

*Honesty - Integrity - Character*

# *Amended Agenda*

August 3, 2017 – 1:30 p.m.  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

## Meeting will begin at 1:30pm

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### **Palm Beach County**

#### **Commission on Ethics**

300 North Dixie Highway  
West Palm Beach, FL 33401

561.355.1915

FAX: 561.355.1904

**Hotline: 877.766.5920**

**E-mail: [ethics@pbcgov.org](mailto:ethics@pbcgov.org)**

#### **Commissioners**

Michael S. Kridel, Chair

Clevis Headley, Vice Chair

Vacant

Judy M. Pierman

Sarah L. Shullman

#### **Executive Director**

Mark E. Bannon

#### **Intake and Compliance Manager**

Gina A. Levesque

#### **General Counsel**

Christie E. Kelley

#### **Chief Investigator**

Anthony C. Bennett

#### **Investigator**

Abigail Irizarry

- I. Swearing in new commissioner by Chief Judge Krista Marx
- II. Call to Order
- III. Roll Call
- IV. Introductory Remarks
- V. Approval of Minutes from July 6, 2017
- VI. Status Conference C16-011 (Commissioner Shullman presiding)
- VII. Review of Evidentiary Standards
- VIII. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 17-014
  - b. RQO 17-016
- IX. Items Pulled from Consent Agenda
  - a.
- X. Proposed Advisory Opinions
  - a. RQO 17-015
- XI. Executive Director Comments
- XII. Commission Comments
- XIII. Public Comments
- XIV. Adjournment

If a person decides to appeal any decision made by this Commission with respect to any matter considered at this meeting or hearing, (s)he will need a record of the proceedings, and that, for such purpose, (s)he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.



**OFFICIAL MEETING MINUTES  
OF THE  
PALM BEACH COUNTY COMMISSION ON ETHICS  
PALM BEACH COUNTY, FLORIDA**

**JULY 6, 2017**

**THURSDAY  
1:33 P.M.**

**COMMISSION CHAMBERS  
GOVERNMENTAL CENTER**

**I. CALL TO ORDER**

**II. ROLL CALL**

**MEMBERS:**

Michael S. Kridel, Chair  
Clevis Headley, Vice Chair - Absent  
Judy M. Pierman  
Sarah L. Shullman

**STAFF:**

Mark E. Bannon, Commission on Ethics (COE) Executive Director  
Anthony C. Bennett, COE Chief Investigator  
Abigail Irizarry, COE Investigator I  
Christie E. Kelley, Esq., COE General Counsel  
Gina A. Levesque, COE Intake and Compliance Manager

**ADMINISTRATIVE STAFF:**

Julie Burns, Deputy Clerk, Clerk & Comptroller's Office

**III. INTRODUCTORY REMARKS**

Chair Michael Kridel said that Commissioner Michael Loffredo had passed away. He stated that he would turn the meeting over to Commissioner Sarah Shullman, who was the presiding commissioner for C16-011.

**IV. SCHEDULING CONFERENCE RE: C16-011 (SARAH SHULLMAN, PRESIDING COMMISSIONER)**

John Cleary, Volunteer Advocate, said that he had provided the respondent's counsel with his phone number, fax number, and email address regarding today's scheduling conference.

Mark E. Bannon, COE Executive Director, said that the respondent and his counsel were properly noticed.

Commissioner Shullman stated that the respondent and his counsel could review the minutes of today's conference. She said that one day was reserved for the final hearing and that a second day could be determined as the hearing progressed.

Mr. Cleary said that one day would be sufficient for the final hearing.

Commissioner Shullman said that the final hearing was scheduled for August 9, 2017 at 10:00 a.m. She stated that witness and exhibit lists should be exchanged between the parties at least 10 days prior to the final hearing.

Mr. Cleary said that:

- He did not anticipate any motions.
- He may have 2 to 3 witnesses, and the respondent may testify.
- Direct examination of his witnesses may take 40 minutes.

Mr. Bannon suggested setting a date when witness and exhibit lists should be exchanged between both parties and when pretrial motions should be submitted to the COE if they were not previously provided.

Commissioner Shullman said that July 14, 2017 should be sufficient time to exchange witness and exhibit lists and to submit pretrial motions to staff.

Mr. Cleary stated that he would reach out to the respondent's counsel to inform him of his availability.

Mr. Bannon suggested that the submission of pretrial motions and the exchange of witness and exhibit lists by July 14 should have a 5:00 p.m. deadline.

#### **IV. – CONTINUED**

Gina Levesque, COE Intake and Compliance Manager, clarified that the final hearing was set for August 7, 2017 at 8:30 a.m. and that she was in communication with the respondent's counsel.

Commissioner Shullman said that:

- July 14 by 5:00 p.m. should provide enough time to exchange witness and exhibit lists and submit pretrial motions to staff.
- Ms. Levesque should inform her if the respondent's counsel could not meet the deadline.
- The final hearing would be held on August 7, 2017 at 9:00 a.m.
- Hearing procedures and evidentiary standards were contained in the COE's ordinance.

#### **V. APPROVAL OF MINUTES FROM JUNE 1, 2017**

**MOTION to approve the June 1, 2017 minutes. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 3-0. Clevis Headley absent.**

#### **VI. REVIEW OF EVIDENTIARY STANDARDS**

Chair Kridel said that item VI. was deleted from the agenda until a full COE was seated.

Commissioner Shullman requested that a discussion to clarify the difference between misuse of position and corrupt misuse of position be scheduled for the next COE meeting. She added that clarifying the difference and including recent case law or opinions from the State COE would be helpful before the C16-011 final hearing took place.

#### **RECESS**

**At 1:48 p.m., the chair declared the meeting recessed for an executive session.**

**VII. EXECUTIVE SESSION**

**VII.a. C17-003**

**VII.b. C17-004**

**VII.c. C17-005**

**VII.d. C17-006**

**VII.e. C17-007**

**VII.f. C17-008**

(CLERK'S NOTE: See page 5 for continuation of item VII.)

**RECONVENE**

**At 2:52 p.m., the meeting reconvened with Chair Kridel, and Commissioners Judy Pierman, and Sarah Shullman present.**

(CLERK'S NOTE: Item VIII. was presented at this time.)

**VIII. PROCESSED ADVISORY OPINIONS (CONSENT AGENDA)**

**VIII.a. Request for Opinion (RQO) 17-010**

**VIII.b. RQO 17-012**

**VIII.c. RQO 17-013**

**MOTION to approve the consent agenda. Motion by Judy Pierman, seconded by Sarah Shullman, and carried 3-0. Clevis Headley absent.**

(This space intentionally left blank.)

(CLERK'S NOTE: Item VII. was continued at this time.)

Chair Kridel read the following Public Report and Final Order of Dismissal for C17-004, C17-006, and C17-008 as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaints on May 31, 2017, alleging that Respondent, Rena Blades, a principal of lobbyists who lobbied Palm Beach County, violated §2-444(a)(2) of the Palm Beach County Code of Ethics by giving, directly or indirectly, gifts with a value greater than \$100 in the aggregate for the calendar year to persons who she knew were employees of the county.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On July 6, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate and the Respondent, the Commission determined that the violations were unintentional, inadvertent or insubstantial and issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Therefore it is:

ORDERED AND ADJUDGED that the complaints against Respondent, Rena Blades, are hereby DISMISSED and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 6, 2017.

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal.)

## VII. – CONTINUED

Chair Kridel read the following Public Report and Final Order of Dismissal for C17-003 as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on April 5, 2017, alleging that Respondent, Dawn Wynn, a Palm Beach County employee, violated §2-444(a)(1) of the Palm Beach County Code of Ethics by knowingly accepting a gift from a person that she knew, or should have known, was a Principal of a lobbyist who lobbied Palm Beach County.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County code of Ethics. On July 6, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate, the Commission determined that the violation was unintentional, inadvertent, or insubstantial and issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Therefore it is:

ORDERED AND ADJUDGED that the Complaint against Respondent, Dawn Wynn, is hereby DISMISSED and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 6, 2017.

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal.)



## VII. – CONTINUED

Chair Kridel read the following Public Report and Final Order of Dismissal for C17-005 as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on April 5, 2017, alleging that Respondent, Carol Meneely, a Palm Beach County employee, violated §2-444(a)(1) of the Palm Beach County Code of Ethics by knowingly accepting a gift from a person that she knew, or should have known, was a Principal of a lobbyist who lobbied Palm Beach County.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On July 6, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate, the Commission determined that the violation was unintentional, inadvertent, or insubstantial and issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Carol Meneely, is hereby DISMISSED and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 6, 2017.

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal.)

