

Report on Jeff Pena Complaint

December 1, 2022

**ATTORNEY/CLIENT
PRIVILEGED COMMUNICATION**

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Introduction

The City Council for the City of Freeport (the “City”) engaged the services of the undersigned for purposes of undertaking an investigation, and assessment of whether Mr. Jeff Pena (“Pena”) used confidential information, gained solely because of his position on the Freeport Economic Development Corporation (“EDC”), to purchase the Boys and Girls Club of Brazoria County (the “Club”) building located at 202 W. First Street (the “Building”).

This report is the outcome of a comprehensive review and examination of correspondences, documents, report and documents provided by City Attorney Chris Duncan, EDC minutes and agendas; and interviews with complainant, former EDC Board Members, additional individuals, City Attorney Duncan, City Manager Kelty, and Jeff Pena. The following individuals were interviewed or provided information to this investigator which was relevant to the investigation:

1. Jeff Pena
2. Melanie Oldham
3. Chris Duncan
4. Tim Kelty
5. Marinell Music
6. Mingo Marquez
7. Edward Garcia
8. Nicole Mireles
9. Amber Newman
10. Kenny Hayes

The following individuals were not interviewed:

1. Donald Sisk is deceased;
2. Carolyn Teas is deceased;
3. Courtland Holman declined to speak to me on advice of his attorney; and
4. Trey Sullivan declined to speak to me.

Executive Summary

A complaint was initiated by citizen Marinell Music alleging that Pena purchased the Building with confidential information gained because of his position on the EDC. Jeff Pena, as a member of the EDC Board and in his role as EDC Board president had access to information not generally available to the public. General information unrelated to the Project but generally related to the development of the area around the Building was publicly available. It could not be determined whether the information obtained by Pena during his time on the Board was information which was of any more benefit than that information generally available to the public.

Timeline:

1. December 2019 - Holman had initial discussions with business/industrial developer Chem Energy; project is eventually given code name "Sky High."
2. February 2020 - Chem Energy looked at 203 W. Second Street for the Project. Chem Energy did not acquire the property.
3. March 2020 - Chem Energy property located Fourth Street between Cherry and Park St. Chem Energy did not acquire the property.
4. April 2020 - Chem Energy initiated discussions to redevelop the entire downtown, Cherry to Pine, Second to Fourth St. and including the EDC 8.8-acre site.
5. June 2020 - Pena is informed by Teas that the Club may be interested in selling their Building.
6. June 11, 2020 - Pena contacts Club seeking to purchase the Building.
7. September 30, 2020 - Chem Energy states in an email that they were denied bank financing for the 8.8-acre EDC property.
8. October 2020 - Pena signs contract with Club to purchase the Building.
9. November 2020 - Chem Energy proposes a movie studio and development on the EDC 8.8 acres.
10. May 11, 2021 - Pena closes on purchase of Building.

Facts:

In approximately December 2019 a business/industrial developer called Chem Energy approached the EDC looking for a suitable location to locate a refinery. Holman gave the Chem Energy project the code name “Project Sky High” (the “Project”). At some point during Chem Energy’s discussions with the EDC Chem Energy’s desire for a refinery changed to the creation of a solar farm and, in association with the creation of a solar farm, Chem Energy desired an appropriate location for “trade desk” office space. This idea too was eventually discarded by Chem Energy, and a complete redevelopment of the downtown area began to form in coordination with discussions with the EDC. The redevelopment of downtown began to be discussed around the time that an individual by the name of Donald Sisk got involved in the Project. Donald Sisk proposed a development of the 8.8 acres owned by the EDC in the downtown area to include a possible movie studio. All iterations of the Project were discussed during EDC executive sessions no fewer than six times during 2020. According to Pena, he spoke with Holman at least once a week and spoke with Chem Energy representatives only on group calls with Holman, Kelty, and Duncan. During calendar year 2020, various locations were targeted for the Project, including 203 W. Second Street, the 100 block of Fourth Street, and the 8.8 acres owned by the EDC, however, the Building was never discussed as a potential site for the Project. Ultimately, no iteration of Project Sky High came to fruition and no properties were acquired for the Project.

In early June 2020 Carolyn Teas, a tenant of one of Pena’s buildings and a former employee of the Club, approached Pena with information that the Club Building may be available for sale.

Teas informed Pena that the Club was in the process of having the Building appraised and determining what to do with the Building. Pena contacted Club Chief Executive Officer Amber Newman by phone in early June to inquire as to the status of the Building. Pena followed up that contact on June 11, 2020, with a meeting and correspondence to Newman inquiring as to whether the Club would be willing to sell the Building. Newman informed Pena that the Club board had not yet decided on what they wanted to do with the Building.

Pena on at least one occasion after his initial meeting with Newman followed up with her inquiring as to the status of the decision on the Building. On September 17, 2020, Newman informed Pena that the Club board had decided to sell the Building and that she had been tasked with moving forward on the sale. A sales agreement was executed by Pena and the Club in October 2020 with a closing date scheduled for October 30, 2020, which, after edits to the agreement, was moved to November 30, 2020. Title issues arose prior to the new closing date and the closing date was moved to April 2021 with closing finally occurring on May 11, 2021, when Pena acquired the Building.

All EDC board members interviewed confirmed that multiple discussions regarding Project Sky High occurred in closed sessions. No EDC board members knew of Chem Energy having a plan to purchase the Building and no EDC board member was aware of any plans for the EDC to purchase the Building. Nor did anyone interviewed have any recollection of Chem Energy planning to purchase any waterfront property other than the EDC 8.8 acres. In addition, all individuals interviewed agreed that while information regarding Project Sky High was not generally known to the public there was information available to the public regarding the EDC's

desire to redevelop the 8.8 acres it currently owned, and it was generally known that the downtown area and waterfront area was being targeted for redevelopment. Oldham acknowledges that she learned about multiple possible developments in the downtown and waterfront areas through her own personal research of public records.

Conclusions

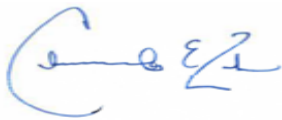
As a member of the EDC Board, Pena was present during multiple closed sessions of the EDC during which the Project was discussed, and Pena had access to information which was not generally available to the public.

In his roles as EDC President Pena had access to additional information regarding the Project that was not available to the EDC board members or the public.

General information unrelated to the Project but generally related to the development of the area around the Building was publicly available.

It was not possible to determine whether the information obtained by Pena in his role as EDC board member and EDC President provided him with information which was of any more benefit than that information generally available to the public and resulted in an any type of advantage in the purchase of the Building.

-END-



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12/01/2022
Date