



**PALM BEACH COUNTY COMMISSION ON ETHICS**  
300 North Dixie Highway, Suite 450, West Palm Beach, Florida 33401  
Hotline: 877-766-5920 or 561-355-1915

**RECEIVED**

JUN - 3 2015

Commission on Ethics  
by:

**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: Todd McLendon E-Mail: \_\_\_\_\_  
Address: PO Box 1293  
City: Loxahatchee Zip: 33470  
Home #: \_\_\_\_\_ Work #: \_\_\_\_\_ Cell #: \_\_\_\_\_

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

*Please provide as much information as possible.*

Name: James Rockett E-Mail: \_\_\_\_\_  
Address: 14155 43rd N  
City: Loxahatchee Zip: 33470  
Home #: \_\_\_\_\_ Work #: \_\_\_\_\_ Cell #: \_\_\_\_\_  
Title/Office Held or Sought: Loxahatchee Groves Town Council Member

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

☒ Allegation is against person in County/Municipal Government  
☐ Allegation is about County/Municipal/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.

Signature of Person Making Complaint

STATE OF FLORIDA

COUNTY OF Palm Beach

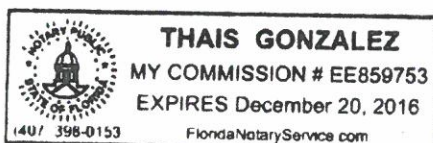
Sworn to (or affirmed) and subscribed before me this 28 day of May, 2015, by

Todd McLendon

(Name of Person Making Statement)

who is personally known to me ☒ or produced identification \_\_\_\_\_. Type of identification produced:

(Signature of Notary Public, State of Florida)



Todd McLendon  
PO Box 1293  
Loxahatchee Fl 33470  
954-931-4634  
May 28, 2015

PALM BEACH COUNTY COMMISSION ON ETHICS  
300 North Dixie Highway, Suite 450  
West Palm Beach, Florida 33401

Dear Palm Beach County Commission on Ethics:

This is a formal complaint regarding a voting conflict pursuant to Florida statute 112.3143.

During the Town of Loxahatchee Groves public meeting that took place on 4-7-2015 Councilman James Rockett recused himself from voting on a matter that was Quasi-Judicial in nature. Councilman James Rockett's son owns property directly next to the project before the town council that was to be voted on. However, before recusing himself he made a motion regarding the same matter. Councilman Rocket spoke at great length from the dais as to why the same matter before the council should be rejected. I have attached the Form 8B that was filled out by Councilman James Rockett. Speaking on the matter before recusing himself is in violation as further detailed below.

Big Dog Ranch is a dog rescue facility that sought a special exception from the Town of Loxahatchee Groves. The matter was placed on the Loxahatchee Groves town council agenda for 4-7-2015. Previous to the meeting, Big Dog Ranch had requested to postpone the hearing. Due to the fact that the postponement was granted, it appeared that the representative of Bog Dog Ranch was not present. The video of the meeting can be found at <https://www.youtube.com/watch?v=tpjkMzO0IGk>. The resolution on the agenda was 2015-09. On the video at 1:04:20 It is explained that Big Dog Rescue has requested a continuance on the resolution. At 1:04:20 Councilman James Rockett spoke from the dais at great length as to why the item should not be postponed and insisted the item be voted on that evening. At 1:12:12 for over four minutes Councilman James Rockett spoke again as to why the Quasi-Judicial hearing should take place that evening. He explains that the applicant and the project are detrimental to the town. At 1:18:55 Councilman James Rockett again explains that the application should be denied. At 1:19:40 Councilman James Rockett in fact makes a motion to disapprove the application entirely. The motion is seconded by Vice Mayor Jarriel. Fortunately, the town attorney explained that the motion is not proper and the item must be postponed to a following meeting. Councilman James Rockett withdraws his motion at this point. At 1:21:00 Councilman Tom Goltzene makes a motion to postpone the hearing until the following meeting. The motion is seconded by Councilman Ryan Liang. Councilman James Rockett than asks for the motion to include specific wording limiting the applicant. At this point the vote is taken on the motion and Councilman James Rockett abstains from voting.

As you may be aware Florida Statute 112.3143(4) states "No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss" As one can see by the video Councilman James Rockett participated at great length in attempting to deny the applicant. General members of the public are limited to speaking one time on a single agenda item with a time limit of three minutes. Councilman James Rockett spoke not as a member of the public but as a councilman from the dais with great influence. He spoke several times at durations longer than the general public is allowed. He did not fill out a comment card as members of the general public are required. He in fact made a motion to deny the application all together.

Florida Statute 112.3143 (4)(b) states "the disclosure shall be made orally at the meeting when it becomes known that a conflict exists." This disclosure was not made prior to the lengthy input by Councilman



James Rockett. Had this been disclosure been made I am certain the chairman (Mayor Browning) would not have allowed Councilman James Rockett to participate in the manner he did.

Florida Statute 112.3143 (4)(a) states the memorandum of conflict "shall be read publicly at the next meeting held subsequent to the filing of this written memorandum." The memorandum was in fact not read publicly at the next meeting as required.

Public officials must be held accountable for their actions especially when acting as a representative of the public. I do not believe Councilman James Rockett's actions during this important meeting complied with state law and wish for you to take whatever action necessary to prevent this from occurring again.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd McLendon", with a long horizontal flourish extending to the right.

Todd McLendon

# FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Rockett James</i>	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE <i>Town of Loxahatchee Groves (Council)</i>
MAILING ADDRESS <i>14155 43rd Rd</i>	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY <i>Loxahatchee Grove</i>	<input checked="" type="checkbox"/> CITY <i>Town</i> <input type="checkbox"/> COUNTY <input checked="" type="checkbox"/> OTHER LOCAL AGENCY
COUNTY <i>Palm Beach City</i>	NAME OF POLITICAL SUBDIVISION: <i>Loxahatchee Groves</i>
DATE ON WHICH VOTE OCCURRED <i>4/7/15</i>	MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

## WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

\* \* \* \* \*

### ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

\* \* \* \* \*

### APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the



### APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

### DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, James Rockett, hereby disclose that on April 7, 20 15:

(a) A measure came or will come before my agency which (check one)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, \_\_\_\_\_;
- ☒ inured to the special gain or loss of my relative, \_\_\_\_\_;
- ☐ inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- ☐ inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

potential of property south of the Big Dog Ranch request for variance could be perceived to benefit a member of my family. To avoid any risk of perceived or subsequent accusations of impropriety, I recuse myself from the vote relative to the Big Dog Ranch request.

Date Filed

April 7th 2015

Signature

James Rockett

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

PALM BEACH COUNTY COMMISSION ON ETHICS  
**MEMORANDUM OF INQUIRY**

To: Steven P. Cullen, Executive Director  
From: Mark E. Bannon, Senior Investigator  
Re: C15-016 – James Rockett, Council Member, Town of Loxahatchee Groves

• **Background**

This matter came to the attention of the PBC Commission on Ethics (COE) by way of a formal sworn Complaint filed with the COE by Todd McLendon. The sworn Complaint submitted to COE staff was signed and notarized on May 28, 2015, and received by COE staff on June 3, 2015. The Respondent in this Complaint is Loxahatchee Groves Town Council Member James Rockett.

Complainant provided COE staff with specific allegations against respondent listed in an undated letter addressed to the COE, and attached to the sworn complaint. Complainant states at the beginning of this letter, "This is a formal complaint regarding a voting conflict pursuant to Florida statute 112.3143." Complaint alleges that on April 7, 2015, Loxahatchee Groves (the Town) held a Town Council meeting. The agenda for this meeting included a quasi-judicial hearing concerning Resolution Number 2015-09 (agenda item 6.a.), a request for a "special exception and site plan review" for Big Dog Ranch (a proposed "no kill" animal shelter), to be located on property near Okeechobee Blvd., and "D" Road, within the Town. Big Dog Ranch is a 501(c)(3), nonprofit charitable organization under IRS rules.

