

Fred Gunther
213 S. Baylen Street
Pensacola, FL 32502

April 21, 2013

City Council President, P.C. Wu
222 W. Main Street
Pensacola, FL 32502

RE: CMPA Board Position

President Wu,

At the suggestion of another member of City Council, I am writing this letter to give my side of the story. As we discussed, I plan to speak today if a motion to remove me is made at the Committee of the Whole meeting, but I wanted to provide my statements in writing as well.

The timeline began a few weeks ago, when Gregg and Justin Beck visited my office and stated they were planning to make an offer on Parcel one at the Community Maritime Park. I was excited about an offer and told them I thought the other Board members would be as well. They asked me to keep their plans to make an offer confidential, which I did. Subsequently, on Friday afternoon, April 12, 2013, Ed Spears emailed the CMPA operations and audit committee, of which I am a member, a Letter of Intent from Beck Property Company (Exhibit A) to sublease a portion Parcel one. On Monday afternoon, April 15th, Beck Property Company presented their offer to the CMPA operations and audit committee. There was not a quorum at the meeting, but a "straw vote" was taken on Mr. Jim Reeves' motion to recommend moving the proposal forward to the CMPA Board for negotiations. I voted against this recommendation, because the offer was below the appraised value and a portion of parcel one was removed, resulting in lower sub-lease payments to the City. The next morning, Tuesday April 16th, Nate Monroe published an article in the Pensacola News Journal (Exhibit B) stating the price offered by Beck Property Company, as well as the fact that I voted against the proposal because I thought the offer was too low. After reading the PNJ article, Bill Van Horn, a retail developer I have represented in the past, wrote me an email (Exhibit C). It contains some strong opinions, and we apologize for this but he has agreed to let me show it to you since it proves we had not discussed Parcel one at the Maritime Park or Beck Property Company's offer before Tuesday. It states that he read the PNJ article, he agreed the offer of \$20 PSF annually was too low and he would be willing to pay more than this. I responded to tell him he could write up an offer. He called and came by my office later that day to discuss the property. He left saying he wanted to do more due diligence on the parcel and think about it. I received a call from him the next day around noon, saying he wanted to make an offer. He told me the terms he wanted to offer and I wrote up a Letter of Intent (LOI) containing these terms. He asked that the offer be structured exactly like the offer from Beck Property Company, but the price higher, at \$25.18/SF. This is approximately 25% higher than the Beck offer and would have net the City of Pensacola over two million dollars more over a 99 year term. I was excited about the possibility of attracting more revenue for the City and possibly

the CMPA. I finished the LOI (Exhibit D) just before the CMPA meeting. I emailed it to Ed Spears and brought 15 copies of the LOI to the meeting. Ed distributed to the CMPA Board members and I gave a copy to Justin Beck explaining that I just received the offer.

It has been stated that I "photocopied" the Beck offer. I know the Becks worked hard on preparing their offer and I can understand their frustration with the fact that the offers were so similar, but this is how Mr. Van Horn requested the offer be prepared. It was his intent for the CMPA Board members to compare apples to apples, so there would be no doubt the offers were the same, with the exception of the higher price.

At the CMPA Board Meeting, Beck Property Company presented their offer. I recused myself from the vote, and asked to be recognized from the audience to present Mr. Van Horn's offer. I felt it was necessary to explain how I received the offer and summarize it since it had arrived and was given to Board members just before the meeting. I reviewed the terms of the offer and answered several questions by Board members. I never asked or advocated that Mr. Van Horn's offer be approved over the offer from Beck Property Company. I simply requested the offers be submitted to CBRE, the City's real estate firm, for a recommendation. There was no expectation of a commission if a sublease was eventually executed between the CMPA and Mr. Van Horn. Commissions had not been discussed and I had no idea if I would be allowed compensation or not.

There has also been criticism because it has been stated that William Van Horn, Mr. Van Horn's son, works for my real estate company. William does hold a real estate license with my company, as he just graduated from UWF and is learning the family business from his father. William is an independent contractor, he has never completed a real estate transaction as an agent with my company, and I have never paid him anything. I did not advocate or cast a vote to his benefit.

It has been suggested that I have violated the Code of Ethics for Public Officers and Employees issued by the Florida Commission on Ethics (Exhibit E). Pages eight and nine of this document set forth the entities subject to these guidelines. Organizations fitting the description of the CMPA are not included. In addition, I have spoken with Julie Costas, legal counsel for the Florida Commission on Ethics. She has stated the Florida Ethics Code does not apply to 501c3 non-profit organizations, even if the members are appointed by the City Council. We also discussed, and this interpretation was shared by Mr. Ed Spears at the last CMPA meeting, that the CMPA is governed by its By-Laws (Exhibit F). I believe it is important to note that I made a motion at the last CMPA meeting for our Board to adopt the Florida Ethics Code and the financial disclosure requirements which go along with it. This motion was denied.

It has also been stated that I violated the City of Pensacola's ethics code. I was not aware the City of Pensacola had an ethics code until this past Thursday when I read the allegations that I had violated them on *Rick's Blog*. I served as Chairman of the City of Pensacola Zoning Board of Adjustment for several years and was never provided a copy of the City's ethics code. We were given a copy of the State Ethics Code. I was never provided with a copy of the Florida Ethics Code or the City Ethics Code when I joined the CMPA operations and audit committee or the CMPA Board. Please see definition number 11 on page two of the City of Pensacola's Ethics Code (Exhibit G), which states "Official or

employee' means any elected or appointed official or employee of the City, whether paid or unpaid, and includes all members of a board, body, advisory board, council, commission, agency, department, district, administration, division, bureau, committee, or subcommittee of the City. This definition includes members of council and the Mayor." Page six, Section 4.04(c) of the City Charter (Exhibit H) states "No elected City official shall hold any appointive City office, City board membership, or City employment while in office, except as may be provided by State law." The CMPA is not a City Board. If it were, a member of City Council could not serve as a CMPA Trustee.

What I realize now is most individuals, including the media, believe the CMPA adheres to the State and/or City ethics code. I understood otherwise, so I behaved more informally than when I served on a City Board. Using the term "client" was a poor choice of words, as people have assumed I was being compensated and I was advocating approval of Mr. Van Horn's offer when I was not. I also did not clarify that I would not have received compensation without approval from the CMPA Board. As a result, I have created bad press for the CMPA, the City, the City Council and I have angered the Becks, for whom I have always had much respect, as well as others. This I regret, although I can assure you I have paid the price. I have been accused of many things both publicly and in the media over the past few days. I have no doubt that I will be overly vigilant in avoiding any perceived ethics issues in the future should you allow me to remain on the CMPA Board. I have spent thousands of hours serving this City and the CMPA and I believe I deserve better than to be dismissed from the CMPA Board over this issue without an opportunity to defend myself. If I am removed, the implication will be that I committed an ethics violation or violated CMPA's governing documents. If anyone believes I have done so, I welcome them to file a complaint, and allow me to respond.

Thank you again for your time and consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'Fred Gunther', with a stylized, flowing script.

Fred Gunther

Cc: Councilwoman Sherri Myers
Councilman Andy Terhaar
Councilman Larry Johnson
Councilman Gerald Wingate
Councilman Brian Spencer
Councilwoman Jewel Cannada-Wynn
Councilwoman Megan Pratt
Councilman Charles Bare