

**MINUTES
SPECIAL CITY COUNCIL MEETING
TUESDAY, JANUARY 17, 2023, 6:00 P.M.
NEPTUNE BEACH CITY HALL
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266**

Pursuant to proper notice, a Special City Council Meeting of the City Council of the City of Neptune Beach was held on Tuesday, January 17, 2023, at 6:00 p.m., at Neptune Beach City Hall, 116 First Street, Neptune Beach, Florida 32266.

Attendance:**IN ATTENDANCE:**

Mayor Elaine Brown
Vice Mayor Kerry Chin
Councilor Lauren Key
Councilor Nia Livingston
Councilor Josh Messinger

STAFF:

City Manager Stefen Wynn
City Attorney Zachary Roth
Police Chief Richard Pike
Chief Financial Officer Danielle Dyer-Tyler
Community Development Director Heather Whitmore
Senior Center Director Leslie Lyne
Mobility Management Director Megan Steward
City Clerk Catherine Ponson

**Call to Order/Roll
Call/Pledge**

Mayor Brown called the Special Meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

**City Manager
Employment**

Consideration of City Manager Employment. Mayor Brown read into the record a document dated January 16, 2023, prepared by the City Attorney. This was prepared at Mayor Brown's request. She then read into the record a document dated January 17, 2023, prepared by the City Attorney. Both documents state that in the City Attorney's legal opinion, cause exists under the City Manager's contract for his termination. Both documents are attached and made a part of this record.

City Manager Stefen Wynn stated that prior to the meeting, his legal counsel advised him it was his option to attend this meeting. He added that he had not had a chance to go over what was presented with his legal counsel. He would like time to review it.

Vice Mayor Chin remarked that it saddened him that this has reached this point. He hoped that differences could be ironed out and solutions found for complex issues such as the water tank. He stated that he had discussed the water tank with the City Manager a couple of weeks ago. The City Manager clearly understood the concerns surrounding the tank, including the underlying ground's stability and safety implications to the adjacent residents should the ground fail. He is disappointed to see the timeline of events that have brought us to tonight's meeting. Whether deliberate or not, it seems inescapable that neglect of duty has allowed this tank to be built with adverse impacts to the neighbors. He expressed his apologies to the residents of Neptune by the Sea that this has occurred.

Vice Mayor Chin stated he is an empathetic person and was ready to agree to a negotiated settlement last week with favorable terms. Those efforts did not reach a resolution. He remains hopeful that at this late hour that we can arrive at an agreement. He added that he would wait for the other Councilors' opinions.

Councilor Key stated on September 19, 2022, she read into the record many of her concerns that she had with the City Manager's poor performance surrounding his incompetence, recklessness, and ineffective leadership. At the core of the problem, in the most simplistic terms, the City Manager has, and continues to be, unwilling to accept responsibility for his actions, period. It has been her experience, as she stated previously, "the City Manager typically does not accept responsibility and blames others for his mistakes. Any apologies given for his poor or unprofessional behavior have been presented in a way that it attempts to shift blame and refuses to see any genuine fault or take accountability." His report he delivered yesterday, does just that. He claims no prior knowledge of the dimensions of the "big green monster" after admitting two sentences earlier that he was told the dimensions by the Community Development Director. He then goes on to say "our responsibility regarding the "big green monster" lies with the Building Department", a department that lies under his direct command. She can think of no worse quality in a leader than lying and evading responsibility. It is for these reasons, among others stated here tonight, that it is in the best interest of the City of Neptune Beach, to relieve Mr. Wynn of his duties.

Councilor Livingston agreed with what has already been stated. She feels sad. She reported that she met with Mr. Wynn two weeks ago hopeful that we could move forward trying to figure out what could be done to improve operations, communications, etc. Leaving that meeting, seeing the attachments and documentation of what has been going on, it seems clear to her Mr. Wynn cannot take responsibility for any of his actions. It leaves her at a point where she has lost confidence that he can carry out his duties to work towards the best interest of the City. It saddens her for the City of Neptune Beach but also for the residents in Neptune by the Sea, for what's happened. At this point, she agrees with the legal opinion.