Some time prior to this meeting, representatives for Big Dog Ranch had requested that the hearing be postponed to the April 21, 2015 meeting. This postponement was accepted by Town staff prior to the meeting, and therefore representatives of Big Dog Ranch did not attend the April 7<sup>th</sup> meeting. Complainant alleges that at the April 7<sup>th</sup> meeting, Respondent opposed the postponement of the quasi-judicial hearing, spoke to oppose the entire project stating that he believed the application for special exception should be denied, and that the hearing should be held that evening. According to Complainant, at one point, Respondent makes a motion to disapprove the application for special exception, but is told by the Town Attorney that it is not a proper motion based on the circumstances, and due process issues may require the Town Council to postpone the matter until the following meeting. According to Complainant, when another Council Member offers a motion to postpone the hearing, and this motion is seconded, Respondent attempts to add limiting language to the motion. Complainant alleges that once the motion to postpone the quasi-judicial hearing on this issue was made and seconded, Respondent abstains from voting advising he may have a conflict of interest regarding this project based on family ownership of land situated directly south and abutting the land at issue. Complaint also provided a copy of the state Form 8B Memorandum of Voting Conflict, filed by Respondent that same night. On this Form 8B, Respondent writes that the conflict of interest which forced him to abstain from voting is based on, *"potential of property south of the Big Dog Ranch request for variance could be perceived to benefit a member of my family. To avoid any risk or perceived or subsequent accusation of impropriety, I recuse myself from the vote relative to the Big Dog Ranch request."* Respondent's signature appears to be found on the bottom of this form as required, and it is dated April 7, 2015.

It should be noted that Complainant's specific allegations against Respondent are based on state law violations under §112.3143, **Voting conflicts**. He does not reference any section of the PBC Code of Ethics within his sworn Complaint, or allege any violation based on the PBC Code of Ethics. In addition, the portion of state law he quotes as being violated, §112.3143(4)(b), (which prohibits "participation" on any matter that would inure to the official's private gain or loss, or that of any relative), is incorrectly alleged. This sub-section of state law applies to "appointed public officers", but does not apply to "elected public officers," such as Respondent. While a vote on such a matter by an elected official may be in violation of state law, participation in discussions leading up to a vote by an elected official is not prohibited under state law.

In general, where a sworn Complaint fails to allege a violation of the PBC Code of Ethics, or other ordinance over which the COE has jurisdiction, it would be found to be "legally insufficient" on its face, and administratively



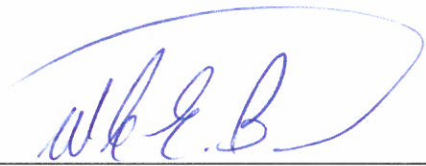
dismissed. Any alleged violation of the state code of ethics must be filed with the Florida Commission on Ethics. However, the PBC Code of Ethics addresses similar conflicts of interest under §2-443, **Prohibited Conduct**. The relevant sections include, §2-443(a), **Misuse of public office or employment**, and §2-443(c), **Disclosure of voting conflicts**. Under §2-443(c), Respondent would specifically be prohibited from both voting on and participating in any matter before the Town Council that would result in a special financial benefit for any person or entity listed in §2-443(a)(1-7). Sub-section 2-443(a)(3) includes a "child or step-child" within this prohibition. Therefore, if Respondent participated in a matter before Town Council that would result in a "special financial benefit" for his son, he would be in violation of this code section.

After a discussion with the COE Executive Director, it was decided to use the information given in the formal Complaint as a factual basis to allege a possible violation of the PBC Code of Ethics, and to open a formal investigation into this matter. It should be noted that nowhere in §2-260, *Procedure on Complaints filed*, of the Commission on Ethics ordinance does it require that a Complainant list the exact code section they believe was violated, only that the Complainant, "*Allege the elements of a violation within the commission on ethics' jurisdiction in the complaint and/or supporting documents provided,*" to be a legally sufficient complaint.<sup>1</sup>

- **Recommendation**

**Based on the above information, I recommend that a formal investigation into the allegations of this Complaint be commenced.**

Submitted by:



Mark E. Bannon  
PB County Commission on Ethics

6/17/2015  
Date

Reviewed by:

SPC  
(Initials)

6/17/2015  
Date

<sup>1</sup> Section 2-260(b)(1) of the Commission on Ethics Ordinance.

PALM BEACH COUNTY COMMISSION ON ETHICS  
**LEGAL SUFFICIENCY DETERMINATION**

To: Palm Beach County Commission on Ethics  
From: Steven P. Cullen, Executive Director  
Re: C15-016 – James Rockett – Council Member, Town of Loxahatchee Groves

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- **Recommendation**

Staff recommends a finding of **LEGAL SUFFICIENCY** be entered regarding the Respondent in C15-016.

*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 substantially on the personal knowledge of the Complainant, relating to an alleged violation occurring after the effective date of the code, and filed with the Ethics Commission within two years of the alleged violation.*

- **Background**

This matter came to the attention of the PBC Commission on Ethics (COE) by way of a formal sworn Complaint filed with the COE by Todd McLendon. The sworn Complaint submitted to COE staff was signed and notarized on May 28, 2015, and received by COE staff on June 3, 2015. The Respondent is Loxahatchee Groves Town Council Member James Rockett.

Complainant attached an undated letter to the sworn complaint that provided specific allegations against Respondent. Complainant states at the beginning of the letter, "This is a formal complaint regarding a voting conflict pursuant to Florida statute 112.3143." Complaint alleges that on April 7, 2015, Loxahatchee Groves (the Town) held a Town Council meeting.

The agenda for the meeting included a quasi-judicial hearing concerning Resolution Number 2015-09 (agenda item 6.a.), which is a request for a "special exception and site plan review" for Big Dog Ranch (a proposed "no kill" animal shelter) to be located on property near Okeechobee Blvd. and "D" Road within the Town. Sometime prior to the meeting, representatives for Big Dog Ranch requested that the hearing be postponed to the April 21, 2015 meeting. The postponement was accepted by Town staff prior to the meeting, and therefore representatives of Big Dog Ranch did not attend the April 7<sup>th</sup> meeting.

Complainant alleges that at the April 7, 2015 meeting, Respondent opposed the postponement of the quasi-judicial hearing, spoke on his position of opposing the entire project, stated that he believed the application for special exception should be denied, and that the hearing should be held that evening. According to Complainant, at one point Respondent makes a motion to disapprove the application for special exception, but is told by the Town Attorney that it is not a proper motion based on the circumstances, and due process requires the Town Council to postpone the matter until the following meeting.

According to Complainant, when another Council Member offers a motion to postpone the hearing, and this motion is seconded, Respondent attempts to add limiting language to the motion. At this point, Complainant alleges that once the motion to postpone the quasi-judicial hearing on this issue is made and seconded, Respondent abstained from voting advising he may have a conflict of interest regarding this project based on family ownership of the land situated directly south and abutting the land at issue.

Complaint also provided a copy of the state Form 8B Memorandum of Voting Conflict filed by Respondent that same night. On the Form 8B, Respondent writes that the conflict of interest which forced him to abstain from



voting is based on, "potential of property south of the Big Dog Ranch request for variance could be perceived to benefit a member of my family. To avoid any risk of perceived or subsequent accusation of impropriety, I recuse myself from the vote relative to the Big Dog Ranch request." Respondent's signature is on the bottom of the form as required and it is dated April 7, 2015.

- **Analysis**

The sworn information presented by Complainant to COE staff, if true, is legally sufficient to show that Respondent, James Rockett, Council Member for the Town of Loxahatchee Groves, may have violated the Palm Beach County Code of Ethics when participating in discussions relating to an application for special exception and site plan review concerning real property that lies to the south of and contiguous to real property owned by Respondent's son, if the special exception and site review would inure to the private gain or loss in value for the real property owned by Respondent's son.

**The following sections of the PBC Commission on Ethics ordinance are relevant:**

**Sec. 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) Countywide Code of Ethics;

**Sec. 2-260. Procedure on Complaints filed.**

- (a) *Filing of complaints.*
  - (1) Any person may file a complaint with the commission on ethics.
  - (2) The Inspector General, Executive Director of the Commission on Ethics or the State Attorney may file a complaint with the commission on ethics.
- (b) *Legal sufficiency of complaints.*
  - (1) In order to be found legally sufficient, complaints filed by persons under section (a)1 above, must:
    - a. Be in writing, and executed on a form prescribed by the commission on ethics;
    - b. Allege the elements of a violation within the commission on ethics' jurisdiction in the complaint and/or supporting documents provided;
    - c. Be based substantially upon the personal knowledge of the complainant; and
    - d. Be signed under oath or affirmation by the complaining person.

