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Commissioners,

**First and foremost, please do not respond to this email and in particular do not respond by hitting the “reply to all” function. Discussing an item pending before the COE with other Commissioners outside of a public meeting is a violation of the Florida “Government in the Sunshine Law” (Sunshine Law). Also, even an answer via email directed only to me listing your thoughts regarding this advisory opinion may make it appear that I am trying to conduct a “poll” of your position on this item, which is also not allowed under the Sunshine Law. So, please do not reply to this email.**

That being said, this email and the attached document is being sent to each COE Commissioner for the sole purpose of giving you information to consider concerning some of the issues to be addressed when we resume this discussion at the September 11<sup>th</sup> COE meeting. I am aware that you received a significant amount of back-up material from several sources before the matter was initially discussed on August 3<sup>rd</sup>. While unfortunate from a timing standpoint, I am also aware that this information was given to you shortly before our meeting, and that you may not have had sufficient time to review all of the material. Therefore, the document attached to this email entitled, “Key issues regarding RQO 17-015” is an attempt to list what I believe to be the major issues to be considered, and questions that must be answered for this advisory opinion. Commissioners, providing you this information is not an attempt to sway any of you on these issues, it is merely an attempt to ferret out some of the important issues for your consideration before our next meeting. There may well be additional issues you wish to discuss on this matter at the September 11<sup>th</sup> COE meeting, and you certainly may do so.

I know that we take a lot of your time for which you are not compensated in dealing with these complicated ethics issues. But please remember the work you do on the COE makes a tremendous difference in our communities, and many people appreciate your efforts, including staff. Also, the reason your job is becoming more complicated is because as COE Commissioners you (and those that served before you), have answered all the easy questions. So, only the complicated ones are left to answer. Remember also that local government officials and employees rely of your guidance in these types of issues. Again, thank you to each of you for what you do for Palm Beach County and our municipalities in helping to increase public confidence in our local governments.

I would ask that prior to the September 11<sup>th</sup> COE meeting, each of you take time to closely review the information previously provided regarding this request for advisory opinion, as well as considering the oral presentation given to the COE by Jupiter PZC Commissioners Schneider and Hague, and by Darren Leiser, Esq., representing the Love Street PUD applicant. While the meeting minutes are not yet available, the video of this meeting is on-line at the COE website ([www.palmbeachcountyethis.com](http://www.palmbeachcountyethis.com)), should you wish to review the presentations. I am also

attaching all of the "back-up" material given to you prior to the August 3<sup>rd</sup> COE meeting, in case you no longer have it available.

Also, you should be aware that since our last meeting, there have been some changes in circumstances. Most of them as discussed in the "Key issues" document. But, in addition to factors listed there, when the Love Street PUD amendment issue was presented to the Jupiter PZC on August 8<sup>th</sup>, both Commissioner Schneider and Hague recused themselves from both participation and vote on this matter because they were not sure whether a conflict of interest was present. With this in mind however, there are two reasons why I believe this issue must still be discussed and an advisory opinion rendered. First, another amendment to the Love Street PUD plan would bring the matter back before this commission again, and this advisory opinion will be considered by other officials as it will "*establish the standard of public duty*" on similar issues that others may rely on in the future.

Respectfully,

Mark Bannon

## Key issues regarding RQO 17-015

### Jupiter PZC Commissioners Schneider and Hague

#### Issue #1:

Would participation in discussions and/or voting by Jupiter PZC Commissioners Schneider and Hague on the proposed amendments to the Love Street PUD be a violation of Code §2-443(c), *Disclosure of voting conflicts*, because such a vote would give an unlawful “*special financial benefit, not shared with similarly situated members of the general public*”, to one or more people or entities listed under §2-443(a)(1-7), *Misuse of public office or employment*, based on their position as officers or directors of a not-for-profit organization who collects money to fund a lawsuit against the Town of Jupiter, where they are also named parties, in order to overturn the original Love Street PUD passage by the Town Commission?

#### Issue #2:

Would participation in discussions and/or voting by Jupiter PZC Commissioners Schneider and Hague on the proposed amendments to the Love Street PUD be a violation of Code §2-443(b), *Corrupt misuse of official position*, because such a vote would give some unlawful “*special benefit*” to themselves or another person or entity, where this benefit would be given with “*wrongful intent*” and would be “*inconsistent with the proper performance of their public duties,*” based on their position as officers or directors of a not-for-profit organization who collects money to fund a lawsuit against the Town of Jupiter, where they are also named parties, in order to overturn the original Love Street PUD passage by the Town Commission?

#### Issue #3:

Was Commissioner Schneider and Hague’s participation in discussions and/or voting at the July 11, 2017 PZC meeting to “*table*” the issue of the Love Street PUD amendments until the next meeting in order for them to obtain an advisory opinion from the COE done in violation of either Code Section 2-443(b), *Corrupt misuse of official position* or Code Section 2-443(c), *Disclosure of voting conflicts*, when they had been advised by the Jupiter Town Attorney of a potential conflict of interest regarding the Love Street PUD matter prior to the meeting based on their position as officers or directors of a not-for-profit organization who collects money to fund a lawsuit against the Town of Jupiter, where they are also named parties, in order to overturn the original Love Street PUD passage by the Town Commission?

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Section 2-260.9, *Advisory Opinion*, of the Commission on Ethics Ordinance specifically gives the Commission on Ethics (COE) the power to render such an opinion, “*to establish the standard of public duty, if any.*” This particular issue is important to discuss because it is one that could resurface for the PZC if any additional changes are made to the Love Street PUD, and these commissioners need to know their ability to vote on the project if that should happen. Plus it is unclear whether additional appeals of the lawsuit (see

Some key facts to be considered within these issues are:

1. At the time the request for advisory opinion was made, the Love Street Planned Unit Development (Love Street PUD) had already been approved by the Jupiter Town Council. By amending this approved plan, the plan had to be brought back before the Jupiter Planning and Zoning Commission (PCZ), prior to the Town Council considering these amendments. The PCZ acts only as an advisory board to the Town Council in this planning process, and has no quasi-judicial authority to decide the issue, but it does vote whether to recommend the application for approval or denial. Neither Commissioner Schneider nor Hague were members of the PCZ when the initial Love Street PUD application was before the PCZ in 2016. Both were appointed to the PZC by Town Council Members who voted against the Love Street PUD project in 2016.
2. Both Commissioner Schneider and Hague are also officers or directors of "Citizen Owners of Love Street Ad Hoc Committee, Inc." (COOLS) which was formed in opposition to the Love Street PUD project as approved by Jupiter Town Council in 2016. These commissioners jointly requested this advisory opinion, and along with COOLS are named "Petitioners" in a lawsuit against the Town of Jupiter (Respondent) to have the 2016 Town Council approval of the project reviewed.<sup>1</sup>
3. To fund this lawsuit, a "Go-Fund-Me" page was created. When the page was closed sometime after the August 3<sup>rd</sup> COE meeting, it had raised \$8,075 for legal costs. Commissioner Schneider and/or Hague advised the COE at the August 3<sup>rd</sup> COE meeting that the funds collected through the Go-Fund-Me page were only assessable by the attorney representing Petitioners in this lawsuit. While it does not remain clear as to who created the Go-Fund-Me page, it seems clear that this funding source was created by either Commissioner Schneider, Commissioner Hague, COOLS as an entity, or someone associated with the lawsuit.

In order to properly advise the PZC Commissioners and establish the standard of public duty for them and others under this section of the Code of Ethics, the advisory opinion needs to consider the following relevant questions:

1. Does the fact that the Go-Fund-Me page was used to fund a lawsuit against the Town in an attempt to reverse the previous Town Council approval the Love Street PUD mean that any vote on the Love Street PUD or amendments to this project by PZC Commissioners, who are parties to this lawsuit and officers or directors of COOLS (also a party to the lawsuit), will be given an unlawful "special financial benefit" by their voting on the Love Street PUD or any amendment to the application regarding this project, and thus be in violation of Code §2-443(c), *Disclosure of voting conflicts*? Does this also mean that such a vote may also violate the *corrupt misuse of official position* standard found in Code Section 2-443(b)?

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<sup>1</sup> It should be noted that this lawsuit was filed by way of a writ of certiorari on both substantive and procedural grounds as discussed by Love Street PUD's attorney at our last meeting. A three judge circuit panel granted the Town's motion to dismiss the case on July 18, 2017 due to lack of standing by Petitioners. On August 10, 2017, this same panel denied Petitioner's motion for rehearing and ordered the Clerk of Courts to close the file. As of this point, unless appealed further, the lawsuit has been dismissed for lack of standing.

2. Assuming yes to either of both, do these prohibitions apply now after the initial Go-Fund-Me page was closed and all funding for the lawsuit from this source stopped,<sup>2</sup> and where the lawsuit filed in circuit court against the Town has been dismissed with a motion for re-hearing being also denied? **However, it should be noted that a new Go-Fund-Me page has been opened to fund an appeal with the 4<sup>th</sup> District Court of Appeals concerning this lawsuit, so the funding source continues for this purpose.**
  
3. In his letter to Commissioners Schneider and Hague, the Jupiter Town Attorney also opined that where an official has been shown to have a particularly strong “bias” against an issue before them (i.e. the Love Street PUD project), and in particular where this official has “quasi-judicial” powers, they are obligated to recuse themselves from voting on such matters<sup>3</sup>. Based on this “notice,” would these commissioners be prohibited from participating in or voting on the Love Street PUD project, including any amendments, based on the corrupt misuse standard of the PBC Code of Ethics?

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<sup>2</sup> It should also be noted that at the August 3<sup>rd</sup> COE meeting, either Commissioner Schneider or Hague advised that the law suit was now fully funded as the legal fees for the attorney were based on a “flat-rate” agreement.

<sup>3</sup> As noted earlier, the PZC does not have quasi-judicial powers over planning matters, but does have quasi-judicial powers in certain zoning matters.

August 9, 2017

Mr. Mark E. Bannon,  
Executive Director  
Palm Beach County Commission on Ethics  
300 North Dixie Highway, Suite 450  
West Palm Beach, FL 33401

Dear Mr. Bannon:

We would like to provide you with additional information to aid you in your evaluation of our original request for an advisory opinion on whether or not a conflict of interest exists that would prevent us from participating in the Town of Jupiter Planning and Zoning Commission (PZC) meeting on the amended Love Street development plan. We thought it would be helpful to provide you with the complete background on our involvement with the original Love Street project, as approved under Resolution 52-16.

Following the construction of an uncharacteristically large and dense Planned Unit Development (PUD) in Jupiter, known as Harbourside Place, many residents began paying more attention to proposed projects, especially for the area called the Jupiter Inlet, which is located not too far from Harbourside. Shortly thereafter, a developer purchased approximately two acres of waterfront property in the inlet area on Love Street. In order for the developer to be able to construct a sizeable PUD, the Town, through its Community Redevelopment Agency (CRA), entered into an agreement with the new owner to “swap” a Town owned adjoining piece of land on Love Street with another undeveloped parcel the developer purchased 1/3-1/2 linear mile away on Parkway Street. The Town’s Love Street lot was being used as parking lot to provide parking spaces for the public as well as nearby businesses. It is our understanding that the developer purchased the property on Parkway Street at the request of the CRA. The CRA’s decision to swap the public property on Love Street for the other less valuable lot on Parkway Street was done administratively and there was no public proceeding where the public could express its views on what should be done with a piece of public property.

