



Palm Beach County Commission on Ethics

Commissioners
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Executive Director
Steven P. Cullen

May 16, 2013

Susan Whelchel, Mayor
City of Boca Raton
201 Palmetto Park Road
Boca Raton, FL 33432

Re: C13-010

Sent via email only

Dear Mayor Whelchel,

This is to inform you that a complaint was filed against you in the above referenced matter on April 18, 2013. Attached please find a copy of the complaint as well as additional documents prepared by the Commission on Ethics Staff. This information is not a public record until probable cause is found or the complaint dismissed by the Commission.

On June 6, this matter will be heard by the Commission on Ethics. For the reasons contained in the reports, Staff is recommending that the complaint be dismissed.

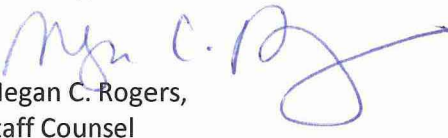
You are not required to attend the executive session; however, if you wish to attend, the executive session will take place at the following time and location:

June 6, 2013/3:00 p.m.
Palm Beach County Governmental Center
301 North Olive Avenue
12th Floor McEaddy Conference Room
West Palm Beach, FL 33401

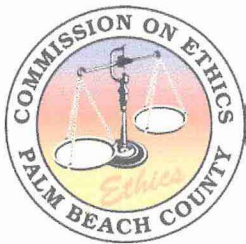
As indicated, it will be the Commission on Ethics Staff recommendation that the above referenced complaint be dismissed. If the Commission on Ethics does not dismiss the complaint, no other action will be taken at that time and you will be notified of any future proceedings or requirements.

Should you have any questions or concerns regarding the above, please feel free to contact me at 561-233-0736.

Sincerely,


Megan C. Rogers,
Staff Counsel

Enclosures



PALM BEACH COUNTY COMMISSION ON ETHICS

2633 Vista Parkway, West Palm Beach, Florida 33411

Hotline: 877-766-5920 or 561-233-0724

COMPLAINT FORM

1. Complainant (Person bringing Complaint) Add pages, if necessary.

Please list all information where you would like to be contacted. Our preference is email.

Name: PATRICIA DERVISHI E-Mail: pattiberry@comcast.net
Address: 420 NE. 10 TERRACE
City: BOCA RATON FLORIDA Zip: 33432
Home #: _____ Work #: _____ Cell #: (561) 305-4311

2. Respondent (Person against whom complaint is made) Add pages, if necessary.

Please provide as much information as possible.

Name: SUSAN WHELCHER E-Mail: SWHELCHER@CI.BOCA-RATON, FL. US
Address: 201 PALMETTO PARK ROAD
City: BOCA RATON FLORIDA Zip: 33432
Home #: _____ Work #: (561) 593-7700 Cell #: (561) 213-5828
Title/Office Held or Sought: MAYOR - BOCA RATON

3. IF KNOWN, CHECK THE BOX OR BOXES THAT APPLY

☒ Allegation is against person in
County/Municipal Government

☐ Allegation is about County:
Whistleblower Retaliation

4. STATEMENT OF FACTS BASED ON YOUR PERSONAL KNOWLEDGE

In a separate attachment, please describe in detail the facts and actions that are the basis of your complaint, including the dates when the actions occurred. Also attach any relevant documents as well as names and contact information of persons who may be witnesses to the actions. If known, indicate the section of the ordinance you believe is being violated. For further instructions, see page 2 of this form.

5. OATH

I, the person bringing this complaint, do depose on oath or affirmation and say that the facts set forth in the foregoing complaint and attachments are true and correct, to the best of my knowledge and belief.

Patricia B. Dervishi
Signature of Person Making Complaint

STATE OF FLORIDA
COUNTY OF Palm Beach

Sworn to (or affirmed) and subscribed before me
this 17 day of April, 2012, by

Patricia Dervishi
(Name of Person Making Statement)

who is personally known to me _____ or produced
identification ✓. Type of identification
produced: Florida Driver License

(Signature of Notary Public) Todd Slobodkin

Notary Public, State of Florida
Commission # EE 219700
My comm. expires July 28, 2016

(Print, Type, or Stamp Commissioned Name of Notary Public)

RECEIVED

APR 18 2013

Commission on Ethics
by: _____

Palm Beach County Commission of Ethics Complaint Against Mayor Susan Welchel, Boca Raton, FL

Background Information:

The original submission of Archstone Palmetto East development project came before the Boca Raton Community Redevelopment Agency (CRA) under ordinance #5203 for final approval after an abbreviated public process on February 27, 2012. The body in a 4-1 vote approved it.

After approval the citizens of Boca Raton filed a petition for a referendum. The City of Boca Raton and the developer deemed the petition unlawful. Judge Lucy Cernow Brown heard the case in the West Palm Beach County Courthouse. Judge Brown ruled in favor of the citizens. The attorneys for the city filed a motion for a rehearing and were denied. The City of Boca Raton and the developer then filed to appeal the judge's decision. This appeal in the court system at this time

On March 11, 2013 an amended plan for Archstone Palmetto east development under ordinance #4035 went before the CRA for final approval.

