



*Honesty - Integrity - Character*

**Palm Beach County**  
**Commission on Ethics**  
300 North Dixie Highway  
West Palm Beach, FL 33401  
561.355.1915  
FAX: 561.355.1904  
**Hotline: 877.766.5920**  
E-mail: [ethics@pbcgov.org](mailto:ethics@pbcgov.org)

**Commissioners**  
Michael S. Kridel, Chair  
Clevis Headley, Vice Chair

Bryan Kummerlen  
Judy M. Pierman  
Sarah L. Shullman

**Executive Director**  
Mark E. Bannon

**Intake and Compliance Manager**  
Gina A. Levesque

**General Counsel**  
Christie E. Kelley

**Chief Investigator**  
Anthony C. Bennett

**Investigator**  
Abigail Irizarry

# *Amended Agenda*

October 12, 2017 – 1:30 p.m.  
Governmental Center,  
301 North Olive Avenue, 6<sup>th</sup> Floor  
Commissioners Chambers

Meeting will begin at 1:30pm  
Executive Session will begin at 2:00pm  
Regular Agenda will resume at 2:45pm

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- I. Call to Order
- II. Roll Call
- III. Introductory Remarks
- IV. Approval of Minutes from August 3, 2017
- V. Status Check Re: Final Hearing C16-011
- VI. Executive Session(s)
  - a. C15-022
  - b. C16-005
- VII. Processed Advisory Opinions (Consent Agenda)
  - a. RQO 17-017
  - b. RQO 17-018
  - c. RQO 17-019
  - d. RQO 17-020
- VIII. Items Pulled from Consent Agenda
  - a.
- IX. Proposed Advisory Opinions
  - a. RQO 17-015 (Discussion only)
- X. Executive Director Comments
- XI. Commission Comments
- XII. Public Comments
- XIII. Adjournment

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



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

**AUGUST 3, 2017**

**THURSDAY  
1:36 P.M.**

**COMMISSION CHAMBERS  
GOVERNMENTAL CENTER**

- I. SWEARING IN NEW COMMISSIONER BY CHIEF JUDGE KRISTA MARX**
- II. CALL TO ORDER**
- III. ROLL CALL**

**MEMBERS:**

Michael S. Kridel, Chair  
Clevis Headley, Vice Chair  
Judy M. Pierman  
Bryan Kummerlen  
Sarah L. Shullman

**STAFF:**

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

**ADMINISTRATIVE STAFF:**

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

**IV. INTRODUCTORY REMARKS**

Chair Michael Kridel introduced new Commissioner Bryan Kummerlen and asked him to elaborate on his background.

#### **IV. – CONTINUED**

Commissioner Kummerlen shared that he was with the West Palm Beach Police Department for 30 years and retired as chief in February 2017.

#### **V. APPROVAL OF MINUTES FROM JULY 6, 2017**

**MOTION to approve the July 6, 2017 minutes. Motion by Commissioner Judy Pierman, seconded by Vice Chair Clevis Headley, and carried 5-0.**

#### **VI. STATUS CONFERENCE C16-011 (Commissioner Sarah Shullman presiding)**

Representative Al Jacquet said that the original attorney withdrew and a new attorney had been identified. The new attorney communicated with staff and a new date had been discussed between both parties.

Gina Levesque, COE Intake and Compliance Manager, said she would continue to discuss alternative dates for another meeting and would notify all parties.

Commissioner Shullman said that the August 7, 2017 hearing was cancelled.

A status check meeting was scheduled for September 7, 2017.

#### **VII. REVIEW OF EVIDENTIARY STANDARDS**

Commissioner Shullman requested that there be a discussion about the definitions of misuse of position and corrupt misuse.

Regarding the 3 evidentiary standards used by the COE, Christie E. Kelley, COE General Counsel, said that:

- The legal sufficiency standard was used to decide if a complaint could be filed. The person must be under the jurisdiction of the COE and the alleged actions, if true, must constitute a violation of the Code of Ethics.
- The probable cause standard applied when there were reasonably trustworthy facts and circumstances that warranted proceeding to a final public hearing.

## **VII. – CONTINUED**

- The clear-and-convincing evidence standard required credible evidence and explicit testimony and it produced a firm belief of conviction without hesitation.

Commissioner Shullman requested that Ms. Kelley provide any case law about misuse of position and corrupt misuse in preparation for the September 7, 2017 status meeting.

Ms. Kelley stated that Blackburn v. State Commission on Ethics defined wrongful intent as acting with reasonable notice that the conduct is inconsistent with the proper performance of their public duties. She added that the evidence must show that the public employee or official used his or her official position to obtain a special benefit for any person when he or she was aware that the action was inconsistent with the proper performance of public duties.

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

**VIII.a. Request for Opinion (RQO) 17-014**

**VIII.b. RQO 17-016**

**MOTION to approve the consent agenda. Motion by Vice Chair Headley, seconded by Commissioner Pierman, and carried 5-0.**

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

**X. PROPOSED ADVISORY OPINIONS**

**X.a. RQO 17-015**

Mark E. Bannon, Commission on Ethics (COE) Executive Director, said that the request came from Commissioner Cheryl Schneider and Commissioner Mary Beth Hague of the Town of Jupiter Planning and Zoning Commission and involved a possible conflict of interest.