Many Social Media sites began sharing plans about the project and the swap. A social media petition appeared which garnered 3,800 signatures against the project. In addition, residents sent emails to the Town and began attending council meetings in large numbers, voicing opinions against the “swap” and pointing out policies and codes that were not being followed properly in order to make way for another uncharacteristically large and dense development. When a scaled down version of the Love Street project was made public several months later, it became apparent that many serious issues still remained unaddressed. The CRA and the Town were still planning on swapping the public parcel despite the objections of residents that protocol was not followed when the scaled down plan was never presented to the PZC and that the plan appeared to be inconsistent with many aspects of the Town’s Comprehensive Plan, Strategic plan as well as various sections of Town code.

Under Town procedure and individual resident is limited to comments of 3 minutes in length. Residents became concerned that this did not provide enough time to state the issues before Council on the record. Moreover, Town procedure does not afford Council Members the opportunity to respond directly to these resident comments. Frustrated by this procedure, a group of residents formed an unincorporated ad hoc group in the hopes that together they would have a better chance of being heard. The group called itself the Citizen Owners of Love Street (COOLS) and its intent was to be an official intervener in the site plan hearing in opposition of the "swap." This process would allow COOLS 15 minutes to make a presentation on various policy and procedural issue, including an opportunity for rebuttal. In April 2016, COOLS applied to intervene on the basis that the Town was seeking to dispose of public property without proper public input. The Town denied COOLS the right to intervene, saying that we did not have standing. COOLS objected with the fact that the public never had a chance to weigh in on whether the town should "swap" the property. Even though the Development Order requires the applicant to "swap" the properties, the entire agreement was not part of the proceedings nor was it on the agenda as an issue for Council review and take public comment. At that point all activity in COOLS stopped and the members of the ad hoc group continued to participate as individuals under the 3-minute limit. On June 7<sup>th</sup> the Town Council approved the development order on second reading, with the "swap" as an ancillary agreement.

Social media feedback indicated that many residents were extremely unhappy with the development decision. We did some research and realized that the Florida Rules of Appellate procedure provided a vehicle for residents to get an administrative review of the development order. Through this review we would be able to have the court determine whether Town policies and codes had been applied properly and whether the correct process had been followed in the approval process. The Petition for Writ of Certiorari is a limited legal action whereby a petitioner can request the court to review certain municipal orders. By its very nature, this type of review is limited only to certain types of issues. This type of review is different from a traditional lawsuit where parties can seek monetary damages. Through this writ, the only thing the petitioners can obtain is a legal opinion on whether certain standards have been met. Through social media we determined that there was support to have a neutral third party review what had taken place. A few days after the development order was adopted, we consulted with an attorney who agreed that there were sufficient irregularities with the development approval to justify filing a request with the court. At that point we needed a mechanism to collect funds from those who supported the "administrative review" so that we could hire an attorney to prepare the petition. We had to provide the attorney with a retainer before the attorney could begin preparing the petition, which was due 30 days from the date the Town rendered its decision.

A few days later in early June, Ms. Schneider created the GoFundMe account to raise money for the petition. As part of setting up the account, GoFundMe asks you how you want to share the existence of the account – email, Twitter or Facebook. The account was set up to communicate via Facebook. A message was posted on the GoFundMe page, which the platform then forwarded to Ms. Schneider's Facebook page. From there, residents shared the information about the existence of the GoFundMe effort via Facebook, including to several pages dedicated to local issues. People who contribute via the GoFundMe platform can then elect to receive



updates about the fundraising campaign via email. GoFundMe also requires the creator of the account to specify the authorized person or entity that is allowed to withdraw funds. Once that person or entity is provided to GoFundMe, the system sends to that person the instructions on how to access the money to make a withdrawal. No other person may withdraw funds. The only way these funds can flow is to the person authorized to make a withdrawal or back to a person who made a contribution. For this GoFundMe account the only person authorized to withdraw funds was attorney we retained to prepare the petition. We have no way to even monitor the account to see when withdrawals are made.

Once the GoFundMe account had been established, various residents expressed interest in participating in the petition. In the process of reviewing the issues, we were advised that our former ad hoc group, COOLS, could ask the court to review whether it was proper for the Town to have denied COOLS' request to intervene. We were advised that to include this issue it would be best if COOLS became an official legal entity. Because of that COOLS was incorporated on July 15, 2016, right before the petition was filed with circuit court. In the end, COOLS became a named petitioner along with 6 other individuals. No one petitioner had any greater rights than the other. The petitioners included two individuals who lived adjacent to the proposed development and would be directly impacted by the swap and four individuals who believed that their due process rights had been violated by the way in which the town processed and approved the application.

The focus of the request for the court's review was the Town's decision-making process and failure to apply Town Code, not the overall desirability of the proposed PUD. We believed that a fair reading and application of the Town Code could not support staff's recommendation for approval. The petition included four argument topics:

1. There was no competent substantial evidence to meet several Town Code Criteria required to approve the development application;
2. The Town violated essential requirements of law by approving certain waivers, by failing to have the planning and zoning commission review the revised site plan, and by disregarding Town Code parking requirements;
3. The Town violated the Town Code section 2-2(d)(C) regarding full disclosure of the substance of exparte communications, and therefore violated essential requirements of law; and
4. Due process was violated regarding violation of the lack of full disclosure of the substance of ex parte communications, regarding the failure to include consideration of the "swap" agreement at the development order proceedings, and regarding the last-minute notification of the staff report and draft development order.

We believe it is clear from the facts and circumstances described above, that it is not possible for either of us to derive any kind of special benefit, financial or otherwise from either the GoFundMe account or the petition for administrative review. The GoFundMe account by its

very terms and structure limits who can access funds raised on its platform. The only person who can withdraw funds from this GoFundMe account is the attorney who prepared the petition. The sole purpose of the GoFundMe account was to raise money to pay the legal fee for this effort. As we stated at the Commission on Ethics meeting on August 3, 2017, we were fortunate enough to be able to enter into a flat fee arrangement and all fees have been paid. It is not possible for there to be a financial connection between the results of the PZC proceeding and the request for administrative review because all financial obligations have already been satisfied. We have since deleted the GoFundMe campaign to make it clear that no additional fundraising is necessary at this point.

Some Commissioners expressed concern about the connection between the COOLS non-profit entity and the GoFundMe account. It is not possible for there to be a direct connection since the GoFundMe account was created and the parameters established approximately one month before COOLS was even incorporated. Moreover as explained above, COOLS holds no special place among the petitioners and has no ability to exert independent financial control or influence over funds related to the legal action.

Any benefit from the administrative review is one that flows to all – confidence that any decision made by a municipality, particularly one involving public property, is made in accordance with the law and in an open, transparent and even handed manner. There is nothing special that any of the petitioners stands to gain beyond what the public gains from having a neutral arbiter review the Town Council's decision.

We are sending this in the hope that it will provide some clarity on the events that transpired. We are available to answer any questions you may have or to provide any other additional information you deem necessary.

As an update, we wanted to let you know that at the August 8, 2017 PZC meeting, no motion to postpone the Love Street item was made. As a result, we recused ourselves and the item went forward without our participation. Nevertheless, we believe it is important for the Commission to conclude its work on this matter.

Respectfully submitted,

MB Hague  
Cheryl Schneider

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 be a violation of §2-443(a)(1-7), *Misuse of public office or employment*, and §2-443(c), *Disclosure of voting conflicts*, as such actions will result in a prohibited "special financial benefit" to yourselves or to another person or entity as set forth in §2-443(1-7) of the Code. Additionally, such action would also 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>

The relevant question is 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 either of you, or 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 either of you or to COOLS, your actions would be prohibited under §2-443(a)(1-7). While it is less clear that either of you personally would financially benefit from participation in discussions or voting on the proposed Love Street PUD amendments, the link between such a vote and a financial benefit to COOLS is more certain. Through their website and/or "Go Fund Me" page, COOLS is

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<sup>1</sup> §2-443(a)(1-7)

<sup>2</sup> §2-443(c)

soliciting donations to overturn previously approved Love Street PUD project. Among the purposes of this solicitations is the attempt to raise funds to pay the cost of litigation to overturn the approval of this project by Town Council. Such actions, while they do not seem to directly affect the consideration proposed amendments, are clearly tied to overturning the approval passed by Town Council in 2016. And while the proposed amendments to the Love Street PUD are not before any court, they are clearly aligned in a manner in which COOLS cannot help but to benefit financially from a vote of the amendments because of their solicitation of funds for this very purpose.. 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 correct, and this challenge as listed in the Writ of Certiorari relies on both procedural and substantive arguments .

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.

Based on the financial benefit that COOLS would obtain by your participation in or voting on the proposed amendments to the Love Street PUD, COOLS would "secure a special privilege, benefit, or exemption" by your participation and vote on the amendments before the PZC. .

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.

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

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

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 (15th 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;
  - (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;

<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)).

(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

## Ethics

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**From:** CHERYL SCHNEIDER <schneic15@gmail.com>  
**Sent:** Wednesday, July 12, 2017 1:46 PM  
**To:** Ethics  
**Cc:** MB Hague  
**Subject:** Town of Jupiter Planning and Zoning Commission - Voting Conflict of Interest

To the Palm Beach County Commission on Ethics:

We, the undersigned, are Commissioners on the Town of Jupiter Planning and Zoning Commission (PZC). We are contacting the Commission on Ethics to request that the Commission issue an advisory opinion regarding a potential voting conflict of interest issue.

A few hours before the July 11, 2017 PZC meeting, each of us was presented with a memo from the Town Attorney, Thomas J. Baird of Jones Foster, informing each of us that there may be the potential appearance of a conflict of interest related to the item entitled "Love Street Commercial Development – Amendments to the approved small-scale Planned Unit Development (PUD) and site plan for retail, restaurant, and office on 2.0 +/- acres at 1116 Love Street." The Town Attorney stated that he raised this issue because we are both included as named parties in a Petition for Writ of Certiorari Pursuant to Rule 9.100(f) of the Florida Rules of Appellate Procedure, in which we asked the Circuit Court of the Fifteenth Judicial Circuit to review Town of Jupiter Resolution 52-16 (Citizen Owners of Love Street, et al v Town of Jupiter, Case No: 50-2016-CA-0081316-XXXX-MB (AY), filed July 15, 2016). (Citizen Owners of Love Street Ad Hoc Committee (COOLS) is a Florida non-profit organization with which each of us is affiliated. Neither of us receives any financial compensation or any other type of benefit from COOLS.) Resolution 52-16 granted the applicant the right to develop a small-scale PUD on 3.8 +/- acres at 1116 Love Street. **Petitioners asked the court to review whether the Town Council had applied correctly to the application several Town of Jupiter code provisions, as well as whether the Town had followed proper due process and disclosure procedures.**

This same applicant came before the PZC last evening to seek approval for a revised small scale PUD at 1116 Love Street and in doing so was seeking certain amendments to Resolution 52-16. PZC never discussed the substance of the item, but instead discussed the Town Attorney's memo regarding the potential conflict of interest. PZC voted to table the item and postpone hearing it until the August 8, 2017 meeting in order to give us the opportunity to seek an advisory opinion on this matter from the Commission on Ethics.

Neither of us has any financial interest in what gets developed at 1116 Love Street. There is no financial benefit, or indeed any material benefit or quid pro quo that would flow to either of us if the circuit court granted the Petition for Certiorari and quashed Resolution 52-16. We each believe very strongly that we can be impartial in applying the Town of Jupiter Code to the applicant's request to amend its small scale PUD.

We are available to answer any questions or provide any additional information the Commission on Ethics may require.

We look forward to your response.