Councilor Messinger remarked that the facts of the situation are evident at this point. He believes the City and residents of Neptune by the Sea have been placed in a very bad predicament. The situation was further exacerbated by providing all of the facts to the City Council and General Counsel. The facts continued to be misrepresented throughout the process, up until a comprehensive records pull took place, and these things came to light. He is disappointed we are at this place. He was hoping a resolution could be reached for an amicable exit. He does not believe that is possible at this point. He is in concurrence with numerous colleagues here that an immediate separation of the City Manager is in the best interest of the City and its residents.

Mayor Brown expressed that she is sorry that we are here for this reason. She was very hopeful that the offers that were given to Mr. Wynn last week were rejected. She is sorry the City is going through this as a whole. Her colleagues have stated their feelings and more important is that they do not like being here to do this. Their job and their duty is to the City of Neptune Beach as we move forward.

Made by Livingston, seconded by Messinger.

MOTION:

BASED ON THE ITEMS STATED ON THE RECORD TONIGHT, STEFEN WYNN BE TERMINATED WITH CAUSE, PURSUANT TO HIS CONTRACT, AS TO:

ITEM 1. FLAGRANT NEGLECT OF DUTY
ITEM 3. WILLFUL MISCONDUCT

Roll Call Vote:

Ayes: 5-Key, Livingston, Messinger, Chin, and Brown

Noes: 0

MOTION CARRIED**PUBLIC COMMENT**

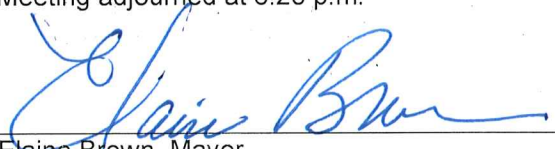
Public Comment

Pat Hazouri, 207 Florida Boulevard, Neptune Beach, stated this was horrifying. She expressed that she could not believe what had happened.

Rob Vannoy, 625 Cherry Street, Neptune Beach, stated that what Council had to do was tough. When an employee is not performing and lies directly to constituents, Council did the right thing.

Adjournment

There being no further business, the Special Meeting adjourned at 6:28 p.m.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, CMC
City ClerkApproved: 02/06/2023

ANSBACHER LAW

CONDOMINIUMS • HOMEOWNER ASSOCIATIONS
REAL ESTATE • CONSTRUCTION • PERSONAL INJURY

5815 Goodbye Executive Drive
Jacksonville, FL 32217
(Primary mailing address)

4509 US Highway 17
Hemming Island, FL 32093

1650 US Hwy 1 South, Ste 201
St. Augustine, FL 32084

500 3rd Street South
Jacksonville Beach, FL 32250

111 North Orange Avenue
8th Floor
Orlando, FL 32801

January 16, 2023

City Council
City of Neptune Beach
116 First Street
Neptune Beach, FL 32266

VIA EMAIL

**RE: City Manager Employment Status
Opinion of Cause**

Dear Mayor, Vice Mayor, and City Councilors:

In response to Mayor Brown's request, please find my conclusion and discussion of the issue presented below:

Issue

Does cause exist for the termination of the City Manager, Stefen Wynn, pursuant to his employment contract?

Summary

If the City Council accepts the discussion set forth below, it is my legal opinion that cause exists for the termination of the City Manager pursuant to his employment contract.

Discussion

Pursuant to the City Manager's contract, there are four bases for termination with cause:

1. Flagrant Neglect of Duty.
2. Conviction by a court of competent jurisdiction of the commission of a felony or the violation of any statute relating to the conduct of public employees.
3. Willful misconduct that substantially impairs or damages the interests or reputation of the City.
4. Such other grounds as are hereafter established by ordinance.

