

DEC 22 2023

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

**RECEIVED**  
**CONFIDENTIAL**

**In re: Henry Rosenthal,**

**Respondent.**

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**Complaint No.: 23-168**

**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, Henry Rosenthal, serves as a Councilman for the Village of Islamorada. Complainant is Deborah Gillis of Islamorada, 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 Article II, Section 8(h)(2), Florida Constitution, and Section 112.313(6), 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 November 21, 2023.

## ALLEGATION ONE

Respondent is alleged to have violated Article II, Section 8(h)(2), Florida Constitution, by using his position to obtain a disproportionate benefit for himself.

### APPLICABLE LAW

Article II, Section 8, provides as follows:

**Ethics in government.**—A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. To assure this right:

(h)(1) A code of ethics for all state employees and nonjudicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

(2) A public officer or public employee shall not abuse his or her public position in order to obtain a disproportionate benefit for himself or herself; his or her spouse, children, or employer; or for any business with which he or she contracts; in which he or she is an officer, a partner, a director, or a proprietor; or in which he or she owns an interest.

### ANALYSIS

Islamorada Village of Islands (Village) is 6.7 square miles in total area with a population of approximately 7,100. (ROI 4) The Village Code of Ordinances identifies 22 Zoning Districts with 6 of the Districts permitting restaurants. (ROI 5) According to the Code, permitted uses within the Public/Semi-Public Services (PS) Zoning District includes houses of worship and religious facilities, arts, and cultural facilities. (ROI 5) Restaurants are not listed as permitted uses within the PS Zone. (ROI 5)

In May 2022, the Village Council selected Thomas Yates to serve as Village Manager and he began his employment in August 2022. (ROI 10) Dan Gulizio was hired as the Village Director of Planning by the previous Village Manager. (ROI 12) Subsequently, Jennifer DeBoisbriand

was hired as a Planning Director and the office was restructured wherein Gulizio's title was changed to Director of Development and Planning. (ROI 12)

Yates advised that he and Gulizio worked closely trying to balance the existing Code with the present-day concerns of growth and development, redevelopment, and environmental protection. (ROI 13) He advised challenges arose when trying to apply the current code while seeking ways to improve the Code for future use under the comprehensive plan. (ROI 13)

DeBoisbriand advised that changing established zoning ordinances is a significant process. (ROI 15) The Code outlines the procedures necessary to seek a text amendment or zoning map change. (ROI 6) Any amendment must be consistent with the comprehensive plan. (ROI 6)

DeBoisbriand advised that either process begins with an application to the Planning Office. (ROI 15) The application is reviewed by the Planning Office and other Village officials and then submitted to the Local Planning Agency and Village Council for a first and second reading with public comment. (ROI 15) Finally, any proposed change is sent to the State of Florida Department of Commerce for approval and becomes final following a 30-day appeal period. (ROI 15) The process typically takes a minimum of six months. (ROI 15) While some minor conditional use requests may be approved at staff level, a major conditional use must go before the Council for approval. (ROI 16)

In 2020, Respondent was elected to the Village Council.<sup>1</sup> (ROI 9) Respondent wanted to open a dinner theater and identified property located at 83250 Overseas Highway (property) as a

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<sup>1</sup> Complaint alleges that Respondent attempted to purchase church property within Village limits for the purpose of converting it to a dinner theater. The location of the church property was allegedly not zoned for a dinner theater. The method for amending the applicable zoning laws to permit the dinner theater would allegedly require a lengthy and expensive process which would include public input. Allegedly, the current political climate in the Village would not be favorable to such an amendment. The complaint alleges that Respondent was secretly working with a Village staff member, Dan Gulizio, to change the allowed uses of the property. Respondent allegedly met with Gulizio outside of Village Hall several times. When Gulizio was terminated by the Village Manager before the zoning change could be accomplished, Respondent allegedly approached other staff members. Respondent allegedly instructed a different staff member to administratively change the zoning uses of the property he was purchasing. Respondent allegedly

potential location. (ROI 19, 24) The property is owned by the Island Community Church, Inc. (ROI 7) It was once a movie theater before being purchased by the church in 1974. (ROI 7) The property is zoned as PS with a PS Future Land Use Map. (ROI 8) On January 3, 2023, Respondent signed a contract to purchase the Overseas property with the Church. (ROI 19)