Respectfully submitted,

Cheryl Schneider, Commissioner

Town of Jupiter Planning and Zoning Commission

2702 West Mallory Blvd

Jupiter, FL 33458

MB Hague, Commissioner

Town of Jupiter Planning and Zoning Commission

1353 Bourne Drive

Jupiter, FL 33458



790 Juno Ocean Walk, Suite 600  
Juno Beach, Florida 33408-1121  
Website: www.jhrjpa.com



Direct Line: (561) 713-2086  
Fax: (561) 775-0270  
E-Mail: dleiser@jhrjpa.com

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

October 9, 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 and Executive Director Bannon:

As you know, 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 Commission on Ethics ("COE") with an update about recent developments since the August 3, 2017, COE meeting.

First, we understand that the COE Executive Director desires more direction from the COE regarding revising RQO 17-015. The enclosed excerpt of the transcript of the August 3, 2017 COE meeting concerning RQO 17-015 documents the portions of that meeting dealing with the COE Commissioners discussion on how to proceed. From page 53 to the bottom of page 55 of that transcript, after the COE unanimously refused to approve RQO 17-015, Commissioners Kridel and Shullman responded to Executive Director Bannon's request for direction to revise RQO 17-015. Commissioner Kridel commented how the rejection of the draft opinion finding no conflict "leaves us in the position of having to issue something else" and "the areas are relatively clear". Executive Director Bannon stated "clearly this [the draft opinion] is not the opinion you want". Commissioner Shullman commented about the need "to issue a revised opinion", "they're [Commissioners Hague and Schneider] on reasonable notice....If they move to table it [the Love Street Application hearing]....based on those facts it appears there is a conflict". None of the other Commissioners contradicted these sentiments. Consequently, the Owner's understanding is that the COE wanted a revised opinion concluding that a conflict of interest exists to be voted on at its next meeting.

On August 8, 2017, the Town of Jupiter ("Town") Planning and Zoning Board ("PZB") held its hearing on Owner's Small Scale Planned Unit Development amendment application ("PUD Amendment"). As soon as the item for the PUD Amendment was called by the PZB Chairman, Commissioners Hague and Schneider each participated in the hearing by urging their fellow PZB Commissioners to again postpone the hearing on the PUD Amendment even though the COE put them

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on notice that doing so would put them at risk of further violations.<sup>1</sup> Having received no support from any of the other PZB Commissioners, they recused themselves from the hearing and the disinterested PZB Commissioners voted unanimously to approve the PUD Amendment. A copy of the portion of the transcript of the hearing setting forth Commissioners Schneider and Hague's statement is enclosed. This participation was yet another violation of Section 2-443(c), particularly given their notice of the conflicts and corrupt nature of this activity. Instead, they should have immediately disclosed their conflict and recused themselves without any further comment and without advocating for a further delay to the PUD Amendment.

On August 9, 2017, Commissioners Schneider and Hague sent the COE Executive Director a letter outlining their position regarding their conflict of interest. The Owner does not feel the need to address their letter point by point. However, the Owner notes that the letter is factually and legally inaccurate.

Also on August 9, 2017, the Circuit Court, sitting in its appellate capacity, denied Commissioner Hague, Schneider, COOLS, and the other petitioners' motion for rehearing for their lawsuit against the Town challenging the Owner's project.

On August 27, 2017, Teri Grooms, one of the named petitioners in the subject lawsuit against the Owner's project, started another Go Fund Me page to raise \$7,500 to pay for an appeal of the Circuit Court's decision dismissing the case. The Go Fund Me page can be found here: <https://www.gofundme.com/save-love-street>. Notwithstanding Commissioner Schneider's statements at the COE hearing that the fundraising would be deactivated, see pages 57 and 58, and even stating that they had just closed the fundraising before the end to the COE meeting, they continue to support this new Go Fund Me page, and have raised another \$850, further demonstrating their financial interest related to the Love Street Project. On August 30, 2017, Commissioner Schneider, on Facebook, requested donations to the Go Fund Me campaign to help her, and the other petitioners, fund their appeal. A copy of the Facebook post is enclosed. On September 15, 2017, the petitioners filed their appeal in the Fourth District Court of Appeal. Thus, Commissioner Schneider was still fundraising for the lawsuit even though the COE declared that such fundraising efforts were a conflict of interest.

To supplement the information the Owner provided at the COE hearing, the Owner submits that it was financially harmed by the actions of Commissioners Hague and Schneider to delay the project by incurring (a) professional fees by its development team, attorneys and outside consultants in attending the delayed meeting, addressing the conflicts issue at two P&Z hearings and two COE hearings, (b) carrying costs for the project during the delays in the hearing, and (c) the lost opportunity cost of proceeding with the project. Also, to clarify Commissioners Hague and Schneider's confusion in response to the COE's questioning about whether their company, Citizen Owners of Love Street, Inc., was represented by the same attorney as was representing them, Florida law requires business entities to be represented by legal counsel, and the pleadings in the litigation indicate that the same attorney represents all of the petitioners.

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<sup>1</sup> See the bottom of pages 54 and 55 of the COE Meeting transcript.

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Therefore, on behalf of the Owner, we respectfully request that the COE consider these new developments when discussing Commissioners Schneider and Hague's impermissible conflict of interest at the October 12, 2017, COE hearing.

Sincerely,

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



Darren W. Leiser  
For the Firm

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PALM BEACH COUNTY COMMISSION ON ETHICS  
August 3, 2017  
301 North Olive Avenue, 6th Floor  
West Palm Beach, Florida

\* \* \* \* \*

Excerpts of Meeting  
In Re: IX. Proposed Advisory Opinions RQO 17-015

APPEARANCES:  
Michael S. Kridel, Chair  
Clevis Headley, Vice Chair  
Judy M. Pierman, Commission Member  
Sarah L. Shullman, Commission Member  
Brian Kummerlen, Commission Member  
Mark Bannon, Executive Director  
Christie Kelley, General Counsel  
Gina A. Levesque, Intake and Compliance Manager

Reported by:  
Donna L. Harshaw, Court Reporter  
Notary Public, State of Florida

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1                    P R O C E E D I N G S  
2                    \* \* \* \* \*

3                    MR. KRIDEL: Proposed advisory opinion,  
4 RQO 17-015. At this point I will ask executive  
5 director Bannon to start that ball rolling.  
6                    MR. BANNON: Thank you, Mr. Chair.  
7                    In a joint request for an advisory  
8 opinion, two members of the Jupiter Planning &  
9 Zoning Commission: Commissioner Sheryl  
10 Schneider and Commissioner M.B. Hague,  
11 requested an advisory opinion concerning a  
12 possible conflict of interest in an issue  
13 before them.  
14                    The issue concerns a request for  
15 amendments to a previously approved planned  
16 unit development known as the Love Street PUD.  
17 The Love Street PUD had been approved by town  
18 council in 2016, and was brought back before  
19 the P&Z based on certain proposed amendments to  
20 the approved development plan. Both  
21 commissioners are officers or directors of a  
22 not-for-profit entity known as COOLS, which is  
23 opposed to the Love Street PUD project, and  
24 both have spoken at public meetings about their  
25 opposition to this project.

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1                    The commissioners received letters dated  
2 July 11, 2017 from the Jupiter town attorney  
3 notifying them that he believed that they had a  
4 conflict of interest in this issue and that  
5 they should consider recusing themselves from  
6 the issue when the matter was heard by the P&Z  
7 that same day, July 11th.  
8                    At this meeting Commissioner Schneider  
9 discussed the information provided by the town  
10 attorney and moved to table the issue until the  
11 August 8th meeting so that an advisory opinion  
12 could be obtained from the COE. That motion  
13 was seconded by Commissioner Hague, and the  
14 motion ultimately passed.  
15                    On July 12th, the next day, the Commission  
16 on Ethics staff received the joint request for  
17 advisory opinion, and later received additional  
18 relevant information from various sources  
19 including a copy of the city attorney's memo to  
20 the commissioners, a letter written by the  
21 attorney for the applicant, and each of these  
22 documents listed reasons why Commissioners  
23 Schneider and Hague had a conflict of interest  
24 and should recuse themselves from both  
25 discussion and voting on the proposed

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1                    amendments.  
2                    The reasoning offered to the commissioners  
3 for the requested recusal is based on state  
4 ethics laws, a general concern of lack of  
5 impartiality, concerns over the participation  
6 being a violation of the development  
7 applicant's due process rights, and the  
8 participation in voting in this issue would be  
9 in violation of the Palm Beach County code of  
10 ethics, specifically code sections 2-443,  
11 misuse of public office by providing improper  
12 special financial benefit to a prohibited  
13 party; 2-443 (c), failure to disclose a voting  
14 conflict; 2-443 (b), corrupt misuse of official  
15 position.  
16                    With all of that being said, COE's  
17 proposed advisor only addresses the issue of  
18 whether these actions would violate any  
19 provisions of the Palm Beach County code of  
20 ethics, as that is the jurisdictional limit of  
21 this Commission on Ethics.  
22                    Staff admits that participation and  
23 discussion and voting on the proposed  
24 amendments to the Love Street PUD as P&Z  
25 commissioners does not violate any of these

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1 code sections. Neither commissioners nor the  
2 nonprofit entity COOLS would receive a direct  
3 or indirect special financial benefit by voting  
4 on these proposed amendments, and because an  
5 official was known to be a strong advocate for  
6 or against a particular course of action  
7 proposed does not mean that voting on such  
8 issue would meet the standard of corrupt misuse  
9 as defined in 2443, even where that position is  
10 in conflict with a jury and town staff. Such a  
11 vote would not be for the purpose of obtaining  
12 a special privilege, benefit, or exception for  
13 any person or entity which would be considered  
14 inconsistent with the (indiscernible) of their  
15 official position, as all residents of the Town  
16 of Jupiter would be affected in the same  
17 manner.  
18 Further, the possibility that such a vote  
19 may cause harm to the overall project through  
20 delay is not the standard to be considered in  
21 this case. The sole standard to be determined  
22 is whether any improper special financial  
23 benefit was provided to one of the entities or  
24 persons listed in 2-443 (a) 1-7, or a special  
25 privilege, benefit, or exemption is given to

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1 any person or entity by such a vote, and  
2 whether the vote was knowingly inconsistent  
3 with the proper performance of the public  
4 official's duties.  
5 I know we have a lot of people that want  
6 to speak on this matter.  
7 Commissioners, do you have any questions?  
8 I know that some of these documents were  
9 provided with the revision of our agenda. Does  
10 anybody have anything that you want to comment  
11 on, question, now before I ask for comments of  
12 the public, the public who are here?  
13 MS. SHULLMAN: I'll reserve until after  
14 the comments.  
15 MR. KRIDEL: Then at this point those of  
16 you who are here who want to speak on this  
17 proposed amendment are invited to do so.  
18 MS. LEVESQUE: Cards.  
19 MR. KRIDEL: Oh, I've got to do that  
20 first? Okay. I will read into the record two  
21 of the cards because that's what's requested.  
22 This is from Cheryl Schneider living at  
23 2702 West Mallory Boulevard, Jupiter, Florida,  
24 33458.  
25 I want to clarify the proceeding before

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1 the Jupiter PZC is not quasi-judicial. PZC has  
2 no final authority, and the application in  
3 question and -- I'm not sure; maybe that means  
4 opinion -- makes recommendations for town  
5 council to -- I'm not sure, ma'am, what this  
6 last word is, C-M --  
7 MS. SCHNEIDER: Sorry. I don't have very  
8 good handwriting.  
9 MR. KRIDEL: Your handwriting is great. I  
10 can't read this one word.  
11 MS. SCHNEIDER: The point I was trying to  
12 make was there was information given to you  
13 that the proceeding before planning & zoning on  
14 the Love Street matter was quasi-judicial for  
15 planning & zoning commission. I wanted to  
16 clarify that for us it's purely an advisory  
17 role in that our job is to give recommendations  
18 to the town council to raise issues for the  
19 town council to consider in their capacity in  
20 reaching a final decision.  
21 The only final decision-making authority  
22 that the Town of Jupiter Planning & Zoning  
23 Commission has is with regard to variance  
24 requests, and the (indiscernible) location is  
25 not a variance request. So I just wanted to

