

MEMORANDUM

Date: September 23, 2022

From: Costa Vatikiotis, Mayor

To: Board of Commissioners

Subj: Authorization to Seek Special Counsel Concerning Past Administrative Procedural Matters

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I wish to thank Commissioner Eisner for bringing the discussion of the staff emails concerning the Anclote Harbor Apartments project forward for a public airing. With this public airing, there should also be an end objective in mind. Here, it is to understand what happened and how it affects the Anclote Harbor Apartments project overall, including its approval.

For me, these emails simply describe “bad government.” I believe the residents were cheated out of a full and fair public process. I have made this view known to both the City Manager and the City Attorney. Whether or not there was any wrongdoing, the emails portray a most casual work relationship between the City staff and the developer and its agents to where there may not have been any intentional wrongdoing, but by the staff dropping its guard, it played into the hands of the Developer achieving its objective at the expense of the public. One of the City’s litigators described the business approach of the developer as “dispassionate.” He got it right. Unfortunately, our staff at the time did not.

These 750 or so emails cover a period from mid-2017 to mid-2020 and prior to the first public hearing on the Anclote Harbor Apartments project. To be clear, this matter does not involve our current Planning Director. All this happened before she returned to the City. Also, I have discussed this request for a Special Counsel with the City Manager, and he believes one is needed, as well. Both, he and I agree we need to set the record straight in hopes of starting to put this matter behind us and move the City forward. The Anclote Harbor Apartments project and the issues surrounding the project have been devastating in terms of being a major distraction and consuming significant amounts of staff time. Without getting into any detail, the City Manager suggests there is more to this matter than what the written record shows. Also, in fairness to the City Manager and our current Planning staff, the Planning Director has already reviewed and analyzed the changes that were made to the Land Development Code and Comprehensive Plan during that time period and is prepared to discuss them publicly. She will be looking for direction as to rolling back the changes, keeping them, or modifying them from what was approved. At this point, the City Manager and the Planning Director are waiting for the appropriate time to bring these forward. Now may not be the right time.

Why do we need a Special Counsel? We are currently looking for a new City Attorney and a law firm to serve the City. Also, the City Attorney and at least one other attorney from his law firm, were involved in some of these public matters that the emails describe. So, we need objectivity.

Also, the Special Counsel needs to be, well, a specialist, specifically in Malpractice Law, Constitutional Law, and Land Use Law. Consequently, the Special Counsel will likely be a law firm involving more than one attorney with one attorney being the liaison with the City. This approach was taken successfully by the City on a different matter twenty five years ago.

Between the time of my first memorandum to the Commission dated August 29, 2022, concerning this matter and now, I have reviewed many public records, not just the emails. Some of these records suggest the business relationships involved in this matter more specifically than what is known publicly. I have also researched the legal principles that may be involved in this matter. Obviously, I am not an attorney licensed to practice law. However, I can read and I have a fiduciary responsibility and duty to the City residents. Also, as one ethics class instructor once said when it comes to ethics, "if it doesn't feel right, it probably isn't," and from what I have seen and read, it doesn't feel right.

The issues that I am concerned with and the possible wrongdoing involve 14th Amendment rights of due process in administrative procedures, ethics and voting conflicts, attorney misconduct and other issues involving attorney Standards of Professional Conduct and fiduciary responsibility. I recognize these are serious. However, I have a reasonable basis for listing those here. I am not going to personalize this matter by naming or identifying individuals. I will share those details and leave all the rest regarding the law to the Special Counsel at the appropriate time if one is approved.

As an example of one concern, based on the emails, the Conditional Use Ordinance was apparently amended during this time period to the benefit of the Anclote Harbor Apartments project. Its amended form was subsequently used in the approval of the Anclote Harbor Apartments project. Based on the emails, the idea of changing one provision of the ordinance, specifically the 12 month expiration deadline from being tied to obtaining a building permit to that of an approved site plan, was that of the developer's attorney. Moreover, the change was not initiated by any policy concern from the City Commission. In fact, this part of the ordinance had been in place for at least 25 years. Also, the fact that the change was to the benefit of the Anclote Harbor Apartments was not stated publicly by the former Planning Director during the public meetings or included in the staff reports. This ordinance change occurred in early 2019. The Developer had decided to proceed with the project in November, 2018. The City Manager did not advise the City Commission in writing that there was a proposed apartment project on the former WalMart site until late 2019, although at least one sitting Commissioner in 2019 and one former Commissioner who was in office in 2017 and met with the Developer knew of the project beforehand. To be clear, 320 of 404 apartments that are planned are on the portion of the former Walmart parcel for which a conditional use was needed.

Again, these public actions were taken without identifying that the reason for the change was tied substantially to one project. By concealing this reason, it deprived residents of their due process right to comment on the proposed ordinance change in the context of the project for which it was being changed. To me, there are obvious reasons why the project was kept out of the public eye during this timeframe. I will reserve describing those with the Special Counsel.

I should also point out something that may not be so obvious in this discussion. The City government between mid-2017 and mid-2020 was complicit in this matter. The City government and its staff held the public hearings and largely concealed key information associated with the ordinance changes and their purpose. So wherever the Special Counsel leads us in this matter, there may be exposure to the City government, as well.

If this Commission proceeds with a Special Counsel, I respectfully request to be made the liaison for identifying prospective law firms for you to consider. I have discussed this point with the City Manager, and he is comfortable with letting me work directly with our Purchasing Director. The City Manager should not be involved. I have some experience with the process and what is needed from my time as City Manager.

Lastly, I have described several concerns that have a legal basis. Whether or not they are valid will first be left to the Special Counsel first to determine. The basic premise to moving forward with this effort is to understand what happened and how it affects the Anclote Harbor Apartments project overall, including its approval. Hopefully, there will be a lesson learned from all of this. One being that residents have rights, too.

Thank you.