Mr. Bannon stated:

- The matter involved amendments to a previously approved planned unit development (PUD), known as the Love Street PUD.

### **X.a. – CONTINUED**

- Ms. Schneider and Ms. Hague were officers or directors of Citizen Owners of Love Street, Inc. (COOLS), a non-profit entity that opposed the project.
- Both commissioners had voiced their opposition to the Love Street project in public meetings.
- They received letters from the Town of Jupiter attorney dated July 11, 2017 notifying them that there was a conflict of interest and should consider recusing themselves from the issue.
- Ms. Schneider moved to table the issue until the August 8, 2017 town meeting to allow for an advisory opinion from the COE.
- On July 12, 2017, COE staff received the joint request for an advisory opinion and later received additional information from various sources regarding the conflict of interest.
- Ms. Schneider and Ms. Hague were asked to recuse themselves due to:
  - State ethics laws
  - A general concern for lack of impartiality
  - Concerns over their participation being a violation of the applicant's due-process rights
  - Violation of Palm Beach County Code of Ethics
  - Misuse of public office by providing improper special financial benefit to a prohibited party
  - Failure to disclose a voting conflict
  - Corrupt misuse of official position

The proposed advisory opinion only addressed the issue of whether these actions violated any provisions of the Code of Ethics because that was the jurisdictional limit of the COE. Staff concluded that:

### **X.a. – CONTINUED**

- Participating in discussions and voting on these amendments did not violate the code.
- Ms. Schneider and Ms. Hague nor COOLS will receive any direct or indirect financial benefit by voting on the proposed amendments.
- Such a vote would not be for the purpose of obtaining a special privilege, benefit, or exception.

Chair Kridel read into the record a public comment card submitted by Ms. Schneider.

Ms. Schneider clarified that her role was to give recommendations to the town council and she had no decision making authority.

Chair Kridel read into the record a public comment card submitted by Ms. Hague.

Jeff Collins, Vice President of 1116 Love Street, LLC, stated that after his project was approved by the town council, Ms. Schneider and Ms. Hague formed COOLS and sued the Town of Jupiter to overthrow the approval of the project. They did not recuse themselves from voting and were fundraising to stop the project, which constituted a benefit and conflict of interest.

Darren Leiser, 1116 Love Street, LLC attorney, stated that the issue was clear and dealt with public officials who participated in a hearing for a project they were suing to block. He said that they had received financial benefit because they were petitioners in a lawsuit challenging the project on which they voted. He added that COOLS raised money and thus benefitted financially, lessening their litigation costs.

Ms. Schneider stated that:

- The Jupiter Planning and Zoning Commission received notice of the items appearing on the agenda 4 days before the meeting.
- She received the letter from the town attorney 5 hours before the town meeting.

## **X.a. – CONTINUED**

- The judicial review requested by COOLS came as a result of concerns that the town had not applied the town code correctly, which deprived the community the opportunity to make comments on the Love Street PUD.
- Concerns also included absence of disclosures and several code waivers.
- The matter was about how the town processed the application and making sure the laws were applied correctly.

Mr. Bannon stated that both he and Ms. Kelley had reviewed the petition filed by COOLS and acknowledged that there were both procedural and substantive challenges in the document.

Commissioner Shullman asked Ms. Schneider if COOLS had done any fundraising.

Ms. Schneider indicated that the only fundraising done was to hire the attorney to file a petition. She said that the GoFundMe account was still active and the only person who could access the money was the attorney representing COOLS. She said that she set up the GoFundMe account as an individual to raise money for legal fees and that COOLS did not have a bank account, Web site or links to the GoFundMe account.

Mr. Leiser stated that it was incorrect to state that COOLS had no affiliation to the GoFundMe page because the only way to find the GoFundMe page was by conducting a search for “Citizen Owners of Love Street” on the site.

Commissioner Headley asked Mr. Leiser whether or not he believed there was improper, special privilege, benefits, or exceptions.

Mr. Leiser responded that he believed there were special financial benefits because funds for the lawsuit were collected and other members of the community did not have this privilege. He added that corrupt intent and improper purpose was applicable as well because as litigants against the project, the town officials saw to its delay or defeat. Regarding wrongful intent, he said that the officials had reasonable notice that this was a conflict and did not do anything about it.

Ms. Schneider said that fees had already been paid and therefore she would close the GoFundMe account.

## X.a. – CONTINUED

Mr. Collins stated that there were opportunity costs generated by the delay of the project, which affected its credibility and created uncertainty.

Ms. Hague stated that she followed the code when making decisions. She added that she was appointed to the Jupiter Planning and Zoning Commission by Tom Kuretski in April 2016 and prior to that, she served as a teacher and owned her own business. She said that she never had to vote on projects presenting issues such as waivers being given and codes being ignored.

Mr. Bannon stated that if a *quid pro quo* existed and no one knew about it, then it did make it an improper vote.