The Ethics Charge

During this entire process Mayor Susan Welchel has been an outspoken proponent of this development.

In the 2012 City Goal Setting Session the Mayor Susan Welchel made it a point to add Archstone and Public Educational a "high priority" for the City of Boca Raton in the upcoming fiscal year. It is highly unusual for a development that is a 100% private venture a high priority for the City. Furthermore, "and public education" re: Archstone, as second unusual request did not take place at all since that goal setting session.

During the same time period, the children of Mayor Welchel; Jay Welchel and Kristy Hartofilis who are the Principles of Welchel Partners Real Estate, have established and maintained a professional relationship with the Archstone East Palmetto Park Road

Development team and have been promoting the project on their business/professional website (see attached). They go as far as to refer to the City Council approval. They display a rendering of the Archstone building and mention it by name. They also say that their mother is the Mayor of Boca Raton.

At no time during this process did Mayor Welchel disclose the relationship her children had with Archstone Development team. In point and fact, during the quasi-judicial hearing of March 11th, 2013, Attorney Ralf Brookes, representing the citizens in opposition, was prohibited from inquiring of the Mayor on this issue. Quasi-Judicial hearings require the fact finder to disclose relationships and discussions that may tend to bias the fact finder in this deliberative process. The Mayor did not declare for the record the relationship her children had with this development. She had an affirmative obligation to make this disclosure public and failed to do so.

Statutes and Ordinance Sections Violated:

A voting conflict arises when the official is called upon to vote on: “any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a **relative** ... of the public officer” F.S. 112.3143; ***Palm Beach County Code Ethics Sec. 2-443(a)(3) (“ 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: child”). One's "relative" is defined to include only one's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. F.S. 112.3143(1)(b); ***Palm Beach County Code Ethics Sec. 2-442*** If there is a voting conflict under the terms of the statute, a local official holding an elective position must: a. Abstain from voting on the measure; b. Before the vote, publicly state to the assembly the nature of his or her interest in the matter; and c. Within 15 days of the vote, file a memorandum of voting conflict (Commission Form 8B) with the person responsible for recording the minutes of the meeting, who incorporates the form in the minutes. In CEO 86-13 and CEO 10-24, the Commission advised that a CRA official may vote on matters affecting his or her interests but still would be required to publicly announce the conflict and file a voting conflict memorandum. ***Palm Beach County Code Ethics Sec. 2-442 (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). In addition, ***Palm Beach County Code Ethics Sec. 2-442 (i) Disclosure or use of certain information.*** A current or former official or employee shall not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person. Further, Public officers may not corruptly use or attempt to use their official position or perform their official duties, to secure a special privilege, benefit, or exemption for themselves or another. F.S. 112.313(6) and ***Palm Beach County Code Ethics Sec. 2-442 (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."). "Corruptly" is defined in F.S. 112.312(9) to mean: done with a wrongful intent and for the purpose of obtaining, or compensating, or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

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South Florida Commercial Real Estate - Whelchel Partners

Whelchel Partners has a team of real estate professionals who understand the extraordinary challenges facing South Florida property owners in today's commercial real estate market. The firm delivers the industry specific knowledge and experience necessary to find innovative solutions for commercial real estate owners, investors and businesses. Owners strive to maintain value in today's turbulent economic environment. A hands-on, community approach to property management, leasing, and tenant retention are indispensable to South Florida commercial real estate ownership.

Clients can remain focused on their core business as they leverage Whelchel Partners' resources and established local network. The firm provides financially sound and time sensitive solutions to today's complex real estate issues. A healthy mix of cutting edge technology, grass-roots prospecting, and in-depth research are key aspects to our marketing and leasing strategy. Whelchel Partners distinguishes themselves by their deep roots in the Boca Raton community while delivering institutional quality results for their clients.

Based in Boca Raton, Florida and serving the local communities, Whelchel Partners provides South Florida commercial real estate services in the areas of:

- Landlord Leasing
- Tenant Representation
- Property Management
- Property Disposition & Sales
- Advisory & Consulting Services
- Real Estate Owned (REO) Bank Dispositions
- Distressed Asset Acquisition & Note Purchases
- Market Surveys, Financial Analysis & Data-Driven Solutions
- Areas of Focus: Office, Retail, Medical Office, Industrial

"It's time to get back to the basics of sound underwriting, lowering operating expenses and delivering value to tenants. "Delay and Pray until a magical rebound occurs is not the best strategy."

