MINUTES
SPECIAL MEETING
DESTIN CITY COUNCIL
NOVEMBER 8, 2019
DESTIN CITY HALL
ANNEX COUNCIL CHAMBERS
10:00 AM

The Council of the City of Destin met in special session with the following members and staff present:

Destin City Council

Mayor Pro Tem Prebble Ramswell
Councilmember Rodney Braden
Councilmember Cyron Marler
Councilmember Steven Menchel
Councilmember Parker Destin
Councilmember Skip Overdier

Destin City Staff

City Manager Lance Johnson
Human Resources Manager Karen Jankowski
City Attorney Kyle Bauman
Deputy City Clerk Kim Montgomery
Deputy City Manager Webb Warren
Land Use Attorney Kimberly Kopp

CALL TO ORDER

Mayor Pro Tem Prebble Ramswell called the meeting to order at 10:02 AM; followed by the Pledge of Allegiance.

NEW BUSINESS

A. Initiation of lawsuit against Pointe Mezzanine, LLC

The City Attorney requests authorization \\ to initiate a lawsuit against Pointe Mezzanine, LLC. The basis of the lawsuit is that Pointe Mezzanine, LLC has propounded certain public records request on the City which he believes constitute improper purpose under the State Statute, Chapter 119. He stated that the improper purpose language was recently added to that statute and it could be the first lawsuit of its kind in the State of Florida, therefore it carries some risks. If the City were to lose this lawsuit, the City would probably be required to pay attorneys' fees to Pointe Mezzanine's attorneys. He also noted they are in another public records lawsuit with Point Mezzanine. If the City does not prevail on that lawsuit, they could also be obligated to pay attorneys' fees. However, it somewhat mitigates the risk in this case as both litigations will run in tandem or they could be consolidated.

Councilmember Overdier moved to authorize the City Attorney to initiate a lawsuit against Pointe Mezzanine, LLC; seconded by Councilmember Destin.

Councilmember Destin requested an amendment to the motion with the discretionary language that gives the City Attorney the ability to continue negotiating with opposing counsel and opposing parties to have this issue resolved.

The City Attorney stated this is a very fluid situation; adding he is requesting authorization because of the fast phase nature of the public records request. They remain in contact with the attorneys of Pointe Mezzanine and will continue to try and discuss things with them to see if there is something that can be worked out and not have to file the lawsuit. He will report back to Council at the next meeting.

Councilmember Overdier offered an amended motion to authorize the City Attorney to initiate a lawsuit against Pointe Mezzanine, LLC; but give the City Attorney the ability to continue negotiating with opposing counsel and opposing parties to have the issue resolved. Councilmember Destin seconded the amended motion.

Councilmember Marler announced he would abstain from voting as he is employed by a party of the Pointe Mezzanine.

The Mayor Pro Tem inquired as to the next step and the time frame for this proceeding.

According to the City Attorney, the lawsuit could be filed within a week. They would be gathering documents to respond to the latest public records request, which he discussed privately with individual Council member. He explained that due to the scope of that request, it could take quite some time to fully comply with it which is why they believe the public records request was propounded upon the City for an improper purpose.

Councilmember Menchel asked if the City provides an estimate of the cost to the requester prior to start producing records.

The City Attorney explained that by the current policy, the Clerk's Office analyzes the cost, gives a cost estimate to the requester, and asks for a deposit if it would take more than 2 hours of work.

The Mayor Pro Tem asked how it is handled when members of the Council spend personal time searching through their phones and materials for the record.

The City Attorney explained that the State Statute allows for the charging of special service fee. The City keeps track of the time spent searching for materials. The Council could give the City Clerk their time so it could be added to the special service fee.

The Mayor Pro Tem called for a vote on the motion, which passes 5-0 (Council members Destin, Overdier, Menchel, Ramswell and Braden voted "yes"; Councilmember Marler abstained from voting).

B. Hiring of Special Counsel for the Pointe Mezzanine, LLC vs. City of Destin and the City of Destin Board of Adjustment, Case No. 2019 CA 004010 F

The City Attorney noted that on October 2, 2019, Point Mezzanine had appealed a final administrative decision of the Community Development Director Louis Zunguze to the City's Board of Adjustment. The Board of Adjustment unanimously upheld Mr. Zunguze's determination. Point Mezzanine has since appealed that decision with the circuit court to seek a review of the Board of Adjustment's determination. He stated that this case is typically a specialized area of law and so he has sought a special counsel to aid in the response to this lawsuit. The special counsel's name is Ted Borowski of Borowski & Traylor, P.A., who has handled many of this type lawsuits over the years. He asked for Council's authorization to engage Mr. Borowski as his co-counsel for this lawsuit. They would be working together to file a response to Point Mezzanine's brief. He added that the Land Use Attorney Kimberly Kopp would also be involved in some fashion in this case.