Commissioner Shullman stated that:

- The COE needed to consider if there was a conflict and if there was a financial benefit that would preclude the town officials from voting on the issue.
- Ms. Schneider and Ms. Hague formed a non-profit, sued the town, and raised funds for the lawsuit, which was a pure conflict in her opinion.
- Fundraising was clearly a benefit.
- Corruptness use did not only refer to a financial benefit but any benefit resulting from an official's actions.
- Voting on an action when special interest existed was inconsistent with the officials' duties and they should not be able to vote.
- The advisory opinion should be revised to state there was a conflict.

Commissioner Headly inquired if the GoFundMe page was reviewed prior to issuing the proposed advisory opinion.

Mr. Bannon stated that the GoFundMe page was reviewed and discussed in preparation for the opinion.

(CLERK'S NOTE: No motion was made to publish RQO 17-015.)

## **XI. EXECUTIVE DIRECTOR COMMENTS**

Mr. Bannon asked for direction with regards to RQO 17-015.

Chair Kridel stated that in the absence of an advisory opinion, something else should be issued.

Commissioner Shullman stated that a revised advisory opinion should be presented and voted on at the next COE meeting.

Mr. Bannon stated that the revised opinion would be issued the following month.

## **XII. COMMISSION COMMENTS**

### **XII.A.**

**DISCUSSED:** Welcome

Chair Kridel, and commissioners Shullman, Pierman, and Headley welcomed Commissioner Kummerlen.

### **XII.B.**

**DISCUSSED:** Position search

Chair Kridel thanked the Palm Beach Police Chiefs' Association President, North Palm Beach Police Chief Rick Jenkins, the Board of Directors, and Executive Director Ted Gonzalez for helping fill the position so quickly after the unfortunate passing of Michael Loffredo.

### **XII.C.**

**DISCUSSED:** Gratitude

Commissioner Kummerlen thanked everyone for the opportunity to serve on the COE.

## **XIII. PUBLIC COMMENTS**

Mr. Collins inquired about the process and when the revised advisory opinion for RQO 17-015 would be available.

**XIII. – CONTINUED**

Chair Kridel stated that the revised advisory opinion would be drafted before the next meeting on September 7, 2017.

Ms. Schneider stated that she would deactivate the GoFundMe page.

Chair Kridel clarified that deactivating the GoFundMe page was not a direction given by the COE.

**XIV.           ADJOURNMENT**

**TIME: 3:05 P.M.**



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

COE Meeting October 12, 2017

Page 16 of 36 Commissioners

Michael S. Kridel, *Chair*

Clevis Headley, *Vice Chair*

Bryan Kummerlen

Judy M. Pierman

Sarah L. Shullman

**Executive Director**

Mark E. Bannon

In Re: Alson Jacquet

C16-011

## NOTICE OF HEARING

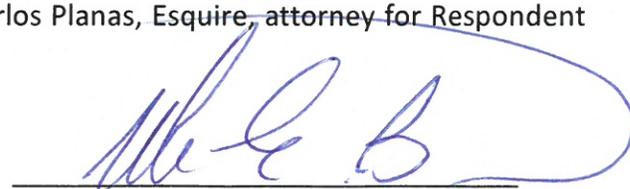
YOU ARE HEREBY NOTIFIED that the above-referenced complaint has been set for a Final Hearing before the Palm Beach County Commission on Ethics with Sarah Shullman as the Presiding Commissioner. The hearing will be held in the Palm Beach County Robert Weisman Governmental Center, 301 North Olive Avenue, 6th Floor, Jane M. Thompson Memorial Chambers, West Palm Beach, FL 33401 on the agreed upon date of Thursday, October 12, 2017 beginning at 1:35 p.m.

The hearing is open to the public and minutes will be taken by the clerk. An abbreviated version of the minutes will be provided by the clerk approximately one month after the hearing. If you would like a verbatim copy of the minutes, you may request a copy at your own expense.

## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the Notice of Hearing was sent via email this 28<sup>th</sup> day of September 2017 to Juan-Carlos Planas, Esquire, attorney for Respondent and John B. Cleary, Esquire, Advocate.

By:

  
Mark E. Bannon, Executive Director  
Palm Beach County Commission on Ethics

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Krista Garber, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380, or immediately upon receiving this notification if the time before the scheduled appearance; if you are hearing or voice impaired, call 711."



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

**Executive Director**

Mark E. Bannon

August 29, 2017

Mr. James Stiles, Director  
Palm Beach County Water Utilities Department  
8100 Forest Hill Blvd  
West Palm Beach, FL 33413

Re: RQO 17-017  
Gift Law

Dear Mr. Stiles:

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

**QUESTION:**

Are Palm Beach County (County) employees who work in the Water Utilities Department allowed to accept food from a County vendor without violating the Palm Beach County Code of Ethics (Code)?

**ANSWER:**

Under the Code, public employees and officials are prohibited from soliciting or accepting a gift with a value of greater than \$100 in the aggregate for the calendar year from any vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to their municipality or to the county, as applicable.<sup>1</sup> Public officials and employees are also prohibited from accepting a gift of any value in exchange for the past, present and future performance or non-performance of a legal duty or official public action.<sup>2</sup>

Here, a County vendor, Trillium Construction, Inc., has offered to provide food for the luncheon celebrating the opening of the County's new operation and maintenance facility. Using the estimates provided, the total cost per employee for the lunch is approximately \$12. Thus, the County employees are not prohibited from accepting lunch, so long as (1) the cost per person does not exceed \$100, (2) the recipients of the lunch have not accepted additional gifts from that vendor totaling, in the aggregate, more than \$100, and (3) there is no "quid pro quo" or special treatment or privileges given to Trillium Construction, Inc. by any County employee or official in exchange for providing the food at the luncheon.