Jay Whelchel



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News**

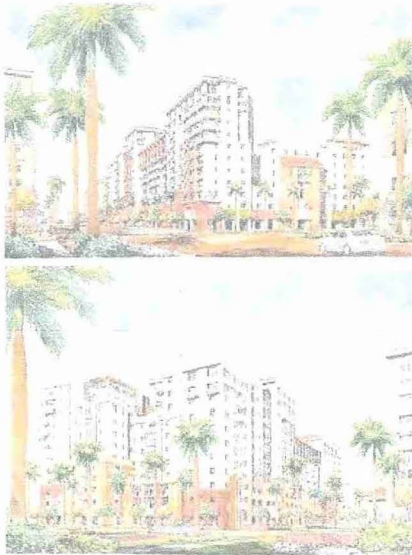
GO

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Boca Raton's Building Boom

Monday, 16 July 2012 00:00 Kristy Hartofilis



The skyline in Boca will be changing over the next few years as scores of developers have converged on the city. Multi-family rental projects abound in various states of approval and construction, leading many to hope our local real estate market is on the rise.

With a 4-1 vote, Boca Raton's City Council has just approved a new multi-family rental project by [RAM Development Company](#). Located on the corner of Palmetto Park Road and Federal Highway in downtown Boca Raton, the project will add 208 units to the ever-growing landscape of multi-family development.

This decision comes on the heels of another recent approval for the creation of 378 residential rental units by developer [Archstone](#) on East Palmetto Park Road. Additionally, 384 units are already under construction by [Alliance Residential](#), dubbed Broadstone at North Boca Village.

Two more developments, Via Mizner and Camden Boca Raton, are also seeking future approvals that would supply an additional 600 units to the downtown area. All together, this comes to over 1,500 new rental units under construction or seeking approval to begin development.

Ideally, this influx of new apartments, featuring the latest of amenities, will be the vortex of attraction to all the young professionals that work in downtown Boca Raton but happen to live and play in other communities.

Photo Credit: Renderings provided through the courtesy of [RAM Development Company](#) and [RLC Architects](#).

Bring Your Business to Boca!

Tuesday, 10 July 2012 20:12 Kristy Hartofilis

[State wide incentives entice new business and encourage growth.](#)



JOCKS, POLS AND BROKERS

Friday, 15 October 2010 17:36 administrator

http://www.bisnow.com/south_florida_commercial_real_estate_news_story.php?p=11144



Take two parts CRE experience, one part **soccer pro**, and add a dash of **politics**. What you get is **Welchel Partners Real Estate Services**. **Jay Welchel** and his sister **Kristy Hartofilis** (with Jay's wife Melissa as marketing director) have established a full-service, **third-party** CRE firm in **Boca Raton**. Jay and Kristy previously came from Florida real estate developer Flagler. As the market soured, Jay saw an opportunity to provide distressed property owners and uncertain tenants a more hands-on approach to addressing real estate concerns. "Right now, it's a lot of client specific work," including **short sales** and consulting on **lease restructures**, Jay says. "Six months from now ... as we pick up a few landlord leasing assignments, we hope to build **traditional** third- party leasing." So there's the real estate part, what about the soccer? Kristy is a former pro player with the **New York Power**. And the politics? The siblings' mother is **Susan Welchel**, mayor of Boca Raton.

Last Updated (Wednesday, 10 November 2010 21:34)

« [Start](#) [Prev](#) [1](#) [2](#) [Next](#) [End](#) »

Page 2 of 2



PALM BEACH COUNTY COMMISSION ON ETHICS
MEMORANDUM OF INQUIRY

To: Steven P. Cullen Executive Director
From: Mark E. Bannon, Senior Investigator
Re: C13-010 – Respondent Susan Whelchel, Mayor, City of Boca Raton

- **Background**

On April 18, 2013, COE staff received a sworn complaint from Patricia Dervishi, a resident of the City of Boca Raton (the City), alleging that Respondent, Susan Whelchel, the elected Mayor, violated the Palm Beach County Code of Ethics by voting on an issue that went before the City Council, sitting as the Boca Raton Community Redevelopment Agency (CRA), in which her children (Jay Whelchel and Kristy Hartofilis) had a financial benefit. The complaint stated that the issue revolved around votes taken during regular CRA meetings held on February 27, 2013 and March 11, 2013. The complaint states that Respondent voted to allow the initial “Archstone Palmetto Park” building project, a multi-family residential and retail building to be located at 349-425 Palmetto Park Road in the City at the February 27, 2013 meeting, and to approve a site plan amendment for this project at the March 11, 2013 meeting.

It should be noted that according to the information found on the City website (www.ci.boca-raton.fl.us), the CRA meetings for February and March were held on February 11th and March 21st. The February 11th CRA meeting minutes did not list any discussion or vote on the Archstone Development. The March 21st meeting had a vote on the site plan amendment and Respondent voted for approval of this amendment.

The basis of this complaint is an allegation that Respondent’s children own and operate a third party real estate leasing company, Whelchel Partners Real Estate Service, Inc. (Whelchel Partners), and, “have established and maintained a professional relationship with the Archstone East Palmetto Park Road Development team and have been promoting the project on their business/professional website. They go as far as to refer to the City Council approval. They display a rendering of the Archstone building and mention it by name. They also say that their mother is the Mayor of Boca Raton.” The complaint further states, “At no time during this process [the CRA approval votes] did Mayor Whelchel disclose the relationship her children had with Archstone Development team.”