**The following sections of the PBC Commission on Ethics ordinance are relevant:**

**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.... 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:
  - (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;

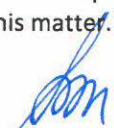
- (3) A sibling or step-sibling, **child or step-child**, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild of either himself or herself, or of his or her spouse or domestic partner, or the employer or business of any of these people; (Emphasis added)
- (4) An outside 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) **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. (Emphasis added)

- **Conclusion**

Based on the sworn Complaint and supporting documents, there is **LEGAL SUFFICIENCY** to open a formal investigation into this matter.

BY:

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

  
\_\_\_\_\_  
Date



PALM BEACH COUNTY COMMISSION ON ETHICS  
**REPORT OF INVESTIGATION**

To: Steven P. Cullen, Executive Director  
From: Mark E. Bannon, Senior Investigator  
Re: C15-016 – James Rockett, Council Member, Town of Loxahatchee Groves

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The information provided in the Memorandum of Inquiry in this case, including all documentary evidence, is incorporated by reference into this Report of Investigation.

- **Investigation**

Big Dog Ranch requested the special exception to the Loxahatchee Groves Unified Land Development Code (ULDC) adopted by the Town in 2010, and amended in 2013 by Town Ordinance 2013-03, in order to provide medical care to animals in its proposed shelter. The property on which the animal shelter was to be located falls within an Agricultural Residential Zoning District (AR) under the ULDC. The Big Dog Ranch proposal was for an animal shelter. The ULDC lists “rescued animal care” as a permitted use in an AR zoned parcel only with the approval of a special exception.<sup>1</sup> Town staff and Big Dog Ranch, at the direction of the Town Council, entered into negotiations concerning several other requirements to allow the shelter to be built, which were apparently accepted by both parties.

I reviewed the audio/video record of the April 7<sup>th</sup> Town Council meeting obtained from the Town’s website ([www.loxahatcheegrovesfl.gov](http://www.loxahatcheegrovesfl.gov).) According to the complaint, and as listed in the meeting agenda (also obtained from the Town website), the meeting was scheduled to include a quasi-judicial hearing on Resolution 2015-09 (agenda item 6a), concerning the Big Dog Ranch application for a special exception and site review. However, Big Dog Ranch requested that the hearing be postponed until the next meeting scheduled for April 29, 2015. Apparently, staff agreed to the postponement prior to the April 7<sup>th</sup> Town Council meeting; and therefore, representatives for Big Dog Ranch were not present. It is Respondent’s alleged conduct at that meeting that forms the basis of this complaint.

The topic of the postponement of the quasi-judicial hearing requested by Big Dog Ranch was opened for discussion by Town Council at approximately 1:03:58 by Mayor David Browning. Town Council members were advised by City Manager Bill Underwood that staff had received the request for postponement of the hearing from representatives of Big Dog Ranch and had given tentative approval. Respondent was the first Council member to speak on the issue beginning at approximately 1:04:20 of the meeting. He stated that this was another continuation of the matter and there were many residents in attendance at the meeting to discuss the issue. He also said that he believed the request was a delay tactic to weaken opposition to the variance requested. He took a position against the postponement request saying, *“If the Council knows what they want to do tonight, let’s do it. Let’s not keep kicking the can down the road. All I see us doing is making it harder for those to object who have come out tonight. We keep asking them to come back, making it harder and harder on them. Big Dog can come here every day of the week.”* Respondent went on to state, *“I propose that we discuss it tonight as a quasi-judicial matter, and we approve it or disapprove it tonight.”* He concluded his comments at approximately 1:06:38 of the meeting.

After a short statement by Council Member Tom Goltzene, Mayor Browning asked Town Attorney Mike Cirullo to weigh in on the legal aspects of the issue. Cirullo advised the Council that because the request to continue the matter was received and agreed to by staff, he was concerned that to move the hearing forward at this meeting could present a “due process” issue as Big Dog was not represented. He did advise that the Council can grant the continuance to the next meeting, and make it clear that no further postponements would be allowed. Mayor Browning and Council Member Goltzene each then commented. At approximately 1:12:27, Respondent spoke, asking for a clarification on what Town Attorney Cirullo stated, and said, *“What I think I heard Mike telling us, was that because Big Dog Ranch requested something, and our Town staff agreed with them, that the Council now is*

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<sup>1</sup> Section 20-015 – *Permitted uses*, of the UDLC addresses this issue. Section 20-015 states that rescued animal care is “Permitted w/Special Exception Category A.”

*obligated to do something. That's what I thought I heard, and I don't buy that. Now he went on to say that there may be some question as to whether they have been given the right opportunity since they requested a continuance. But, if it's a request...to me that's...a request says, they're asking. And it's the Council, we have to decide to yes or no. Second thing, comments that were made..."* At this point, Town Attorney Cirullo acknowledged that the decision was the Council's to make; but reiterated his concerns that because a request was made to continue, and staff agreed to that request, moving forward with the hearing would allow a due process challenge, which is why he recommended that the Council agree to the continuance.

Respondent made additional comments as to the fact that this was merely a request for continuance, and cautioned Town staff about making agreements that might put the Council in a bind in the future. At approximately 1:13:55 of the meeting, Respondent began comments regarding the merits of the Big Dog Ranch proposal, stating that when they were considering this proposal they did not know what they knew now. He also stated that the Council had originally directed Big Dog Ranch to the area of Southern Blvd., outside of the residential areas. During those comments Respondent stated, *"We've been betrayed by this organization big time."* He then began to comment that the purpose of the facility was not for the good of the dogs, but for making money. He also stated that this was really a request from a developer to make millions of dollars to the detriment of the Town. At approximately 1:16:10 of the meeting Respondent said, *"I'm ready to vote on this subject tonight."*

There was some further discussion on the merits of the shelter project by other Council Members and the Mayor, as well as whether the continuance should be granted. Mayor Browning also advised that Big Dog Ranch held an "open house" at the proposed site to get input from residents in an attempt to "tweak" the proposal as needed to satisfy opposition. At that point, which is at approximately 1:18:55 of the meeting, Respondent made the following statement, *"We didn't know we weren't going to deal with it until after we went to deal with it. But one other thing Mr. Mayor, they may be coming back to tweak, suggesting they want to tweak what they want to do. They need to take a front end loader to their proposal not tweak it, and move the hell out of our town."*

Mayor Browning stated that he did not disagree with Respondent's comments, but that everyone can come back in two weeks when the matter will be decided. He then asked for a motion to move the hearing to April 21<sup>st</sup>, and no further. At approximately 1:19:40 of the meeting, Respondent said, *"I make a motion instead, I make a motion that we disapprove this."* Mayor Browning then states, *"Okay, we have a motion to disapprove this item 6a."* The motion was seconded by Vice Mayor Jarriel, and a vote was called by Mayor Browning.

However, before the vote could be taken, Town Attorney Cirullo interrupted the proceeding by asking, *"What is the motion? Is the motion to deny the application?"* Mayor Browning said, *"No, the motion is to....yes, to deny the application."* Town Attorney Cirullo replied, *"If the motion is to deny the application you have to have a hearing. If you deny the continuance, you'll have a hearing, because the hearing was noticed for tonight. But you can't disapprove the application without having a hearing."* At that point, approximately 1:20:25 of the meeting, Respondent said, *"Then let's have the hearing."* Town Attorney Cirullo then replied, *"The motion was to disapprove the application, and it was seconded; and I would respectfully tell you that you're not obligated because I can't obligate you, but don't pass that motion. You don't want to face a lawsuit."* At that point, approximately 1:20:51 of the meeting, Respondent withdrew his motion.

A motion to move the matter to the April 21<sup>st</sup> meeting was made by Council Member Goltzene at approximately 1:21:05 of the meeting. The motion was seconded by Council Member Liang. Respondent asked for clarification on the motion, and then requested that "no continuance beyond April 21<sup>st</sup>" language be added to the motion. Town Attorney Cirullo advised that the motion stood as stated and a vote was called by Mayor Browning. Three Council Members voted for the postponement and one against. Respondent did not vote and at approximately 1:22:10 of the meeting said, *"I recuse myself from this because of land associated south of the applicant."* Mayor Browning then said that the motion passed 4-0 with one abstaining. The meeting then moved on to other business.