**FACTS:**

You are the Director of the County's Water Utilities Department, which has a new Operation and Maintenance Facility opening in Belle Glade. This fully-equipped complex will provide permanent facilities to house the water and wastewater support staff necessary in the western communities of Belle Glade, Pahokee, and South Bay. The general contractor for this project, Trillium Construction, Inc., has offered to provide food for all employees for the opening ceremonies luncheon on October 31, 2017. Trillium Construction, Inc. is a vendor of the County.

<sup>1</sup> §2-444(a)(1)

<sup>2</sup> §2-444(e)

All employees will have an opportunity to partake in the lunch provided. Most employees will be able to attend the event, but a skeleton crew will be required to stay behind to assist the public. Plates will be transported back for those staff members remaining at work. It is estimated that 350 employees will participate. The estimated cost per employee for the lunch will be \$12. On the same morning, an official dedication will be held for public officials and invited guests. The Water Utilities Department will provide light snacks for this event. Only County employees will attend the opening ceremonies luncheon.

**LEGAL BASIS:**

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

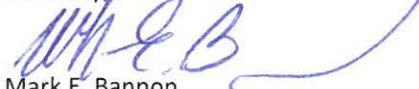
**Sec. 2-444. Gift law.**

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
  
- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
  - (1) An official public action taken or to be taken, or which could be taken;
  - (2) A legal duty performed or to be performed or which could be performed; or
  - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.

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

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

Sincerely,



Mark E. Bannon  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

COE Meeting October 12, 2017

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**Commissioners**

Michael S. Kridel, *Chair*

Clevis Headley, *Vice Chair*

Bryan Kummerlen

Judy M. Pierman

Sarah L. Shullman

**Executive Director**

Mark E. Bannon

August 30, 2017

Ms. Kim Cawley, Senior Fire Inspector  
North Palm Beach Fire Rescue  
560 U.S. Highway 1  
North Palm Beach, FL 33408

Re: RQO 17-018  
Gift law

Dear Ms. Cawley:

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

**QUESTION:**

May the Village of North Palm Beach (Village) provide its employees with lunches four times per year as well as with gift cards to Publix at the end of the year as a show of appreciation for their hard work and dedication without violating the Palm Beach County Code of Ethics (Code)?

**ANSWER:**

The Code prohibits Village employees from using their official position to obtain a special financial benefit for themselves, or to corruptly obtain any special benefit with wrongful intent in a manner inconsistent with the proper performance of official duties.<sup>1</sup> Based on the facts provided, general appreciation gifts given by the Village officials and administration to all of its employees would not be prohibited under this section.

Village employees are also prohibited from accepting, directly or indirectly, gifts valued at more than \$100, annually in the aggregate, from any Village vendor or lobbyist.<sup>2</sup> The Code also prohibits Village employees and officials from soliciting gifts of any value from a vendor or lobbyist of their municipality, if the gifts are for their personal benefit or the benefit of a relative or a fellow employee.<sup>3</sup> Based on the facts provided, neither vendors nor lobbyists are being solicited for these gifts, and no vendors or lobbyists are giving these gifts. Therefore, Sec. 2-444(a)(1) and Sec. 2-444(c) do not apply. These sections also do not apply to unsolicited gifts given by a public employer to employees.

In addition, the Code prohibits any person or entity from offering, giving, or agreeing to give a gift of any value to Village employees, as well as prohibiting Village employees from accepting or agreeing to accept a gift of any value, because of the performance or non-performance of an official act or legal duty.<sup>4</sup> Here, the gifts from the Village officials and administration to the Village employees are general in nature and not in exchange for the performance of a specific official act. Sec. 2-444(e) of the Code does not apply to the situation here because the gift is from the Village and there is no quid pro quo in exchange for the gift.

<sup>1</sup> §2-443(a); §2-443(b)

<sup>2</sup> §2-444(a)(1)

<sup>3</sup> §2-444(c)

<sup>4</sup> §2-444(e)

Finally, although the Code does not prohibit a municipality from giving gifts to its employees based on the facts provided, the employees may be required to report the gifts on gift disclosure forms if the value of the gifts exceed \$100 in the aggregate. In determining the value of a gift, the Code defers to Florida code and statutes.<sup>5</sup> For gift reporting purposes, the individual value of a gift of food is the total value divided by the number of persons sharing the gift.<sup>6</sup> If the combined value of the gifts given by the Village to any specific employee exceeds \$100 from the period beginning October 1 to September 30 of the following year, the employee must report the gifts in accordance with the disclosure requirements of the Code.<sup>7</sup> If any of the employees who receive the gifts are state reporting individuals, they must follow state law regarding gift disclosure.