Items 1 and 3 should be discussed based on the facts as I understand them, which are set forth below.

In December 2022, a 29-foot water storage tank (the "Water Tank") was built on the new Publix site owned by Neptune Beach FL Realty, LLC at 572 Atlantic Blvd., Neptune Beach, Florida 32266. This is the same property and development covered by the Development Agreement between

the City and the owner dated March 1, 2021 and recorded at Official Records Book 19662, Page 1438 of the current public records of Duval County, Florida. That Development Agreement delineates the improvements to be made on the property and limits the improvements to those included in the exhibits to the Development Agreement. The Water Tank is not shown on the exhibits to the Development Agreement.

On December 9, 2022, the City Manager emailed the City Council and stated:

While I knew about the need for a water tank to meet fire sprinkler requirements, it was my understanding that it would be closer to the building. The first time that I had seen the site plan for the Publix was today when they were attached to the previous email.

The City Manager also advised council and staff that he was not aware of the height of the tank until it was constructed and that he otherwise was not aware of the specifics regarding the tank. Many of these conversations were verbal. As the City Manager's statements frequently changed around the construction of the tank, it is impossible to precisely state each position he articulated. However, several emails were discovered regarding this matter.

On June 27, 2022, former Community Development Director Sam Brisolara sent the City Manager an email stating:

Stefen,

This is the only plan we have showing the placement of the tank. There is no southern elevation drawing. However, after speaking with Andrew, the internal diameter of the tank is 33', with a 29' height to the eave; it holds 181 thousand gallons. I am still in favor of the forest green.

The attachment to that email depicts the location of the tank in approximately the location where it has been constructed.

This email had been preceded by an email from the City Manager to Ms. Brisolara on June 24, 2022, stating

Green in color is good, but I'd like to see the Southern elevation that includes the tank.

Before that, on May 13, 2022, Ricardo Jimenez, an engineer with Dewberry Hydro, who was working on this project, sent an email directly to the City Manager stating:

Good afternoon,

Please see attached the memo from our review of the Neptune Beach Plaza Phase II Project. The applicant addressed all the items in the Site Plan Review Checklist. Please let us know if you have any questions.

Attached to that email were several documents, including one titled “Publix 1753 Neptune Beach Fire System Civil Plans – 4-22-22”. The 8th page of that attachment was the same as the attachment included in Ms. Brisolara’s June 27 email, which depicted the location of the water tank.

When asked about the June 27 and May 13 emails, the City Manager’s position was that he had not seen them.

Accepting this to be true, this constitutes a “flagrant neglect of duty” on the part of the City Manager pursuant to the 1st basis for termination set forth in the City Manager’s employment contract. For the City Manager to repeatedly fail to check emails pertaining to a project of this significance amounts to a failure to perform the basic functions of the position in neglect of his duties.

One of the duties of the City Manager in his contract is to “perform such other legally permissible and proper duties and functions as the City Council shall from time-to-time assign.”

In the Development Agreement, the City Council assigned the City Manager the duty to conduct coordination meetings regarding the project. Such meetings were intended to “ensure regular communication and confirm that the design and specifications of the project, as developed, are consistent with this Agreement including its Exhibits.” The City Council gave the City Manager the specific duty to provide objections to the owner of the project if “the information, plans, and specifications presented materially deviates from this Agreement or its Exhibits.” See Section 4.B.6 of the Development Agreement. In such event, the objection would be brought to the Council to resolve. This is consistent with the requirement in the Development Agreement that no deviations (except minor deviations) may be made except by amendment to the Development Agreement. Such amendment required Council approval. See Section 4.A. of the Development Agreement.

A 29-foot tall, 181-thousand-gallon water tank is not a minor deviation. For the City Manager to not be actively involved in every stage of planning of the Water Tank and to not inform the Council that the Water Tank had been added to the project is a flagrant neglect of the duties assigned to him by the Council. It is my opinion, therefore, that cause exists as to Item 1 in the City Manager’s contract.