Respondent's Form 8b listed his reason for not voting on the issue as, *"potential of property south of the Big Dog Ranch request for variance could be perceived to benefit a member of my family. To avoid any risk of perceived or*

*subsequent accusation of impropriety, I recuse myself from the vote relative to the Big Dog Ranch request.”* The form 8b was dated April 7, 2015 and appears to have been signed by Respondent.

Next, I reviewed the audio record of the April 21, 2015 Town Council meeting (a video of this meeting was not available). At approximately 00:11:31 of the April 21<sup>st</sup> Town Council meeting the quasi-judicial hearing for the Big Dog Ranch request for a special exception and site review (Resolution 2015-089, Agenda item 6c) was opened by Mayor Browning. Town Attorney Cirullo gave instructions for the conduct of the hearing and swore in potential witnesses. Attorney Marty Perry, representing Big Dog Ranch spoke before the Town Council beginning at approximately 00:17:37 of the meeting.

At approximately 00:18:45, Attorney Perry asked if Respondent was going to recuse himself. Respondent replied, *“Yes, while I look forward to your presentation, I will not be participating in the discussions of the (inaudible).”* Attorney Perry then suggested to Respondent that he leave the dais to avoid the appearance of a conflict. Respondent replies, *“I’ll do that.”* Because there was only an audio recording of this meeting available,, I was unable to determine whether or not Respondent actually left the dais at that time.

The quasi-judicial hearing lasted until approximately 3:28:00 of the meeting, at which time a vote was taken. Resolution 2015-09 passed 3-1, with Mayor Browning, and Council Members Jarriel and Goltzene voting for the Resolution, and Council Member Liang voting against the Resolution. Respondent again abstained from voting on the issue.

After reviewing that meeting, I reviewed the state Form 8B, Memorandum of Conflict of Interest filed by Respondent regarding his abstention during this meeting which had been forwarded to COE staff as required under the Code of Ethics.<sup>2</sup> Respondent’s 8B Form for the April 21<sup>st</sup> meeting stated, *“potential of the property south of the Big Dog Ranch request for variance could be perceived to benefit a member of my family. To avoid any risk of perceived or subsequent accusation of impropriety, I recuse myself from the vote relative to the Big Dog Ranch request.”*

I arranged to meet with Town Manager Bill Underwood at the Loxahatchee Groves Town Hall. My purpose for meeting with Manager Underwood was to obtain certain documents, including the draft minutes from the April 7<sup>th</sup> and April 21<sup>st</sup> Town Council meetings if available. I also wanted to discuss Respondent’s statement that he would abstain from voting on the Big Dog Ranch matter at the April 21<sup>st</sup> meeting, as it was unclear from the audio portion of the meeting who was actually speaking, as well as whether he was aware that Respondent was going to recuse himself from the vote to continue the Big Dog Ranch public hearing held on April 7, 2015.

- **Meeting with Bill Underwood, Town Manager, Loxahatchee Groves**

I went to the Loxahatchee Town hall on June 12, 2015 for the meeting with Town Manager Bill Underwood. Prior to speaking with Manager Underwood, Town Clerk Janet Whipple provided me with the draft meeting minutes for the April 7, 2015 meeting, and a copy of her typed notes used to prepare the minutes for the April 21, 2015 Town Council meeting. She also gave me copies of the comment cards submitted by Respondent’s son, Damon Rockett for both meetings. Damon Rockett owns the property abutting and directly south of the proposed shelter site, where he has a commercial business. According to Clerk Whipple, Damon Rockett did not speak at the April 7<sup>th</sup> meeting, but his comment card was read into the record by Mayor Browning, stating, *“I strongly oppose.”*

I then met with Manager Underwood in his office. This interview was not recorded or taken under oath as the purpose was merely to discuss why Big Dog Ranch needed an exception to the ULDC for their project, and to verify that Respondent had not participated in this particular public hearing. As stated earlier, only audio recording of this meeting was available, so I was not able to visually confirm that Respondent had not participated in the meeting. Manager Underwood advised that the exception to the ULDC was needed because Big Dog Ranch’s request was for a rescue facility required an exception to be approved. He also verified that Respondent had not

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<sup>2</sup> Section 2-443(c), *Disclosure of Voting Conflicts*, of the PBC Code of Ethics states in relevant portion, “Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics.”



participated in the public hearing held on April 21<sup>st</sup> for this issue and left the dais immediately after recusing himself.

I asked Manager Underwood if either he or the Town Attorney were aware that Respondent was going to recuse from voting on the issue of a continuation request for Big Dog Ranch on April 7<sup>th</sup>, which moved the public hearing to April 21<sup>st</sup>, prior to him doing so when a vote was called. He stated that he was not aware, but could not speak for the Town attorney.

The meeting was concluded at that time.

What is noteworthy about the public hearing regarding the Big Dog Ranch application for exception held on April 21, 2015 is the fact that Respondent recused himself prior to any discussion about that issue. Respondent had not recused himself until after a vote was called at the April 7<sup>th</sup> meeting. Further, during that meeting he discussed not only Big Dog Ranch's request to continue the scheduled public hearing until April 21<sup>st</sup>, but also spoke extensively on the merits of the application itself. Respondent even went so far as to attempt to introduce a motion to disapprove the application on its merits.

After the meeting with Manager Underwood, I reviewed the recording from the April 21, 2015 Town Council meeting again to listen to the actual comments made by Damon Rockett during the public hearing. The comment card he submitted read, *"Big Dog Ranch does not belong in the center of Lox. It will negatively impact the Town forever and negatively impact all residents throughout the Town."* Damon Rockett's verbal comments began at approximately 2:35:33 of the meeting. He started by saying that he was not there to argue the pros and cons of the project, and that he appreciated the modifications and adjustments made by the development and design team. However, he then stated, *"All I can ask you for Councilmen is, would you want this facility next to your residence or business? Because that's what you're asking me to accept. I own the property adjacent to the south. Thank you."* Damon Rockett made no further comments at this hearing.

- **Meeting with James Rockett, Respondent and Council Member, Loxahatchee Groves**

I met with Respondent at the Loxahatchee Groves Town Hall on Thursday, June 18, 2015 at approximately 11:45 AM, after conducting code of ethics training at that location. At this time, I gave Respondent a copy of the sworn complaint, and some time to review the document. I then advised Respondent that I was conducting an investigation into this matter and asked if he would like to voluntarily give me a statement as to the allegations. Respondent advised that he would talk to me, but thought it best if he sought legal counsel first. I gave Respondent my business card, and asked either he or his legal counsel contact me when he was ready.

Prior to advising me of his desire to speak with legal counsel, Respondent stated that the Complainant in this matter had run against him and lost in the last Town Council election. He also advised me that he had contacted the Florida Commission on Ethics staff by telephone to ask them whether he should vote on the "Big Big Ranch" matter. They advised him that if he was unsure as to a conflict of interest, it would be better if he did not vote on the issue. He was not told he could not participate in the matter. I advised Respondent that under the Florida Code of Ethics he was only prohibited from voting, but under the PBC Code of Ethics it was also prohibited for an official to "participate" in any matter on which the official had a conflict of interest, and could not vote.<sup>3</sup>

The meeting was then concluded.

On Thursday, June 25, 2015, having not heard from Respondent, I sent an email via his Loxahatchee Groves email address. In that email I advised Respondent that it had been a week since we spoke, and asked that he contact me.

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<sup>3</sup> Section 2-443(c), *Disclosure of voting conflicts*, states in relevant portion, "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."

On Friday, July 3, 2015, Attorney Larry Davis, Esq., left a voice mail on my office telephone advising that he would be representing Respondent in this matter and asked that I call him in his office at (954) 927-4249. On Tuesday, July 7, 2015, I verified that Attorney Davis was a member in good standing with the Florida Bar at their website, [www.floridabar.org](http://www.floridabar.org). Having confirmed he was a member of the Florida Bar in good standing and eligible to practice law in Florida, I spoke with him by telephone. I advised him that he would need to file a "Notice of Appearance" with the COE as representing Respondent before I could discuss any information concerning this matter. I told him that once he did that, he would be given access to the available information concerning this matter. Attorney Davis stated that he would file a Notice of Appearance the same day, and requested that the available documents be sent to him via email once the notice of appearance was received by COE staff. Attorney Davis also advised that after he reviewed the documents, he would call me to discuss the matter further. On this same date at approximately 9:46 A.M., Attorney Davis sent me an email advising that he was representing Respondent in this matter and requesting all information concerning this matter be sent to him. I forwarded this email to COE Intake Manager Gina Levesque, who then emailed his office copies of all of the documents in the file including the initial Complaint and supporting documents, the Memorandum of Inquiry, Determination of Legal Sufficiency and other related documents.