## VII. – CONTINUED

Chair Kridel read the following Public Report and Final Order of Dismissal for C17-007 as discussed during the executive session:

Complainant, Mark E. Bannon, Executive Director, Palm Beach County Commission on Ethics (COE), filed the above referenced complaint on April 5, 2017, alleging that Respondent, Ernest Pena-Roque, a Palm Beach County employee, violated §2-444(a)(1) of the Palm Beach County Code of Ethics by knowingly accepting a gift from a person that he knew, or should have known, was a Principal of a lobbyist who lobbied Palm Beach County.

Pursuant to §2-258(a) of the Palm Beach County Commission on Ethics Ordinance, the COE is empowered to enforce the Palm Beach County Code of Ethics. On July 6, 2017, the Commission conducted a hearing and reviewed the Memorandum of Inquiry, the Report of Investigation, and the Probable Cause Recommendation submitted by the COE Advocate. After an oral statement by the Advocate, the Commission determined that the violation was unintentional, inadvertent, or insubstantial and issued a Letter of Instruction pursuant to Section 2-260.3 of the Commission on Ethics Ordinance.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Ernest Pena-Roque, is hereby DISMISSED and a Letter of Instruction is issued.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on July 6, 2017.

By: Michael S. Kridel, Chair

(CLERK'S NOTE: The clerk added the language as printed in the Public Report and Final Order of Dismissal.)

**IX. ITEMS PULLED FROM CONSENT AGENDA – None**

**X. EXECUTIVE DIRECTOR COMMENTS**

**X.A.**

**DISCUSSED:** Condolences.

Mr. Bannon said that he and his staff offered condolences to the family and friends of Commissioner Michael Loffredo, who passed away.

**X.B.**

**DISCUSSED:** COE Training and Municipal Meetings.

Mr. Bannon said that municipalities continued to receive COE ethics training and that staff continued to attend municipal meetings.

**X.C.**

**DISCUSSED:** COE Open Seat.

Mr. Bannon said that the Palm Beach County Association of Chiefs of Police selected a replacement for the COE's open seat, but he had not received official notification yet.

**XI. COMMISSION COMMENTS**

**XI.A.**

**DISCUSSED:** Condolences.

Commissioner Pierman said that she was impressed by how many people whose lives were touched by Commissioner Loffredo.

**XII. PUBLIC COMMENTS – None**

(This space intentionally left blank.)

**XIII. ADJOURNMENT**

**At 3:04 p.m., the chair declared the meeting adjourned.**

APPROVED:

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Chair/Vice Chair

The evidentiary standard for the filing of a complaint is legal sufficiency.

- For legal sufficiency to exist:
  - the person must be under the jurisdiction of the Commission on Ethics (COE), and
  - his or her alleged actions, if true, would be a violation of the Code of Ethics.

The evidentiary standard for the probable cause hearing is probable cause.

- Probable cause exists where there are reasonably trustworthy facts and circumstances that warrant proceeding to a final hearing.

The evidentiary standard for the final public hearing is the “clear and convincing evidence” standard.

- Clear and convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue. (Fla. Std. Jury Instr. (Civ.) 405.4.)
  - Clear and convincing evidence requires more proof than a ‘preponderance of the evidence’ (more likely than not) but less than ‘beyond a reasonable doubt.’ It is a medium level standard.
  - The Fourth District Court of Appeal describes the clear and convincing evidence standard as:
    - [C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witness must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.”  
Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4<sup>th</sup> DCA 1983)



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

July 24, 2017

Mr. Jonathan Brown  
5033 Okeechobee Blvd  
West Palm Beach, FL 33417

Re: RQO 17-014  
Conflict of Interest

Dear Mr. Brown,

At the time you requested this advisory opinion, you had received a tentative offer from the County Administrator to become the Director of the Department of Economic Sustainability for Palm Beach County. Once you are formally selected to this position, you would be a county employee and would be subject to the Palm Beach County Code of Ethics (Code). Therefore, although you are not entitled to an advisory opinion because you are not currently under the jurisdiction of the Code, because you are seeking an opinion proactively to avoid any potential issues, the Palm Beach County Commission on Ethics will make an exception and provide an opinion.<sup>1</sup> The opinion rendered is as follows:

**QUESTION:**

Under the Code, does a conflict of interest arise for you, if you are selected as the Director of the Department of Economic Sustainability (DES), where your wife's real estate clients apply for the Home Investment Partnership Program (HOME), members of your church apply for assistance from HOME when the DES administers the HOME program, and you serve on the board of a non-profit organization which has previously receive assistance from the HOME program?

**ANSWER:**

The Code prohibits a public employee from using his official position in any way that would result in a special financial benefit, not shared with similarly situated members of the general public, being given to the persons or entities specified in §2-443(a)(1-7), which include the employee's spouse, his spouse's business or employer, or a non-profit organization where he serves as an officer or director.<sup>2</sup> The Code also prohibits a public employee from using his official position to corruptly secure a special benefit for any person.<sup>3</sup> Corruptly means an official action taken with wrongful intent and for the purpose of receiving any benefit, which is inconsistent with the proper performance of his public duties.<sup>4</sup>

Based on the facts provided, to be eligible for the HOME program, the applicants must meet the criteria established by the U.S. Department of Housing and Urban Development (HUD); DES does not determine the criteria. Your wife's real estate clients and the members of your church are applicants applying for financial assistance through the HOME program and will be receiving the benefit if selected. To be eligible, they must meet the low income requirements and the additional criteria established by HUD in the same manner as any member of the general public. As such, the clients and the members of your church are similarly situated to the general public, and there is no special financial benefit to them. In addition, your wife does not receive any financial benefit from the HOME program or

<sup>1</sup> RQO 14-029

<sup>2</sup> §2-443(a)(1-7)

<sup>3</sup> §2-443(b)

<sup>4</sup> Id.

from her clients applying for the HOME program, which is available to any eligible member of the general public. Further, although you are on the board of directors of Word of Faith Community Development Corporation (WFCDC), which has previously received funding through the HOME program, a conflict of interest would not arise for you because WFCDC will no longer apply for financial assistance from the HOME program.

Because DES does not have discretion on which applicants qualify for financial assistance through the HOME program and because the HOME program is available to any eligible member of the general public, a prohibited conflict of interest would not exist as long as you do not use your official position in any way to give a special financial benefit to any of the persons or entities specified in §2-443(a)(1-7) or use your official position to corruptly secure any kind of special benefit for anyone. Although DES does not have discretion on which applicants qualify for financial assistance through the HOME program, you are reminded that you must ensure that you are not involved in any decision-making and must not attempt to interfere in any way with the decisions regarding the HOME applications.

**FACTS:**

You are currently serving as an uncompensated member of the board of directors for Word of Faith Community Development Corporation (WFCDC). WFCDC is a non-profit organization which focuses on identifying and pursuing projects for community development and improvement to create affordable housing for low and moderate income people and for economic development and revitalization. You were previously employed by WFCDC but ended your employment with the organization about 18 months ago. Your current role with WFCDC is strictly youth mentoring and agency compliance.

WFCDC has previously received funding through HOME, a program that is funded by the U.S. Department of Housing and Urban Development. HOME provides financial assistance to low-income applicants to acquire their first home. WFCDC purchased four properties with HOME funds and currently leases them to low income families. HOME also works with nonprofits to fund activities that build, buy, or rehabilitate affordable housing for rent or home ownership. The Department of Economic Sustainability reviews and administers the HOME program.

To qualify for the HOME program, specific qualifications must be met. The awarding of financial assistance through HOME is not discretionary in nature. All applicants go through an extensive application process and must meet federal income requirements. Any eligible resident of Palm Beach County can apply for assistance from the HOME program.

Your wife is currently employed by WFCDC, serving as its Executive Director. A year ago, WFCDC decided to no longer continue as a housing organization that would compete for funding on county projects and does not plan to apply for funding in the future. She is also a licensed Realtor, and, in the next month or two, she will be submitting clients from WFCDC to the county for the HOME program. She does not receive a fee for submitting the HOME applications on their behalf. You also stated that members of your church have previously applied for the assistance program, and additional members may be applying in the future. You have stated that, in your position as Director of DES, you will not be involved in any way with the application process for the HOME program.

**LEGAL BASIS:**

The legal basis for this opinion is found in §2-443(a) and §2-443(b) of the Code of Ethics:

**Sec. 2-443 Prohibited conduct.**

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
  - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;

- (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
- (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (5) A customer or client of the official or employee's outside employer or business;
- (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
- (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.

(b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "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 an official or employee which is inconsistent with the proper performance of his or her public duties.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon  
Executive Director

CEK/gal





# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

COE Meeting 8/3/2017

Page 15 of 22 Commissioners

Michael S. Kridel, *Chair*

Clevis Headley, *Vice Chair*

Michael F. Loffredo

Judy M. Pierman

Sarah L. Shullman

**Executive Director**

Mark E. Bannon

July 24, 2017

Tonya Davis Johnson, Director  
Office of Small Business Assistance  
50 S. Military Trail, Suite 202  
West Palm Beach, FL 33415

Re: RQO 17-016  
Gift law

Dear Ms. Johnson,

Your request for an advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. The opinion rendered is as follows:

**QUESTION:**

Under the Palm Beach County Code of Ethics (Code), are you allowed to accept a gift when the gift was given by an anonymous source?