There are also indications that the statements made by the City Manager are inaccurate. In particular, the June 27 email from Ms. Brisolara to the City Manager was in direct response to a message from the City Manager to Ms. Brisolara the preceding Friday. The proposition that the City Manager did not see the email or its contents, and did not otherwise follow up or have discussions regarding the Water Tank with Ms. Brisolara or any other person from June 27 until December 9, is not credible. Thus, the totality of the circumstances indicates that it is likely that the City Manager intentionally misstated the facts to the City Council and staff. Such conduct constitutes “willful misconduct” under the 3rd basis for termination with cause set forth in the City Manager’s contract.

The City, and Council in particular, have been accused of incompetence or worse by members of the public and have been threatened by the property owner regarding the water tank. These facts “substantially impair or damage the interests or reputation of the City.” This and the willful misconduct from which it resulted constitute additional cause for termination under Item 3 of the City Manager’s contract.

In addition to the specific matters above, the City Manager has demonstrated a pattern of conduct that is, at least, neglectful of his duties. In addition to those previously articulated on the record in Council meetings, there is an example to mention.

The handling of the Senior Center project, as outlined on the record in prior Council meetings, demonstrates his neglect. By email to City Staff on February 6, 2021, the City Manager stated:

The Senior Center project is one that I’ve neglected since the beginning of the year.

The City Manager followed that email immediately with an email to the City Council in which he stated:

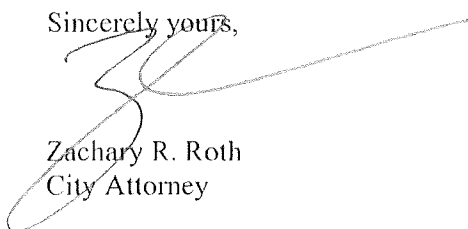
I apologize that this project has been neglected and a complete plan wasn’t produced....I’ll switch my attention to finishing the Senior Center.

Two years later, the Senior Center remains incomplete and completion is not imminent. This contributes to a finding of flagrant neglect of duty.

Enclosed with this opinion are the materials referenced herein.

For all of these reasons, it is my legal opinion that cause exists under the City Manager’s contract for his termination for Items 1 and 3.

Sincerely yours,



Zachary R. Roth
City Attorney

ZRR/jav
Enclosures

Copy to: Stefen Wynn

ANSBACHER LAW
CONDOMINIUMS • HOMEOWNER ASSOCIATIONS
REAL ESTATE • CONSTRUCTION • PERSONAL INJURY

8818 Goodbys Executive Drive
Jacksonville, FL 32217
(Primary mailing address)

3509 US Highway 17
Fleming Island, FL 32003

1650 US Hwy 1 South, Ste 201
St. Augustine, FL 32084

500 3rd Street South
Jacksonville Beach, FL 32250

111 North Orange Avenue,
8th Floor
Orlando, FL 32801

January 17, 2023

City Council
City of Neptune Beach
116 First Street
Neptune Beach, FL 32266

VIA EMAIL

**RE: City Manager Employment Status
Addendum to Opinion of Cause**

Dear Mayor, Vice Mayor, and City Councilors:

On January 16, 2023, I received the “Final Report on TLM Realty Neptune Plaza with Attachments 4” delivered by City Manager Stefen Wynn. I evaluated such document to determine if it altered the opinions set forth in my letter as to cause for termination dated January 16, 2023.

Such report did not alter the opinion set forth in my letter. Instead, it further corroborated the background set forth therein. The City Manager admits to receiving the email and dimensions on June 27, 2022, and states that he “wasn’t made fully aware of the size of the tank until after it was built on 12/9/2022.”¹ The City Manager does not describe any further action on his part to monitor the water tank in the period between June 27, 2022 and December 9, 2022. He further states that “Prior to and after the CDD’s email to me, I hadn’t reviewed any applications related to ‘Neptune Beach Phase II Project’.”