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1 clarify the scope of what we operate under in  
2 that circumstance.  
3 MR. KRIDEL: I can read your last  
4 sentence: PZC proceeding in this instance  
5 isn't binding.  
6 MS. SCHNEIDER: Thank you.  
7 MR. KRIDEL: The second comment card is  
8 from M. B. Hague, whose name appears repeatedly  
9 in the documents, 1353 Orrin (phonetic) Drive.  
10 The planning & zoning item is not  
11 quasi-judicial. It is an item looked at as  
12 advisory to the town council. Council is the  
13 decision body.  
14 That being said, I have cards from Darren  
15 Leiser.  
16 So, Mr. Leiser, please come to the  
17 microphone. Did I pronounce it correctly? If  
18 I didn't, I apologize.  
19 MR. LEISER: You did. Leiser is correct.  
20 If it would please the council, I would  
21 like to have Mr. Jeffrey Collins make a  
22 statement before I do.  
23 MR. KRIDEL: That's fine.  
24 MR. COLLINS: Jeff Collins. I did not put  
25 my address: I'm sorry, 548 Robin Lane, Jupiter,

<p style="text-align: right;">Page 9</p> <p>1 Florida. 2 I am the vice president of 1116 Love 3 Street, LLC, so I would like the commission to 4 issue -- to see this issue from our perspective 5 as a corporate citizen of the town. Ms. Hague 6 and Ms. Schneider have several years opposed to 7 our project, as is their right as town 8 residents. Our PUD was recommended for 9 approval by P&amp;Z before they were on the board. 10 with several members stating how much they 11 appreciate our project, and then it was 12 subsequently approved by town council. 13 Ms. Hague and Ms. Schneider, along with 14 the group they formed, COOLS, sued the town to 15 overturn our PUD approval. Throughout the 16 process of obtaining PUD approval, Ms. Hague 17 and Schneider made comment against our 18 application on the record, social media, as 19 well as at council meetings; many I personally 20 attended. 21 Following the PUD approval, Ms. Hague was 22 reappointed. She had been originally appointed 23 in May of 2016, so she had been there before, 24 and Ms. Schneider was appointed to the P&amp;Z 25 board, each by the only two town council</p>	<p style="text-align: right;">Page 11</p> <p>1 is simply not reasonable for public officials 2 to have the ability to further their personal 3 agendas by exercising their public servant 4 powers. To allow that creates a very bad image 5 of the town's ethics and adversely affects its 6 reputation. Now that a circuit court has 7 dismissed their lawsuit, we're even more 8 concerned of the possibility of revenge being 9 taken out on our project. 10 Further, because of Ms. Hague and 11 Schneider using their power to delay a hearing 12 on our amendment to obtain your ethics opinion 13 and having to address our ethic concerns, we've 14 incurred additional costs, delays, and 15 disruption, including carrying costs and 16 professional fees. 17 To me, plain common sense dictates that 18 people so committed to stopping a project that 19 they have sued in court and now appealing the 20 Judge's dismissal of that suit cannot then be 21 expected to carry out their public duties or 22 objectively judge whether a project complies 23 with town code. Allowing this would give them 24 an opportunity to cause us untold further delay 25 and additional expenses, and advance their own</p>
<p style="text-align: right;">Page 10</p> <p>1 members who actually voted against the PUD. We 2 then decided to request an amendment to our 3 PUD, which is not an uncommon occurrence. 4 As the P&amp;Z hearing and amendment request 5 approached, we always assumed they would not 6 participate in our hearing because of their 7 obvious bias and conflict. As we found out 8 they did not appear to be taking any steps to 9 recuse themselves, we became increasingly 10 concerned that we'd not get a fair hearing 11 because they were suing to stop our project, 12 fundraising to stop our project, in leading the 13 opposition to stop our project and causing us 14 to incur expenses and time. So how could they 15 possibly not have a special benefit and have a 16 conflict of interest? 17 We are entitled to have a fair hearing by 18 public officials who do not have a special 19 vested interest in seeing the project stopped 20 regardless of its merits and meeting all 21 aspects of the town code. 22 Ms. Hague and Ms. Schneider have a 23 conflict of interest for all of the reasons 24 stated and should not be allowed to participate 25 in hearing to judge or view the amendment. It</p>	<p style="text-align: right;">Page 12</p> <p>1 interest as opposed to the expressed town 2 interests that have already been approved, the 3 PUD. 4 Therefore, on behalf of 1116 Love Street, 5 LLC, we ask you to not issue the proposed 6 opinion, and in its place issue an opinion 7 finding that there is indeed a conflict. 8 I thank you for your time. 9 MR. KRIDEL: Thank you. 10 Mr. Leiser, would you like your turn now? 11 Would you confirm your address? 12 MR. LEISER: 790 Juno Ocean Walk, Juno 13 Beach, Florida, 33408. 14 MR. KRIDEL: Thank you. 15 MR. LEISER: My name is Darren Leiser, and 16 I'm an attorney for 1116 Love Street, LLC. 17 As Mr. Collins stated, they are the owner 18 and the applicant of the subject PUD. I'd like 19 to note that the issue here is fairly 20 straightforward: It's can a public official 21 participate in a hearing on a project that the 22 official is suing on? 23 The simple answer appears to be no, and I 24 ask the commission not to get bogged down in 25 the details and lose sight of the forest for</p>

<p style="text-align: right;">Page 13</p> <p>1 the trees. We believe that Section 2-443 2 (a)1 and 7 do apply to this situation to both 3 Commissioners Schneider and Hague and to COOLS. 4 The proposed RQO argues that neither 5 Ms. Hague or Ms. Schneider will receive any 6 special financial benefit from participating in 7 the hearing, and that any financial benefit to 8 COOLS is too remote and speculative. We don't 9 think this is correct. They will receive a 10 special financial benefit because they are 11 petitioners in a lawsuit challenging the 12 validity of the project on which they will be 13 voting. Litigation costs money. 14 COOLS is a single-purpose entity; its one 15 purpose being to defeat the Love Street 16 project. It raises money to do so. By 17 participating in hearings regarding the very 18 project they are trying to kill. Commissioners 19 Hague and Schneider are securing a financial 20 benefit for themselves and for COOLS because 21 their petition will help them raise money for 22 COOLS and lessen their litigation costs if they 23 are able to stop the project outside of court. 24 We also believe that Section 2443 (b) also 25 applies because there is a special benefit</p>	<p style="text-align: right;">Page 15</p> <p>1 hearing would violate the ethics code if there 2 was any quid pro quo to the applicant. Though 3 COOLS or its sponsors are not the applicant 4 here, it does have an interest in seeing that 5 the application is defeated, and as we have 6 outlined, Ms. Hague and Ms. Schneider can 7 further COOLS fundraising efforts and 8 litigation strategy by participating in the 9 hearing; thus, a quid pro quo appears to be 10 present. 11 Additionally, Ms. Schneider and Ms. Hague 12 should have asked first and acted later. The 13 petition was filed over a year ago. Presumably 14 they completed their ethics training when they 15 were appointed to the planning &amp; zoning board, 16 and the first of the top ten ethics rules is 17 always ask first and act later. As such, they 18 should have realized there was a potential 19 conflict of interest and dealt with it before 20 the hearing on the Love Street project. This 21 didn't happen. They waited until the hearing, 22 and then the hearing was delayed because of it. 23 Had they obtained an opinion beforehand; 24 regardless of whether or not the opinion 25 stated they could or could not participate, the</p>
<p style="text-align: right;">Page 14</p> <p>1 accruing to Commissioners Schneider, Hague, and 2 COOLS. The RQO incorrectly asserts that the 3 petition for certiori that was filed with the 4 court is only a procedural challenge to the 5 PUD. In fact, it's a substantive challenge to 6 the PUD, and this is the very PUD that is 7 before the planning &amp; zoning commission. Thus 8 the application before the PZB, the planning &amp; 9 zoning commission, is affected by the 10 litigation because if the PUD application -- 11 because if the PUD is deemed invalid by the 12 Court, then the application will certainly be 13 affected by such a decision. Therefore, they 14 have a benefit beyond that of the rest of the 15 community since they are named petitioners in 16 the lawsuit against the project and 17 participating in the hearing will further their 18 litigation strategy and the goal of COOLS. 19 In a prior RQO, number 16-021, the 20 commission found that there was an appearance 21 of impropriety where a planning &amp; zoning board 22 member who was also a member of a nonprofit 23 participated in a hearing at which a benefactor 24 of that nonprofit was the applicant. The 25 commission stated that participation in that</p>	<p style="text-align: right;">Page 16</p> <p>1 application would have been resolved at the 2 hearing on July 11. Thus, the project has been 3 delayed and, as stated earlier, this is exactly 4 what COOLS is trying to accomplish. 5 Finally, the proposed RQO appears to set a 6 dangerous precedent. If approved the RQO can 7 be used by public officers who are opposed to a 8 project who wait until the actual hearing on 9 the project to request ethics guidance thereby 10 delaying the project, which will cause damages 11 to the applicant, especially if the application 12 is time sensitive. This isn't fair to the 13 applicant, and is certainly not the intent of 14 the ethics code. 15 For these reasons and, again, because it 16 is simply a conflict to allow public officials 17 who are suing to block a project participate on 18 a vote concerning that very project, we ask 19 that the commission not approve the proposed 20 RQO. Thank you. 21 MR. KRIDEL: Thank you. 22 And we have one more from Ms. Schneider. 23 MS. SCHNEIDER: Thank you. I just wanted 24 to clarify several points that was made by the 25 applicant.</p>