**ANSWER:**

The Code prohibits you from accepting a gift with a value over \$100 in the aggregate for the calendar year from any person or entity that you know, "or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies or who sells or leases to the county."<sup>1</sup> Thus, if you know or should know that a gift valued at more than \$100 is from one of these prohibited sources, you cannot accept that gift.

Based on the facts here, you made a reasonable attempt to identify the source of the gift by contacting the retail outlet which refused to provide the information. Although you cannot identify the person making the gift (after making a reasonable effort), it cannot be assumed the gift was from a prohibited source. Therefore, Sec. 2-444(a)(1) is not applicable because the gift cannot be deemed to have come from a "prohibited source" since the source's identity is unknown.

Because the gift of the flowers was not from a prohibited source, you must determine whether you must report the gift on a gift disclosure form. Under the code, employees must complete a gift disclosure form with the COE for any gifts received in excess of \$100.<sup>2</sup> Therefore, if the value of the flowers exceeds \$100, you must report the gift.

Based on the facts provided, the florist who fulfilled the order on behalf of the anonymous gift giver stated that the cost of the order exceeded \$100. Even though another florist lists a price under \$100 for the same type of order, the valuation of the gift should be the actual cost to the gift giver.<sup>3</sup> Thus, the gift of the flowers must be reported on a gift form. Because the gift was from an anonymous source, best practice would be to

<sup>1</sup> §2-444(a)(1)

<sup>2</sup> §2-444(f)

<sup>3</sup> 112.3148(7)(a), Fla. Stat. (2016)

include a short statement as to why you do not know the name of the person making the gift and what steps you took to try and identify the person.

Finally, you can also choose to refuse the gift and, therefore, be under no obligation to report it at all. You have up to 90 days to return an unwanted gift, or, in this case, because you do not know the source of the gift, you can refuse to keep the flowers and dispose of them.

**FACTS:**

You are the Director of the Office of Small Business Assistance. Two dozen long-stemmed roses were delivered to your office in your absence. The card did not identify the gift giver. You contacted the florist (Designs by Guzzardo's), and you were told that the name of the sender could not be released. The florist stated that the value of the arrangement exceeded \$100. On the florist's website, the cost of the two dozen long-stemmed roses is listed as between \$132.95 to \$182.95. You also searched the ProFlowers website and the cost at ProFlowers for the same arrangement is lower than \$100.

**LEGAL BASIS:**

The legal basis for this opinion is found in §2-444(a)(1), §2-444(f), and §2-444(g) of the Code of Ethics:

**Sec. 2-444 Gift law.**

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics.
- (2) *All other officials and employees who are not reporting individuals under state law.*
- b. *All other gifts.* All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration. Food and beverages consumed at a single setting or a meal shall be considered a single gift, and the value of the food and beverage provided at that sitting or

meal shall be considered the value of the gift. In determining the value of the gift, the recipient of the gift may consult, among other sources, Florida Statutes, §112.3148, and the Florida Administrative Code as may be amended.

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M.E.B.', with a long horizontal flourish extending to the right.

Mark E. Bannon  
Executive Director

CEK/gal

July 25, 2017

Commissioner Cheryl Schneider  
Commissioner MB Hague  
Town of Jupiter Planning and Zoning Commission  
210 Military Trail  
Jupiter, FL 33458

Re: RQO 17-015  
Voting Conflict, Conflict of Interest, Corrupt Misuse of Official Position

Dear Commissioners Schneider and Hague,

Your request for advisory opinion to the Palm Beach County Commission on Ethics (COE) has been received and reviewed. Additional information considered for this advisory opinion was provided by attorneys representing 1116 Love Street, LLC (Love Street PUD's limited liability corporate entity), the Jupiter Town Attorney, the Jupiter Town Clerk, and the Florida Division of Corporations. The opinion rendered is as follows:

**QUESTION:**

Does a conflict of interest arise under the Palm Beach County Code of Ethics (the Code) for you as members of the Town of Jupiter Planning and Zoning Commission (PZC) which would prohibit you from participating in discussions or voting on proposed amendments to the approved Planned Unit Development of property located at 116 Love Street (Love Street PUD) when you are named parties in a circuit court action filed against the Town of Jupiter by a not-for-profit citizen's group challenging the procedural correctness of the 2016 project approval by Jupiter Town Council, and you are both also listed as officers or directors of this not-for-profit organization?

**ANSWER:**

Under the Code, as members of the Town of Jupiter PZC, any discussion or vote by you on the proposed amendments to the Love Street PUD now being considered by PZC would not be a violation of either §2-443(a)(1-7), *Misuse of public office or employment*, or §2-443(c), *Disclosure of voting conflicts*, as such actions will not result in a prohibited "special financial benefit" to yourselves or to any other person or entity set forth in §2-443(1-7) of the Code. Additionally, such action would not violate §2-443(b), *Corrupt misuse of official position*.

Code section 2-443(a)(1-7), *Misuse of public office or employment*, prohibits a public official from participating in or voting on any matter that will result in a special financial benefit, not shared with similarly situated members of the general public, being given to any persons or entities specified in §2-443(a)(1-7). Sub-section 2-443(a)(7) includes "A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director."<sup>1</sup> Taking such actions would also violate §2-443(c), *Disclosure of voting conflicts*, for the same reason.<sup>2</sup>

Here, where it is clear that no prohibited special financial benefit would be given to either of you personally by such actions, the relevant question then becomes whether participation in discussions or voting on these proposed amendments to the Love Street PUD would result in a prohibited special financial benefit being given to Citizen Owners of Love Street, Inc. (COOLS), a not-for-profit entity. COOLS' records with the Florida Division of Corporations list both of you as officers or directors of COOLS. Thus, if participation in discussions or voting on the proposed amendments to the Love Street PUD would result in a special financial benefit to COOLS, your actions would be prohibited under §2-443(a)(1-7). However, there is no evidence that these actions will result in any direct or indirect special financial benefit to COOLS. Further, the idea that voting against the proposed amendments to the Love Street

<sup>1</sup> §2-443(a)(1-7)

<sup>2</sup> §2-443(c)

PUD will result in an improper special financial benefit being given to COOLS or to you personally by lowering the cost of the current litigation against the Town, or increasing donations to COOLS, is at best remote and speculative. The proposed amendments to the Love Street PUD are not before any court. The issue now on appeal in Circuit Court is whether the original passage of Resolution 52-16 by the Town Council to allow the Love Street PUD was procedurally correct. The court will determine that issue based on their analysis of the law and the procedure employed in considering this resolution.

Since there is no “special financial benefit” to yourself or to COOLS by your discussion or vote on the proposed amendments to the Love Street PUD, we must next consider whether participation in discussions and/or voting on these proposed amendments would meet the standard of a “corrupt misuse” of your official position. Code section 2-443(b), *Corrupt misuse of official position*, prohibits any action which would “corruptly” secure a special privilege, benefit or exemption for one’s self or for others. The term “corruptly” is defined within this Code section and states in relevant portion: *“For the purposes of this subsection, “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 an official or employee which is inconsistent with the proper performance of his or her public duties.”*<sup>3</sup>

Although your strongly held opinions concerning the overall Love Street PUD are known to be in opposition to the project, actions taken as PZC Commissioners by participating in discussions and/or voting at a public meeting against the proposed amendments to the Love Street PUD project cannot be considered “corrupt” unless these actions are taken with wrongful intent and are inconsistent with the proper performance of your public duties. It should be noted that both of you were placed on the PZC by elected officials who voted in opposition to the Love Street PUD at the June 7, 2016, public hearing where the project was approved by majority vote, 3-2. At this same public hearing, both of you spoke in opposition to the Love Street PUD.

However, there is no evidence that your participation in or voting on the proposed amendments to the Love Street PUD would “secure a special privilege, benefit, or exemption for yourselves or others.” Although you are officers or directors of COOLS and COOLS supports your position of rejecting the proposed amendment changes to the Love Street PUD, COOLS receives no special privilege, benefit or exception by these actions. All residents of the Town of Jupiter are affected in the same manner by such a vote, regardless of their position concerning the correctness of the decision.

Further, the fact that COOLS has filed an action in Circuit Court by writ of certiorari against the Town of Jupiter concerning the procedural correctness of the original approval of the Love Street PUD by Town Council does not mean that COOLS or this action would benefit from either of you participating in or voting on the proposed amendments. Again, should the Court decide to hear this challenge, they will decide the matter based on their own analysis of the procedural issues involved. The proposed “amendments” to the Love Street PUD are not before any court for review, and the Circuit Court’s decision will not be affected whether or not these amendments are eventually approved by the PZC or the Town Council. The fact that an official holds a well-known position on a controversial issue, and takes that position in discussions or votes concerning that issue, does not make those actions a “corrupt misuse” of their official position by being “inconsistent with the proper performance of their public duties,” even where that position is in the minority among voting members.

