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January 14, 2025

Mr. Richard Berrios

Transmitted to: rberrios@cityofpsl.com

Re: Your Ethics Inquiry on Behalf of Mayor, Shannon Martin

Dear Mr. Berrios:

In your request, you ask that we opine on whether a voting conflict would exist for two upcoming votes involving zoning before the Port St. Lucie City Council. You state that Mayor Martin is a voting member of the council. You further state that Mayor Martin owns real property in or near the areas that will be affected by these votes.

The two votes in question are, first, a vote to amend the City's comprehensive plan. The request states that this is a vote, in large part, to bring a previously approved application back into compliance with later-changed zoning definitions. The project in question is a nursing facility that, at the time of its application's approval, could fall under the City's Limited Mixed-Use Category. However, a 2021 change to that category definition excluded Institutional use from this category. As such if the nursing facility is to remain compliant with current zoning, the city must change the zoning category to Institutional in order to allow the previously approved use.

The second vote before the Council is to consider certain amendments to the Planned Unit Development (PUD) that reflect the actions of the first vote, but are specific to the approvals required by the PUD. The request states that both votes are taken with the purpose of bringing a largely completed project back into zoning compliance, as it was before the 2021 changes.

It is stated in the request that the PUD in question is the Ravello PUD, consisting of 426 acres with 440 units of single-family development and conservation/recreation area, and a 7-acre commercial parcel, which is the focus of the votes.

The request states that Mayor Martin's interest in the votes is rooted in her ownership of a .40-acre developable, single-family lot within the PUD in question. The request further states that the lot owned by Mayor Martin is neither within nor adjacent to the 7 acres in question. No further financial interest held by the Mayor is disclosed.

The statute applicable to your inquiry is Section 112.3143(3)(a), Florida Statutes.¹ Section 112.3143(3)(a), which is part of the voting conflict statute, states:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

The statute defines "special private gain or loss" as an "economic benefit or harm that would inure to the officer, his or her relative, business associate or principal[.]" See Section 112.3143(1)(d), Florida Statutes. Therefore, a voting conflict would be created if a county commissioner were to vote on any measure that would financially affect himself or herself, or that he or she knows will financially affect a principal by whom he or she is retained, a relative, a business associate, or another person or entity listed in the statute.

When determining whether "special private gain or loss" will occur, Section 112.3143(1)(d) specifies several factors which must be considered, including the "degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm . . ." In a number of opinions, the Commission on Ethics has found that the potential effects of a vote to be too "remote and speculative" to constitute the "special private gain or loss" required to violate the statute, when the potential financial effect of the vote on an individual enumerated in the statute is too attenuated.

For example, in CEO 06-8, the Commission considered a situation in which a city councilmember was faced with a vote to redevelop city-owned land located near properties owned by himself or his father. The Commission found the possible financial effect from the votes on this to be "remote or speculative" and concluded that Section 112.3143(3)(a) would not apply, noting the nature and

¹ The Commission opinions and statutes cited herein are available at www.ethics.state.fl.us.

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degree of effect on the properties in question was too uncertain. See also CEO 14-3 and CEO 06-20.

Based on these facts, as stated in your request, it appears that there is no "special private gain or loss" to be found with either of the votes in question. Through analysis of the facts provided, the potential benefit to Mayor Martin is too remote and speculative to trigger Section 112.3143(3)(a). Accordingly, it appears Section 112.3143(3)(a) will not prohibit you from voting on these measures.

This opinion is based on the facts as presented in the request and restated in this opinion. If there are other facts that would indicate benefits or potential benefits known to Mayor Martin at the time of the vote, then this opinion should not be taken to cover them, and if they constitute a voting conflict not discussed here, you should treat the vote as a conflict and respond in accordance with the requirements set forth in Section 112.3143(3) (i.e., declare the conflict prior to the vote, abstain from the vote, and file the voting conflict memorandum (CE Form 8B) within 15 days of the vote).

Should you have further questions, or if this letter misinterprets the facts of your inquiry, please let me know.

Sincerely,

Michael Terry

Staff Attorney

Florida Commission on Ethics

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