The complaint also included the following documents as evidence of the allegations, which are submitted to the inquiry file:

- **Documents submitted to Inquiry file (from Complainant)**

1. The original complaint (sworn to by Complainant and notarized on April 17, 2013), and a separate attachment listing the allegations, as well as the sections of the Code of Ethics believed to have been violated by Respondent¹. (5 pages)
2. Copy of pages from the website of Whelchel Partners (www.whelchelpartners.com), showing the artists rendition of the Archstone Development, and listing a news story where it states that Boca Raton Mayor Susan Whelchel is the mother of Jay Whelchel and Kristy Hartofilis (3 pages)

- **Inquiry**

On April 19, 2013, I reviewed the information listed in the complaint and the documentation provided by Complainant, Patricia Dervishi. I also reviewed the video of the CRA meeting held on March 11, 2013 from the City’s website (www.ci.boca-raton.fl.us). This CRA meeting was held as a public quasi-judicial hearing concerning

¹ Complainant list the following Code of Ethics sections as having been violated: Sections 2-443(a)(3), *Misuse of public office or employment*, 2-442(c), *Disclosure of voting conflicts*, 2-442(i), *Disclosure or use of certain information*, and 2-443(b), *Corrupt misuse of official position*.

the proposed amendments. Respondent did participate fully in the discussions at this hearing, and did vote to approve the amendment, which passed on a 4-1 vote.

On April 22, 2013, I called Complainant and spoke to her about the allegations within the complaint. During this conversation, Complainant advised me that she is a member of a citizen group that opposes the Archstone Development. During this discussion, she also agreed that neither she nor any member of this group had any firsthand information that Whelchel Partners was in a "professional relationship" with the builders of the Archstone Development project on Palmetto Park Road. They deduced such a connection based solely on the information provided on the Whelchel Partners website which showed the artists rendition of the future development. Having reviewed the full website myself, I pointed out to her that many of the current projects within the City were named in this website as a showing of current development taking place in Boca Raton, but no one single development was identified as being in any professional relationship with Whelchel Partners. I also made her aware that the information listed on the Whelchel Partners website that discussed the sibling's mother being the Mayor of Boca Raton was a copy of a news story written about the siblings starting a real estate business, and it was the author of that story who wrote about the connection in the article. Complainant could offer no additional evidence of any professional relationship between Whelchel Partners or Archstone, nor could she provide the name of any witness who could verify that such a business connection existed. However, if such a business relationship exists, then Respondent may have violated the Code of Ethics by voting on this matter.

- **Applicable code provisions**

Pursuant to Chapter 2, Article V, Division 8, §2-258(a), the jurisdiction of the Commission on Ethics extends to the county code of ethics, county post-employment and lobbyist registration ordinances.

The following portions of the PBC Code of Ethics are relevant to this Inquiry:

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. (Emphasis added)

As current Mayor of the City of Boca Raton, Respondent is within the jurisdiction of the PBC Commission on Ethics (COE) and under the Code of Ethics.

Sec. 2-443(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: (Emphasis added)

- (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; (Emphasis added)*

Sec. 2-443(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 complaint alleges that Respondent's votes on the Archstone project in February and March of 2013 provided a "special benefit not shared with similarly situated members of the general public" to her children as principals of Whelchel Partners Real Estate, who "have established and maintained a professional relationship with the Archstone East Palmetto Park Road Development team, and have been promoting the project on their

business/professional website.” This allegation makes both code section 2-443(a) and 2-443(c) relevant to this Inquiry.

- **Analysis**

The definition of “legal sufficiency” used by COE staff is as follows:

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based upon facts which have been sworn to by a material witness or witnesses, and if true would constitute the offenses alleged, relating to a violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

Under this definition and based on the information discussed, this complaint is legally sufficient. Although the Complainant does not base her allegations on first-hand knowledge, she does have knowledge that the principals of Whelchel Partners, Jay Whelchel and Kristy Hartofius-Whelchel, are the children of Respondent. Her assertion of a “professional relationship” between the children of Respondent and the developers of the Archstone project is based solely on information gleaned from the Whelchel Partners website, and even though misinterpreted by Complainant, if this relationship were true, the votes of Respondent on the Archstone Development project, made while sitting as a member of the Boca Raton CRA, may have violated both Section 2-443(a)(3), *Misuse of public office or employment*, and 2-443(c), *Disclosure of voting conflicts*.

- **Conclusion:**

Staff recommends to the Executive Director that there is **LEGAL SUFFICIENCY** to open a preliminary investigation into this complaint.

Submitted by:



Mark E. Bannon, Senior Investigator
PB County Commission on Ethics

5/3/2013
Date

Reviewed by:

SPC

(Initials)

5/13/13

Date

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF LEGAL SUFFICIENCY

To: Palm Beach County Commission on Ethics
From: Steven P. Cullen, Executive Director
Re: C13-010 – Respondent Susan Whelchel, Mayor, City of Boca Raton

- **Recommendation**

Regarding Respondent, Susan Whelchel, Mayor, City of Boca Raton, the Commission on Ethics Staff recommends a finding of LEGAL SUFFICIENCY be entered in Complaint C13-010.