Concerning your motion and vote on July 11, 2017, to “table” the proposed amendment issue until you had the opportunity to obtain this advisory opinion, such actions are the only course that could be taken under the circumstances, and also do not provide an improper benefit to you or to COOLS. Despite the argument made that this action delays and thus harms the Love Street PUD project overall, that is not the standard used to determine whether an action is prohibited under the Code. The standard to be considered is whether any improper special privilege, benefit or exemption was provided by such actions. Here, it was not.

<sup>3</sup> *Ibid.*

Finally, we take no position regarding whether your participation in discussions and/or voting on the proposed amendments to the Love Street PUD will violate state ethics laws or certain “due process” protections as we are without jurisdiction to comment on such matters. Violations of state ethics laws are matters for the State Commission on Ethics to consider, and issues concerning due process are for a court to determine.

**FACTS:**

This advisory opinion is jointly requested by Cheryl Schneider and M.B. Hague, who serve as appointed Commissioners on the Town of Jupiter Planning and Zoning Commission (PZC). On June 7, 2017, the Jupiter Town Council gave final approval to an application to build a commercial development on an area known as the Love Street Planned Unit Development (Love Street PUD), which lies within the Town of Jupiter at 1116 Love Street. This approval was completed by the adoption of Town Resolution 52-16, which was passed by a majority vote 3-2. At the Town Council Meeting on June 7, 2016, which included a public hearing on the Love Street PUD, both Cheryl Schneider and M.B. Hague spoke against approval of the Love Street PUD. Ms. Hague was already a member of the PZC, having been appointed by Town Council Member Jim Kuretski on June 19, 2016, and then re-appointed by him on June 4, 2017. Cheryl Schneider was appointed to PZC on June 4, 2017 by Council Member Ron Delany. It should be noted that Council Members Kuretski and Delany are the two Council Members who voted against the Love Street PUD application at the Town Council meeting on June 7, 2016.<sup>4</sup> It should also be noted that both H.B. Hague and Cheryl Schneider are officers or directors of a registered non-for-profit entity, Citizen Owners of Love Street, Inc. (COOLS), which was established on August 8, 2016.<sup>5</sup> The establishment of COOLS was just one month after the approval of the Love Street PUD.

Sometime after the approval of the Love Street PUD, the owner of the development property (1116 Love Street, LLC), filed an application for certain “amendments” to Town Resolution 52-16 and the Love Street PUD, which brought this issue back before the PZC. The proposed amendments were scheduled to be discussed at the PZC meeting on July 11, 2017. However, prior to this meeting Commissioners Schneider and Hague received a memorandum from Town Attorney Thomas Baird, informing them they had potential “conflicts of interest” concerning the Love Street PUD amendments. The main “conflict of interest” issues raised by Mr. Baird concern a challenge to your ability to remain “independent and impartial” concerning a vote on the Love Street PUD proposed amendments, and your affiliation Cools and the court action filed by Writ of Certiorari in Palm Beach County Circuit Court (15<sup>th</sup> Florida Judicial Circuit) against the Town of Jupiter, which challenges the procedural validity of the initial passing of Town Resolution 52-16 at the June 7, 2016 Town Meeting.

At the PZC meeting held on July 11, 2017, you both participated and voted on a motion to table the vote on the proposed amendments to the Love Street PUD until you had the opportunity to obtain an advisory opinion on the issues raised by Town Attorney Baird. On July 12, 2017, you sent a request for this advisory opinion via email to COE staff. Staff also received additional information from attorneys representing the development property owner.

**LEGAL BASIS:**

The legal basis for this opinion is found in §2-443(a), §2-443(b), and §2-443(c) of the Code of Ethics:

**Sec. 2-443 Prohibited conduct.**

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
  - (1) Himself or herself;

<sup>4</sup> As recorded in the Minutes of the June 7, 2016 Jupiter Town Council Meeting.

<sup>5</sup> From the Florida Division of Corporations website ([www.sunbiz.com](http://www.sunbiz.com)).

- (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
  - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
  - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
  - (5) A customer or client of the official or employee's outside employer or business;
  - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner— "substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
  - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (b) **Corrupt misuse of official position.** An official or employee shall not use his or her official position or office, or any property or resource which may be within his or her trust, to corruptly secure or attempt to secure a special privilege, benefit, or exemption for himself, herself, or others. For the purposes of this subsection, "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 an official or employee which is inconsistent with the proper performance of his or her public duties.
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted, as well as information obtained from additional sources by COE staff. It is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,

Mark E. Bannon  
Executive Director

MEB/gal

# JONES FOSTER

JOHNSTON & STUBBS, P.A.

## Memo

**To:** Commissioner Schneider  
**From:** Thomas J. Baird, Town Attorney  
**Date:** July 11, 2017  
**Subject:** 1116 Love Street

I am writing to you concerning the potential appearance of a conflict of interest which arises due to you being a Petitioner, President and Director of COOLS in the appeal of the prior approval of the property at 1116 Love Street, known as the Love Street Project.

In my capacity as the attorney for the Planning & Zoning Commission (Commission), I offer to you the following advice as it relates to your performance of your official duties as part of the Commission. However, be advised that I am not your individual attorney. Should you believe it appropriate, you should contact a licensed Florida attorney to discuss whether or not you have a conflict, and your ethical obligations as a member of the Commission.

As a member of the Commission, your participation and voting privileges are subject to § 286.012, Fla. Stat. Pursuant to this statute you are required to vote on applications presented to the Commission **unless there is, or appears to be a possible conflict of interest** under State Statutes, §§ 112.311, 112.313, 112.3143, or § 2-443 of the Palm Beach County Code of Ethics.

Pursuant to § 112.311(1), Fla. Stat., the proper conduct and operation of government requires that public officials be "**independent and impartial**". Pursuant to § 112.311(5), Fla. Stat., it is the policy of the state of Florida that no public officer shall have any interest, financial or otherwise, direct or indirect; or engage in any professional activity which is "in substantial conflict with the proper discharge of [your] duties in the public interest. Pursuant to § 112.311(6), Fla. Stat., it is the policy of the State of Florida that public officers are agents of the people and hold their positions for the benefit of the public." As such, you are expected to observe, when taking official acts "the highest standards of ethics." This policy recognizes that promoting the public interest and maintaining the respect of the people in government is of foremost concern.

Section 112.313(6) and (7), Fla. Stat. are also relevant to your position as a Commissioner. Pursuant to § 112.313(6), Fla. Stat., a public officer shall not attempt to use her position to secure a special benefit for herself, or others. Pursuant to § 112.313



July 11, 2017  
Page 2

(7), Fla. Stat., no public officer shall hold any employment with a business entity<sup>1</sup> which will create a continuing or frequently recurring conflict between her private interest and the performance of her public duties that would impede the full and faithful discharge of her public duties.

The Palm Beach County Code of Ethics (Code) also governs your conduct as a public officer. See Code § 2-442. Pursuant to Code § 2.443(7), your participation and vote on the Love Street Project could reasonably be considered to be prohibited conduct because your vote whether for or against the Love Street Project could be of benefit to COOLS. Pursuant to Code § 2-443(1), as a public officer you are prohibited from using your position to take or fail to take any action, or influence others to take or fail to take any action to benefit a not for profit organization corruptly<sup>2</sup>.

It appears that you have a possible conflict of interest pursuant to the Statutes and the Code sections referenced hereinabove. It is reasonable to believe that as an individual Petitioner and as President and a Director of COOLS, your appeal of the decision of the Town Council concerning the Love Street Project raises the question of whether you can act independently and impartially with respect to the Love Street Project. As a member of the Commission you are required to be free from bias and to objectively evaluate projects which come before the Commission. If you conclude that you do have a conflict, you should obtain the appropriate form from the Town and file it before or at the Commission meeting. Also, you would be precluded from participating in or voting on the Love Street Project.

Cc: Councilor Ron Delaney  
Lori Bonino, Interim Town Manager  
John Sickler, Director, Planning & Zoning

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<sup>1</sup> § 112.312(5) defines business entity as "any corporation ... doing business in the State." While you do not hold employment with COOLS, you are a member of its Board of Directors.

<sup>2</sup> Corrupt misuse of position means using an official position for the purpose of obtaining any benefit which is inconsistent with the proper performance of your public duties.

# JONES FOSTER

JOHNSTON & STUBBS, P.A.

## Memo

**To:** Commissioner Hague  
**From:** Thomas J. Baird, Town Attorney  
**Date:** July 11, 2017  
**Subject:** 1116 Love Street

I am writing to you concerning the potential appearance of a conflict of interest which arises due to you being a Petitioner and Director of COOLS in the appeal of the prior approval of the property at 1116 Love Street, known as the Love Street Project.

