City Council
The City of Milton
6738 Dixon St.
Milton, FL 32572
c/o Mayor Heather Lindsay hlindsay@miltonfl.org
Randy Jorgenson rjorgenson@miltonfl.org

Re: Request for Legal opinions related to Main Street Milton

Dear Council Members:

Per your direction, we have reviewed the status of several legal questions tasked at the Executive Committee meeting, Monday February 4, 2019. The issues tasked for our review and report as we understood them are stated below. A short answer on each point is provided as summary, and the issues involved are then discussed in more detail further below.

Summary

1. Whether and to what scope the City Clerk’s duties may include gathering and recordkeeping of the Downtown Community Redevelopment Agency (CRA-I) funding expenditures, generally, and any relevant backup detail, e.g. – invoices or other records of expenditures by Main Street Milton (“MSM”) to or on behalf of its ultimate grantees or others.

   – No, the City Clerk’s legal duties do not currently include this tasking within their scope.

2. Whether City Council or other authoritative policies presently govern MSM board of directors conflicts of interest in regard to grants and expenditures within the limits of the law.

   – Yes, MSM is understood to have the required registration with the Dept. of Agriculture with the required reporting of its conflicts policy under Chapter 496, Fla. Stat., and its bylaws policy on conflicts is in conformity with the law for such conflicts of interest
standards pursuant to Chapter 617, Fla. Stat., governing director conflicts of interest for non-profit corporations.

3. Whether decision on certain grants that involved potentially interested directors of MSM were conducted in accordance with the lawful conflict policies.

-- Yes, of the three such grant decisions we have been advised of, they all appear to have conformed to the relevant conflicts policies under the MSM bylaws policy in force pursuant to Chapter 496, and pursuant to the general requirements for non-profit directors under Chapter 617.

Discussion

1. The City Clerk’s office is established by the City Charter with limited express duties, and which are not relevant to this question (attendance at Council meetings and countersigning of checks). The remainder of the Clerk’s duties are provided in the Charter to be established by the Council by ordinance.

Under Section 2-202 of the Code of Ordinances, the City Clerk is provide a scope of duties regarding elections and vacancies, but no other duties are set forth in regard to the position in this division of the Code governing the City Clerk’s position and duties. There are ad hoc recordkeeping and related functions appearing in various other places, such as addressing certain services, records or actions, personnel and tax withholding, etc. However, I find no other relevant provision in the Code establishing affirmative financial recordkeeping duties that would necessarily reach the CRA expenditures recordkeeping needs. The Clerk does have certain detailed financial recordkeeping and discretionary duties set forth by ordinance, but chiefly in regard to the City’s investment plan pursuant to Division 4 of Article VII governing Finance, in Sections 2-691 passim to 2-708.

There is no direction in the Community Redevelopment Act (§163.330, et seq., Fla. Stat.) compelling any particular office or scope of duties for relevant record keeping. Similarly, there is nothing in the City of Milton CRA-I Community Redevelopment Plan that directs the Clerk or any other officer to some more specific scope of recordkeeping duties in that regard.

It appears that the remainder of the Clerk’s regular duties, which appear to be substantial and do include broad recordkeeping tasks, as well as more particular recordkeeping tasks on matters such as CRA grants, may have been established by customary expectations or merely administrative tasking. Such tasks do not appear to be pursuant to duties imposed by the relevant laws governing the position, nor establish any standards for any records to be sought, gathered or kept.

2. We have reviewed the MSM bylaws and the relevant statutes pursuant Chapter 496 and Chapter 617 governing non-profit corporations. In response to this question, we also understand the following as premised facts provided by City staff: that MSM has a current and
valid registration with the Department of Agriculture; that there have been MSM directors or officers that had a direct or indirect interest in certain applications that were approved by MSM for funding under City grants; and that certain details of three of those events can be considered as illustrative of the present concern driving the question posed. I will address those three scenarios in concept only. We have not investigated the facts of the three illustrative events independently, and cannot offer a firm opinion as to the compliance of the actual events to the extent that they may vary in any important detail.

MSM is in compliance with the legal duties governing its policies for conflicts of interest since it has a compliant conflicts policy pursuant to Chapter 617 and a valid registration complying with Chapter 496. Chapter 496 does not impose substantive conflicts requirements, it merely requires they be reported as part of the registration with the Department. If the registration is valid and current, then it may presumed, absent other facts, that the registration is complete and includes the filing of the MSM bylaws conflicts policy as detailed by §496.4055, Fla. Stat.

MSM’s bylaws policy on conflicts requires as follows:

“No Director or Officer of the organization shall engage in any course of conduct which may result in a conflict inconsistent with the best interests of the organization. Upon recognition of a conflict of interest, any member, Director, Officer or Employee of MSM is obligated to disclose the conflict to the Board of Directors immediately and abstain from any participation, discussion, voting or other activity associated with the conflicted issue.”

This policy is in compliance with Chapter 617, Fla. Stat., and more particularly §617.0832, governing director conflicts of interest, which provides in pertinent part:

“(1) ... No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;

(b) The fact of such relationship or interest is disclosed or known to the members entitled to vote on such contract or transaction, if any, and they authorize, approve, or ratify it by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.
(2) For purposes of paragraph (1)(a) only, a conflict-of-interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no relationship or interest in the transaction described in subsection (1)...

Chapter 617 does not impose any similar conflicts restrictions on officers of the corporation, so MSM’s bylaws policy is more expansive in scope than the legal requirements by making both directors and officers subject to the same conflicts policy. In addition, the restrictions themselves in the MSM conflicts policy on directors are more stringent than those required by general law. For example, an interested director under the MSM provision must abstain from “discussion, voting and other activity involving the conflicted issues.” The Chapter 617 restrictions merely require that the conflict itself be disclosed or otherwise known to the non-interested members, and then approved or ratified by a majority of the board members other than the interested director. MSM’s conflicts policy is thus more than compliant with the general law.

3. We were also asked to evaluate three scenarios that may reflect actual events of decision that might concern compliance with the law on the conflicts policy. The reported facts illustrating these scenarios gleaned from City staff are varied and involve both directors and officers of MSM. Suffice it to say, in the interest of discretion when giving opinion on facts we have not investigated that, as to each of these three events, I will only address the bare factors that pertain to the conflicts policies in question. We understand that in all three cases the potentially interested director or officer recused from the matter being considered. Recusal more than satisfies the conflicts policy imposed by law under §617.0832, Fla. Stat. Assuming without deciding that the MSM bylaws conflicts standard might be considered a general legal obligation of the directors/officers by virtue of the registration required by §496.4055, that more stringent conflicts standard is satisfied by the recusals as well.

If there are other questions that arise from these points, we are happy to address them.

Cordially,

Moore, Hill & Westmoreland, P.A.

[Signature]

George R. Mead, II

GRM/hbm
cc: Dewitt Nobles, City Manager, City Clerk
cityclerk@mymiltonflorida.com