Legal sufficiency exists where there is an allegation of a violation of an ordinance within the jurisdiction of the Ethics Commission, purportedly committed by an individual within the authority of the Ethics Commission, based upon facts which have been sworn to by a material witness or witnesses, and if true would constitute the offenses alleged, relating to a violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.

- **Background**

On April 18, 2013, COE staff received a sworn complaint from Patricia Dervishi, a resident of the City of Boca Raton (the City), alleging that Respondent, Susan Whelchel, the elected Mayor, violated the Palm Beach County Code of Ethics by voting on an issue that went before the City Council, sitting as the Boca Raton Community Redevelopment Agency (CRA), in which her children (Jay Whelchel and Kristy Hartofilis), had a financial benefit. The complaint stated that the issue revolved around votes taken during a regular CRA meetings held on February 27, 2013, and on March 11, 2013. The complaint states that Respondent voted to allow the initial “Archstone Palmetto Park” building project, a multi-family residential and retail building to be located at 349-425 Palmetto Park Road in the City at the February 27, 2013 meeting, and to approve a site plan amendment for this project at the meeting on March 11, 2013. The basis of this complaint is an allegation that Respondent’s children own and operate a third party real estate leasing company, Whelchel Partners Real Estate Service, Inc. (Whelchel Partners), and, “have established and maintained a professional relationship with the Archstone East Palmetto Park Road Development team and have been promoting the project on their business/professional website. They go as far as to refer to the City Council approval. They display a rendering of the Archstone building and mention it by name. They also say that their mother is the Mayor of Boca Raton.” The complaint further states, “At no time during this process [the CRA approval votes] did Mayor Whelchel disclose the relationship her children had with Archstone Development team.”

- **Analysis**

Pursuant to Chapter 2, Article V, Division 8, §2-258(a), the jurisdiction of the Commission on Ethics extends to the county code of ethics, county post-employment and lobbyist registration ordinances. Violations of §2-443(a) (Misuse of office) and §2-443(c), (Disclosure of Voting Conflicts) of the Code of Ethics are within the jurisdiction of the Palm Beach County Commission on Ethics. The Commission on Ethics has personal jurisdiction over Susan Whelchel as Mayor of the City of Boca Raton.

Applying the sworn complaint and the documents provided to the Code of Ethics, we review the facts to determine whether reliable information provided points to actions that may violate the Palm Beach County Code of Ethics:

Sec. 2-443(a), Misuse of public office or employment, states in relevant portion:

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:* (Emphasis added)

- (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;*

Sec. 2-443(c). Disclosure of voting conflicts, states as follows in relevant portion:

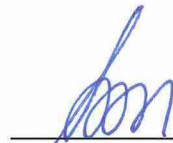
- (c) *Disclosure of voting conflicts.* County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The official shall publicly disclose the nature of the 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.

The sworn documentation provided does on its face allege violations of §2-443(a)(3) and (c) and is based at least partially on the personal knowledge of the Complainant.

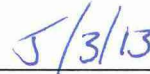
- **Conclusion**

Because sufficient information is provided by the submitted documents, reasonable inferences from those documents, if true, could support a violation of the code of ethics. Therefore, case number C13-010 against Respondent, Susan Whelchel, is **LEGALLY SUFFICIENT**. A preliminary investigation into this matter should proceed.

BY:



Steven P. Cullen, Executive Director
Florida Bar No. 362204
Commission on Ethics



Date

MEMORANDUM OF INVESTIGATION

To: Steven P. Cullen Executive Director
From: Mark E. Bannon, Investigator
Re: C13-010 – Respondent Susan Whelchel, Mayor, City of Boca Raton

- **Background**

On April 18, 2013, COE staff received a sworn complaint from Patricia Dervishi, a resident of the City of Boca Raton (the City), alleging that Respondent, Susan Whelchel, the elected Mayor, had violated the Palm Beach County Code of Ethics by voting on an issue that went before the City Council, sitting as the Boca Raton Community Redevelopment Agency (CRA), in which her children (Jay Whelchel and Kristy Hartofilis), had a financial benefit in the outcome of this vote. The complaint stated that the issue revolved around votes taken during a regular CRA meetings held on February 27, 2013, and on March 11, 2013. The complaint states that Respondent voted to allow the initial "Archstone Palmetto Park" building project, a multi-family residential and retail building to be located at 349-425 Palmetto Park Road in the City at the February 27, 2013 meeting, and to approve a site plan amendment for this project at the meeting on March 11, 2013.

The basis of this complaint is an allegation that Respondent's children own and operate a third party real estate leasing company, Whelchel Partners Real Estate Service, Inc. (Whelchel Partners), and, "have established and maintained a professional relationship with the Archstone East Palmetto Park Road Development team and have been promoting the project on their business/professional website. They go as far as to refer to the City Council approval. They display a rendering of the Archstone building and mention it by name. They also say that their mother is the Mayor of Boca Raton." The complaint further states, "At no time during this process [the CRA approval votes] did Mayor Whelchel disclose the relationship her children had with Archstone Development team." On May 3, 2013, the COE Executive Director found that this complaint was legally sufficient.