In my capacity as the attorney for the Planning & Zoning Commission (Commission), I offer to you the following advice as it relates to your performance of your official duties as part of the Commission. However, be advised that I am not your individual attorney. Should you believe it appropriate, you should contact a licensed Florida attorney to discuss whether or not you have a conflict, and your ethical obligations as a member of the Commission.

As a member of the Commission, your participation and voting privileges are subject to § 286.012, Fla. Stat. Pursuant to this statute you are required to vote on applications presented to the Commission **unless there is, or appears to be a possible conflict of interest** under State Statutes, §§ 112.311, 112.313, 112.3143, or § 2-443 of the Palm Beach County Code of Ethics.

Pursuant to § 112.311(1), Fla. Stat., the proper conduct and operation of government requires that public officials be "**independent and impartial**". Pursuant to § 112.311(5), Fla. Stat., it is the policy of the state of Florida that no public officer shall have any interest, financial or otherwise, direct or indirect; or engage in any professional activity which is "in substantial conflict with the proper discharge of [your] duties in the public interest. Pursuant to § 112.311(6), Fla. Stat., it is the policy of the State of Florida that public officers are agents of the people and hold their positions for the benefit of the public." As such, you are expected to observe, when taking official acts "the highest standards of ethics." This policy recognizes that promoting the public interest and maintaining the respect of the people in government is of foremost concern.

Section 112.313(6) and (7), Fla. Stat. are also relevant to your position as a Commissioner. Pursuant to § 112.313(6), Fla. Stat., a public officer shall not attempt to use her position to secure a special benefit for herself, or others. Pursuant to § 112.313 (7), Fla. Stat., no public officer shall hold any employment with a business entity<sup>1</sup> which

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<sup>1</sup> § 112.312(5) defines business entity as "any corporation ... doing business in the State." While you do not hold employment with COOLS, you are a member of its Board of Directors.

July 11, 2017  
Page 2

will create a continuing or frequently recurring conflict between her private interest and the performance of her public duties that would impede the full and faithful discharge of her public duties.

The Palm Beach County Code of Ethics (Code) also governs your conduct as a public officer. See Code § 2-442. Pursuant to Code § 2.443(7), your participation and vote on the Love Street Project could reasonably be considered to be prohibited conduct because your vote whether for or against the Love Street Project could be of benefit to COOLS. Pursuant to Code § 2-443(1), as a public officer you are prohibited from using your position to take or fail to take any action, or influence others to take or fail to take any action to benefit a not for profit organization corruptly<sup>2</sup>.

It appears that you have a possible conflict of interest pursuant to the Statutes and the Code sections referenced hereinabove. It is reasonable to believe that as an individual Petitioner and as a Director of COOLS, your appeal of the decision of the Town Council concerning the Love Street Project raises the question of whether you can act independently and impartially with respect to the Love Street Project. As a member of the Commission you are required to be free from bias and to objectively evaluate projects which come before the Commission. If you conclude that you do have a conflict, you should obtain the appropriate form from the Town and file it before or at the Commission meeting. Also, you would be precluded from participating in or voting on the Love Street Project.

Cc: Councilor Jim Kuretski  
Lori Bonino, Interim Town Manager  
John Sickler, Director, Planning & Zoning

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<sup>2</sup> Corrupt misuse of position means using an official position for the purpose of obtaining any benefit which is inconsistent with the proper performance of your public duties.



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**JECK, HARRIS, RAYNOR & JONES**  
Attorneys and Counselors at Law

July 12, 2017

Planning & Zoning Commission  
Town of Jupiter  
210 Military Trail  
Jupiter, FL 33458

Re: July 11, 2017, Planning & Zoning Commission ("Commission") Hearing  
Concerning 1116 Love Street ("Property").

Dear Commissioners:

Based on the Town Attorney memoranda to Commissioners Mary Beth Hague and Cheryl Lynn Schneider dated July 11, 2017 and my July 10, 2017 letter to you, the Town and 1116 Love Street, LLC ("Owner") have taken the position that these Commissioners appear to be in violation of multiple state and local ethics and conflicts laws if they participate or vote on matters related to the Owner's application for the proposed project on the Property ("Project"). At last night's Commission meeting, these Commissioners chose to make and second a motion to postpone the hearing on the Project to the next Commission meeting ("Motion"), and participate in and vote on the Motion. Without these Commissioners making the Motion, it may have never arisen. If they had not advocated and voted for it, it would have failed on a vote of 3-2 by disinterested commissioners. With these Commissioners' vote, the Motion carried 4-3.

At the hearing, these Commissioners expressed being unaware of a question of their ethics and conflict in evaluating the Project before receiving the Town Attorney's memoranda and claimed more time was needed to consider what to do. However, it is troublesome that these Commissioners seemed to not have been mindful of their ethical and conflict responsibilities on their own initiative, as it would seem self-evident to a reasonable person that their past conduct and current position as litigants against the Town on this Project would require recusal. Furthermore, we have been told Commissioner Hague was questioned about her conflict as early as June 26, 2017 and Commissioner Hague dismissed the concern. Also, these Commissioners (before being appointed to the Commission) have used social media to accuse other public officials of having disqualifying "conflicts" in voting on matters when the substance of such "conflicts" were far less weighty than in this situation.

These Commissioners were given every opportunity by Commission Chair Patrick Rutter, the Town Attorney, and the example of Commissioner Brett Leone in recusing himself, not to participate in or vote on the Motion. Despite all of this, they chose to initiate, participate in and vote on the Motion to delay the Project.

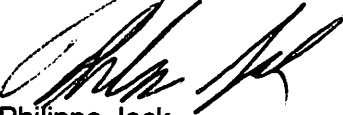
Planning & Zoning Commission  
Town of Jupiter  
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The Motion harms the Project by further delay, causing unnecessary expense for the entire development team and legal counsel to prepare for last night's meeting, having the burden of addressing the ethics and conflict issues, and creating other damages. The Motion improperly furthers these Commissioners' "special private gain or loss", their interests in their litigation, and their expressed bias and impartiality toward the Project in substantial conflict with the proper discharge of their duties in the public interest.

These Commissioners' participation and voting on the Motion is a violation of multiple state and local ethics and conflicts laws previously described. In addition, the Owner's due process rights have been violated by these Commissioners undertaking what is referred to as "corrupt misuse of official position". The Owner, the Town, the Town Council and the public have a right to a fair proceeding free from potential bias and prejudice. The action taken by these Commissioners on this Motion undermines the confidence of the public in public officers carrying out their public duties and is a bad reflection on the Town. The Town's citizens are entitled to receive an independent and impartial hearing on zoning matters.

Therefore the Owner requests that the Commission proceed quickly, by special meeting if possible as allowed under Sec. 24-34(b) of the Town Code, to hold a hearing on the Owner's application and without the participation of these Commissioners. The Commission should not be prevented from carrying out its function timely because two Commissioners purported to claim uncertainty about their compliance with the law despite legal advice to the contrary. Government cannot operate if violators of ethics and conflicts laws can delay hearings by raising questions about their violations.

Very truly yours,



Philippe Jeck

cc: Thomas Baird, Esquire, Town Attorney  
Lori Bonino, Interim Town Manager  
Sally Boylan, Town Clerk and  
Hon. Todd Wodraska, Mayor.

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**JECK, HARRIS, RAYNOR & JONES**  
Attorneys and Counselors at Law

August 1, 2017

Palm Beach County  
Commission on Ethics  
300 North Dixie Highway  
Suite 450  
West Palm Beach, FL 33401

Re: RQO 17-015 Conflict of Interest, Corrupt Misuse of Official Position.

Dear Commissioners:

This firm represents 1116 Love Street, LLC ("Owner") the owner and developer of the property located at 1116 Love Street, Jupiter, Florida ("Property"). The purpose of this letter is to provide the Owner's response to the Palm Beach County Commission on Ethics's ("COE") staff's proposed RQO 17-015.

Background

On June 7, 2016, the Town of Jupiter ("Town") approved the Owner's Small Scale Planned Unit Development ("PUD") on the Property.<sup>1</sup> On July 15, 2016, Cheryl Schneider, M.B. Hague, individually, and the Citizen Owners of Love Street, Inc. ("COOLS", Ms. Schneider and Ms. Hague are directors and Ms. Schneider is president of COOLS) sued the Town in a Petition for Writ of Certiorari in the 15<sup>th</sup> Judicial Circuit ("Petition") challenging the Town's decision to approve the PUD. The proposed RQO 17-015 incorrectly characterizes the Petition as a procedural challenge. On July 10, 2017, the Circuit Court dismissed the Petition for the petitioners' lack of standing, expressly ruling that they made substantive challenges to the PUD, a copy of the Court's order is attached. The petitioners have since filed a motion for an extension of time to file a motion for a rehearing.