On Tuesday, July 7, 2015 I met with Town Attorney Mike Cirullo at Loxahatchee Groves Town Hall prior to conducting code of ethics training. I asked Attorney Cirullo if he was aware that Respondent intended to abstain from voting on the "Big Dog Ranch" issue at the April 7, 2014 Town Council meeting. He advised that he had a brief discussion with Respondent about that possibility, but that he does not advise Council Members as to whether they should abstain because it is an individual choice of each Member. However, he did advise Respondent to contact both the Florida Commission on Ethics and the PBC Commission on Ethics to help him with evaluating whether there was a need to recuse himself from this issue.

On Wednesday July 8, 2015 I requested a copy of Respondent's Acknowledgement of Receipt of Ethics Training forms from his last two trainings from Town Clerk Janet Whipple. She provided a copy of one form via email on Thursday, July 9, 2015. This form was signed by Respondent on November 29, 2012. The form indicated that he watched a live presentation of ethics training on June 24, 2012, and that he had also viewed the internet presentation of ethics training at some time. Respondent was also in attendance at the code of ethics training I conducted on June 18, 2015 at the Loxahatchee Groves Town Hall, and the town clerk provided a copy of this acknowledgement form via email on July 15, 2015.

On July 15, 2015, COE staff also received an email acknowledging receipt of the initial documents sent to Respondent's attorney. Included in this email was Attorney Davis' response to the initial documents. Both documents were submitted to the file.

- **Documents submitted to the investigative file**

1. Formal sworn Complaint submitted by Todd McClendon (1 page)
2. Letter to the COE signed by Todd McClendon, listing the basis for his complaint. (2 pages)
3. Copy of Respondent's State Form 8B (voting conflict), dated April 7, 2015, which appears to be signed by Respondent. (2 pages)
4. Copy of Respondent's State Form 8B (voting conflict), dated April 21 2015, which appears to be signed by Respondent. (2 pages)
5. Copies of notes from Town Clerk Janet Whipple in the form of "draft minutes" from the April 7, 2015 and April 21, 2015, Town Council meetings. (21 pages)
6. Copy of Resolution 2015-09, Big Dog Ranch, and Town staff back-up documentation (39 pages)
7. Copies of comment cards from the April 7, 2015 and April 21, 2015 Town Council Meeting and quasi-judicial hearing concerning the "Big Dog Ranch" resolution, submitted by Damon Rockett, son of Respondent. (2 pages)
8. Copy of Section 20-015, *Permitted uses*, Loxahatchee Groves Land Development Code, (2 pages)
9. Copy of §112.3143, Voting conflicts, discussing in sub-section (1)(d), the meaning of "special private gain or loss," and in sub-section (4)(c), the definition of "participate" as meaning, "any attempt to influence the decision by oral or written communication." (3 pages)

10. Copy of aerial photograph and information on the subject properties in Loxahatchee Groves (Big Dog Ranch and a parcel owned by Respondent's son, Damon Rockett), obtained from the PBC Property Appraiser's website ([www.pbcgov.com/papa](http://www.pbcgov.com/papa)). (4 pages)
11. Copy of corporate information from the Florida Division of Corporations' website ([www.sunbiz.com](http://www.sunbiz.com)), on "A Cut Above Landscape and Maintenance, Inc." located at 1686 "D" Road, Loxahatchee, FL 33470, listing Damon Rockett as the only Director, as well as President and Registered Agent of this Florida Profit Corporation. (2 pages)
12. Copy of Respondents Acknowledgement of Receipt of Ethics Training Form, signed November 29, 2012. (1 page)
13. Copies of Florida COE Advisory Opinions, CEO 79-14, CEO 88-31, and CEO 89-34 (7 pages)
14. Copies of PBC COE advisory opinions RQO 12-063, RQO 12-070, and RQO 12-082 (9 pages)
15. Copy of *George v. City of Cocoa, Florida*, 78 F.3d 494, 1996. (7 pages)
16. Copy of Respondents Acknowledgement of Receipt of Ethics Training Form, signed June 18, 2015. (1 page)
17. Copy of Attorney Davis' response to initial documents received in this matter, dated July 15, 2015 (2 pages).

- **Applicable law**

The following sections of the PBC Commission on Ethics ordinance are relevant:

**Section 2-254. *Creation and jurisdiction.***

The Palm Beach County Commission on Ethics (hereinafter "commission on ethics") is hereby established. The jurisdiction of the commission on ethics shall extend to *any person required to comply with the countywide code of ethics...* (Emphasis added)

**Sec. 2-256. *Applicability of code of ethics ordinance.***

The countywide code of ethics ordinance shall be applicable to all persons and/or entities within the jurisdiction of said ordinance and shall apply to the members and staff of the commission on ethics.

**Sec. 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) Countywide Code of Ethics;

**Sec. 2-260. *Procedure on Complaints filed.***

**(a) *Filing of complaints.***

- (1) Any person may file a complaint with the commission on ethics.
- (2) The Inspector General, Executive Director of the Commission on Ethics or the State Attorney may file a complaint with the commission on ethics.

**(b) *Legal sufficiency of complaints.***

- (1) In order to be found legally sufficient, complaints filed by persons under section (a) 1 above, must:
  - a. Be in writing, and executed on a form prescribed by the commission on ethics;
  - b. ***Allege the elements of a violation within the commission on ethics' jurisdiction in the complaint and/or supporting documents provided;*** (Emphasis added)
  - c. Be based substantially upon the personal knowledge of the complainant; and
  - d. Be signed under oath or affirmation by the complaining person.



The following sections of the PBC Code of Ethics are relevant:

**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.... The term "official" shall mean members of the board of county commissioners, a mayor, ***members of local municipal governing bodies...*** (Emphasis added)

**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:

(3) A sibling or step-sibling, ***child or step-child***, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild or either himself or herself, or of his spouse or domestic partner, ***or the employer or business of any of these people;*** (Emphasis added)

(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). (Emphasis added)

• **Facts established during the Investigation**

1. Respondent is an elected Council Member for the Town of Loxahatchee Groves (the Town) initially elected in 2010, and whose current term expires in 2016. He is thus an "official" as defined in §2-442, *Definitions*, of the PBC Code of Ethics, and subject to the jurisdiction of the PBC Commission on Ethics, as well as the PBC Code of Ethics.
2. An initial sworn Complaint against Respondent was filed with COE staff on June 3, 2015 by Todd McLendon, a resident of the Town. It alleged that Respondent attended a Town Council meeting on April 7, 2015, and while at this meeting spoke on the merits of a Resolution concerning an animal shelter being proposed for a location within the Town. The Complaint further alleged that after this discussion on the merits of the animal shelter proposal itself, Respondent abstained from voting on the postponement of a public hearing on this issue to a later date, advising he had a conflict of interest due to family ownership of land lying directly south of the target property.
3. Complainant provided a copy of a State of Florida Form 8B, *Memorandum of voting conflict for county, municipal, and other local officials*, which he alleged was filed by Respondent due to his abstaining from a vote at the April 7, 2015 Town Council Meeting.
4. Respondent did attend the scheduled Town Council meeting on April 7, 2015, as was verified by the video/audio recording of the meeting found on the Town's website ([www.loxahatcheegrovesfl.gov](http://www.loxahatcheegrovesfl.gov)).
5. The original agenda for the April 7, 2015 Town Council meeting included a public hearing concerning Town Resolution Number 2015-09, a proposal by "Big Dog Ranch" (a registered 501(c)(3) nonprofit charitable organization), to open a "no kill" type animal shelter on property located within the Town limits at the southeast corner of Okeechobee Boulevard and "D" Road.
6. The proposal required a "special exception" because of the Town's Unified Land Development Code (ULDC), adopted by the Town in 2010, and amended in 2013 by Town Ordinance 2013-03. The

property on which the animal shelter was to be located falls within an Agricultural Residential Zoning District (AR) under the ULDC, and lists "rescued animal care" as a permitted use in an AR zoned parcel only with Town Council approval of a special exception.