**FACTS:**

You are an employee of the Village and serve on its event committee. Members of the Village Council and the Village administration would like to gift all of the 221 Village employees (full-time and part-time) with \$50-\$75 gift cards to Publix at the end of the year as an appreciation for their hard work and dedication. In addition, the council members and administration would also like to provide lunch for the employees four times throughout the year at the Village's expense. The Village will fund the gifts. Vendors and lobbyists are not providing the gifts and will not be solicited to fund them.

**LEGAL BASIS:**

The legal basis for this opinion is found in the §2-443(a), §2-443(b), §2-444(a)(1), §2-444(c), §2-444(e), §2-444(f), and §2-444(g) of the Code:

**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;
- (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.

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

- (a) (1) No county commissioner, member of a local governing body, mayor or chief executive when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit or accept directly or indirectly, any gift with a value of greater than one hundred dollars (\$100) in the aggregate for the calendar year from any person or business entity that the recipient knows, or should know with the exercise of reasonable care, is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies, sells or leases to the county or municipality as applicable.
- (c) No county commissioner, member of a local governing body, mayor or chief executive officer when not a member of the governing body, or employee, or any other person or business entity on his or her behalf, shall knowingly solicit a gift of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist where the gift is for the personal benefit of the official or employee, another official or employee, or any relative or household member of the official or employee. No advisory board member or any other person or business entity on his or her behalf, shall knowingly solicit a gift

<sup>5</sup> §112.3148(7), Florida Statutes; §34-13.310, Florida Administrative Code

<sup>6</sup> RQO 11-103

<sup>7</sup> §2-444(f)

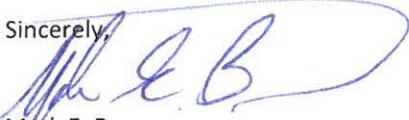
of any value from any person or business entity that the recipient knows is a vendor, lobbyist or any principal or employer of a lobbyist who lobbies the recipient's advisory board, or any county or municipal department as applicable that is subject in any way to the advisory board's authority, influence or advice, where the gift is for the personal benefit of the advisory board member, another advisory board member, or an official, or any relative or household member of the official or employee.

- (e) No person or entity shall offer, give, or agree to give an official or employee a gift, and no official or employee shall accept or agree to accept a gift from a person or entity, because of:
- (1) An official public action taken or to be taken, or which could be taken;
  - (2) A legal duty performed or to be performed or which could be performed; or
  - (3) A legal duty violated or to be violated, or which could be violated by any official or employee.
- (f) Gift reports. Any official or employee who receives a gift in excess of one hundred dollars (\$100) shall report that gift in accordance with this section.
- (1) *Gift reports for officials and employees identified by state law as reporting individuals.* Those persons required to report gifts pursuant to state law shall report those gifts in the manner provided by Florida Statutes, §112.3148, as may be amended. When a state reporting individual files a gift report with the state, a copy of each report shall also be filed contemporaneously with the county commission on ethics.
  - (2) All other officials and employees who are not reporting individuals under state law.
    - b. All other gifts. All officials or employees who are not reporting individuals under state law and who receive any gift in excess of one hundred dollars (\$100), which is not otherwise excluded or prohibited pursuant to this subsection, shall complete and submit an annual gift disclosure report with the county commission on ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. All officials or employees who are not reporting individuals under state law and who do not receive a gift in excess of one hundred dollars (\$100) during a given reporting period shall not file an annual gift disclosure report. The annual gift disclosure report shall be created by the county commission on ethics and shall be in a form substantially similar in content as that required by state law.
- (g) For the purposes of this section, "gift" shall refer to the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.

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

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

Sincerely,



Mark E. Bannon  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

COE Meeting October 12, 2017

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Commissioners  
Michael S. Kridel, *Chair*

Clevis Headley, *Vice Chair*

Bryan Kummerlen

Judy M. Pierman

Sarah L. Shullman

**Executive Director**

Mark E. Bannon

August 28, 2017

Mr. Andres Castillo  
City of West Palm Beach  
Geographic Information System Division  
401 Clematis Street  
West Palm Beach, FL 33401

Re: RQO 17-019  
Outside Employment

Dear Mr. Castillo:

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

**QUESTION:**

As a Geographic Information System (GIS) Division employee with the City of West Palm Beach (City), may you also operate a part-time GIS consulting business without violating the Palm Beach County Code of Ethics (Code)?

**ANSWER:**

The Code prohibits you from entering into any contract or other transaction for goods or services with your public employer, unless an exception under Sec. 2-443(e)(1-5) applies.<sup>1</sup> This prohibition extends not only to you, directly or indirectly, but to your outside business as well. The Code defines an outside business as any entity in which you or specified relatives have an ownership interest of at least five (5) percent.<sup>2</sup> Therefore, you and your outside business are prohibited from entering into any contract or transaction for goods or services with the City. In addition, the Code prohibits you, as public employee, from using your official position with the City to give a special financial benefit to specified persons or entities, including yourself, your outside business, or a customer or client of your outside business.<sup>3</sup> The Code defines a customer or client as a person or entity to which your outside business has supplied goods or services during the previous 24 months in excess of \$10,000.