The Owner's application to the Town to amend the approved PUD ("Application") was scheduled to be heard at the July 11, 2017, Town's Planning and Zoning Board ("PZB") meeting. Both Ms. Hague and Ms. Schneider are PZB Commissioners. Before the July 11 hearing, the Town's attorney gave Ms. Hague and Ms. Schneider memorandums advising that they had an appearance of a conflict of interest and corruptly using their position regarding the PUD because of suing the Town challenging the PUD. As such, and for reasons of state ethics laws, the Town's attorney recommended that they recuse themselves from participating in and voting at the July 11 hearing regarding the Application. On July 10, 2017, the Owner, through a letter sent by our firm to PZB, also objected to their participation on similar and other grounds, a copy of which is filed with COE. COE's Top Ethics Rule 1 advises public officials to "always...ask first, act later" to identify and resolve any ethics issues. Ms. Hague and Ms. Schneider did not address their ethics issues before taking action to delay the Application from receiving a fair

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<sup>1</sup> The proposed RQO 17-015 has a typographical error stating that this approval was granted on June 7, 2017.

Commission on Ethics  
August 1, 2017  
Page 2

hearing. At the July 11 hearing, they made and seconded a motion that the hearing be delayed until they had a chance to seek a COE advisory opinion on whether they had ethics violations if they participated in the hearing. This motion would not have carried had only the disinterested Commissioners votes been counted and the motion may not have even been made. The Owner objected to Ms. Hague and Ms. Schneider's participation at the hearing and in a second letter dated July 12, 2017, sent by our firm to PZB. The result of their request is the proposed RQO 17-015 advising that Ms. Hague and Ms. Schneider do not have to recuse themselves.

### Response to Proposed RQO 17-015

At its core, the issue before the COE is whether a public official may participate in hearing on a project which is the subject of a lawsuit which that public official is suing to block. On its face, the answer to this issue should undoubtedly be no. The proposed RQO 17-015 misses the forest for the trees and is not correct.

### The Special Financial Benefit is not Speculative and Remote.

The special financial benefit to COOLS, Ms. Hague and Ms. Schneider from opposing the Application is not remote and speculative. The Owner agrees that Ms. Hague and Ms. Schneider as PZB Commissioners are permitted to have opinions concerning the PUD and to express such opinions like the public at large. However, unlike the general public, they have and are (i) raising money from the public for COOLS, (ii) incurring attorney's fees and costs, (iii) causing the Town and the Owner to incur attorney's fees and cost, including delay costs, and (iv) leading the effort to sue the Town to overturn the PUD as individuals and as board members of COOLS. COOLS is actively fundraising to pay the attorney via the Go Fund Me website. These financial impacts are not remote and speculative, but real and quantifiable. The longer the lawsuit goes on, the more the financial impacts will be. Therefore, Ms. Hague, Ms. Schneider, and COOLS have a definite financial interest in delaying the PUD and pursuing the litigation. Ms. Hague and Ms. Schneider participating in the delay vote and any future votes concerning the PUD violate Ethics Code Sec. 2-443(a) since they are securing a special financial benefit.

### Ms. Hague, Ms. Schneider and COOLS will Secure a Special Privilege, Benefit, or Exemption.

Ms. Hague, Ms. Schneider and COOLS have and will secure a special privilege, benefit, or exemption not shared by other Town residents by their delay vote and if they participate in the Application hearing for the reasons stated above. The substance of the Application is the subject matter of the litigation. To say that the prior approval only is the subject of the litigation is a technical distinction that does not address the heart of the ethics at issue. The Petition challenges the PUD on substantive grounds that are also present in the Application. These challenges necessarily affect the Application since if the underlying PUD is invalid the Application may be affected. By participating in the Application, Ms. Schneider and Ms. Hague can influence the decision on the Application that will further their strategy in the litigation which is real and immediate. The delay also inflicts real financial harm to the Owner and the project. This is inconsistent with the proper performance of their public duties per Ethics Code Sec. 2-443(b).

In a prior RQO 16-021, the COE has opined, in a less obvious situation, that an apparent conflict of interest exists where a PZB member participates in a hearing on an application by a benefactor of the non-profit on which the PZB member is a board member. The COE concluded that: "Based on this appearance of impropriety, the COE feels it is important to stress that any official action taken by Ms.

Commission on Ethics  
August 1, 2017  
Page 3

Patrick as a PZB member, including voting to recommend this development project to the City Commission, will violate the misuse of public office and employment section of the Code if it is based on any unlawful *quid pro quo* to the developer because of the developer's donation to WARC." As outlined herein, *quid pro quo* is present with COOLS because by voting on the Application, Ms. Hague and Ms. Schneider can further their litigation strategy and their fundraising efforts. In addition, by participating in the Application they have an opportunity to retaliate against the Owner because of their current adverse Court ruling dismissing the Petition.

Allowing a Potentially Conflicted Official to Delay a Hearing to Obtain an Opinion is Improper.

Proposed RQO 17-015 states that Ms. Hague and Ms. Schneider's decision to "table" the Application until they had the opportunity to obtain an opinion from the COE was the "only course that could be taken under the circumstances." This assertion is incorrect. As noted in the proposed RQO 17-015, both Ms. Hague and Ms. Schneider were appointed to the PZB after the PUD was approved in 2016 by the Town councilmen who voted against approving the PUD. These PZB members appear to be appointed as a direct result of their known opposition to the PUD. The litigation has been outstanding for over a year. Pursuant to COE's Top Ethics Rule 1 advising public officials to "always...ask first, act later" to identify and resolve ethics issues, both had ample time to request an opinion from the COE long before the July 11, 2017, meeting.

Bad Precedent Incentivizing Unethical Behavior.

If the COE does not apply the Code of Ethics to these facts to advise Ms. Hague and Ms. Schneider to not participate in the Application, a safe pathway is being created for any public official who has corrupt intent, special financial interests or special benefits, to delay a project by waiting until the hearing date to postpone the hearing to request advice on ethics. The harm is then already done, which can be particularly egregious in time sensitive situations and even in the best case be used to deplete a citizen's resources by causing multiple meetings, unknown delays and uncertainty.

Conclusion

By taking a clear position that a public official engaged in litigation in a matter coming before her for judgment should not participate in that judgment, the COE will be instilling public confidence in government, and helping public officials avoid not only COE violations, but also state ethics violations. Therefore, we respectfully request that the COE not issue the proposed RQO 17-015.

Sincerely,

JECK, HARRIS, RAYNOR & JONES, P.A.



Darren W. Leiser  
For the Firm



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY FLORIDA

CIVIL APPELLATE DIVISION A Y  
CASE NO.: 2016CA008136XXXXMB

CITIZEN OWNERS OF LOVE STREET  
AD HOC COMMITTEE, INC.; JOE  
CHARLES; THERESA GROOMS; MARY  
BETH HAGUE; GEORGE PINKERTON;  
CHERYL LYNN SCHNEIDER; and JAN  
WEST;

Petitioners,

v.

TOWN OF JUPITER,

Respondent.

---

**BY ORDER OF THE COURT:**

**THIS CAUSE** came before the Court on Petitioners' Second Corrected Amended Petition for Writ of Certiorari Pursuant to Rule 9.100(f), Florida Rules of Appellate Procedure ("Petition") and Respondent Town of Jupiter's Amended Motion to Dismiss Petition for Writ of Certiorari for Lack of Standing ("Motion"). The Court has carefully considered the Petition, the Response, and the Reply, along with the Motion and Petitioners' Response. Petitioners seek to quash a decision of the Town Council for the Town of Jupiter approving a construction project. Respondent, the Town of Jupiter ("Town"), argues that this Court need not reach the merits of the Petition because Petitioners lack standing. The Court agrees and grants the Motion, but writes separately in order to clarify which standard for standing applies in this case.

*Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972), sets forth the three-tiered test for standing in challenges to administrative zoning decisions. Which test applies depends on the type of

zoning challenge levied. *Renard* explains the three tests are: (1) A petitioner seeking to *enforce* a valid zoning ordinance has standing if he or she has suffered “special damages” as discussed in *Boucher v. Novotny*, 102 So. 2d 132 (Fla. 1958). *Renard*, 261 So. 2d at 837-38. (2) A petitioner seeking to *attack* a validly enacted zoning ordinance has standing if he or she has “a legally recognizable interest[ ] which is adversely affected by the proposed zoning action . . . .” *Id.* at 838. (3) A petitioner seeking to *attack* an ordinance that is void “because not properly enacted” has standing simply if he or she is an “affected resident, citizen or property owner of the governmental unit in question . . . .” *Id.* The Town argues Petitioners all fail either the first or second test in *Renard*. Petitioners counter by arguing that the third test applies and that Petitioners, as residents of the Town, all have standing.