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1 First of all, with regard to the timing, 2 the planning &amp; zoning commission, the way it 3 works now, we get notice of the items that 4 we're going to hear on the agenda four days 5 before the meeting. So even if I had contacted 6 you on the day that I got the notice, we would 7 still be here at this hearing today. 8 I was also given the letter from the town 9 attorney regarding this matter five hours 10 before the meeting and three hours before the 11 close of business for you, so we moved as 12 expeditiously as we could to address the 13 question. 14 The other thing I want to correct is the 15 characterization of the request for petition 16 for judicial review. The issues that we raised 17 had to do with the fact that we were concerned 18 that town council had not applied the town code 19 correctly, and this has nothing to do with the 20 applicant itself or with what the project looks 21 like. 22 For example, when the applicant revised 23 its project, the project was supposed to go 24 back to the planning &amp; zoning commission for 25 review, and it did not. That deprived the</p>	<p style="text-align: right;">Page 19</p> <p>1 work correctly is anything that should ever be 2 a conflict for anyone. 3 MR. KRIDEL: Commissioners? 4 MS. SHULLMAN: We have another comment. 5 MR. KRIDEL: I'm sorry. We do. 6 MR. LEISER: Yes, I would just like to 7 speak to what Commissioner Schneider just said. 8 MR. KRIDEL: May I ask; I don't know if 9 anybody here can answer my question: How long 10 can this continue, this debate? 11 MR. BANNON: It actually can continue as 12 long as you're comfortable allowing it. In 13 fairness, since she spoke again, I think you 14 should allow -- 15 MR. KRIDEL: Okay. I just wanted to make 16 sure that I wasn't -- 17 MR. BANNON: There's no hard-and-fast 18 rule. It's up to you as chair as to how long 19 you want to continue this. 20 MR. KRIDEL: There are very few things in 21 life that I've discovered that are completely 22 up to me. If this is one of them, continue. 23 MR. LEISER: I just have one comment; it's 24 concerning the petition that was filed. 25 Ms. Schneider characterizes it as a technical</p>
<p style="text-align: right;">Page 18</p> <p>1 public of an opportunity to make comments on 2 the project and deprived the planning &amp; zoning 3 commission of another opportunity to provide 4 guidance to the town council. 5 We also raised questions about whether the 6 disclosures under Sunshine were adequate, and 7 felt that there had been a number of 8 conversations that had taken place in the shade 9 that the public was unaware of, and wanted to 10 make sure that in the future that these 11 findings were disclosed. 12 We had also talked about situations where 13 an applicant is required to make a showing in 14 order to be able to provide certain parking 15 under the code, and that showing wasn't made or 16 requested, other parts of the code where 17 waivers were supposed to be granted and they 18 weren't granted. So these are all -- 19 everything in our request for review are 20 technical matters having to do with how the 21 town processed the application. So, you know, 22 our view is that our interest is making sure 23 that the laws are applied correctly and we have 24 good government processes here, and I don't 25 really think that wanting to have the things</p>	<p style="text-align: right;">Page 20</p> <p>1 challenge, and in part it is a technical 2 challenge, but I've also provided the actual 3 petition. I don't know if you've seen it, but 4 there are -- I believe their first two 5 arguments are a substantive challenge to the 6 PUD. The first having to do with traffic 7 impacts and the second having to do with a lack 8 of parking, so it is more than a technical 9 challenge. They're actually challenging the 10 substance of the PUD. 11 MR. BANNON: Mr. Chair, just so you know, 12 we did not provide it because it 13 was (indiscernible) pages long. But I did 14 review it, and Ms. Kelley has reviewed it, and 15 there are both procedural and substantive 16 challenges. 17 MR. KRIDEL: I didn't think I'd seen it, 18 despite the additional documents. 19 So, Commissioners, are there any comments, 20 questions, or observations? 21 MS. SHULLMAN: I have a question, if 22 Ms. Schneider wants to answer: Has COOLS done 23 any fundraising? 24 MS. SCHNEIDER: The only fundraising we 25 did was to be able to hire the attorney to file</p>

5 (Pages 17 to 20)



<p style="text-align: right;">Page 21</p> <p>1 the petition. COOLS has no other purpose. 2 Originally the entity was formed actually 3 because we wanted to be able to participate 4 more fully in the town council proceedings. As 5 residents we only are allowed to speak for 6 three minutes, and there were a large number of 7 issues we wanted to raise. So we formed the 8 ad hoc group so that we could intervene and 9 have 15 minutes to address town council, and 10 that's the reason the entity was formed. Then 11 later it became one of the petitioners in the 12 request for judicial review, and the only 13 fundraising it's ever done is the Go Fund Me 14 account to be able to retain the attorney to 15 file the review for us. 16 MS. SHULLMAN: Thank you. 17 Is the Go Fund Me account still active? 18 MS. SCHNEIDER: It is open now, but it is 19 linked exclusively to the attorney. So if 20 anybody contributes, I can't touch the money. 21 There's no way I can get the money or 22 Commissioner Hague can get the money. The only 23 person who can withdraw money from that account 24 is the attorney. 25 MS. SHULLMAN: But the money comes through</p>	<p style="text-align: right;">Page 23</p> <p>1 MS. SCHNEIDER: No. COOLS doesn't have 2 anything. 3 MS. SHULLMAN: What about on FaceBook, are 4 there any links on FaceBook that run off the 5 Go Fund Me account? 6 MS. SCHNEIDER: No. We just put it up on 7 Go Fund Me, and then people found it and we 8 don't -- we didn't advertise it. 9 MS. SHULLMAN: How would they find it? 10 MS. SCHNEIDER: Well, I guess there was a 11 general e-mail on Go Fund Me that said here's 12 what we want to do and you can contribute, and 13 then people found it that way. Again, it's 14 linked to a general FaceBook account, but not 15 -- COOLS doesn't have a FaceBook page. It 16 doesn't have a website. It doesn't have -- I 17 think it has a G Mail address. 18 MS. SHULLMAN: Who sent the e-mail? 19 MS. SCHNEIDER: The original e-mail? 20 MS. SHULLMAN: The general e-mail about 21 the Go Fund Me. 22 MS. SCHNEIDER: I set up the Go Fund Me 23 account. 24 MS. SHULLMAN: Okay. You sent the general 25 e-mail through the Go Fund Me account?</p>
<p style="text-align: right;">Page 22</p> <p>1 COOLS to the attorney? 2 MS. SCHNEIDER: No, it doesn't go through 3 COOLS at all. It goes from the Go Fund Me 4 account, and then the only person who can 5 access the money is the attorney. COOLS 6 itself does not have a bank account. It 7 doesn't collect money. It doesn't do anything. 8 It was just an ad hoc group and it was added to 9 the petition. But the money that's raised in 10 the Go Fund Me is linked directly to the 11 attorney, so he's the only one who can touch 12 the money, and COOLS isn't even involved in 13 that. 14 MS. SHULLMAN: But if COOLS set up the 15 Go Fund Me account to allow the money to go to 16 the entity -- 17 MS. SCHNEIDER: No, COOLS did not set up 18 the Go Fund Me account. I set up the Go Fund 19 Me account as an individual before we had 20 incorporated COOLS to be able to be a 21 petitioner. So COOLS is not involved at all in 22 terms of any financial activity. 23 MS. SHULLMAN: Does COOLS have a website 24 or anywhere that links to the Go Fund Me 25 account?</p>	<p style="text-align: right;">Page 24</p> <p>1 MS. SCHNEIDER: So you go in Go Fund Me, 2 you write your message, quick start, and then 3 it gets linked to FaceBook or Twitter or 4 whatever. Then after that if people 5 contribute, if you add another message it sends 6 it to -- it collects the e-mail addresses of 7 the people who contributed. 8 MS. SHULLMAN: In the message that went 9 out to the contacts that received the message 10 about the Go Fund Me account, who was it being 11 sent on behalf of? Like did it say this is 12 COOLS sending out this message? 13 MS. SCHNEIDER: No. 14 MS. SHULLMAN: Was it you individually; 15 not the actual sender, but who did the message 16 appear to be from? 17 MS. SCHNEIDER: It would appear to be from 18 me as the person who originated the Go Fund Me 19 account. 20 MS. SHULLMAN: So you individually, and 21 COOLS is not mentioned at all in the e-mail? 22 MS. SCHNEIDER: No, COOLS isn't part of 23 that. 24 MR. KRIDEL: Ms. Schneider, does COOLS 25 have any -- I understand you're not an</p>

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<p>1 attorney. Does COOLS have any legal title to 2 the funds in the Go Fund Me account? 3 MS. SCHNEIDER: No. The only person who 4 has legal title to the money is the attorney 5 who was representing. 6 MR. KRIDEL: That may be who has the 7 authority to withdraw it at this point, but I'm 8 just wondering if at some point if COOLS -- you 9 want to take it down, close the Go Fund Me 10 account, where are those funds disbursed 11 ultimately? Who controls that? 12 MS. SCHNEIDER: The attorney. All of the 13 money has been disbursed at this point, and it 14 can only go to the attorney. There might be a 15 mechanism if there's money left over to return 16 it to the people who donated it. But COOLS is 17 not involved in that at all. It has no 18 connection in any way, shape, or form to the 19 Go Fund Me account. 20 MR. KRIDEL: So this really then, unless 21 I'm misunderstanding, the Go Fund Me account is 22 you raising funds? 23 MS. SCHNEIDER: To hire a lawyer. 24 MR. KRIDEL: To hire a lawyer? 25 MS. SCHNEIDER: Right.</p>	<p>1 MS. SHULLMAN: Are you a client and 2 Commissioner Hague a client of the attorney? 3 MS. SCHNEIDER: Yes. 4 MS. SHULLMAN: And you're not sure about 5 COOLS? 6 MS. SCHNEIDER: No, I don't know off the 7 top of my head whether COOLS signed as a 8 client. I don't believe so because at the time 9 COOLS had no -- no. I don't think COOLS was. 10 MS. SHULLMAN: But regardless of the 11 actual retainer agreement you signed, the 12 attorney is representing all of the petitioners 13 in the petition, right? 14 MS. SCHNEIDER: Correct, and I don't 15 recall whether or not COOLS was part of the 16 retainer agreement or not. I don't believe it 17 was. It was just the individuals. 18 MS. SHULLMAN: Okay. I'm just asking now 19 does the attorney represent all of the 20 petitioners? In other words, the attorney 21 doesn't represent you, but there's another 22 attorney for COOLS? 23 MS. SCHNEIDER: Oh, correct. 24 MS. SHULLMAN: He's representing all of 25 the petitioners?</p>
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<p>1 MR. KRIDEL: It's not COOLS in any way 2 whatsoever? 3 MS. SCHNEIDER: No. COOLS does not have a 4 bank account. 5 MR. KRIDEL: I understand that, but 6 there's a difference between beneficial 7 interest and other types of interest, and I'm 8 just trying to be -- get to the point where I'm 9 completely clear about that, including 10 (indiscernible). 11 MS. SCHNEIDER: Right. No, there's no 12 connection in any way, shape, or form 13 whatsoever between COOLS and the Go Fund Me 14 account. 15 MS. SHULLMAN: Who does the attorney 16 represent? 17 MS. SCHNEIDER: He represents everyone on 18 the petition. 19 MS. SHULLMAN: Does the attorney represent 20 COOLS? 21 MS. SCHNEIDER: COOLS is a named 22 petitioner, so I -- off the top of my head I 23 can't tell you if COOLS is a client. COOLS may 24 not be a client. I think it's the individuals 25 are the client.</p>	<p>1 MS. SCHNEIDER: Correct. 2 MS. SHULLMAN: So the funds that are going 3 to the attorney are to represent COOLS and the 4 petitioners individually? 5 MS. SCHNEIDER: Correct. 6 MS. SHULLMAN: I actually wanted to ask 7 Mr. Leiser if there's any other factual 8 information pertaining to the fundraising? 9 MR. LEISER: Well, I didn't bring a copy, 10 but if we could go to the Go Fund Me page, the 11 only way I've been able to find the website, 12 the actual Go Fund Me page, is to put in the 13 search box citizen owners of Love Street, and 14 that brings up the actual Go Fund Me page. So 15 I don't think it's accurate to say that COOLS 16 has no affiliation whatsoever with the Go Fund 17 Me page because that's the way I found it, 18 through the Go Fund Me website. 19 MS. SCHNEIDER: Those were words that were 20 used in one of the posts. It was not a 21 reference to the entity. That is why the 22 words -- if you come up and you do a word 23 search the words citizen owners of Love Street 24 will appear. But that is not a reference, and 25 I would know because I wrote it, that is not a</p>

