



MEMORANDUM

To: Richard Berrios, City Attorney
City of Port St. Lucie

From: Robert Meyers and Susan L. Trevarthen *SLT*

Date: November 23, 2024

RE: Voting Conflict of Interest Inquiry for Mayor Martin – Ravello PUD Applications

You have inquired regarding whether Mayor Martin has a voting conflict of interest on a matter scheduled to be heard by the Port St. Lucie City Council. The law requires elected officials to abstain from voting where they would receive a special benefit from the vote. The statute defines a special benefit as financial in nature, which can arise from either a gain or a loss. See Section 112.3143(1)(d), Florida Statutes.

In sum, based on the facts as we understand them and as set forth herein, we conclude that she does not have a voting conflict of interest that would require her to abstain from voting on the Ravello PUD applications pursuant to Florida Statutes Section 112.3143(3)(a). Our analysis follows.

BACKGROUND:

The Ravello PUD

There are two land use-related items potentially triggering a voting conflict, related to the same, largely developed project known as the Ravello PUD. One is an amendment to the City's Comprehensive Plan, which is a legislative determination, and the other is an amendment to an existing PUD approval, which the City Council reviews in its quasi-judicial capacity. The PUD is 426 acres, and is comprised of single family residences (440 units), conservation/recreation area, and a 7-acre commercial parcel.

In 2017, the City Council approved a 150-bed assisted living facility use and Child Day Care/VPK use for the 7-acre parcel, approved the applicant's request to remove the approximately 65,000 square feet of previously approved commercial uses for the parcel, and determined that the assisted living use was consistent with the Comprehensive Plan. The same Limited Commercial (CL) and General Commercial (CG) Comprehensive Plan designations and PUD zoning category apply to the 7-acre parcel today as were in place in 2017.

However, pursuant to the Comprehensive Plan policies, the PUD zoning compatibility is analyzed with reference to the Limited Mixed Use (LMD) category. The Comprehensive Plan amendment is necessary not because the project is changing the approved assisted living facility use, but rather because the City separately decided to amend the uses allowed in the LMD zoning district in 2021 to

exclude institutional uses. Therefore, an assisted living facility is no longer technically compatible with the CG/CL plan designations via the LMD zoning. The application proposes to amend the 7-acre parcel's CG and CL land use designations to Institutional (I), a land use designation with which the assisted living facility is compatible.

The PUD application proposes to amend the PUD concept plan for the 7-acre parcel from Commercial to Institutional use, remove the Child Day Care/VPK uses, rename the PUD, and make other miscellaneous changes.

The Mayor's Interest

The Mayor owns a .40 acre developable single family residential lot in the Ravello PUD. The PUD itself is currently split into two Property Owners Associations. One is the Island of Ravello POA, which is currently controlled by the property owners. The mayor's property lies within this POA. The other POA is known as the Ravello POA, which is currently under the applicant's control. The Mayor's property does not lie within the scope of the application before the Council, and is not adjacent to the 7-acre parcel.

ANALYSIS:

A voting conflict of interest exists under Section 112.3143(3)(a), Florida Statutes, if a public officer votes upon a measure which inures to the special private gain or loss of the officer—but only if the officer derives an economic benefit or suffers an economic loss in connection with the action taken by the officer's board. To the extent to which the public officer is not uniquely affected by the action taken, at least the following factors must be considered when determining whether a special private gain or loss exists:

- 1) the size of the class affected by the vote;
- 2) the nature of the interests involved;
- 3) the degree to which the interests of all members of the class are affected by the vote; and
- 4) the degree to which the official receives a greater benefit or harm compared to other members of class.

Additionally, the analysis must consider 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. If uncertainty as to the benefit or harm at the time of the vote exists, or the gain or loss is remote or speculative, the public officer has no prohibited voting conflict under state law.

Although decided on a case-by-case basis, Florida Commission on Ethics opinions have tended to find no special gain or loss when the covered person constitutes less than one percent of the affected class. The one percent rule recognizes that if the class of affected properties is sufficiently large, any gain or loss to the public officer is not special. Absent a special benefit or loss, the officer may vote on such items.

CONCLUSION:

The Mayor does not have a voting conflict of interest that would require her to abstain from voting on the Ravello PUD applications, pursuant to Florida Statutes Section 112.3143(3)(a).

Comprehensive Plan amendment: Only one seven-acre parcel is at issue in the Comprehensive Plan amendment, as compared to the acreage and number of properties of the entire Ravello PUD. Also, the nature of the comprehensive plan amendment is to validate the Council's prior determination that an assisted living facility on the property is consistent with the Comprehensive Plan, and it does not change the number of beds, acreage or other attributes of that approved use. The application also does not alter the plan designation or approved uses for the principal residential uses of the Ravello PUD, including the Mayor's single family lot. Consequently, the Mayor is not prohibited from voting on this item.

PUD amendment: The 7-acre parcel under consideration is a small portion of the overall 426 acres, of which the Mayor owns a single .40 acre undeveloped single family residential lot. Not only does the Mayor's property constitute much less than one percent of the affected classes (.4 acres out of 426 acres and 1 unit out of 440 units), the property is outside of the scope of the PUD application, which does not directly affect the rights associated with PUD's residential lots. Therefore, the Mayor is not prohibited from voting on the PUD application because: 1) the class of the affected properties is sufficiently large, resulting in no special benefit or loss to the Mayor, 2) the Mayor's lot is not affected to a greater degree than any other residential lot in the Ravello PUD and 3) any potential special benefit or loss concerning the Mayor's property is uncertain, remote and speculative.