The Court finds the correct standard to apply in this case is *Renard*’s first test involving “special damages.” The third test only applies when a litigant is attacking an ordinance as “void” due to its improper enactment. *Renard*, 261 So. 2d at 838. *Renard* itself describes this test as involving questions such as whether “required notice was not given.” *Id.* Similarly, *Upper Keys Citizens Ass’n, Inc. v. Monroe County*, 467 So. 2d 1018, 1021 (Fla. 3d DCA 1985) characterizes the third test as asking whether an ordinance is “procedurally” valid. The third test of *Renard* is thus not applicable here because Petitioners have raised a substantive challenge to the Town’s decision premised on its purported failure to comply with the provisions of the Jupiter Town Code. Because Petitioners are attempting to enforce the Code—itsself a valid series of ordinances—their position falls squarely within *Renard*’s first test, which applies when a party seeks to enforce a municipal ordinance. For this reason, the Court will apply the first test in *Renard*.

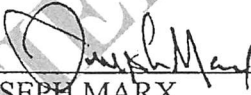
Under *Renard*'s first test, Petitioners lack standing. In order to succeed on a claim under this test, a litigant must show special damages particular to the party that differ in kind (as opposed to degree) from the damages suffered by the community as a whole. *Boucher*, 102 So. 2d at 134-35; *see also City of Ft. Myers v. Splitt*, 988 So. 2d 28, 31-33 (Fla. 2d DCA 2008). Petitioners' proffered injuries in this case involve "increased traffic congestion" and "inadequate parking conditions" caused by the Town's decision. The Petition characterizes all the Petitioners as Town residents who "frequently have difficulty finding an available parking space" at restaurants and businesses in the area. These injuries are not of the sort that would justify standing under *Renard*'s first test. *See, e.g., Skaggs-Albertson's Props., Inc. v. Michels Belleair Bluffs Pharmacy, Inc.*, 332 So. 2d 113, 117 (Fla. 2d DCA 1976) (noting injuries caused by traffic or parking "are only damages differing in degree from those suffered by the community as a whole and are not special damages which differ in kind"). The Motion must therefore be granted and the Petition must be dismissed.

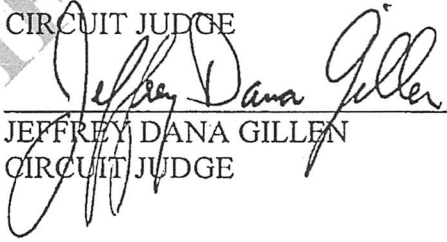
The Court makes no ruling on the merits of the Petition. Accordingly, it is hereby,


**ORDERED** that Respondent Town of Jupiter's Amended Motion to Dismiss Petition for Writ of Certiorari for Lack of Standing is **GRANTED**. Petitioners' Second Corrected Amended Petition for Writ of Certiorari Pursuant to Rule 9.100(f), Florida Rules of Appellate Procedure is **DISMISSED** for lack of standing. *See Renard v. Dade County*, 261 So. 2d 832, 837-838 (Fla. 1972). The clerk is directed to close the file.

**DONE and ORDERED** in Chambers at West Palm Beach, Palm Beach County, Florida, this 10 day of July 2017.

  
\_\_\_\_\_  
PETER D. BLANC  
CIRCUIT JUDGE

  
\_\_\_\_\_  
JOSEPH MARX  
CIRCUIT JUDGE

  
\_\_\_\_\_  
JEFFREY DANA GILLEN  
CIRCUIT JUDGE

  
Copies provided to:

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2514 Hollywood Boulevard, Suite 408  
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cmb@baronjustice.com  
eservice@baronjustice.com

Thomas J. Baird, Esq., & M. Megan Coughlin, Esq.  
Jones Foster Johnston & Stubbs, P.A.  
4741 Military Trail, Suite 200  
Jupiter, FL 33458  
tbaird@jonesfoster.com  
mcoughlin@jonesfoster.com

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH  
COUNTY, FLORIDA

CITIZEN OWNERS OF LOVE  
STREET AD HOC COMMITTEE,  
INC., JOE CHARLES, THERESA  
GROOMS, MARY BETH HAGUE,  
GEORGE PINKERTON, CHERYL  
LYNN SCHNEIDER, and JAN WEST,

APPELLATE DIVISION

CASE NO.:  
50-2016-CA-008136-XXXX-MB (AY)

Lower Tribunal No.: 52-16

Petitioners,

vs.

TOWN OF JUPITER,

Respondent.

\_\_\_\_\_ /

**PETITIONERS' UNOPPOSED MOTION FOR EXTENSION OF TIME  
TO FILE MOTION FOR REHEARING**

Petitioners CITIZEN OWNERS OF LOVE STREET AD HOC COMMITTEE, INC.,  
JOE CHARLES, THERESA GROOMS, MARY BETH HAGUE, GEORGE PINKERTON,  
CHERYL LYNN SCHNEIDER, and JAN WEST, by and through undersigned counsel,  
move the Court for an extension of time to file their Motion for Rehearing pursuant to Rule  
9.330, *Fla.R.App.P.*, and state in support thereof:

1. On July 18, 2017, the Clerk filed and e-served on counsels the Court's July 10,  
2017 Order granting Respondent Town of Jupiter's Amended Motion to Dismiss Petition for  
Writ of Certiorari for Lack of Standing.

2. Rule 9.330, *Fla.R.App.P.*, provides that a motion for rehearing “may be filed within 15 days of an order or within such other time set by the court.” Logically, that should mean 15 days from the date the order is filed/served on counsels, but the Rule is unclear as to which date applies when the order is executed prior to filing and serving.

3. Therefore, in an abundance of caution, Petitioners move the Court to extend the deadline until 15 days following service on counsels, through August 2, 2017.

4. The undersigned conferred with opposing counsel on this motion, and opposing counsel has no objection.

WHEREFORE, Petitioners pray the Court to grant an extension through August 2, 2017.

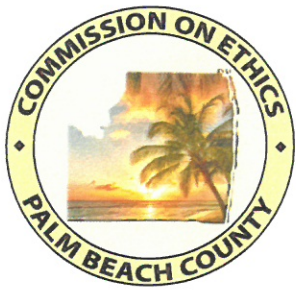
#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the e-filing portal on this 25<sup>th</sup> day of July, 2017 to: Thomas J. Baird, Esq., Town Attorney, [Tbaird@jonesfoster.com](mailto:Tbaird@jonesfoster.com), Jones, Foster, Johnston & Stubbs, P.A., 4741 Military Trail, Suite 200, Jupiter, FL 33458.

*/s/Charles M. Baron*

---

CHARLES M. BARON, ESQ.  
Fla. Bar No. 509825  
*Attorney for Petitioners*  
Charles M. Baron, P.A.  
2514 Hollywood Blvd., Suite 408  
Hollywood, FL 33020  
Tel. 954-919-5669  
Fax 305-933-9992  
Email: [cmb@baronjustice.com](mailto:cmb@baronjustice.com)



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

**Commissioners**  
Michael S. Kridel, *Chair*  
Clevis Headley, *Vice Chair*  
Michael F. Loffredo  
Judy M. Pierman  
Sarah L. Shullman

**Executive Director**  
Mark E. Bannon

October 14, 2016

Ms. Lynn Gelin, Esq., Assistant City Attorney  
City of Delray Beach  
200 N.W. 1st Ave.  
Delray Beach, FL 33444

Re: RQO 16-021  
COE Jurisdiction/Voting Conflict

Dear Ms. Gelin,

The Palm Beach County Commission on Ethics (COE) considered your request for an advisory opinion, and rendered its opinion at a public meeting held on October 14, 2016.

**QUESTIONS:**

- (1) Are members of the West Atlantic Redevelopment Coalition (WARC) under the jurisdiction of the COE and subject to the Palm Beach County Code of Ethics (Code)?
- (2) Does Ms. Joycelyn Patrick, chair of WARC and City of Delray Beach Planning and Zoning Board (PZB) member, have a voting conflict if a sponsor of WARC's annual fundraising gala appears before the PZB?

**ANSWER:**

The COE has jurisdiction over all county and municipal officials and employees, including most county or municipal advisory board members. These officials and employees are generally subject to the Palm Beach County Code of Ethics. Under the Code, the definition of an official includes those who serve on volunteer boards and commissions as "members appointed by the board of county commissioners, members of local municipal governing bodies...to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity."<sup>1</sup> An advisory board is defined as "any advisory or quasi-judicial board created by the board of county commissioners...."<sup>2</sup>

WARC is a non-profit organization which was created to advise the Delray Beach Community Redevelopment Agency and the City of Delray Beach (City) on redevelopment issues in the West Atlantic area of the City. However, its board members are not appointed by the City Commission and, thus, they are not City officials or employees as defined by Section 2-442. Therefore, WARC board members are not under the jurisdiction of the COE and are not subject to the Palm Beach County Code of Ethics.

However, because the members of the City's PZB are appointed by the City Commission, as a member of the PZB, Ms. Patrick meets the Code's definition of an "official" and is under the jurisdiction of the COE and is subject to the Code.