<p style="text-align: right;">Page 29</p> <p>1 reference to the entity. 2 MS. SHULLMAN: Thank you. 3 MR. KRIDEL: Commissioner Headley? 4 MR. HEADLEY: Am I correct in assuming 5 that Mr. Leiser didn't have access to the 6 fundraising entity? 7 MR. BANNON: Actually, he did afterwards 8 because he wrote a response to it. 9 MR. HEADLEY: Okay. So I'm looking at -- 10 MR. BANNON: Identify the document. 11 MR. HEADLEY: Yes, this is the agenda for 12 today's meeting, page 19 of 42. 13 MR. LEISER: Page 19? 14 MR. HEADLEY: Yes, 1-9 of 42, the last 15 paragraph on page 19, four lines from the 16 bottom starts with despite the argument made. 17 MR. LEISER: Gotcha. 18 MR. HEADLEY: "Despite the argument made 19 that this action delays and thus harms the Love 20 Street PUD project overall, that is not the 21 standard used to determine whether an action is 22 prohibited under the code. The standard to be 23 considered is whether any improper special 24 privilege, benefit, or exemption was provided 25 by such actions."</p>	<p style="text-align: right;">Page 31</p> <p>1 that not other members of the community have. 2 MS. SCHNEIDER: May I -- he's factually 3 incorrect. We have already paid for the 4 attorney. There are no more fees, so there is 5 no more fundraising. I probably need to take 6 the link down, but the fees have already been 7 paid to the attorney. It was a flat fee 8 arrangement. We are not incurring any other 9 costs, so there is no financial impact to us 10 whatsoever related to the planning &amp; zoning 11 commission meeting. That is on an entirely 12 different time table and time frame from what 13 the circuit court is going to do. 14 MR. BANNON: If I can break in for a 15 second? 16 Ma'am, in all due respect, the 17 commissioner asked him for an answer. If he 18 has another question for you, he will. This is 19 not -- 20 MS. SCHNEIDER: My apologies. I just 21 wanted to make a correction. 22 MR. KRIDEL: Are you done, Commissioner 23 Headley? 24 MR. HEADLEY: Anything else you want to 25 say?</p>
<p style="text-align: right;">Page 30</p> <p>1 So I guess what I want to know is do you 2 think -- again, in order for the issue to be 3 improper under the code, there has to be 4 improper special privilege, benefits, or 5 exemptions. Are there any? 6 MR. LEISER: Yes. I believe I outlined 7 what we think those are in my presentation and 8 also in our written responses to the opinion. 9 I don't know if it's in here because I just 10 sent it the other day, but -- 11 MR. BANNON: Page 29. 12 MR. LEISER: Page 29. Yes, so this 13 outlines what we think are the special 14 benefits. And just to summarize again, the 15 special financial benefit that we see is that 16 the commissioners are in litigation with the 17 town over the PUD, and COOLS is one of those 18 petitioners and they have to pay for this 19 lawsuit, so we see their participation in 20 hearings as an opportunity to raise money for 21 the lawsuit. 22 In addition, we also see that if they're 23 able to fight the PUD outside of court, it 24 lessens their litigation expenses, and as 25 petitioners in the lawsuit, that's something</p>	<p style="text-align: right;">Page 32</p> <p>1 MR. LEISER: Well, again, just to 2 reiterate that there is active litigation going 3 on and, again, even if there's not a financial 4 benefit; though we believe there is a financial 5 benefit, what is it, 2-443 (b) is the corrupt 6 intent and improper purpose, and there's a 7 special benefit to them as litigants against 8 the project to see that the project is either 9 delayed or defeated, and that is certainly more 10 than the community in general because the rest 11 of the community hasn't sued to prevent the 12 project; it's only them who have done that. 13 MR. KRIDEL: As long as you're speaking, 14 let me direct a question to you. 15 Remaining on page 29, in the same 16 paragraph, you make the argument that the delay 17 also inflicts real financial harm to the owner 18 and the project. Part of what I do is I 19 determine financial losses, both actual and 20 alleged, and sometimes I'm on the other side 21 too. Can you tell me what is the real harm 22 here? Because it would seem to me that it's 23 speculative at best. 24 MR. LEISER: Well, I can have Jeff Collins 25 speak more to the specific harm. But just</p>

<p style="text-align: right;">Page 33</p> <p>1 initially you have to pay professionals to 2 prepare for such a hearing. Then when you have 3 to have another hearing, obviously you're going 4 to incur more professional fees to do so, so 5 there's financial harm there because but for 6 this issue, they wouldn't have to spend those 7 excess fees. 8 MR. KRIDEL: So we have some opportunity 9 costs too? 10 MR. LEISER: What do you mean by 11 opportunity costs? 12 MR. KRIDEL: Money that's spent, money 13 that's not available in the future, and also 14 what appears to be the inability to move the 15 project forward and, therefore, perhaps losing 16 momentum and some of the other elements of 17 real estate development. 18 MR. LEISER: Oh, yes. Absolutely. Those, 19 I think, are certainly damages that the 20 applicant would suffer. 21 MR. KRIDEL: Now, before I let you go, if 22 you'll look at page 19, and it would be the 23 paragraph that begins on page 19 that speaks to 24 the corrupt concept. In that paragraph 25 corruptly means -- in the last sentence</p>	<p style="text-align: right;">Page 35</p> <p>1 they're no longer actively fundraising, but 2 they are still up on the Go Fund Me page 3 collecting donations. 4 MR. KRIDEL: But would you agree that if 5 what Ms. Schneider said with respect to the 6 only individual with the capacity to access 7 whatever funds that were raised or possibly 8 would be raised, it is the attorney as opposed 9 to any of the petitioners, including COOLS, 10 that sort of creates a road block to 11 compensation or benefit? 12 MR. LEISER: I couldn't say that without 13 seeing the agreement between the attorney and 14 the petitioners. 15 MR. KRIDEL: Oh, I understand, but we're 16 not trying the case. But I'm just asking if 17 what she said was true, then I'm having a hard 18 time following the money. 19 MR. LEISER: Well, if there's a flat fee 20 and it has all been paid for, then obviously 21 there wouldn't be any more litigation expense 22 towards the attorney. That doesn't mean there 23 may not be additional filing fees at some 24 point, but as far as attorney fees are 25 concerned, I would have to agree with you.</p>
<p style="text-align: right;">Page 34</p> <p>1 corruptly means done with a wrongful intent and 2 for the purpose of obtaining or compensating or 3 receiving compensation for any benefit 4 resulting from some act or omission of an 5 official or employee which is inconsistent with 6 the proper performance of his or her duties. 7 I'm having a hard time making this link 8 between how if the only person with access, for 9 example, the fundraising funds, is a third 10 party who is counsel and the project is not 11 going -- stopping the project would not create 12 a stream of assets, or how ever else you want 13 to define it to the petitioners, so I'm trying 14 to understand this hypothetical link. 15 MR. LEISER: Well, first of all, stopping 16 the project would necessarily end the 17 litigation, and so any further costs incurred 18 in litigating and even appealing the Court's 19 decision would likely be cut off. And then 20 additionally as to any type of financial 21 benefit outside of the litigation going towards 22 COOLS, like you said, there's momentum, so if 23 the project is stopped and defeated there could 24 be momentum in fundraising for COOLS. And I 25 know Commissioner Schneider indicated that</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. KRIDEL: Okay. One more thing to 2 443 (b). I'm struggling with developing the 3 theory of wrongful intent. Many people get 4 involved in litigation, as you know, for 5 altruistic reasons, principles, theories, and 6 then other people do have wrongful intent. I'm 7 struggling with meeting that criteria here 8 based on what I've heard from both sides, to be 9 honest. 10 MR. LEISER: Well, I think Ms. Kelley 11 raised an issue -- an interesting point when 12 she earlier today discussed with the Court 13 deemed as wrongful intent. I don't remember 14 the exact standard, but it had to do with -- do 15 you happen to have that? 16 MS. KELLEY: The first DCA defined 17 wrongful intent as acting with reasonable 18 notice, the conduct is inconsistent with the 19 proper performance of their public duties. 20 MR. LEISER: So my position would be that 21 they had the reasonable notice. They filed the 22 petition over a year ago. They knew that this 23 could potentially be a conflict, and they 24 didn't do anything with it, and then we're 25 going to go and vote on and participate in the</p>

<p style="text-align: right;">Page 37</p> <p>1 hearing without even asking had, I guess, the 2 town attorney not raised the issue. 3 MR. KRIDEL: So -- and then I'm really 4 going to be done. So does this speak more to 5 fact or occurrence do you think? 6 MR. LEISER: I think it speaks to both. I 7 mean, it's a fact they have sued the town over 8 the project. It's a fact they've made comments 9 against it. It's a fact that they paid an 10 attorney to proceed with the litigation, and it 11 certainly is an appearance, especially from an 12 applicant's position, where you have people who 13 are suing to stop a project are at the very 14 same time going to judge that project at a 15 local government level. So I think we have 16 both factual and apparent conflict. 17 MR. KRIDEL: Thank you. 18 Mr. Collins, did you want to step forward? 19 MR. COLLINS: You mentioned opportunity 20 costs. I was just going to say absolutely 21 there's financial opportunity costs, as well as 22 every time there's a delay on the project it 23 creates uncertainty to potential tenants, 24 people we're talking with, et cetera. So 25 every time there's a delay like this, which is</p>	<p style="text-align: right;">Page 39</p> <p>1 livability. I've applied my role in the 2 context of being an impartial layer in the 3 check and balance of accountability, doing my 4 best to assure the policies and codes are 5 correctly applied, and that each project is 6 weighed individually purely on its own merits 7 hoping to promote public confidence in the 8 planning process. 9 In the context of reviewing development 10 applications on a case-by-case basis, I have 11 every confidence that I approach each plan with 12 objectivity and fairness. Since my appointment 13 as a resident volunteer to the planning &amp; 14 zoning commission in April of 2016, I've been 15 consciously and mindfully following my ethical 16 obligation and responsibility as it pertains to 17 any conflict of personal gain, bias, or voting. 18 I do not have bias against the developer or 19 development; however, I do thoroughly study a 20 project for compliance, consistency, and 21 compatibility. 22 Because of my personal high standards in 23 conducting the duties of the commission, I have 24 no doubt that I connect independently by 25 evaluating their amendment. It's a total new</p>
<p style="text-align: right;">Page 38</p> <p>1 part of their game, I get phone calls going is 2 this really going to happen, are we really 3 going to do this deal. So absolutely there's 4 opportunity costs, financial and in the overall 5 credibility of the project. 6 MR. KRIDEL: Thank you. 7 Ms. Hague? 8 MS. HAGUE: Thank you, commissioners, for 9 letting me speak. 10 I don't know whether you had received a 11 letter that I sent to general counsel just 12 after I had read some of the communications to 13 you from town council, so I would like to read 14 a portion of it. I would like to respond to 15 the communications submitted to the ethics 16 commission by Darren Leiser, specifically that 17 I'm being accused of securing special benefit 18 or corrupt misuse of my official position, the 19 reason being that I'm a party to the Circuit 20 Court in reviewing whether the town had 21 correctly applied its own policies to an 22 approved project. 23 My desire to serve as a volunteer on the 24 commission is based upon having an interest in 25 my community, its future, health, viability and</p>	<p style="text-align: right;">Page 40</p> <p>1 amendment to resolution 5216 without any bias. 2 Not only is there no voting conflict in my 3 mind, but also let me emphasize that I was 4 never questioned about, discussed, or dismissed 5 concern about a possible voting conflict, as 6 Mr. Jeck had stated in his letters. 7 So I'm open for any questions that you may 8 have of me. Thank you. 9 MR. KRIDEL: How long have you been on the 10 commission? 11 MS. HAGUE: I was appointed in April of 12 2016 after the first Love Street project had 13 been in front of the planning &amp; zoning 14 commission. 15 MR. KRIDEL: Okay. Had you ever been on a 16 city commission before? 17 MS. HAGUE: No. 18 MR. KRIDEL: So have you ever been faced 19 with similar decisions with respect to other 20 projects? 21 MS. HAGUE: No. I think we all come into 22 a project, you know, whether or not you have to 23 weigh whether you're partial or impartial to 24 the project in general, but looking at the 25 codes and looking at compatibility and whether</p>