Yates advised that the PS zoning designation does not permit a dinner theater, alcohol service, and other things that Respondent wanted. (ROI 21) Yates further advised that Respondent regularly met with him and Gulizio to seek an administrative route to change the zoning of the property. (ROI 21) Having advised Respondent that there was no administrative route, they informed him that he needed to go through the amendment process. (ROI 21) Respondent was informed that any proposed zoning changes would take six months. (ROI 25)

Respondent's real estate agent, Roseanne Dully, confirmed that Respondent needed a zoning change to accomplish his plan. (ROI 18) Dully advised that Respondent worked with Gulizio who advised that the process would take six months. (ROI 18) She advised that the church approved a six-month extension of the contract to accommodate the process. (ROI 18)

Gulizio advised that his meetings with Respondent were neither covert nor secretive. (ROI 22) Respondent advised that Gulizio would stop by his house for a social visit and on at least occasion, they discussed the zoning. (ROI 23)

Gulizio advised that at no time did Respondent ask him or pressure him to circumvent the process. (ROI 26) Gulizio denied ever discussing Respondent's specific request with other Council members or that Respondent asked him to do so. (ROI 27) Respondent denied asking

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approached the new Director of Planning, Jennifer DeBoisbriand, and instructed her to poll the other four Council members and explain that the zoning change was inconsequential and that they should vote to approve it. One staff member allegedly reported this matter to the Village Manager, Ted Yates. Respondent allegedly instructed Yates to exclude the zoning change from the Village meeting agenda, but Yates allegedly refused. Respondent allegedly threatened to fire Yates in response. Later, during a Village Council meeting on July 6<sup>th</sup>, Respondent allegedly added an agenda item to terminate Yates' contract.

Gulizio to avoid the process for a zoning code change and advised that it was Gulizio who offered to speak with the other Council members about his zoning change. (ROI 28)

Respondent and Dr. Joanna Johannes attempted to purchase the property together, but Respondent was not approved for his portion of the loan. (ROI 19, 20) They attempted to negotiate where Johannes would purchase the property and Respondent lease a portion of it. (ROI 19, 20) However, they eventually parted ways when they did not come to terms. (ROI 19, 20)

Complainant alleges that Respondent then approached John Cioffi about investing in the property. (ROI 29) Cioffi advised that he has known Respondent for 32 years and considers him a friend.<sup>2</sup> (ROI 32) Cioffi advised that after the negotiations broke down between Respondent and Johannes, Respondent approached several investors, including Cioffi, to join him in purchasing the property. (ROI 32) Cioffi advised Respondent asked him to purchase the property and then rent a portion of it for him to open a dinner theater. (ROI 32) Cioffi had concerns about the zoning change as it can be arduous and time consuming. (ROI 31) He expressed the concerns to Respondent who replied that Cioffi did not need to worry because he was working with Gulizio and that Gulizio was going to make the needed change. (ROI 32)

Cioffi advised that there was talk that Yates was considering releasing Gulizio from his employment. (ROI 34) Cioffi advised that Respondent reassured him that the zoning change would be approved and that he (Respondent) informed Yates that he (Yates) would be fired if he terminated Gulizio. (ROI 34)

Respondent denied any personal or social connection to Cioffi but acknowledged that he once visited Cioffi's home. (ROI 30) Respondent advised that it was Cioffi who approached him about purchasing the property and leasing a portion to him. (ROI 30) Respondent advised that

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<sup>2</sup> Cioffi advised that Respondent has an open invitation to join his family for Thanksgiving dinner which he often does. (ROI 32)

Cioffi initiated a discussion with him about rezoning the property because Respondent served on the Council (ROI 30) Respondent denied having inferred or stated to Cioffi that he was working Gulizio or that Gulizio was going to take care of rezoning the property. (ROI 30, 33)

At an April 13, 2023 Council meeting, Respondent reminded the Council that Yates' contract required a six-month review. (ROI 36) Council member Elizabeth Jolin and Respondent submitted less than stellar reviews on written evaluations for Yates. (ROI 37) However, Respondent advised that his evaluation form did not reflect his view of Yates' actual performance, rather, the low marks were a statement to the form itself and not an actual evaluation of Yates. (ROI 39)

On May 30, 2023, Yates issued a letter of termination to Gulizio. (ROI 40, Exhibit G)

On June 20 2023, Respondent asked DeBoisbriand to meet with him and the Village attorney. (ROI 43) Respondent handed DeBoisbriand a document that Gulizio had prepared for him. (ROI 43, 47, Exhibit E) DeBoisbriand reviewed the document and being unsure of Respondent's expectations, she described the zoning change process to him. (ROI 43) She advised that Respondent stated, "Dan [Gulizio] was just going to do it [Presumably, Respondent meant that Gulizio was going to change the zone administratively as if it were a minor change]." (ROI 43) DeBoisbriand advised that she replied to Respondent that she did not know what Dan [Gulizio] may have told him, but there is a process that must be followed. (ROI 43) She advised that Respondent was concerned because he had a contract on the property and his deadline to complete the purchase was approaching. (ROI 43)