As an official, Ms. Patrick is prohibited from using her official position to give a special financial benefit to specified persons or entities, including to a customer or client of her outside business or employer or to a non-profit organization of which she is an officer or director.<sup>3</sup> Likewise, she is prohibited from participating in or voting on

<sup>1</sup> §2-442

<sup>2</sup> *id.*

<sup>3</sup> §2-443(a)

any matter that will result in a special financial benefit from being given to any of the persons or entities listed in Section 2-443(a)(1-7), *Misuse of public office or employment*, including a customer or client of her outside business or employer or to the non-profit organization of which she is an officer or director.<sup>4</sup>

Based on the facts submitted, Ms. Patrick has not been involved in fundraising or securing sponsors for WARC; other WARC members secured the sponsorship from the local developer for WARC's annual fundraising gala. Although that local developer will be appearing before both the WARC board and the PZB in the future to request a recommendation on one of its projects in the City, the developer is not a customer or client of Ms. Patrick's outside business or employer. Therefore, the misuse of public office or employment provision does not apply to that situation.

Further, based on the information presented, although Ms. Patrick is the chair of WARC (a non-profit organization), WARC would not be receiving, directly or indirectly, any special financial benefit from the developer's project if she were to vote to recommend that project to the City Commission. Therefore, as long as Ms. Patrick does not give any *quid pro quo* or other benefit to the local developer in exchange for the sponsorship of WARC's fundraising gala, she is not prohibited from participating in or voting on the local developer's project when it comes before the PBZ board.

While there may be no per se prohibited conflict of interest, there is an appearance of impropriety created by Ms. Patrick's position on both the WARC Board (who accepted a "title sponsorship" donation from this developer) and on the PZB where she will have to vote on whether to recommend this project to the City Commission. Based on this appearance of impropriety, the COE feels it is important to stress that any official action taken by Ms. Patrick as a PZB member, including voting to recommend this development project to the City Commission, will violate the misuse of public office and employment section of the Code if it is based on any unlawful *quid pro quo* to the developer because of the developer's donation to WARC.

#### **FACTS:**

You are the Assistant City Attorney for the City of Delray Beach. WARC is a 501(c)(3) nonprofit organization created to advise the Delray Beach Community Redevelopment Agency and the City of Delray Beach on redevelopment issues in the West Atlantic area of the City. The board members are comprised of individuals selected from the various subcommittees of the organization. No board members are appointed by the City Commission. The opinions rendered by WARC are merely advisory.

As part of their duties, WARC members actively engage in fundraising events. One of their events is an annual gala for which members of WARC secure sponsorships from local businesses. A local developer in Delray Beach is a "Title Sponsor" for the annual gala. One of the local developer's projects is scheduled to appear before the WARC board to request a recommendation on a project it is developing in accordance with the City's land development regulations. The local developer's project is also scheduled to appear before the City's Planning and Zoning Board to request a recommendation. Ms. Patrick stated that she did not personally engage in any fundraising, unlike other members of WARC.

The Chair of the Board of WARC, Joycelyn Patrick, is also a member of the City's PZB, which consists of seven members. The PZB members are appointed by the Delray Beach City Commission.

#### **LEGAL BASIS:**

The legal basis for this opinion is found in the §2-442, §2-443(a), or §2-443(c) of the Code:

#### **Sec. 2-442. Definitions.**

**Advisory board** shall mean any advisory or quasi-judicial board created by the board of county commissioners, by the local municipal governing bodies, or by the mayors who serve as chief executive officers or by mayors who are not members of local municipal governing bodies.

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<sup>4</sup> §2-443(c)



**Official or employee** means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. The term "official" shall mean members of the board of county commissioners, a mayor, members of local municipal governing bodies, and members appointed by the board of county commissioners, members of local municipal governing bodies or mayors or chief executive officers that are not members of local municipal governing body, as applicable, to serve on any advisory, quasi judicial, or any other board of the county, state, or any other regional, local, municipal, or corporate entity.

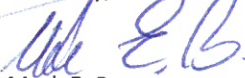
**Sec. 2-443. Prohibited conduct.**

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (5) A customer or client of the official or employee's outside employer or business;
  - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (c) Disclosure of voting conflicts. County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

This opinion construes the Palm Beach County Code of Ethics Ordinance and is based upon the facts and circumstances that you have submitted. The COE does not investigate the facts and circumstances submitted but assume they are true for purposes of this advisory opinion. This opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Mark E. Bannon,  
Executive Director

CEK/gal

**From:** Baird, Thomas J. [<mailto:TBaird@jonesfoster.com>]  
**Sent:** Tuesday, August 01, 2017 2:36 PM  
**To:** Christie Kelley E. <[CEKelley@pbcgov.org](mailto:CEKelley@pbcgov.org)>  
**Cc:** Green, Marilyn R. <[MGreen@jonesfoster.com](mailto:MGreen@jonesfoster.com)>  
**Subject:** this matter

I am the Town Attorney for Jupiter. A week ago or more I left a message to discuss this matter with you.. I left the message on the COE hotline. I would still like to discuss it with you because I have heard that Ms. Schneider received a verbal opinion from someone that she has no conflict. I assume you have my memo to her so I assume you know my position that she most certainly has a conflict. I am sending my opinions on Ms. Schneider and Ms. Hague to you. There are actually 3 members of the Jupiter P&Z Commission with conflicts, but only 2 of them (the other is MB Hague) are the subject of Atty Jeck's letter to you. Please keep in mind that this is a Quasi-judicial board and its members act like judges. As such, they are required to act independently and impartially when reviewing a property owner's request.

Marilyn – please email Ms. Kelley my 2 opinions.

<image003.jpg>

**Thomas J. Baird** Florida Bar Board Certified City, County and Local Government Attorney  
Telephone: **561.650.8233** | Fax: **561.650.5300** | [tbaird@jonesfoster.com](mailto:tbaird@jonesfoster.com)

Jones, Foster, Johnston & Stubbs, P.A.  
4741 Military Trail, Suite 200, Jupiter, Florida 33458  
561-659-3000 | [www.jonesfoster.com](http://www.jonesfoster.com)

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<RQO 17-015 Jupiter PZC.pdf>

On Aug 1, 2017, at 3:30 PM, Christie Kelley E. <[CEKelley@pbcgov.org](mailto:CEKelley@pbcgov.org)> wrote:

**This message originated from outside your organization**

Mr. Baird,

Thank you for your email. Staff does not provide verbal opinions. Attached is the proposed advisory opinion for Commissioner Schneider and Commissioner Hague that will be reviewed by the Commission on Ethics at its commission meeting this Thursday, August 3, 2017 at 1:30 p.m. The meeting will be held in the BCC chambers, 6<sup>th</sup> floor, Governmental Center. You may attend the meeting if you wish to speak at it. Darren Leiser, the attorney from Jeck, Harris, Raynor & Jones, P.A., has also been made aware of the meeting and his ability to speak at it. Mr. Leiser forwarded your opinions to the two commissioners as well as Mr. Jeck's letter to our office.

As the opinion states, we can only address issues under the jurisdiction of the Palm Beach County Commission on Ethics; state ethics laws are matters for the State Commission on Ethics to address.

Kind regards,

**Christie E. Kelley**  
**General Counsel**  
**Palm Beach County Commission on Ethics**  
**Ph 561-355-1978**

[www.palmbeachcountyethics.com](http://www.palmbeachcountyethics.com)

<image002.png>

From: Baird, Thomas J.  
Sent: Tuesday, August 1, 4:56 PM  
Subject: Re: this matter  
To: Christie Kelley E.  
Cc: Green, Marilyn R.

I was unaware that this was before the Commission as I received no notice of a recommended opinion to the Commission. I would like to think that City Attorneys who have opined on an ethical issue would at least be given advanced courtesy notice that the opinion is coming before the Commission. Although I would liked to address the Commission, I have a conflict as I will be attending a meeting of another municipal client (Town of Jupiter Isld.) that day in Martin County.

I would have liked to address the Commission on this issue because of the unique quasi-judicial issues involving elected or appointed officials who are to act like judges and be impartial and independent when considering a property owner's zoning application.

I disagree that the lack of a financial gain or loss can lead to the conclusion that it is ethical for a judge to believe she can act impartially or independently on a quasi-judicial item even though she has publicly opposed a project at public meetings; on social media and when her public opinion is not sustained, bring a legal action against the Town's approval of the project. And then later decide when the application comes back through the same quasi-judicial process suddenly decide that she can be impartial and independent when considering it. This sends the wrong ethical message to elected and appointed officials who act in a quasi-judicial capacity. I'm confident that I am not the only City Attorney who feels this way. If the staff recommendation stands, cities will no doubt be dealing with appeals of quasi-judicial actions based on due process challenges because of the pre-determined opinions of their quasi-judicial judges.

In the event I cannot get to the meeting because of my pre-existing conflict, please provide the Commission members a copy of this email as part of the record before they begin their discussion.

Sent from my iPhone