<p style="text-align: right;">Page 41</p> <p>1 policy has been applied to it. And that's what 2 I do my best to try to do, to point out 3 different questions that I may have, not 4 looking at planning &amp; zoning as my position 5 purely to rubber-stamp a staff report. but to 6 look at it and take the time, now that I'm 7 retired, to get into the weeds so that I can 8 really look at is it following our 9 comprehensive plan, is it doing what it's 10 supposed to be doing, and that's my job at 11 planning &amp; zoning as a local planning 12 commissioner. 13 MR. KRIDEL: Just a couple more questions. 14 Before you retired what was your occupation? 15 MS. HAGUE: I've got a master's in 16 education, so I taught school, and I own my own 17 business. 18 MR. KRIDEL: So you're an entrepreneur? 19 MS. HAGUE: Yes. 20 MR. KRIDEL: In the 13 or 14 months since 21 you've been on the commission, have you been 22 presented with having to vote on other 23 projects? 24 MS. HAGUE: Yes. 25 MR. KRIDEL: And no other projects raised</p>	<p style="text-align: right;">Page 43</p> <p>1 Commissioner Pierman? 2 MS. PIERMAN: I have a couple of 3 questions. By whom were you appointed to the 4 planning commission? 5 MS. HAGUE: By Councilor Kuretski. Jim 6 Kuretski from the town council, I was his 7 personal appointee. 8 MS. PIERMAN: So by virtue of that, you 9 were involved with the code of ethics? 10 MS. HAGUE: Yes. 11 MS. PIERMAN: A lawsuit, you're involved 12 with a lawsuit? 13 MS. HAGUE: I'm one of the petitioners. 14 MS. PIERMAN: Being on the planning 15 commission you are suing this entity? 16 MS. HAGUE: I was -- well, the lawsuit was 17 filed after it had already come in front of 18 planning &amp; zoning, the approved project, so I 19 was not sitting on the commission when -- you 20 know, before that time. 21 MS. PIERMAN: It seems rather interesting 22 to have a board from the city that you're 23 involved with to sue a developer. I guess -- 24 MS. HAGUE: We weren't suing the 25 developer. We were asking for an</p>
<p style="text-align: right;">Page 42</p> <p>1 the issues that you see here? 2 MS. HAGUE: No. 3 MR. KRIDEL: What makes this so special? 4 MS. HAGUE: There just seems to be now 5 we're looking at areas in town that waivers are 6 being given, codes are being ignored, and it's 7 gotten to the point, especially in Jupiter, 8 that you can't let that happen. So, you know, 9 if we've got questions, if we've got facts to 10 bring in front of town council or 11 recommendations to make, it's got -- somebody's 12 got to speak up and do it. 13 MR. KRIDEL: Is there -- have you 14 considered -- and I'm going to tell you you 15 don't have to answer this question: Have you 16 considered addressing these issues with the 17 inspector general? 18 MS. HAGUE: Actually, now we have. Now I 19 have. 20 MR. KRIDEL: I'm not sure I understand 21 that answer, now I have. Now I have considered 22 it or I already have done it? 23 MS. HAGUE: It's been on my mind. 24 MR. KRIDEL: Okay. Commissioners, does 25 anybody else have any questions?</p>	<p style="text-align: right;">Page 44</p> <p>1 administrative review on the project purely 2 because we felt that the codes were not applied 3 and certain things were not asked to be 4 explained. So it was -- there were many, many 5 arguments there that we said were not addressed 6 and were not followed. 7 MS. PIERMAN: So it's the project itself 8 that you were (indiscernible) with. You also 9 have commissioners from the council involved in 10 the lawsuit too? 11 MS. HAGUE: Commissioners from town 12 council, no. No, none of council. None of the 13 town council is involved in the lawsuit. 14 MS. PIERMAN: Just the planning commission 15 itself? 16 MS. HAGUE: Well, let me clarify. 17 Ms. Schneider and I are the two planning &amp; 18 zoning commissioners that are part of the 19 petitioners for the lawsuit. None of the other 20 planning &amp; zoning commissioners are involved or 21 town council. Once again, it's against the 22 administrative review from the town. 23 MS. PIERMAN: So you're basically doing 24 this as individuals? 25 MS. HAGUE: Yes.</p>

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<p>1 MS. PIERMAN: Thank you.</p> <p>2 MR. KRIDEL: Any other commissioners have</p> <p>3 any questions?</p> <p>4 MR. KUMMERLEN: I have one, but I'm not</p> <p>5 sure who to address it to. The question with</p> <p>6 RQO, the one cited, 021, I need a little</p> <p>7 clarification on that. Can I get with</p> <p>8 Mr. Bannon on that or Ms. Kelley?</p> <p>9 MR. BANNON: I'd be happy to.</p> <p>10 MR. KUMMERLEN: That looked like a case</p> <p>11 that involved appearance with Ms. Patrick. As</p> <p>12 I read through that last night to try to figure</p> <p>13 it out, she still was able to vote, but if that</p> <p>14 vote was shown to come from some -- or go</p> <p>15 whichever way she went, there was some unlawful</p> <p>16 quid pro quo, then it would be a violation.</p> <p>17 But her actually voting because of appearance,</p> <p>18 she wasn't precluded from voting?</p> <p>19 MR. BANNON: She was not precluded from</p> <p>20 voting, and it was an appearance and, actually,</p> <p>21 exactly what we said, if there's a</p> <p>22 quid pro quo, for instance, that we don't know</p> <p>23 about or we can't address, then it doesn't make</p> <p>24 it an improper vote. So that we understand,</p> <p>25 because I was confused when Mr. Leiser brought</p>	<p>1 We're not robots up here.</p> <p>2 The question is, as the deciders of the</p> <p>3 decision, is there a conflict when they're the</p> <p>4 ones who have, in my mind, taken it one step</p> <p>5 beyond opposition and filed a lawsuit, and is</p> <p>6 there a special financial benefit that would</p> <p>7 preclude them from voting on the issue? So I</p> <p>8 don't want to get bogged down on whether this</p> <p>9 was a quasi-judicial decision you have to make,</p> <p>10 because to me that's not -- it was raised in</p> <p>11 the papers, but that's not relevant. Whether</p> <p>12 you have final authority is also to me not</p> <p>13 relevant. But I'm hearing what you're saying,</p> <p>14 which was in counter to the papers that were</p> <p>15 submitted.</p> <p>16 So, again, taking your opposition out of</p> <p>17 it, because you're entitled to your opposition,</p> <p>18 we're left with the decision of what does the</p> <p>19 code say and is there a conflict in deciding.</p> <p>20 To me, forming a nonprofit, suing the town, and</p> <p>21 then raising funds for that lawsuit, which the</p> <p>22 Go Fund Me page is still active; people can</p> <p>23 still contribute to it, you know, you can go on</p> <p>24 your cell phone right now, we don't know if the</p> <p>25 attorney is going to have to raise more funds</p>
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<p>1 up that case. but what he said -- he clarified</p> <p>2 there is they're saying that there is a quid</p> <p>3 pro quo, and that's why that applies.</p> <p>4 MR. KUMMERLEN: Thank you very much.</p> <p>5 MR. KRIDEL: If there are no more</p> <p>6 comments, any further comments from the public?</p> <p>7 Is there a motion to approve proposed</p> <p>8 advisory opinion RQO 17-015?</p> <p>9 MS. SHULLMAN: Well, we haven't discussed</p> <p>10 it amongst ourselves. Mr. Chair, would you</p> <p>11 entertain some discussion briefly --</p> <p>12 MR. KRIDEL: That's fine. Sure.</p> <p>13 MS. SHULLMAN: You're looking at me, so do</p> <p>14 you want me to --</p> <p>15 MR. KRIDEL: You started.</p> <p>16 MS. SHULLMAN: Okay. I just want to be</p> <p>17 very clear about what this is about, what our</p> <p>18 decision is about, what it's not about. It's</p> <p>19 not about the petitioners filing a lawsuit.</p> <p>20 which is their lawful right to do. It's not</p> <p>21 about their opposition to the project, which is</p> <p>22 their lawful right to have. It's not even</p> <p>23 about their vocal opposition. Obviously,</p> <p>24 people who are appointed to planning &amp; zoning</p> <p>25 boards have opinions. They're not robots.</p>	<p>1 because of the petition for rehearing that is</p> <p>2 present; that might be speculative. What's not</p> <p>3 speculative is the fact that there is a present</p> <p>4 fundraising effort, and there has been in the</p> <p>5 past.</p> <p>6 Likening it to our decisions, if one of us</p> <p>7 disagreed with a decision that was about to be</p> <p>8 made and went out and formed a nonprofit, and</p> <p>9 then formed a Go Fund Me fundraising page, and</p> <p>10 advertised it, and raised money for the</p> <p>11 attorney to represent our newly-formed</p> <p>12 nonprofit organization, could we then decide</p> <p>13 and vote on that very issue, and I think that</p> <p>14 honestly would be ludicrous. I think there's</p> <p>15 a pure conflict.</p> <p>16 I understand the very detailed -- the</p> <p>17 wording of special financial benefit I think</p> <p>18 that has been shown here with the fundraising</p> <p>19 with the lawsuit. The funds are going to the</p> <p>20 attorney to represent the individuals and</p> <p>21 COOLS, so they have a special interest that is</p> <p>22 not shared by others; whereas, they wouldn't if</p> <p>23 they were just opposed to and wrote a letter to</p> <p>24 the editor.</p> <p>25 So I strongly believe that there's a</p>

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1 conflict, and it also does send a message to  
 2 voting members of any local authority to take  
 3 steps not to have any kind of conflict when  
 4 they're voting. If they are personally  
 5 involved in it, then they need to take a step  
 6 back and ask questions. I'm actually not  
 7 concerned about what happened in the past with  
 8 the tabling and the delay. To me that's a  
 9 separate issue. It's whether they can vote in  
 10 the future on the next vote. I understand the  
 11 concerns about the costs of the delay, but I  
 12 don't feel that's really the issue before us.  
 13 So, just getting back to the language of  
 14 the code, is there a special financial benefit,  
 15 but also under the corrupt misuse position it  
 16 doesn't require a financial benefit. It says  
 17 any benefit. Any benefit resulting from some  
 18 act or omission of an official or an employee,  
 19 and it must be done with wrongful intent.  
 20 It was good timing on the question about  
 21 the wrongful intent which applies to another  
 22 case, but it doesn't mean they're wrongly  
 23 voting or they have some ulterior, wrongful  
 24 motives other than their opposition, which is  
 25 not wrongful. It's the are you aware that

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1 you're taking an action, is there awareness,  
 2 are you on reasonable notice that you're taking  
 3 some action that is inconsistent with your  
 4 position as a voting member. I know I would  
 5 feel that way if I was voting up here, that  
 6 voting on a project that I have a special  
 7 interest in is inconsistent with my duties. I  
 8 would just have to recuse myself. It doesn't  
 9 mean I can't continue with my Go Fund Me page  
 10 with their lawsuit. It doesn't mean they can't  
 11 speak out as citizens. It just means they  
 12 shouldn't be able to vote.  
 13 So, you know, looking at those two  
 14 provisions together, I feel that the opinion  
 15 should be revised to say there is a conflict.  
 16 MR. KRIDEL: Thank you.  
 17 Commissioner Headley?  
 18 MR. HEADLEY: So, Commissioner Shullman,  
 19 your point then is that the issue that changes  
 20 everything is the fact that I guess  
 21 Ms. Schneider and Ms. Hague formed or set up a  
 22 Go Fund Me page and start raising funds to  
 23 cover the costs?  
 24 MS. SHULLMAN: I think it's all of the  
 25 circumstances put together. If they were just

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1 citizens that were speaking out against the  
 2 project, I would not have an issue. It's  
 3 taking those additional steps that to me are  
 4 more than de minimus. They're more than  
 5 speculative. The combination of filing a  
 6 lawsuit, of forming the nonprofit, and  
 7 fundraising to hire the attorney to represent  
 8 themselves individually all put together takes  
 9 them out of the category of just citizens  
 10 expressing their opposition. It puts them into  
 11 now this is going to affect them specially.  
 12 MR. HEADLEY: I hope it's appropriate and  
 13 not inappropriate. Does your staff have access  
 14 to information about the Go Fund Me page --  
 15 MS. LEVESQUE: Commissioner Headley.  
 16 MR. HEADLEY: Sorry. During your  
 17 investigation did you have any access to that  
 18 information about the Go Fund Me page?  
 19 MR. BANNON: First of all, that's not an  
 20 investigation. It's an advisory opinion. So  
 21 just look at the search. Yes, actually within  
 22 the few days of the request coming in  
 23 Mr. Leiser actually provided us with a lot of  
 24 information, and the Go Fund Me page was  
 25 discussed in there.

