above, the director **shall refer** to the North American Industry Classification Manual (Executive Office of the President, Office of Management and Budget, 1997)(**"NAICS"**).[23]

[22] City of San Antonio Unified Development Code § 35-311(b)(2) (likely misprinted at this location but should be at § 35-311(b)(5)).

[23] *Id.* at § 35-311(b)(4)B (emphasis added).

In other words, when making a materially similar use determination regarding a proposed use not contained in the UDC's Use Matrix, the Director must search the NAICS if the use cannot be located within the LBCS.[24]

It is well-known that Planned Parenthood applied for and received licensure from the State of Texas to operate an ambulatory surgical center at 2140 Babcock.

Mr. White uses pages of his letter to justify explaining how an ambulatory surgical center like Planned Parenthood is similar to a medical office or clinic under the LBCS functions.[25] Yet, he never pointed to an expressed LBCS function for *ambulatory surgical center*. He did not point to such a function because the LBCS does not have one. Accordingly, the next step that Mr. White should have taken—but failed to take—in his analysis would have been to review the NAICS for an expressed function known as *ambulatory surgical center*.

The NAICS contains a specific use known as *Ambulatory surgical centers and clinics, freestanding* and with a function code of 621493. The NAICS defines an ambulatory surgical center as comprising:

> [E]stablishments with physicians and other medical staff primarily engaged in (1) providing surgical services (e.g., orthoscopic and cataract surgery) on an outpatient basis or (2) providing emergency care services (e.g., setting broken bones, treating lacerations, or tending to patients suffering injuries as a result of accidents, trauma, or medical conditions necessitating immediate medical care) on an outpatient basis. Outpatient surgical establishments have specialized facilities, such as operating and recovery rooms, and specialized equipment, such as anesthetic or X-ray equipment.[26]

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[24] Only when the use can be located in the LBCS is it possible to apply the criteria for determining similarity. If the use cannot be located in LBCS, the Director is not supposed to see if something else in LBCS is close enough. Instead, he is to refer to NAICS.

[25] Letter of Mark White, Oct. 7, 2015, at 8-10.

[26] North American Industry Classification System. U.S. Census Bureau, available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=621493&search=2012 NAICS Search (last visited December 16, 2015).

One can notice from the NAICS definition of *ambulatory surgical centers* that such a use is characterized by two overall components: first, the provision of outpatient surgical services; and, second, the existence of specialized facilities such as operating and recovery rooms. These are the exact components that Planned Parenthood's *ambulatory surgical center* has at 2140 Babcock. There is no need for Mr. White or the City to waste time and effort confecting similarities from the various LBCS-defined codes because of two reasons: first, the UDC interpretive rule mandates a review in the NAICS for a specific use code—which should have been done but was not—and, second, the NAICS contains the exact use code.

After determining that the NAICS contains the function and definition for *ambulatory surgical centers*, the next step[27] would be to determine the NAICS industry classification under which *ambulatory surgical centers* are defined. That NAICS industry classification is *Other Outpatient Care Centers* (NAICS Function 62149) and is defined, in part, as comprising:

> [E]stablishments with medical staff primarily engaged in providing general or specialized outpatient care **(except family planning centers and outpatient mental health and substance abuse centers)**.[28]

Of note are two items: first, NAICS Function 62149 is distinct from an *Office of Physician* at NAICS Function 62111; second, as noted in the definition above, the NAICS definition for *Other Outpatient Care Centers* expressly excludes "family planning centers". This means that the NAICS makes a distinction between a doctor's office and an *ambulatory surgical center*. It also means that under the NAICS, an *ambulatory surgical center* inherently cannot be equated with a family planning center.

The UDC's Use Matrix contains LBCS Codes 6511 (Clinics)—which is the equivalent of NAICS Code of 65111 (generally, various physicians' offices)—and LBCS Code 6513 (Medical and diagnostic laboratories)—which is the equivalent of NAICS Code 651512 (various medical laboratories).

Since both LBCS Codes 6511 and 6513 are listed in the Use Matrix and are more specific than LBCS Code 6510, then under the interpretive rule briefed extensively above, the Director is prohibited from equating those with an ambulatory or outpatient care under LBCS Code 6510.

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[27] Pursuant to City of San Antonio Development Code § 35-311(b)(4)B.

[28] North American Industry Classification System. U.S. Census Bureau, available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=62149&search=2012 NAICS Search (last visited December 16, 2015).

Regardless, there is no need to go that far under LBCS because the determination is grounded in the NAICS coding and the NAICS equivalents are either more specific than exist in the LBCS system or the NAICS general categories lead to different general groupings that will not correspond directly to the LBCS codes.

In the end, both Mr. White and the City are trapped by the plain language of the interpretative rule in the UDC that requires the Director not to equate or conflate a more specific use listed with a more general use.

In this case, the proper use is identified with particularity in the NAICS as an *ambulatory surgical center*. The higher echelon NAICS heading for that use is another *outpatient care center*. That higher echelon heading specifically excludes family planning centers from being an *ambulatory surgical center*. Accordingly, that heading cannot even be equated with LBCS Code 6510 because the LBCS grouping *actually* includes family planning centers. Therefore, by mere definition it is impossible for the NAICS use *ambulatory surgical center* to be a similar use to either LBCS Codes 6511, 6512, or 6513. Additionally, it is impossible to equate NAICS' *ambulatory surgical center* with LBCS Codes 6511 or 6513 because the *ambulatory surgical center* is a more specific use and the plain language of the UDC prohibits equating a more specific use with a generalized grouping—the specific use is must govern.