The report also indicates that documentation depicting the proposed location of the water tank was available if the City Manager had appropriately monitored the project in December 2021. A permit application dated December 12, 2021 appears to include a site plan showing the approximate location of the water tank. The report implies that the City Manager was not aware of the application or its contents.

The memorandum located on the second page of the report concludes:

The circumstances surrounding the ‘Neptune Plaza, Water Storage Tank’, has revealed significant issues with the way the building department processes and handles permit applications. The processes and policies surrounding permit approvals ought to be reviewed and improved.

¹ This statement also appears to be expressly contradicted by the statement two sentences earlier that “I wasn’t made aware of the dimensions of the water storage tank until an email was sent to me by the Community Development Director on 6/27/2022 that included the dimensions of the tank absent any drawings or elevations.”

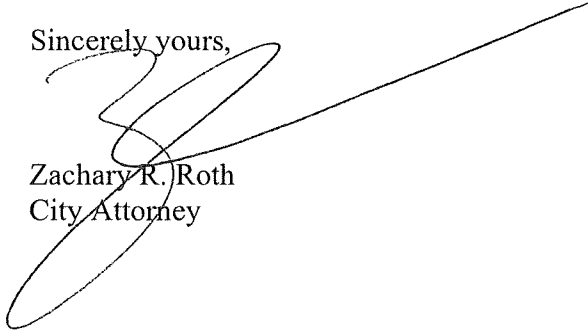
Taken together, each of these statements demonstrate that the City Manager places responsibility for construction of the water tank on the City's building department. The report contains no admission of responsibility on the part of the City Manager.

The City Council delegated the duty to conduct coordination meetings and to otherwise ensure consistency of development with the Development Agreement to the City Manager. In addition to the Development Agreement, there are provisions of the City's Code of Ordinances that are also relevant. Pursuant to Section 2-81 of the City's Code of Ordinances, "The city manager shall be the chief executive officer of the city government, shall enforce the laws of the city and require the faithful performances of all administrative duties." Pursuant to Section 2-85(d) of the City's Code of Ordinances, "Overrule [sic] of official. The city manager shall have the power to set aside any action taken by a department head and may supersede same in the functions of that office."

Responsibility for oversight of the City's building department, in general, and of the project described in the Development Agreement, in particular, are duties of the City Manager. The facts set forth in the report further support a finding of flagrant neglect of duty in violation of the City Manager's employment contract. Further, it is my opinion that the admission that the City Manager received the site plan on June 27, 2022 confirms that the statements made in his email of December 9, 2022 are untrue, supporting the opinion of willful misconduct in violation of the City Manager's employment contract.

For these reasons, my opinion remains that if the City Council accepts the facts described to be true, cause exists for termination under the City Manager's employment contract.

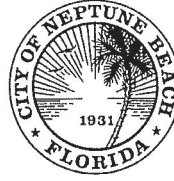
Sincerely yours,



Zachary R. Roth
City Attorney

ZRR/jav
Enclosures

Copy to: Len Magid



**MINUTES
WORKSHOP CITY COUNCIL MEETING
IMMEDIATELY FOLLOWING THE SPECIAL MEETING
TUESDAY, JANUARY 17, 2023, 6:28 P.M.
NEPTUNE BEACH CITY HALL
116 FIRST STREET
NEPTUNE BEACH, FLORIDA 32266**

Pursuant to proper notice, a Workshop City Council Meeting of the City Council of the City of Neptune Beach was held on Tuesday, January 17, 2023, at 6:28 p.m., in Council Chambers, City Hall, 116 First Street, Neptune Beach, Florida, 32266

Attendance**IN ATTENDANCE:**

Mayor Elaine Brown
Vice Mayor Kerry Chin
Councilor Lauren Key
Councilor Nia Livingston
Councilor Josh Messinger

STAFF:

City Attorney Zachary Roth
Police Chief Richard Pike
Chief Financial Officer Danielle Dyer-Tyler
Community Development Director Heather Whitmore
Senior Center Director Leslie Lyne
Mobility Management Director Megan Steward
City Clerk Catherine Ponson

**Call to
Order/Roll Call**

Mayor Brown called the workshop meeting to order at 6:28 p.m.