Based on the facts provided, as long as you or your outside business do not enter into any contract or other transaction for goods or services with the City and you operate your business outside of your City work hours, you will not be in violation of the prohibited contractual relationships provision of the Code. You must also take great care not to misuse your governmental employment in any way to give a special financial benefit to yourself, your outside business, or the customers or clients of your outside business. This would include the use of computer software or hardware or other tools provided to you by your government employer in your private business for the benefit of you, your outside business, or customers or clients of your outside business. Finally, you are reminded that you must also comply with your public employer's merit rules regarding outside employment.

<sup>1</sup> §2-443(d)

<sup>2</sup> §2-442

<sup>3</sup> §2-443(a)

**FACTS:**

You are an employee of the City of West Palm Beach, working in the GIS Division. A GIS is created by combining hardware, software, and people to capture, store, analyze, manage, and present data that involves spatial components (geographically-referenced data). You are considering starting a GIS consulting business on a part-time basis. Your work would occur outside of your public employment work hours. Your clients would not be vendors of the City, and you will not contract with the City.

**LEGAL BASIS:**

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

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

***Customer or client*** means any person or entity to which an official or employee's outside employer or business has supplied goods or services during the previous twenty-four (24) months, having, in the aggregate, a value greater than ten thousand dollars (\$10,000).

***Outside employer or business*** includes:

- (2) Any entity located in the county or which does business with or is regulated by the county or municipality as applicable, in which the official or employee has an ownership interest. For purposes of this definition, an "ownership interest" shall mean at least five (5) percent of the total assets or common stock owned by the official or employee or any combination of the official or employee's household members, spouse, child, step-child, brother, sister, parent or step-parent, or a person claimed as a dependent on the official or employee's latest individual federal tax return.

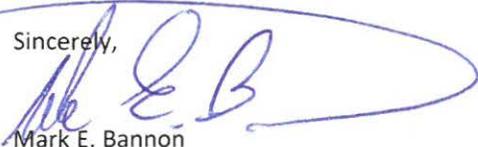
**Sec. 2-443. Prohibited conduct.**

- (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;
  - (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;
- (d) ***Contractual relationships.*** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-448(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.

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

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

Sincerely,



Mark E. Bannon  
Executive Director

CEK/gal



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

**Executive Director**

Mark E. Bannon

October 4, 2017

Mr. Price Patton  
1020 Tamarind Road  
Delray Beach, FL 33483

Re: RQO 17-020  
Conflict of Interest

Dear Mr. Patton,

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

**QUESTION:**

Are you precluded from voting on a matter before the Delray Beach Historic Preservation Board (HPB) involving building plans to a property in the Marina Historic District of the City of Delray Beach when you also own property in that district?

**ANSWER:**

You are not prohibited from voting on or participating in discussions on this matter.

The Palm Beach County Code of Ethics (Code) prohibits you from using your official positions to give yourself a special financial benefit not shared with similarly situated members of the general public.<sup>1</sup> Similarly, you are prohibited from voting on an issue or participating in a matter that gives a special financial benefit to you.<sup>2</sup> Financial benefit, in the context of the Code, constitutes economic gain or loss.<sup>3</sup> Whether a matter rises to the level of a voting conflict turns on whether the financial benefit involved is shared with similarly situated members of the general public. For a financial benefit to be "special", the benefit must inure uniquely to you, rather than affecting everyone in the surrounding area in the same way.<sup>4</sup> Thus, you would be prohibited from voting on this matter if facts and circumstances showed that the approval or denial of the building plans would provide a unique benefit to you.

In evaluating a voting conflict, the COE considers the number of persons who stand to gain or lose from a decision and whether the possibility of a financial benefit is remote and speculative. As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain into a gain or loss shared with similarly situated members of the general public.<sup>5</sup> However, the COE has previously held that where a class is large, a prohibited financial gain would result only if there are circumstances unique to you which would enable your

<sup>1</sup> §2-443(a)

<sup>2</sup> §2-443(c)

<sup>3</sup> RQO 10-013

<sup>4</sup> RQO 12-063

<sup>5</sup> RQO 10-013

property to benefit more than the other property owners within the class.<sup>6</sup> Where the class of persons who stand to benefit from a decision is small, it is more likely that an official will have a conflict.<sup>7</sup>

The general line drawn by the Florida Commission on Ethics involves situations where the interest of the public official involves one percent or less of the class affected, in other words, 100 or more affected persons. For example, the Florida Commission has previously found that having an interest of 1.2% in the affected class (owning one of the 83 properties being affected) was sufficiently near the 1% threshold as to find no voting conflict existed.<sup>8</sup>

Here, the property you are under contract to purchase is within the Marina Historic District. The Marina Historic District consists of approximately 105 property owners. Thus, your interest in the area is less than one percent. Further, the facts and circumstances do not show that the location of your property provides a unique circumstance wherein your personal gain or loss by this vote would exceed significantly that of other property owners in the Marina Historic District. Therefore, because the economic benefit or loss affects a class large enough so as to remove any prohibited individual financial benefit, you are not prohibited from voting on or participating in discussions on these building plans.