All documents submitted to the inquiry file, information obtained during the Inquiry, and the Memorandum of Inquiry itself as well as the Memorandum of Legal Sufficiency are incorporated by reference into this Investigation.

- **Investigation**

On April 30, 2013, I made contact with Jay Whelchel at his business, and arranged to interview him at his office, 980 N. Federal Highway, Boca Raton on Thursday, May 2, 2013 at 9:00 AM. The purpose of my interview was to discuss the allegation by Complainant that Whelchel Partners were in a business relationship with the Archstone Development project builders.

- **Interview: Jay Whelchel, Principal, Whelchel Partners Real Estate, son of Respondent**

On Thursday, May 2, 2012, I conducted an interview with Jay Whelchel at his office, 980 N. Federal Hwy., Boca Raton. This interview was recorded and conducted under oath. The interview began at 9:22AM and was completed at 9:29 AM.

Jay Whelchel identified himself as a principal in Whelchel Partners Real Estate Services, Inc. (Whelchel Partners). He was placed under oath, and stated that he understood that he was under oath. Whelchel stated that he was one of two (2) principals of Whelchel Partners, the other being his sister, Kristy Hartofilis-Whelchel. Both are children of Respondent. Whelchel advised that Whelchel Partners was started approximately 2½ ago. Prior to that, both Whelchel and his sister had worked in real estate for about 12 years for other companies. Whelchel stated that Respondent was not associated with Whelchel Partners. According to Whelchel, his business generally acts as a leasing agent for office space, although they have on occasion also done some sales of real property. They act as the agent for owners of office buildings, and work to lease this space to businesses. They do not work with residential properties, and while they have done some limited retail space leasing, their concentration is on leasing office space to businesses.

We then discussed the Archstone Palmetto Park development project (Archstone). I asked Whelchel what he knew about this building project. Whelchel stated, "Only what I read in the newspaper." He went on to state that he was aware that the proposed Archstone project was a residential condo/apartment building with some limited retail space on the ground floor on east Palmetto Park Road in the City. I asked Whelchel if he was in any business relationship with Archstone or its developers, to which he replied "no," and that Whelchel Partners have never had any business association with the Archstone project developers. I then asked why he listed information about the Archstone project on the Whelchel Partners website (www.whelchelpartners.com). Whelchel advised that they list four (4) of the newer residential building projects in Boca Raton on this web site for several reasons. The first is that the persons who administer their website advised that this would help them get more "hits" on their website as people looking for residential building construction in Boca Raton may also be interested in office space for a business. The second reason is that when a company is looking for office space to lease, they also need information about housing for their employees. If a company were to choose to move to Boca Raton, they would need to make sure their employees have adequate housing within a reasonable proximity to the business. Whelchel Partners lists that information on the website for purposes of assuring potential clients that there is adequate housing, and to show that Boca Raton is a thriving and expanding community, making it a good place to establish a business headquarters. Whelchel advised that the information on the website pertaining to he and his sister was a copy of a news article that was placed there to provide information about the companies principals. The article listed the fact that their mother is the Mayor, but they simply used the entire article. He reiterated that he has no business relationship with any of the residential projects listed on the website, including Archstone. He also stated that his mother is very careful not to discuss any pending issues before City Council with her children to avoid any appearance of them receiving some advantage related to their company.

I showed Whelchel a map of the location of Whelchel partners and the location of the Archstone project, which is approximately a mile apart. I then concentrated on the area surrounding the Archstone project (300 block of Palmetto Park Rd.). I asked Whelchel if his company represents any landowner abutting this project. Whelchel replied that he has no clients whose interests he represents that are in close proximity to this project, nor does he or his sister own or lease any property in this area as individuals.

End of interview.

In continuing this investigation, I made arrangements to interview Respondent at the Boca Raton City Hall on May 13, 2013.

- **Interview: Susan Whelchel, Mayor of Boca Raton, Respondent**

On May 13, 2013, I interviewed Respondent in her office at the Boca Raton City Hall. Also present during this interview was Boca Raton Deputy City Attorney Linda MacLaren. This interview was recorded and taken under oath. The interview began at 11:29 AM and was concluded at 11:36 AM.

Respondent identified herself for the record and was then placed under oath. Ms. MacLaren also identified herself for the record. Respondent also identified herself as the mother of Jay Whelchel and Kristy Hartofius-Whelchel, principals in Whelchel Partners, a commercial real estate firm that leases and sells office space and office buildings.

I asked Respondent if she had any ownership interest in Whelchel Partners, or was employed by this business. She stated that she had no business connection to the firm. She advised that Jay and Kristy's father had assisted them in starting the firm, but that he also did not maintain any ownership interest in the firm.