Councilmember Destin moved to hire Mr. Ted Borowski of Borowski & Traylor as special co-counsel in the case; seconded by Councilmember Braden.

Councilmember Menchel noted that the City Attorney and the Land Use Attorney have successfully represented the City in the Board of Adjustment hearing, which is why the Board ruled in the City's favor. He continued they should be able to handle this case without having to hire another attorney.

The City Attorney explained they were each representing parts of the City at the hearing. He represented the Board of Adjustment and the Land Use Attorney represented City staff; and so technically they were not representing the City together.

Councilmember Menchel asked what makes this case different than the others.

The City Attorney explained it is not a typical case. It involves a very narrow issue of law in local government, and it is something that does not come up very often. He continued it may be within their capabilities to handle the case; however, due to the current workload and the specialized nature of the case, he would fill more comfortable having a special co-counsel in this case.

Councilmember Overdier asked for an estimate of the cost to hire a special counsel.

The City Attorney noted that Mr. Borowski has agreed to drop his usual rate of $300 per hour to $250 per hour. He continued that it is difficult to estimate the total cost because it would depend on the amount of time they would have to dedicate to the case.

The Mayor Pro Tem stated that she has confidence with both the City Attorney and Land Use Attorney handling the case; and that if the workload is a concern, they could probably utilize any of the professional staff of Anchors Smith and Grimsley to assist since the City contracts with that firm.

The City Attorney stated that he has never represented a municipality in this type of case; and that there are lawyers on staff that could probably assist in the matter, but there is no one that has handled as many of this type of case as Mr. Borowski.

According to Councilmember Destin, it is necessary at times to hire a supplemental expert to assist in navigating an unfamiliar area of law. They do not want to put their lawyers in a position where they have to be teaching themselves in applying the specialized procedures or rules to an ongoing court proceeding; which is why they hired a special counsel to represent the City in their franchise negotiations with Gulf Power.

The Land Use Attorney noted she has been involved in this type of case quite regularly over the years, and that she feels she has the capability to handle it. However, it is in the discretion of Council to hire an outside counsel.

Councilmember Menchel offered a substitute motion to have the Land Use Attorney and City Attorney represent the City in this case; and if it gets to the point where they feel they need some assistance, they could come back to Council to request authorization to hire an outside counsel to assist; seconded by Councilmember Ramswell.

Councilmember Marler announced he would abstain from voting as he is employed by a party of the Pointe Mezzanine.

Motion passed 4-1 (Council members Braden, Menchel, Ramswell and Destin voted "yes"; Councilmember Overdier voted "no"; Councilmember Marler abstained from voting).

ADJOURNMENT

Having no further business at this time, the meeting was adjourned at 10:22 AM.

Gary Jarvis, Mayor

ATTEST:

Rey Bailey, City Clerk

ITEM B

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MARLER CYRUS EUGENE	DESTIN CITY COUNCIL
MAILING ADDRESS: 528 KELLY STREET	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ■ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY: DESTIN COUNTY: OKALOOSA	NAME OF POLITICAL SUBDIVISION: N/A
DATE ON WHICH VOTE OCCURRED: NOVEMBER 8 2019	MY POSITION IS: ■ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, CYRUS EUGENE MARLER, hereby disclose that on NOVEMBER 8, 20 14:

(a) A measure came or will come before my agency which (check one)

___ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, _____;

___ inured to the special gain or loss of my relative, _____;

___ inured to the special gain or loss of _____, by whom I am retained; or

___ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

I AM EMPLOYED BY A COMPANY WHICH IS OWNED BY A PARTNER IN THIS MATTER (PUENTE MEZZANINE LLC)

Date Filed

Cyrus Eugene Marler

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.

ITEM A

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MARLER CYRON EUGENE	DESTIN CITY COUNCIL
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
528 KELLY STREET	☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY / COUNTY	NAME OF POLITICAL SUBDIVISION:
DESTIN / OKALOOSA	N/A
DATE ON WHICH VOTE OCCURRED	MY POSITION IS:
11-8-19	☒ ELECTIVE ☐ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Cyan Eugene Mahler, hereby disclose that on November 8, 20 19:

(a) A measure came or will come before my agency which (check one)

___ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, _____;

___ inured to the special gain or loss of my relative, _____;

___ inured to the special gain or loss of _____, by whom I am retained; or

___ inured to the special gain or loss of _____, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

I AM EMPLOYED BY A COMPANY WHO IS OWNED BY A PARTNER IN THIS MATTER (POINT MEZZAINE LLC).

[redacted]

Date Filed

Cyan Eugene Mahler

Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.