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1 MR. HEADLEY: Okay.  
 2 MR. KRIDEL: Commissioner Shullman, let me  
 3 ask a hypothetical. If Ms. Hague and  
 4 Ms. Schneider had formed COOLS and had not been  
 5 -- and COOLS was the petitioner and neither of  
 6 them had been individual petitioners, would  
 7 that have changed your conclusion on this as to  
 8 the conflict and the benefit?  
 9 MS. SHULLMAN: That's a good question.  
 10 They formed COOLS.  
 11 MR. KRIDEL: Right.  
 12 MS. SHULLMAN: So they're pretty  
 13 intertwined. I don't know that it would change  
 14 it, but I would need to think about it.  
 15 MR. KRIDEL: Okay. An unfair question,  
 16 but I thought I would ask.  
 17 Okay. So is there any other discussion  
 18 before I ask for a motion, understanding that  
 19 if there is no motion to issue this, then this  
 20 RQO goes by the wayside unless it's revised at  
 21 a later day? Is there a motion to accept RQO  
 22 17-015?  
 23 Hearing none, the RQO is not to be  
 24 published.  
 25 Item 11. Thank you all for your



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1 participation and your comments. Item 11 is  
2 executive director comments.  
3 MR. BANNON: Thank you, Mr. Chair. I do  
4 have one question. This has never happened  
5 before, and that's fine. I understand what's  
6 happening. Is there a directive for us to  
7 revisit this by anyone or is this just not --  
8 I'm frankly not sure exactly how to --  
9 MR. KRIDEL: I don't have a  
10 (indiscernible). As long as I've been on this  
11 commission I've never seen it either. I think  
12 that by issuing no opinion, it leaves us in the  
13 position of having to issue something else;  
14 that's what I think.  
15 MS. SHULLMAN: Why don't we, if I may  
16 suggest, just move to issue a revised opinion  
17 to be voted on at the next meeting?  
18 MR. BANNON: I'm absolutely okay with  
19 that. I just need direction on that again  
20 because clearly this is not the opinion you  
21 want. So what I really need, and this doesn't  
22 have to be voted on, just direction as to what  
23 area specifically you want to advise, what  
24 areas.  
25 MR. KRIDEL: Well, I think the areas are

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1 relatively clear. It would just seem to me  
2 that we can't just let this drift off into the  
3 Ethernet. We need to issue something, and I  
4 don't even know if you need something directly  
5 from us about that. I think that's just part  
6 of the process. If we're not going to issue  
7 this opinion, then we need to issue another  
8 opinion that may ultimately -- and I'm not  
9 giving you direction to do anything other than  
10 to write another opinion.  
11 MR. BANNON: And the reason, the other  
12 concern, of course, is this won't be issued  
13 until next month, which means you had the issue  
14 that -- the minor issue, I think, which was --  
15 MS. LEVESQUE: Mr. Bannon.  
16 MR. BANNON: -- the minor issue of what  
17 should they do in the meantime, and if they  
18 table it again, you've got the problem with the  
19 impact on itself. But I don't think that  
20 there's a way around that. If you're not going  
21 to issue an opinion today, it has to be  
22 reconsidered.  
23 MR. KRIDEL: Due process is sometimes a  
24 long process.  
25 MS. SHULLMAN: Well, and I think at this

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1 point they're on reasonable notice of what the  
2 thoughts up here are. If they move to table  
3 it, that's the decision they make. But at this  
4 point we've had the discussion; they're on  
5 reasonable notice. And I think to answer your  
6 question about just generally; I don't know  
7 that we're writing it right now, but to me it's  
8 just the facts. The facts changed it, because  
9 when I read this opinion I thought it made  
10 absolute sense, and so my feelings and my  
11 decision on the motion is not a condemnation of  
12 the opinion as it was written. I think there  
13 were certain facts that came out after the  
14 fact. There were some facts that came out  
15 today that just changed the answer of whether  
16 there was, in fact, a benefit.  
17 So I want to be clear that prior to today  
18 I don't think there was anything troubling  
19 about the opinion. So I would add in those  
20 facts that we've learned today that we've  
21 learned from the written submissions after the  
22 proposed went out, and that based on those  
23 facts it appears there is a conflict, and we  
24 can see how it reads from there.  
25 MR. BANNON: Actually, this discussion

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1 was enough. I just needed to get some guidance  
2 as to where I was going to go.  
3 \* \* \* \* \*  
4 MR. KRIDEL: Commissioner Shullman.  
5 MS. SHULLMAN: Of course I have to echo  
6 that, welcome aboard. Before I said that you  
7 hadn't been sworn in, so you corrected me and  
8 said it was premature. So officially welcome.  
9 I think you'll find we have some very healthy  
10 debates. Since my time here it has always been  
11 very professional.  
12 I appreciate all of the comments on both  
13 sides today, the submissions. It really helps  
14 for us when we're reading an advisory opinion  
15 that we're going to vote on to understand  
16 what's behind it. Not so much the project,  
17 because I have to tell you I know nothing about  
18 the project. So my vote, I'm just not familiar  
19 with what's going on in Jupiter. But to have  
20 the background of the advisory opinion and the  
21 practical (indiscernible) was really helpful to  
22 read.  
23 So I would encourage anybody who is  
24 listening or watching, if you ever have a  
25 thought or comment on a proposed opinion, to

<p style="text-align: right;">Page 57</p> <p>1 send it so that we can consider it. And, as 2 always, I thank my fellow commissioners for 3 their thoughtful thoughts and comments. 4 * * * * *</p> <p>5 MR. KRIDEL: With that having been said, 6 are there any other comments from the public 7 who are in the room? 8 You're coming up. Okay.</p> <p>9 MR. LEISER: It's not really a comment. I 10 guess it can probably wait until after the 11 meeting. I just want to know what the process 12 would be from here to get a revised opinion? 13 MR. BANNON: We will be working on that 14 over the next -- until the next meeting. 15 MR. LEISER: The meetings are the first 16 Thursday of every month? 17 MR. BANNON: September 7th. 18 MR. LEISER: Okay. Very good. 19 MS. SCHNEIDER: Since our fundraising is 20 completed, we can go ahead and deactivate the 21 Go Fund Me campaign if that's a concern for you 22 because all of the fees and costs have already 23 been paid. So we can certainly go ahead and do 24 that if that is the real cause of the issue, 25 because we don't need it anymore. We just</p>	<p style="text-align: right;">Page 59</p> <p>1 CERTIFICATE 2 3 STATE OF FLORIDA 4 COUNTY OF PALM BEACH 5 6 I, Donna L. Harshaw, Court Reporter, certify 7 that I was authorized to and did stenographically 8 report the foregoing proceeding and that the 9 transcript is a true record. 10 11 12 Dated this 8th day of August, 2017. 13 14 15 16 _____ 17 Donna L. Harshaw, Court Reporter 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 58</p> <p>1 hadn't gotten around to closing it down. 2 MR. KRIDEL: I don't think that -- the 3 fact that you're doing that is fine. You're 4 not going to get that direction from us. 5 MS. SCHNEIDER: No, I know. I just wanted 6 to -- just to underscore the point that the 7 fundraising had been completed already so it's 8 not necessary, and that we will just go ahead 9 since you seemed to, you know, indicate that 10 that caused concern. We'll just go ahead and 11 close it because we don't need it, just to let 12 you know. 13 MR. KRIDEL: Very good. Thank you. 14 We're adjourned. 15 (Thereupon, at 3:05 p.m. the meeting was 16 concluded.) 17 18 19 20 21 22 23 24 25</p>	

## MISUSE OF PUBLIC OFFICE OR EMPLOYMENT

- Unlike the Florida Code of Ethics, the PBC Code under Section 2-443(a), ties the use of official position for financial gain to seven specific persons or entities. So, you may not use your official position to obtain a “special financial benefit” (one not available to other similarly situated people or entities), for:
  1. Yourself;
  2. Your spouse, domestic partner, household member or dependent;
  3. Any close family relative;
  4. Your outside employer or business, or the outside employer of business of your spouse or domestic partner;
  5. A customer or client of your outside employer or business;
  6. A substantial personal debtor or creditor (more than \$10,000);
  7. A civic group, union, charitable, or religious organization, or other not-for profit, if you, your spouse or your domestic partner are officers or directors of that organization.

## VOTING CONFLICTS UNDER THE PBC CODE OF ETHICS

- Section 2-443(c), (*Disclosure of voting conflicts*) controls the actions of both elected and appointed officials pertaining to voting conflicts.
- This code section is linked to Section 2-443(a), in that the same seven persons or entities that an official or employee is prohibited from giving a “**special financial benefit**” by that section, are the same persons and entities he or she is prohibited from giving a “special financial benefit” (or loss) via their vote.
- So, if said vote provides a “special financial benefit” (or loss) to any of those seven persons or entities under 2-443(a), the official is prohibited from voting on that issue and must recuse.
- Further, when they complete their memorandum of conflict (or Form 8b), they must send a copy to the PBC Commission on Ethics at the same time.
- Finally, under the PBC Code of Ethics both elected and appointed officials are prohibited from **participating or voting** in any matter in which one or more of those seven persons or entities will receive a special financial benefit (or loss).

## VOTING CONFLICTS UNDER THE FLORIDA CODE OF ETHICS

- Section 112.3143, (Florida Statutes), prohibits any public officer (elected or appointed) from voting on any matter before their body that will result in any “special private gain or loss” which would inure to them, a relative or business associate, to any principal by whom they are retained, or to the parent organization or subsidiary of such a corporate principal.
- Elected officials must state the nature of the conflict on the record, and recuse themselves from the vote, although they may participate in any discussions leading up to said vote. Within 15 days, they must file a written memorandum (may use the State Form 8b), and send it to the Florida Commission on Ethics.
- Appointed officials must follow similar disclosure rules, although once they disclose the conflict of interest on the record, they are prohibited from participating in discussions on the issue as well as voting on the matter (participation in this context means an attempt to influence the decision). They must also file a conflict of interest memorandum (or Form 8b) with the Florida Commission on Ethics.

## VOTING CONFLICTS UNDER THE FLORIDA CODE OF ETHICS (CONTINUED)

- When considering whether something will result in a “special gain or loss,” the following factors should be considered:
  1. The size of the class affected by the vote.
  2. The nature of the interests involved.
  3. The degree to which the interests of all members of the class are affected by the vote.
  4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm compared to other members of the class.