We next discussed the Archstone Palmetto Park building project (Archstone). I asked Respondent to tell me what she knew about this project. Respondent stated that Archstone is a multi-family development scheduled to be built on East Palmetto Park Road in the City. It is one of several residential projects planned for the downtown area of the City. This project is currently on hold due to lawsuits filed to stop the project. Respondent stated that at least two (2) times over the past year this project has come before City Council or the CRA for approval. Each time the project has passed by a vote of 4-1, with her voting in the majority. I next asked if she was aware of any business connection between Whelchel partners and the developers of Archstone. Respondent stated that she was not, and that such a connection was unlikely since Whelchel Partners did not work in the residential real estate market. They did almost exclusively office buildings, both sale and leasing, and on rare occasions, some retail space leasing, but never residential. I next asked if Respondent herself or her spouse had any connection to

these developers. Respondent stated that she knew some of the agents for the Archstone developers, but that she had no personal or business relationship with any of them, nor did her spouse. She supported the project because she believed that it was best for the City to have available housing in this area. Respondent also believed that this complaint was politically motivated because of her support for this project by the same group of residents that had filed suit to stop the project. She reiterated that her support of the project was not due to some special benefit to herself, her spouse, her children or any prohibited group, but was for the betterment of the City as a whole.

Respondent and I discussed whether she, her spouse, any close relative or Whelchel Partners owned or leased any property that abutted the proposed site for Archstone. Respondent stated they did not have any ownership or business interest in any property near this site, nor did Whelchel Partners to her knowledge. Respondent and I then had a short discussion about the rules of voting conflicts in both the Florida and PBC Code of Ethics. Respondent had a very clear understanding of these rules, and was aware of her obligations under law should such a conflict arise.

End of interview.

- **Additional documents submitted to investigative file by COE staff**

1. Copy of records of the Florida Division of Corporations website (www.sunbiz.com) listing Jay Whelchel and Kristy Hartofilis as the only officers or directors of Whelchel Partners Real Estate Services, Inc. (1 page)
2. Printed copy of online real estate trade paper entitled *Real Estate Biznow (South Florida)*, published on November 9, 2010, in which the article discussing Whelchel Partners, as well as Jay Whelchel and Kristy Hartofilis appears. This article can be found at the online site, (www.biznow.com/commercial-real-estate/south-florida/shoppes-selle/). (5 pages)
3. Copy of a portion of the Archstone webpage (www.archstone.com) listing an artist's rendition of the Archstone Palmetto Park development project, similar to that found on Whelchel Partners website and submitted by Complainant in her initial submission of documents. (1 page)
4. Copy of agenda from the March 11, 2013 CRA meeting in which Respondent voted on an issue concerning the Archstone Palmetto Park development project. (3 pages)
5. Copy of information from Whelchel partners webpage (www.whelchelpartners.com) (6 pages)

- **Applicable code provisions**

The following portions of the PBC Code of Ethics are relevant to this Inquiry:

Sec. 2-442. Definitions.

Official or employee means any official or employee of the county or the municipalities located within the county, whether paid or unpaid. (Emphasis added)

As current Mayor of the City of Boca Raton, Respondent is within the jurisdiction of the PBC Commission on Ethics (COE) and under the Code of Ethics.

Sec. 2-443(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: (Emphasis added)

- (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; (Emphasis added)

Sec. 2-443(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. (Emphasis added)

The complaint alleges that Respondent's votes on the Archstone project, including a vote taken as a CRA member on March 11, 2013 (and a similar vote sometime in 2012), provided a "special benefit not shared with similarly situated members of the general public" to her children as principals of Whelchel Partners Real Estate, who "have established and maintained a professional relationship with the Archstone East Palmetto Park Road Development team, and have been promoting the project on their business/professional website." This allegation makes both code section 2-443(a) and 2-443(c) relevant to this Inquiry.

- **Analysis**

It was established during the interview with both Jay Whelchel and Respondent that Respondent is the mother of both Jay Whelchel and Kristy Hartofilis-Whelchel, and that both Jay Whelchel and Kristy Hartofilis-Whelchel are principals in Whelchel Partners Real Estate (Whelchel Partners), a Boca Raton based real estate corporation. It was further established by information obtained from the Florida Division of Corporations website (www.sunbiz.com) and the interviews with Jay Whelchel and Respondent that Respondent is not associated with this business.

It was established during an interview with Complainant that she has no personal knowledge of any business relationship between the Archstone project developers and Whelchel Partners, and that she herself is not associated with her children's business, Whelchel Partners or with the Archstone project.

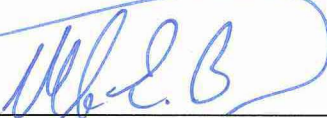
An analysis of the standard of proof required at this point for the Commission of Ethics to establish that Respondent violated the Palm Beach Code of Ethics, Section 2-443(a), *Misuse of public office or employment*, or Section 2-443(c), *Disclosure of voting conflicts*, is based on a finding that there is probable cause to believe such a violation occurred. The standard of probable cause for such a belief is as follows:

Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to believe that the Respondent, Susan Whelchel, violated the Palm Beach County Code of Ethics.