DeBoisbriand advised that Respondent's request would have constituted both a text amendment and a zoning map change. (ROI 44) DeBoisbriand advised that being aware of

Gulizio's work ethic and his concern for following established procedures, she did not find it plausible that he (Gulizio) would have processed the change administratively. (ROI 44)

Respondent told his real estate agent, Dully, that he needed another extension on the purchase contract to complete the zoning change. (ROI 45) Dully informed Respondent she would need to provide a rationale to the Church Board to request a second extension along with a realistic and reasonable timeline for closing. (ROI 45)

Three days after the June 20<sup>th</sup> meeting, Respondent requested DeBoisbriand meet with him and his real estate agent, Dully. (ROI 42, 45, 46) They discussed the timeline for the rezoning process and the general consensus is that DeBoisbriand advised the process could take six to nine weeks. (ROI 45, 46) DeBoisbriand advised that Respondent commented that Gulizio planned to poll the Council. (ROI 46) DeBoisbriand asked Respondent if he was asking her to encourage other Council members to approve his proposed zoning change to which Respondent responded in the affirmative. (ROI 46) DeBoisbriand and Dully both advised that Respondent asked her (DeBoisbriand) to poll the Council. (ROI 45, 46) DeBoisbriand informed Yates of her conversation with Respondent and told him (Yates) that she would not poll the Council. (ROI 46)

On June 14, 2023, Village Labor and Employment Counsel Alison Smith addressed a memo to Council member Jolin outlining the implications of terminating Yates' employment contract. (ROI 50) The memo indicates that Respondent and Jolin had questions concerning Yates' existing contract. (ROI 50, Exhibit H)

On July 6, 2023, Council member Gregg requested the addition of a discussion regarding Yates' contract to the agenda for the July 6<sup>th</sup> meeting. (ROI 51) During the meeting, Gregg questioned Village staff about Yates and they spoke of his consistency, leadership, and his concern

for them. (ROI 51) There was general discussion between the Council members concerning their relationships with Yates. (ROI 55, 56)

During that meeting, Respondent spoke of his displeasure with Yates' termination of Gulizio. (ROI 52) In addition, Respondent stated he did not believe Yates was truly prepared to perform the duties required of the position. (ROI 52) However, he acknowledged that a few weeks prior to Gulizio's termination, he and Yates discussed several issues and he told Yates, "I want you to know, when it comes down to me choosing you or Dan [Gulizio], I'm going with Dan." (ROI 55)

On July 10, 2023, Respondent requested a "Special Call Meeting" for July 17, 2023 to discuss Yates' contract and another topic. (ROI 57, Exhibit H-14) While initially denying to the Commission's investigator that he requested a special meeting, Respondent eventually provided the email where he requested the meeting. (ROI 58)

On July 11, 2023, Respondent's contract with the church was canceled after it denied another extension of his contract. (ROI 20, 59)

The special meeting was held on July 17, 2023. (ROI 62) Council member Gregg moved to extend Yates' contract for one year with Mayor Joseph Pinder<sup>3</sup> seconding the motion. (ROI 62) The motion failed with Respondent voting against it. (ROI 62) Council member Jolin moved to approve the Resolution to not renew Yates' contract and Respondent seconded the motion. (ROI 62, 71)

Council member Mark Gregg asked the three Council members opposed to Yates' renewal, including Respondent, to state their reason for their opposition. (ROI 62) With no reasons

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<sup>3</sup> During this meeting, Mayor Pinder advised that he received a call on the Tuesday following Memorial Day weekend informing him that Yates contacted the vice mayor attempting to arrange a special call emergency meeting to terminate Yates. (ROI 34, 67) This was while Mayor Pinder and Council member Gregg were both out of town and Yates was attending a manager's conference (ROI 67)

provided, Council member Gregg asked the Council members if their decisions had anything to do with Yates' decision to terminate Gulizio. (ROI 62)