Further, in evaluating a potential conflict of interest under the Code, the degree to which there is uncertainty at the time of the vote as to whether there would be any economic gain or loss to the prohibited person or entity must be considered.<sup>9</sup> To constitute a prohibited voting conflict, the possibility of a financial gain must be direct and immediate, rather than remote and speculative.<sup>10</sup> As the COE has previously opined, where an official's gain or loss would require many steps and be subject to many contingencies, any gain or loss is remote and speculative and cannot be said to inure to one's special financial benefit.<sup>11</sup> In addition, the Florida Commission on Ethics has previously held that if a gain or loss to an official resulting from a particular measure is too remote and speculative, it does not constitute a special financial benefit.<sup>12</sup>

Here, any potential financial benefit from this vote would not be direct and immediate. The property you are purchasing is not adjacent to the property involved in this matter; it is a block away. The building plans also include the demolition of a structure and the construction of another structure. Based on the location of your property and uncertainty of the construction process, the potential for any financial benefit to result from this vote is not direct and immediate but remote and speculative at best.

#### **FACTS:**

You serve on the Delray Beach Historic Preservation Board. The HPB is charged with reviewing all development, improvement, and redevelopment applications within a designated historic district of the City of Delray Beach. The board is made up of seven members, who are appointed by the City Commission for a term of three years. The HPB members must have knowledge, experience, and a personal or

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<sup>6</sup> Id.

<sup>7</sup> CEO 92-37 (two percent or eight percent of the property to be affected or 5 of 60 sites and 5 of 168 sites is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law)

<sup>8</sup> CEO 90-71

<sup>9</sup> 112.3143(1)(d), Florida Statutes

<sup>10</sup> *George v. City of Cocoa, Florida*, 78 F.3d 494 (1996).

<sup>11</sup> RQO 12-063, CEO 05-15, CEO 91-61, CEO 12-19

<sup>12</sup> CEO 85-77 (school board member who owned business near the site of a proposed school district building was not prohibited from voting on the matter); CEO 85-87 (city council member was not prohibited from voting on a site plan for a shopping center which was to be located adjacent to the florist store which he owned)

professional interest in historic restoration and preservation. Among their duties, the HPB can grant certain variances and can decide whether to approve Certificates of Appropriateness.

The HPB recently held a quasi-judicial hearing for an applicant seeking to tear down a single-family house and construct a two-story duplex at 116 Marine Way in the Marina Historic District. The Marina Historic District was constructed predominantly between 1922 and 1943. You believe that each unit in the duplex would be priced around \$3 million. You are under contract to acquire a property in the Marina Historic District on SE 7th Avenue about a block from the above site.

The Marina Historic District is bounded by East Atlantic Avenue to the north, SE 4th Street to the south, SE 7th Avenue to the west and the Intracoastal Waterway to the east. The Marina District was designated a historic district in the Local Register of Historic Places in 1988. There are approximately 105 property owners in the Marina Historic District.

Out of an abundance of caution, you announced a potential conflict of interest and stepped from the dais for the subsequent discussion and vote. You would like clarification on whether you had a voting conflict of interest in the matter.

**LEGAL BASIS:**

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

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

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
  - (2) His or her spouse or domestic partner, household member or persons claimed as dependents on the official or employee's latest individual federal income tax return, or the employer or business of any of these people;
  - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people;
  - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
  - (5) A customer or client of the official or employee's outside employer or business;
  - (6) A substantial debtor or creditor of his or hers, or of his or her spouse or domestic partner—"substantial" for these purposes shall mean at least ten thousand dollars (\$10,000) and shall not include forms of indebtedness, such as a mortgage and note, or a loan between the official or employee and a financial institution;
  - (7) A civic group, union, social, charitable, or religious organization, or other not for profit organization of which he or she (or his or her spouse or domestic partner) is an officer or director.
- (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). The official shall publicly disclose the nature of the conflict and when abstaining

from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).

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

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

Sincerely,



Mark E. Bannon,  
Executive Director

CEK/gal

July 25, 2017

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

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

Dear Commissioners Schneider and Hague,

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

**QUESTION:**

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

**ANSWER:**

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

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

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

<sup>1</sup> §2-443(a)(1-7)

<sup>2</sup> §2-443(c)

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

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

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

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

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

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

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

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

**FACTS:**

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

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

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

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

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

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

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

Sincerely,

Mark E. Bannon  
Executive Director

MEB/gal

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

August 1, 2017

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

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

Dear Commissioners:

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

Background

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

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

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

Commission on Ethics  
August 1, 2017  
Page 2

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

#### Response to Proposed RQO 17-015

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

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

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

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

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

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

Commission on Ethics  
August 1, 2017  
Page 3

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

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

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

Bad Precedent Incentivizing Unethical Behavior.

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

Conclusion

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

Sincerely,

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



Darren W. Leiser  
For the Firm

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

CIVIL APPELLATE DIVISION A Y  
CASE NO.: 2016CA008136XXXXMB

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

Petitioners,

v.

TOWN OF JUPITER,

Respondent.