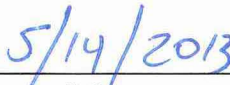
- **Conclusion:**

Staff recommends to the Executive Director that after an investigation of this matter, there are insufficient trustworthy facts and circumstances to believe that Respondent Susan Whelchel violated the Palm Beach County Code of Ethics, and recommends that the complaint be dismissed for lack of probable cause.

Submitted by:



Mark E. Bannon, Senior Investigator
PB County Commission on Ethics



Date

Reviewed by:



(Initials)



Date

PALM BEACH COUNTY COMMISSION ON ETHICS

MEMORANDUM OF NO PROBABLE CAUSE

To: Commission on Ethics
From: Megan Rogers, Staff Counsel
Re: Case Number C13-010, Susan Whelchel, Mayor, City of Boca Raton

- **Recommendation**

A finding of NO PROBABLE CAUSE and DISMISSAL should be entered in the above captioned matter as to the allegations made in the Complaint.

Probable Cause exists where there are reasonably trustworthy facts and circumstances for the Commission on Ethics (COE) to believe that the Respondent, Rodney Roberts, violated the Palm Beach County Code of Ethics.

- **Jurisdiction**

The COE has jurisdiction pursuant to Chapter 2, Article V, Division 8, §2-258(a) of the Palm Beach County Commission on Ethics Ordinance which states in pertinent part:

Article V, Division 8, Section 2-258. *Powers and duties.* (a) The commission on ethics shall be authorized to exercise such powers and shall be required to perform such duties as are hereinafter provided. The commission on ethics shall be empowered to review, interpret, render advisory opinions and enforce the;

- (1) County Code of Ethics;
- (2) County Post-Employment Ordinance, and
- (3) County Lobbyist Registration Ordinance.

Article XIII, §2-443(a) *Misuse of public office or employment*, of the Palm Beach County Code of Ethics (the Code) prohibits any employee or official from using their official position to give a special financial benefit, not shared with similarly situated members of the general public, to their outside employer.

Article XIII, §2-443(c) *Disclosure of Voting Conflicts* requires officials and advisory board members to abstain from voting and not participate in any matter that will result in a special financial benefit to the employee or official's outside employer.

This memorandum adopts by reference the Memorandum of Inquiry and Investigation prepared by COE investigative staff.

- **Background**

This matter came to the attention of the Commission on Ethics (COE) staff through sworn complaint. On April 18, 2013, COE staff received the sworn complaint from Patricia Dervishi, a resident of the City of Boca Raton (the City), alleging that Respondent, Susan Whelchel, the elected Mayor, violated the Palm Beach County Code of Ethics by voting on an issue that went before the City Council, sitting as the Boca

Raton Community Redevelopment Agency (CRA), in which her children (Jay Whelchel and Kristy Hartofilis) had a financial benefit.

The complaint stated that the issue revolved around votes taken during regular CRA meetings held on February 27, 2013 and March 11, 2013. The complaint states that Respondent voted to allow the initial "Archstone Palmetto Park" building project, a multi-family residential and retail building to be located at 349-425 Palmetto Park Road in the City at the February 27, 2013 meeting, and to approve a site plan amendment for this project at the March 11, 2013 meeting.

On May 3, 2013, after a short inquiry by COE staff, Executive Director Steven Cullen found that the complaint was LEGALLY SUFFICIENT to open a preliminary investigation.

- **Investigation**

During the investigation, staff made contact with the Complainant, who advised that she had personal knowledge that the principals of the real estate firm Whelchel Partners (Jay Whelchel and Kristy Hartofilis-Whelchel) were the son and daughter of Respondent. However, the information that Whelchel Partners were in a business relationship with the developers of the Archstone Palmetto Park building project (Archstone) was based on a review of Whelchel Partners website (www.whelchelpartners.com), and information about Archstone found on that website. She was unable to provide any witnesses or additional documentation of such a business relationship.

A sworn interview with Jay Whelchel indicated that the use of the Archstone information on the Whelchel Partners website, along with a listing of information about at least three (3) other residential developments in the downtown Boca Raton area, was based on a marketing plan designed to show potential businesses considering locating to the Boca Raton area that sufficient housing was available to house their employees. Jay Whelchel stated that Whelchel Partners leases and sells commercial real property, specifically office space. And on occasion some retail space. They do not work in the residential real estate market. Further, Jay Whelchel stated that Whelchel Partners, nor he or his sister as individuals, are in a business relationship with Archstone or anyone associated with that entity. A sworn interview with Respondent verified this information, and that Respondent also has no personal or business relationship with the developers of the Archstone project.

- **Conclusion**

Based on the facts and circumstances, there is **NO PROBABLE CAUSE** to believe that Respondent, Susan Whelchel, has violated §2-443(a) or §2-443(c) of the Palm Beach County Code of Ethics. Therefore, staff recommends that this matter be **DISMISSED**

BY:


Megan C. Rogers, Advocate
Florida Bar No. 86555
Palm Beach County Commission on Ethics


Date