7. Respondent's son, Damon Rockett, owns the property adjacent to and directly south of the one-acre property where the animal shelter was to be located. Damon Rockett's business, *A cut above landscape and maintenance, Inc.*, is located on this property, but he resides at a different property he owns within the Town. At the April 7, 2015 Town Council meeting Mayor David Browning read a comment card into the record submitted by Damon Rockett in opposition to the Resolution. The comment card stated, "I strongly oppose."
8. Damon Rockett also spoke briefly in opposition to the Resolution at the April 21, 2015 public hearing, advising that while he appreciated the efforts and changes to the design made by the developer, *"All I can ask you for Councilmen is would you want this facility next to your residence or business? Because that's what you're asking me to accept. I own the property adjacent to the south. Thank you."* His submitted comment card on this issue states, *"Big Dog Ranch does not belong in the center of Loxahatchee. It will negatively impact the Town forever and negatively impact all residents throughout the Town."*
9. Sometime before the April 7, 2015 Town Council Meeting, representatives of "Big Dog Ranch" requested that the scheduled hearing be postponed until the April 21, 2015 Town Council meeting. Town staff agreed to the postponement, and because of the agreement there were no representatives of "Big Dog Ranch" present at the April 7, 2015 Town Council meeting. However, there were a large number of members of the public present for this issue and apparently unaware of the postponement.
10. At the April 7, 2015 Town Council meeting, Respondent mentioned the fact that members of the public were present to hear the Big Dog Ranch issue discussed, and that the postponement should not have been granted by staff without input from Council Members. Respondent also made several statements concerning whether the Resolution itself should be granted, and at one point made a motion to vote down the Resolution on its merits. After being advised by the Town Attorney that a vote on the issue required a public hearing to be held for due process reasons, Respondent withdrew this motion. When a motion to grant the postponement for the public hearing was made, Respondent abstained from voting. The motion to postpone the public hearing for the "Big Dog Ranch" issue until April 21, 2015 passed 4-0, with one abstention.
11. At the public hearing portion of the April 21, 2015 Town Council Meeting, Respondent was asked by the attorney representing "Big Dog Ranch" if he intended to recuse himself. Respondent advised that he did, and at that point left the dais and did not participate in that portion of the meeting. He also filed an additional Form 8B for this abstention. While only audio recording was available for review, the Town Manager verified that Respondent did not participate in discussions or vote on the Big Dog Ranch issue during that meeting.
12. Both of the 8B Forms filed on April 7, 2015 and April 21, 2015 by Respondent listed the reason for his recusal as, *"potential of property south of the Big Dog Ranch request for variance could be perceived to benefit a member of my family. To avoid any risk or perceived or subsequent accusation of impropriety, I recuse myself from the vote relative to the Big Dog Ranch request."*
13. During a brief interview with Respondent on June 18, 2015, he advised that he abstained from voting on the "Big Dog Ranch" issue after speaking by telephone with staff from the Florida Commission on Ethics. Respondent did not make contact with the PBC Commission on Ethics concerning this issue, and therefore was not advised specifically that §2-443(c), *Disclosure of voting conflicts*, of the PBC Code of Ethics, prohibits "participation" as well as voting on any matter which will result in a "special financial benefit" for any person or entity listed in §2-443(a)(1-7). Sub-section 2-443(a)(3) lists "child or step-child" as persons who may not receive any special financial benefit through official action.

- **Analysis**

Based on the investigation, there is sufficient evidence to indicate that Respondent, an elected Council Member for the Town of Loxahatchee Groves, attended the Town Council meeting on April 7, 2015. During the meeting, Respondent spoke extensively in opposition of Town Resolution 2015-09, a proposal by "Big Dog Ranch" to be

given a special exception under the Town's Unified Land Development Code (ULDC) to open and operate a "no kill" animal shelter within Town Limits. While the meeting was initially scheduled to include a public hearing on the matter, Town staff's agreement to allow the hearing to be moved to April 21, 2015 meant that the Town Council was to vote only for approval of that postponement at this meeting.

However, Respondent's discussion of the merits of Town Resolution 2015-09, and his attempt to hold a vote on the Resolution itself, are clear in the recorded audio/video of this meeting. It is also clear that when Town Council voted on the narrow issue of moving the scheduled public hearing to April 21, 2015, Respondent abstained from this vote, and filed a required Form 8B for his abstention in which he states in relevant portion, "*potential of property south of the Big Dog Ranch request for variance could be perceived to benefit a member of my family.*"

The evidence supports the suggestion that at the time of the April 7, 2015 meeting, Respondent believed he had a possible conflict of interest that would prohibit him from voting on the Resolution, and therefore recused himself from the vote to move the public hearing. However, he did not announce this potential conflict of interest, or recuse himself, until after he had participated in extensive discussions during the meeting that addressed the merits of the resolution itself. It should be noted that Respondent stated he sought guidance in this matter from staff of the Florida Commission on Ethics, but failed to make an inquiry of the PBC Commission on Ethics on this issue, even though the Town Attorney advised that he had counseled Respondent to ask both commissions for advice. This is significant given that state law only prohibits him from voting on a matter where he has a potential conflict of interest, while the PBC Code of Ethics prohibits participation in discussions as well as voting on such matters.

At the April 21, 2015 Town Council meeting, a public hearing was conducted regarding the Resolution. Prior to a presentation to Town Council by representatives of Big Dog Ranch, Respondent was asked if he intended to recuse himself from the matter. Respondent stated that he would, left the dais, and did not participate in discussions or a vote on the Resolution. Based on those actions, it is reasonable to assume that Respondent still believed he had a conflict of interest concerning the Big Dog Ranch issue and acted correctly by recusing himself prior to any discussions on the merits of the proposed Resolution.

The evidence indicates that on April 7, 2015, Respondent did participate in a discussion on the merits of a Town Resolution that he believed he was precluded from voting on because of a conflict of interest, based on property owned by his son lying directly south of the target property.

At this point it is necessary to consider whether the mere "belief" that one has a prohibited conflict of interest within the PBC Code of Ethics is sufficient to find a violation where an official participates in discussions or votes on the issue, or whether an unlawful "special financial benefit" itself must be proven in order for a violation to occur, regardless of whether the party believes that such a special financial benefit may exist. The law is unsettled in this area, and the Florida cases and advisory opinions that involve voting conflicts tend to be based on whether a financial benefit meets the standard of a private gain or loss, and in particular by considering whether the financial benefit is unlawful based on the number of persons who receive the benefit, as well as whether the potential benefit is remote and speculative.<sup>4</sup> In at least one advisory opinion, the Florida Commission on Ethics stated that where a private financial increase is certain, even where the amount of increase is unknown, this would meet the standard of a "special private gain," and an official would be prohibited from voting on that issue.<sup>5</sup>

In 1996, the 11<sup>th</sup> U.S. Circuit Court of Appeals decided **George v. City of Cocoa, Florida**.<sup>6</sup> While this case involved a lower court decision concerning a vote by a Council Member that the lower court invalidated because of a perceived bias, and thus the special benefit at issue was not financial in nature, the case also directly addressed the issue of voting conflicts being based on a "financial benefit." In **George**, the Court stated, "*Florida law imposes on elected officials an affirmative duty to vote on all matters before them; abstaining from a vote is prohibited unless there is, or appears to be, a possible conflict of interest under §112.311, §112.313, or 112.3143,*" each of which requires a financial benefit for the official or another covered person or entity.

<sup>4</sup> RQO 12-063, RQO 12-070, RQO 12-082 (PBC Commission on Ethics), CEO 88-31, CEO 79-14, (Florida Commission on Ethics).

<sup>5</sup> CEO 89-34, rendered on September 14, 1989.

