

APR 29 2024

**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

RECEIVED
CONFIDENTIAL

In re: David Alfin,

Respondent.

Complaint No.: 24-022

ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT/COMPLAINANT

Respondent, David Alfin, serves as mayor of Palm Coast, Florida. Complainant is Candace Stevens of Palm Coast, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Section 112.3143(3)(a), Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on April 18, 2024.

ALLEGATION

Respondent is alleged to have violated Section 112.3143(3)(a), Florida Statutes, by voting on measures that inured to his and/or a business associate's special private gain or loss.

APPLICABLE LAW

Section 112.3143(3)(a), Florida Statutes, provides as follows:

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. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Section 112.3143(1)(d), Florida Statutes, defines "special private gain or loss" as follows:

"Special private gain or loss" means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, 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.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.

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 must also be considered.

In order to establish a violation of Section 112.3143(3)(a), Florida Statutes, the following elements must be proved:

1. Respondent must have been a county, municipal or other local public officer serving on a collegial body.

2(A). Respondent must have:

1) voted in his or her official capacity on a measure which would have inured to the Respondent's own special private gain or loss,

or

2) voted in his or her official capacity on a measure which the Respondent knew would have inured to the special private gain or loss of a principal by whom the Respondent was retained or to the parent organization or subsidiary of a corporate principal by which the Respondent was retained,

or

3) voted in his or her official capacity on a measure which the Respondent knew would have inured to the special private gain or loss of a relative or business associate of the Respondent.

OR

(B). When abstaining from a vote because of a conflict, the Respondent, prior to the vote being taken, must have failed to publicly state to the assembly the nature of his or her interest in the measure described in paragraph 2(A), above.

OR

(C). After abstaining from a vote because of a conflict, the Respondent failed to disclose the nature of his or her interest in the measure described in paragraph 2(A), above, as a public record in a memorandum filed within 15 days after the vote occurred with the

person responsible for recording the minutes of the meeting at which the vote occurred.

ANALYSIS

In July 2021, Respondent was elected as the mayor of Palm Coast. (ROI 5) Respondent also is a licensed Real Estate Broker Associate.¹ (ROI 24) He has worked with Grand Living Realty since 2016. (ROI 20) Donald “Toby” Tobin is a Sales Associate at Grand Living Realty. (ROI 26)

On August 9, 2022, the Palm Coast Council conducted a workshop to discuss multiple topics including the creation of the Landings Community Development District (CDD). (ROI 12) On August 16, 2022, Respondent participated in a vote to approve the first reading of Ordinance 2022-XX Establishing the Landings CDD – Application #5100. (ROI 13) On September 6, 2022, Respondent participated in a vote to approve the second reading of Ordinance 2022-XX Establishing the Landings CDD – Application #5100. (ROI 14) On the same day, Respondent signed City Ordinance 2022-17 to establish Landings CDD. (ROI 15) The Ordinance identified the initial five member CDD Board of Directors which included Tobin. (ROI 15)

Complainant alleges Respondent voted on measures brought before the City Council where a company owned by Tobin was the applicant. (ROI 2) Complainant maintains that Respondent and Tobin are business associates by virtue of their co-listings of real estate properties and their association at Grand Living Realty. (ROI 18)

Prior to Respondent assuming his mayoral role, he and Tobin have co-listed properties on three to five occasions. (ROI 26) Respondent advised that co-listing property is an understanding between two agents a sales commission is shared should a completed transaction occur. (ROI 27) He advised that the splitting of the commission and the distribution of each agent’s responsibilities

¹ Respondent advised that a broker associate operates as a salesperson with a higher level of training. (ROI 24)

are negotiated and determined on a transaction-by-transaction basis. (ROI 27) Respondent advised that the co-listing of property with Tobin does not make them business associates or business partners. (ROI 30) Neither Respondent nor Tobin are shareholders in Grand Living Realty nor does either have any ownership interest in the business. (ROI 22, 30)

Lindsay Dolamore, Broker and Owner of Grand Living Realty, confirmed that Respondent and Tobin are not partners relative to their positions with his business. (ROI 10, 20) Dolamore advised that Respondent has been mostly inactive since becoming mayor. (ROI 21)

Business associate is defined as “any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or coowner of property.” §112.312(4), F.S. Respondent and Tobin are not engaging in a regular business enterprise due to the co-listing of a property. There are no regular terms and conditions attached to co-listing the property. Also, Respondent has not made any sales or received any commissions through his work with Grand Living Realty since he has served as mayor.² (ROI 25, 26) As such, the evidence does not reflect that Respondent and Tobin are business associates. In addition, there is insufficient evidence of a special private gain or loss to Respondent and/or Tobin regarding the votes in question.

Therefore, based on the evidence before the Commission, I recommend that the Commission find no probable cause to believe that Respondent violated Section 112.3143(3)(a), Florida Statutes.

² Respondent denied any business affiliation with the Landings CDD or that any relatives received a benefit from his vote(s). (ROI 32)

RECOMMENDATION

It is my recommendation that:

There is no probable cause to believe that Respondent violated Section 112.3143(3)(a), Florida Statutes, by voting on measures that inured to his and/or a business associate's special private gain or loss.

Respectfully submitted this 29th day of April, 2024.



MELODY A. HADLEY

Advocate for the Florida Commission
on Ethics

Florida Bar No. 0636045

Office of the Attorney General

The Capitol, PL-01

Tallahassee, FL 32399-1050

(850) 414-3300, Ext. 3704