Respondent responded that it was not fair to Gulizio that he was not provided reason(s) for his termination. (ROI 63) Respondent did not articulate his rationale for not renewing Yates' contract, stating only, "You do not know what I know. It's not personal, it's a decision on facts." (ROI 63) Council member Gregg asked Respondent if he threatened Yates with the loss of his job if he fired Gulizio. (ROI 64) Respondent replied that he never threatened Yates; however, he again acknowledged that a few weeks prior to Gulizio's termination, he and Yates discussed several issues and he told Yates, "I want you to know, when it comes down to me choosing you or Dan [Gulizio], I'm going with Dan." (ROI 64) Council member Gregg asked Respondent what he meant by the comment and Respondent replied that he did not want to "litigate all this stuff at the meeting." (ROI 64)

When asked by Council member Gregg if Respondent threatened him with his job if he terminated Gulizio, Yates confirmed Respondent's description of their discussion and advised that he considered Respondent's comment as a threat to his employment. (ROI 65) Yet, Respondent denied having sought to terminate Yates or not renew Yates' contract because Yates terminated Gulizio. (ROI 35, 66)

During the meeting, Council member Gregg gave his perspective of the background of Respondent's rezoning issue. (ROI 68) He advised there was no application made, only a discussion, and when time was running out for Respondent to purchase the property, and not wanting to follow the process without some assurance the Council would approve it, the Respondent asked staff to poll the Council to see how they would vote on his requested amendment. (ROI 68)

Respondent's response was that when he had the opportunity to extend his real estate contract, he needed to know how much time it would take to obtain the zoning change. (ROI 69) He advised that as a part of his meeting with DeBoisbriand, there was discussion of her polling the Council members. (ROI 69) He stated he had no reason to believe that it was "illegal" for her to poll the Council members and that he never followed up with her on the request. (ROI 69)

When individually asked by Mayor Pinder and Council member Gregg if Respondent asked her to poll the Council, DeBoisbriand responded, "Yes" respectively. (ROI 70) Mayor Pinder asked Respondent if he asked DeBoisbriand to poll the Commission and Respondent stated he absolutely did not. (ROI 70) It should be noted that Dully, Respondent's real estate, confirmed that he did make the request to poll the Council members. (ROI 45)

Council member Jolin moved to approve the Resolution to not renew Yates' contract. (ROI 71) Respondent seconded the motion and it passed three to two with Council member Gregg and Mayor Pinder dissenting. (ROI 71) Yates employment ended in August 2023. (ROI 10)

While it is alleged that Respondent conspired with staff, the general consensus is that the staff did nothing out of bounds for their positions. However, Respondent did attempt to manipulate the zoning process by requesting that DeBoisbriand poll the Council members to determine if they were receptive to rezoning the property in order to fulfill his quest to open a theater. Respondent's desperation to purchase the property and the zoning change by a date certain is evident by his actions.<sup>4</sup>

Furthermore, Respondent used his position by threatening Yates to keep Gulizio as he believed that Gulizio would push the rezoning of the property. When Gulizio was terminated by Yates, Respondent then used his position to retaliate against Yates and succeeded.

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<sup>4</sup> Contrary to the allegation, Respondent did not request an item related to his zoning change request be removed from an agenda. (ROI 48, 49)

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8(h)(2), Florida Constitution.

### **ALLEGATION TWO**

Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by using his position to benefit himself and/or another.

### **APPLICABLE LAW**

Section 112.313(6), Florida Statutes, provides as follows:

**MISUSE OF PUBLIC POSITION.** No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31.

The term “corruptly” is defined by Section 112.312(9), Florida Statutes, as follows:

“Corruptly” means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

In order to establish a violation of Section 112.313(6), Florida Statutes, the following elements must be proved:

1. Respondent must have been a public officer or employee.
2. Respondent must have:
  - a) used or attempted to use his or her official position or any property or resources within his or her trust,  
or
  - b) performed his or her official duties.
3. Respondent’s actions must have been taken to secure a

special privilege, benefit or exemption for him- or herself or others.

4. Respondent must have acted corruptly, that is, with wrongful intent and for the purpose of benefiting him- or herself or another person from some act or omission which was inconsistent with the proper performance of public duties.

### ANALYSIS

The underlying facts and circumstances relating to this allegation are contained above in Allegation One. See the Analysis in Allegation One.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes.

### RECOMMENDATION

It is my recommendation that:

1. There is probable cause to believe that Respondent violated Article II, Section 8(h)(2), Florida Constitution, by using his position to obtain a disproportionate benefit for himself.
2. There is probable cause to believe that Respondent violated Section 112.313(6) Florida Statutes, by using his position to benefit himself and/or another.

Respectfully submitted this 22<sup>nd</sup> day of December, 2023.

  
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