<sup>6</sup> **George v. City of Cocoa, Florida**, 78 F.3d 494, (11<sup>th</sup> U.S. Circuit Court of Appeals, 1996)



The Court went on to state that under §112.3143(3)(a), Florida Statutes, (Voting conflicts), *"the identification of a 'special private gain or loss' to the city council member as a result of his or her vote is a necessary condition for disqualification."* Further, *"A 'special private gain or loss' described by the voting conflicts statute almost always (if not always) refers to a financial interest of the public official that is directly enhanced by the vote in question."*<sup>7</sup>

The problematic question is whether the passage of a Resolution to allow an animal shelter to be built on property lying adjacent to property owned by Respondent's son would result in some financial gain or loss to his son. If so, would any financial benefit inure only to Respondent's son or a small group of individuals, and is the financial benefit one that would not be considered to be remote and speculative. At this point the Investigation has not resolved this issue. There is some evidence to show that a financial benefit to Respondent's son would be found, and would be one that meets this standard.

The significant evidence on this point is Rockett's actual recusal implying that he at least thought there was a voting conflict. Additionally, his son stated: *"All I can ask you for Councilmen is would you want this facility next to your residence or business? Because that's what you're asking me to accept. I own the property adjacent to the south. Thank you."* Again, this statement gives rise to an inference that there was at least thought of the proposed project negatively impacting the value of the adjoining (family owned) property. It may not be necessary, however, to resolve this question under the facts presented by this case.

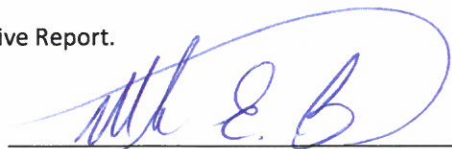
Respondent believed that he was prohibited from voting on the issue of whether to grant a continuance for a public hearing on a Town Resolution, but did participate in discussions on the merits of the Town Resolution on April 7, 2015. At the public hearing for this same Resolution held on April 21, 2015, Respondent, having been made aware of his error, correctly declined to participate in any discussion at the hearing and abstained from voting on the Resolution which was eventually passed 3-1.

Based on the facts presented, I believe it is not necessary to address the issue of whether Respondent's "financial conflict of interest" was authentic. The error by participating in a discussion on the merits of the Resolution on April 7<sup>th</sup> was corrected in the April 21<sup>st</sup> meeting, and the Resolution (which Respondent opposed), was passed 3-1. Therefore, Respondent's initial error did not affect the passage of the Resolution.

It should be noted again that Respondent did contact the Florida Commission on Ethics on this issue, and followed their advice on the matter by not voting. While Respondent did not follow the complete advice of the Town Attorney by contacting both the Florida and PBC Commissions on Ethics, the resulting error at the April 7<sup>th</sup> Town Council meeting could be considered a "harmless error," based on the resulting passage of the Resolution and Respondent's adherence to the requirements of law at the April 21<sup>st</sup> public hearing.

End of Investigative Report.

Submitted by:



Mark E. Bannon  
PB County Commission on Ethics

7/21/2015  
Date

Reviewed by:

SE  
(Initials)

7/21/2015  
Date

<sup>7</sup> *Ibid*, referencing *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170, (Fla. App. 3 Dist, 1984), where Florida's 3<sup>rd</sup> DCA held that §112.3143 does not apply to "bias or prejudice on the part of a public officer other than private economic interests or relationships."





**ACKNOWLEDGEMENT OF RECEIPT  
PALM BEACH COUNTY CODE OF ETHICS  
TRAINING FOR MUNICIPAL EMPLOYEES,  
ELECTED/APPOINTED OFFICIALS AND  
ADVISORY BOARD MEMBERS**

Legal Name: James Rockett (Please print clearly)

Employee Identification Number: \_\_\_\_\_

Department/Board: Loxahatchee Groves Councilman

**Check those items that apply**

I acknowledge that I have read a copy of the Palm Beach County Code of Ethics (printed or posted on the intranet/internet) and completed additional training by:

- ☒ Watching the Code of Ethics Training Program on the Intranet/Internet.
- ☐ Watching the Code of Ethics Training Program on DVD.
- ☒ Attending a live presentation given on June 24, 2012.

I understand that I am responsible for understanding and abiding by the Palm Beach County Code of Ethics as I conduct my assigned duties during my term of employment. I also understand that the information in this policy is subject to change. Policy changes will be communicated to me by my supervisor or through official notices.

James Rockett  
(Legal Signature)

November 29 2012  
(Date)

**Employees:** Submit signed form to your Department Head

**Department Heads:** Submit signed forms to Records, Human Resources

**Advisory Board Members:** Submit signed forms to Appropriate Municipal Representative

**PLEASE SUBMIT THIS FORM TO APROPRIATE PARTY AS HIGHLIGHTED ABOVE  
PLEASE DO NOT SUBMIT THIS FORM TO THE COMMISSION ON ETHICS**

2633 Vista Parkway, West Palm Beach, FL 33411 561.233.0724 FAX: 561.233.0735

Hotline: 877.766.5920 E-mail: [ethics@palmbeachcountyethics.com](mailto:ethics@palmbeachcountyethics.com)

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

# LOXAHATCHEE GROVES TOWN COUNCIL MEETING

101 West D Road (LGWCD Bldg)  
Loxahatchee Groves, FL 33470-0202

## COMMENTS BY THE PUBLIC

(Please PRINT)

DATE 4-21-15

AGENDA ITEM #

Big Dog Ranch

NAME: Damon Rockett

PHONE: (561) 753-9728

ADDRESS: 14095 43rd Road // 1686 D Rd.

Please complete comment card including **ADDRESS, PHONE** and **AGENDA** number  
Submit card to Town Clerk prior to "public comment" portion of agenda item  
When your name is called, please approach the podium and state your name and address for the record  
Please bear in mind there is a **three minute** time limit per speaker per item

☒ I wish to speak

☒ I request my question/comment be read into the record

☐ I support this agenda item

☐ I oppose this agenda item

Question/Comment:

Big Dog Ranch does NOT belong in the center of town.  
It will negatively impact the Town's future and negatively impact  
(Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience  
before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the presiding officer.)  
All comment cards become part of the public record.

All residents throughout the Town.

# LOXAHATCHEE GROVES TOWN COUNCIL MEETING

101 West D Road (LGWCD Bldg)  
Loxahatchee Groves, FL 33470-0202

## COMMENTS BY THE PUBLIC

(Please PRINT)

AGENDA ITEM #

DATE 4-7-15

NAME: Damon Rockwell PHONE: 561 386-1770

ADDRESS: 14095 43rd Rd N. / 3604 C Road. Lox.  
1686 D Road N.

Please complete comment card including ADDRESS, PHONE and AGENDA number

Submit card to Town Clerk prior to "public comment" portion of agenda item

When your name is called, please approach the podium and state your name and address for the record

Please bear in mind there is a three minute time limit per speaker per item

☒ I wish to speak ☐ I request my question/comment be read into the record

☐ I support this agenda item ☒ I oppose this agenda item

Question/Comment:

Item # 6-A Big Dog Ranch. / I strongly oppose

Person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience  
by the Council by the presiding officer, unless permission to continue or again address the Council is granted by the presiding officer.)  
Comment cards become part of the public record.



**Section 20-015. - Permitted uses.**

Plots located in the Agricultural Residential (AR) zoning districts may be used for the following specified uses.