Under the totality of this analysis, it means that the specific use of *ambulatory surgical center* is a prohibited use at 2140 Babcock because that use is not listed in the Use Matrix[29] and under the restrictions imposed by the UDC, the Director must rely upon the NAICS to locate the use of *ambulatory surgical center* and by the NAICS definition that use cannot be a medical office, a clinic, or a family planning center.

Methodology: *Ipse Dixit* Is Not Enough

There is a reference in law known as *ipse dixit* which is a Latin reference to someone (normally a purported expert) making a dogmatic but conclusory or unproven statement.[30] During such instances, the person conflates (or equates) expert credentials with sound methodology by declaring that because of who he is what he says must be true. It is axiomatic in Texas that *ispe dixit* will not support an expert opinion in court and it should not support any advocated opinion out of court.

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[29] The City of San Antonio confirmed this in a zoning review letter. *See* Letter of Trenton Robertson, Dec. 22, 2014.

[30] It means "something asserted but not proved" and literally translates to "he himself said it." Black's Law Dictionary 833 (7th ed. 1999).

Whether or not Mr. White helped to write the UDC or has consulted on other zoning laws in various jurisdictions is irrelevant to whether he has sound methodology in this case. Respectfully, he does not.

First, Mr. White admitted in his letter that the UDC's language (which I briefed above) precluding the Director from equating a more specific use with a generalized category would "seem to foreclose the establishment of an ambulatory surgical center such as a Planned Parenthood facility in the C-1 district."[31] Yet, without explaining how he overcomes his own admission and the mandatory language in the ordinance imposing this restriction, he just declared that "a closer look at the classification system . . . indicates that these facilities . . . fall within a broader, permitted classification."[32] He then spent time explaining that "the Planned Parenthood facility is similar to a" medical clinic (or doctor's office).[33] This is conclusory and an inadequate methodology.

Second, Mr. White failed to address the requirement that the Director was obligated to refer to the NAICS since the use known as an *ambulatory surgical center* was not found in the LBCS. Accordingly, Mr. White never walks the reader through the NAICS and toward the specific definition and use for an *ambulatory surgical center* identified in the NAICS. If the reader only read Mr. White's letter, the reader would never know that there is a specific land use category for *ambulatory surgical center* in the NAICS.

Third, Mr. White provided a list of ambulatory surgical centers in San Antonio.[34] He seemed to use this list to argue that the outliers on that list justify allowing an ambulatory surgical center in a C-1 district.[35] That is tantamount to stating that the exception justifies the rule. I did not seek to verify Mr. White's list. I do note that by way of this list, Mr. White admitted that close to 100% of the ambulatory surgical centers are zoned in multi-use, C-2 or higher districts. Depending upon how one counts, only a couple of outliers are in a C-1 district. In essence, Mr. White's list corroborates that the City trends the zoning of nearly 100% of its ambulatory surgical centers to be in districts with higher intensity than C-1.

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[31] Letter of Mark White, Oct. 7, 2015, at 7-8.

[32] *Id.* at 8.

[33] *Id.* at 9.

[34] *Id.* at 11-13.

[35] Letter of Mark White, Oct. 7, 2015, at 10.

Finally, Mr. White stated that federal law allows zoning for abortion facilities but that the law also precludes an outright ban upon those facilities.[36] While he is correct on this point, he nonetheless erred in how he applied this point. He used the point to state that if "abortion clinics are not materially similar to . . . any other use listed in the [Use Matrix], this would effectively ban abortion clinics in the city of San Antonio" which he argued would be illegal.

- This rationale betrays Mr. White's results-oriented opinion. In other words, Mr. White crafted his opinion—mistakes and all—toward a result in order to avoid that which he considers calamitous. It would explain the methodological errors of his opinion. He tried to get to a predetermined result.

- Mr. White's concern that there might not be a materially similar use for an abortion facility seems grounded in an additional concern that the UDC is so poorly written that someone must save it from itself.

- Mr. White also assumes greater calamity than necessary. Assume just for argument that the poor writing of the UDC means that there is no materially similar use for an abortion facility. All that would mean was that Planned Parenthood would have had a right to appeal to the Zoning Commission for a determination on the Director's decision and it ultimately would be sent to the City Council.[37] Nowhere in his letter did Mr. White contemplate remedial and appellate measures by Planned Parenthood. Instead, his concern incorrectly assumed no further remedies were available to Planned Parenthood and/or assumed that the Zoning Commission or City Council would not grant Planned Parenthood relief.

- Regardless, Mr. White's methodology on this one point assumes more than his advocacy for the City—it assumes a policy purview that is not his but is reserved to both the Zoning Commission and the City Council.

[36] *Id.* at 15.

[37] City of San Antonio Unified Development Code §§ 35-311(b)(3), 35-481.

Conclusion

I conclude, respectfully, as follows: (a) that Mr. White was retained by the City to provide an opinion in support of the City's action and not as an independent reviewer; (b) that Mr. White's unlicensed opinion is incorrect and Planned Parenthood is permitted improperly at 2140 Babcock; and (c) that Mr. White's opinion constitutes the unauthorized practice of law in the State of Texas which could subject both his law firm and him to an enforcement action by the Texas Supreme Court's Unauthorized Practice of Law Committee.