---

**BY ORDER OF THE COURT:**

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

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

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

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

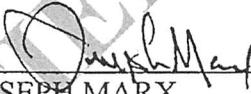
Under *Renard*'s first test, Petitioners lack standing. In order to succeed on a claim under this test, a litigant must show special damages particular to the party that differ in kind (as opposed to degree) from the damages suffered by the community as a whole. *Boucher*, 102 So. 2d at 134-35; see also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

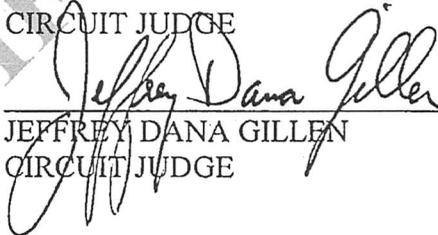
The Court makes no ruling on the merits of the Petition. Accordingly, it is hereby,

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

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

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

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

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

✓ 1/10/17

**Copies provided to:**

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cmb@baronjustice.com  
eservice@baronjustice.com

Thomas J. Baird, Esq., & M. Megan Coughlin, Esq.  
Jones Foster Johnston & Stubbs, P.A.  
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tbaird@jonesfoster.com  
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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH  
COUNTY, FLORIDA

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

APPELLATE DIVISION

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

Lower Tribunal No.: 52-16

Petitioners,

vs.

TOWN OF JUPITER,

Respondent.

\_\_\_\_\_ /

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

*/s/Charles M. Baron*

---

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

# JONES FOSTER

JOHNSTON & STUBBS, P.A.

## Memo

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

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

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

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

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

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

July 11, 2017  
Page 2

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

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

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

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

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

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

# JONES FOSTER

JOHNSTON & STUBBS, P.A.

## Memo

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

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

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

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July 11, 2017  
Page 2

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

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

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



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E-Mail: pjeck@jhrjpa.com

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

July 12, 2017

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

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

Dear Commissioners:

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

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

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

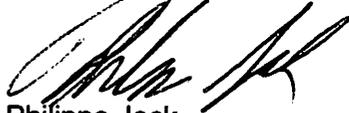
Planning & Zoning Commission  
Town of Jupiter  
July 12, 2017  
Page 2

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

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

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

Very truly yours,



Philippe Jeck

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

790 Juno Ocean Walk, Suite 600  
Juno Beach, Florida 33408-1121  
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Direct Line: (561) 713-2086  
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**JECK, HARRIS, RAYNOR & JONES**  
Attorneys and Counselors at Law

August 1, 2017

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

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

Dear Commissioners:

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

Background

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

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

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

Commission on Ethics  
August 1, 2017  
Page 2

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

### Response to Proposed RQO 17-015

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

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

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

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

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

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

Commission on Ethics  
August 1, 2017  
Page 3

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

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

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

Bad Precedent Incentivizing Unethical Behavior.

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

Conclusion

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

Sincerely,

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



Darren W. Leiser  
For the Firm

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

CIVIL APPELLATE DIVISION A Y  
CASE NO.: 2016CA008136XXXXMB

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

Petitioners,

v.

TOWN OF JUPITER,

Respondent.

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**BY ORDER OF THE COURT:**

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

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

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

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

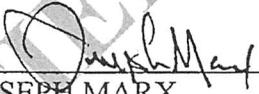
Under *Renard*'s first test, Petitioners lack standing. In order to succeed on a claim under this test, a litigant must show special damages particular to the party that differ in kind (as opposed to degree) from the damages suffered by the community as a whole. *Boucher*, 102 So. 2d at 134-35; see also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

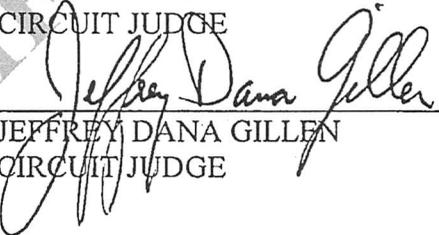
The Court makes no ruling on the merits of the Petition. Accordingly, it is hereby,

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

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

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

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

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

✓ 1/10/17

**Copies provided to:**

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

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

APPELLATE DIVISION

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

Lower Tribunal No.: 52-16

Petitioners,

vs.

TOWN OF JUPITER,

Respondent.

\_\_\_\_\_ /

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

*/s/Charles M. Baron*

---

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



# Palm Beach County Commission on Ethics

*Honesty - Integrity - Character*

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

**Executive Director**

Mark E. Bannon

October 14, 2016

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

Re: RQO 16-021  
COE Jurisdiction/Voting Conflict

Dear Ms. Gelin,

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

**QUESTIONS:**

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

**ANSWER:**

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

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

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

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

<sup>1</sup> §2-442

<sup>2</sup> id.

<sup>3</sup> §2-443(a)

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

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

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

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

**FACTS:**

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

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

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

**LEGAL BASIS:**

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

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

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

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<sup>4</sup> §2-443(c)

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

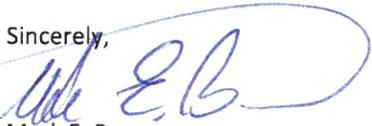
**Sec. 2-443. Prohibited conduct.**

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

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

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

Sincerely,



Mark E. Bannon,  
Executive Director

CEK/gal

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

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

Marilyn – please email Ms. Kelley my 2 opinions.

<image003.jpg>

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

Jones, Foster, Johnston & Stubbs, P.A.  
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<RQO 17-015 Jupiter PZC.pdf>

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

**This message originated from outside your organization**

Mr. Baird,

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

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

Kind regards,

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

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

<image002.png>

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

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

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

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

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

Sent from my iPhone