PUBLIC COMMENTS

Public Comment

Brent Rogers, 932 Strickland Road, spoke regarding the Senior Center Bid. He offered suggestions and his help.

Rob Vannoy, 625 Cherry Street, Neptune Beach, stated it sounded like all parties involved with the "big green monster" are working to come up with a resolution. He requested the stop work order remain in place.

David Duvall, 628 Cherry Street, Neptune Beach, also requested the stop work order remain in place. He added that the termination of the City Manager was tough, but he supports it.

PROPOSED ORDINANCES / NONE

CONTRACTS AND AGREEMENTS / NONE

ISSUE DEVELOPMENT

Res. No. 2023-01, City Clerk

Resolution No. 2023-01, A Resolution of the City of Neptune Beach, Florida, Revoking Resolution No, 2017-01; Providing for Adoption of Recitals, Repeal of Prior Inconsistent Resolutions and Council Decisions, Severability and an Effective Date.

Councilor Messinger explained the City Clerk's duties were effectively delineated between the duties that are prescribed within the ordinances already, including the clerk reporting and serving the City Council but had the clerk's day-to-day operations being handled by the City Manager. Those duties include HR. It has created issues and conflict. He wants to revert it back to its original construct.

Vice Mayor Chin stated he had originally broached this but was delayed because of extra complications of the fact that the City Clerk also handles HR duties. We were trying to figure out how best to separate that out and restoring the Clerk's independence. HR deals with staffing issues and that fall under the City Manager's office. We were reaching out to other clerks, but it was difficult hearing back.

Vice Mayor Chin clarified that the City Clerk is the direct hire of the City Council. It was never originally intended by our Charter to have the day to day operations handled by the City Manager. That was something the previous City Manager had instilled. We are restoring it back to its original intent.

City Attorney Zachary Roth suggested that a sentence be added that clarifies that the City Clerk with responsibilities as HR supervisor shall coordinate with the City Manager but shall report to the City Council.

Mayor Brown summarized that the Clerk reporting to Council is something Council is in favor of and this would be moved forward to the next Council meeting with the added language.

FAR Fee Waiver

Fee Waiver for FAR (Floor Area Ratio). Vice Mayor Chin stated that the new LDC has a FAR for R-1, R-2, and R-3 Zoning Districts. This was to find a method to control density. A proposal being brought forward is to waive the fee for a variance for this specific case.

Mr. Roth advised there could be an administrative waiver for this specific issue.

Mayor Brown reported that Community Development Director Heather Whitmore had prepared a memo regarding this. She is also going to be looking at how she and staff can come forward with corrections for the inconsistencies in the LDC.

Ms. Whitmore explained that ideally there would be an expedited bundle of updates to present as quickly as possible.

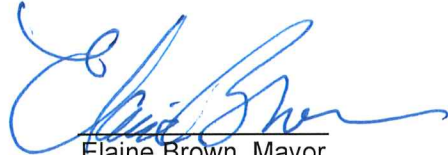
COUNCIL COMMENT

Public Comment

Councilor Key commented that earlier in discussions she did not address the issue with the "big green monster" and her sadness that it exists. She has shared this with residents and met with them. They have had numerous conversations and are in constant contact. She stated that she is sorry this has happened to the residents and Council is working really hard to right a wrong.

Adjournment

There being no further business, the Workshop meeting adjourned at 6:43 p.m.


Elaine Brown, Mayor

ATTEST:


Catherine Ponson, CMC
City Clerk

Approved: 02/06/2023