<b>Principal Uses</b>	<b>Agricultural Residential (AR)</b>
Single Family Dwelling	Permitted
Mobile Home	Permitted w/Special Exception Category B
Public Schools	Permitted
Congregate Living Facility, Type I	Permitted
Non-Profit Community Recreational Facilities	Permitted w/Special Exception Category A
Essential Services	Permitted
Commercial Equestrian Operations	Permitted
Wholesale Nursery	Permitted
Retail Nursery	Permitted w/Special Exception Category A
Aviculture	Permitted subject to Article 80
Commercial Kennels	Not Permitted
Chipping and Mulching	Permitted subject to Article 80
Feed Lots	Not Permitted
Commercial Animal Manure Management	Not Permitted
Commercial Chipping and Mulching	Permitted subject to Article 80
<b>Rescued Animal Care</b>	<b>Permitted w/Special Exception Category A</b>
Outdoor Events	Permitted subject to Article 80 and to a Special Exception Category A
Agriculture	Permitted
Bona Fide Agriculture	Permitted
Wireless Communication Facilities	Permitted w/Special Exception Category A
Rodeo Events	Permitted w/Special Exception Category A

<b>Accessory Uses</b>	<b>Agricultural Residential (AR)</b>
Accessory Dwelling	Permitted
Groom's Quarter	Permitted
Caretaker's Quarter	Permitted
Home Offices	Permitted subject to Article 80
Residential Enterprise	Permitted subject to Article 80
Wholesale Nursery	Permitted
Retail Nursery	Permitted w/Special Exception Category B
U-Pick Farms	Permitted w/Special Exception Category B
Private Kennels	Permitted
Private Stables	Permitted
Yard Sales	Permitted subject to Article 80
Veterinarian Services	Permitted



Dog Boarding	Permitted
Temporary Events	Permitted w/Special Exception Category C

(Ord. No. 2011-008, § 2, 3-1-2011; Ord. No. 2013-03, § 2(Att. A), 6-18-2013; Ord. No. 2013-06, § 2(Att. A), 12-3-2013)

Select Year: 2014 

## The 2014 Florida Statutes

<a href="#">Title X</a>	<a href="#">Chapter 112</a>	<a href="#">View Entire Chapter</a>
PUBLIC OFFICERS, EMPLOYEES, AND RECORDS	PUBLIC OFFICERS AND EMPLOYEES: GENERAL PROVISIONS	

### 112.3143 Voting conflicts.—

(1) As used in this section:

(a) “Principal by whom retained” means an individual or entity, other than an agency as defined in s. 112.312(2), that for compensation, salary, pay, consideration, or similar thing of value, has permitted or directed another to act for the individual or entity, and includes, but is not limited to, one’s client, employer, or the parent, subsidiary, or sibling organization of one’s client or employer.

(b) “Public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

(c) “Relative” means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.

(d) “Special private gain or loss” means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, unless the measure affects a class that includes the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receives a greater benefit or harm when compared to other members of the class.


The degree to which there is uncertainty at the time of the vote as to whether there would be any economic benefit or harm to the public officer, his or her relative, business associate, or principal and, if so, the nature or degree of the economic benefit or harm must also be considered.

(2)(a) A state public officer may not vote on any matter that the officer knows would inure to his or her special private gain or loss. Any state public officer who abstains from voting in an official capacity upon any measure that the officer knows would inure to the officer’s special private gain or loss, or who votes in an official capacity on a measure that 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 other than an agency as defined in s. 112.312(2); or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer, shall make every reasonable effort to disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. If it is not possible for the state public



officer to file a memorandum before the vote, the memorandum must be filed with the person responsible for recording the minutes of the meeting no later than 15 days after the vote.

(b) A member of the Legislature may satisfy the disclosure requirements of this section by filing a disclosure form created pursuant to the rules of the member's respective house if the member discloses the information required by this subsection.

 (3)(a) No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

(4) No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

(a) Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

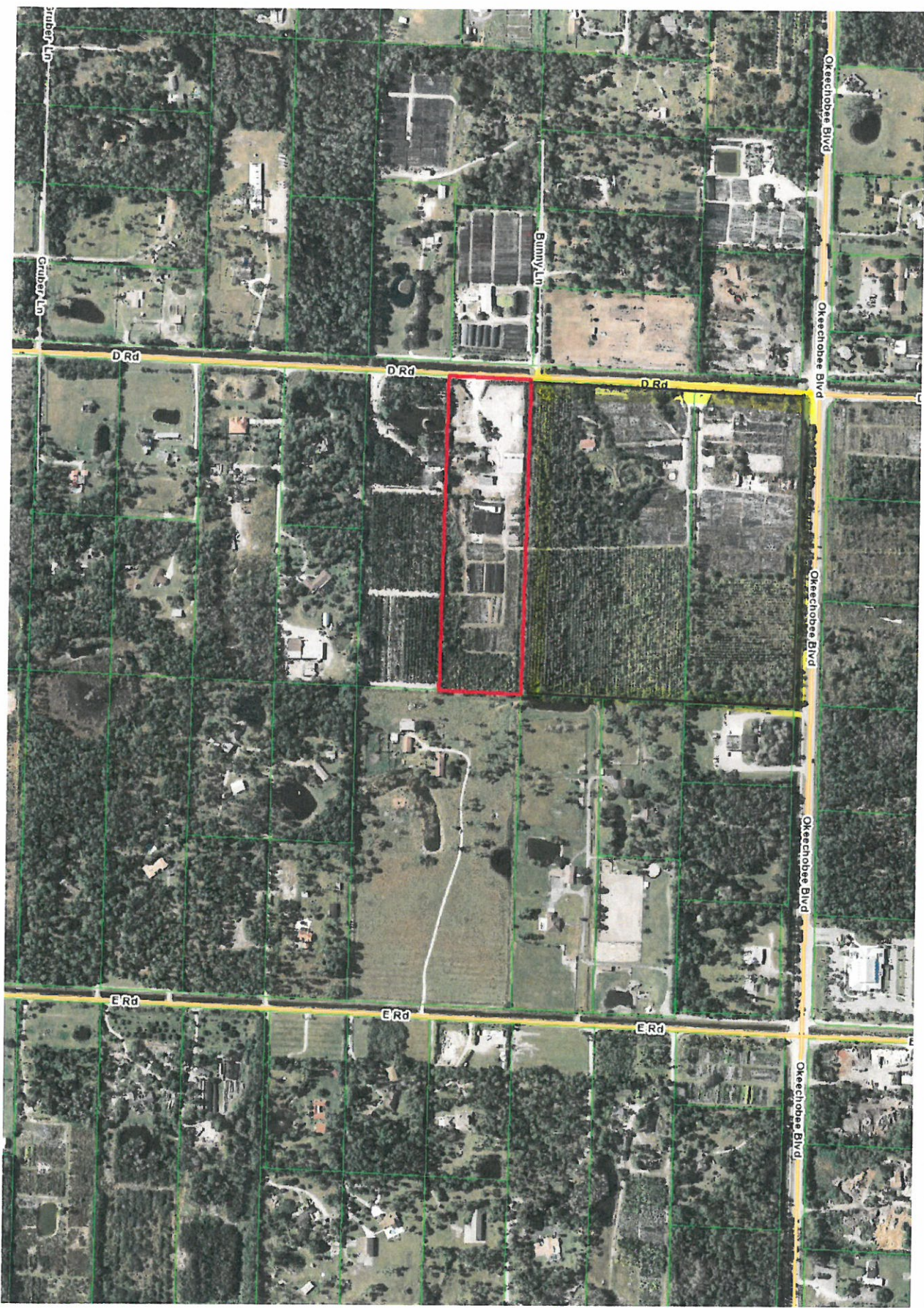
(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

(5) If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

(6) Whenever a public officer or former public officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

**History.**—s. 6, ch. 75-208; s. 2, ch. 84-318; s. 1, ch. 84-357; s. 2, ch. 86-148; s. 5, ch. 91-85; s. 3, ch. 94-277; s. 1408, ch. 95-147; s. 43, ch. 99-2; s. 6, ch. 2013-36.







616 009

Owner: TLH 25 VILLA LLC PCN: 41414317014110010 1 of 1

Property Detail																																																					
Parcel Control Number:	41414317014110010	Location Address: 1930 D RD																																																			
Owners:	TLH 25 VILLA LLC																																																				
Mailing Address:	18205 BISCAYNE BLVD STE 2218, MIAMI FL 33160 2148																																																				
Last Sale:	Not available	Book/Page#: 26645 / 355 Price: Not available																																																			
Legal Description:	LOXAHATCHEE GROVES TRACT 11 BLK D																																																				
<b>2014 Values (Current)</b>		<b>2014 Taxes</b>																																																			
Improvement Value	\$7,366	Ad Valorem \$5,234																																																			
Land Value	\$254,344	Non Ad Valorem \$2,294																																																			
Total Market Value	\$261,710	Total Tax \$7,528																																																			
Assessed Value	\$261,710	<b>2014 Qualified Exemptions</b>																																																			
Exemption Amount	\$0	No Details Found																																																			
Taxable Value	\$261,710	<b>Applicants</b>																																																			
All values are as of January 1st each year		No Details Found																																																			
<b>Building Footprint (Building 1)</b>		<b>Subarea and Square Footage (Building 1)</b>																																																			
		<table border="1"> <thead> <tr> <th>Description</th> <th>Area</th> <th>Sq. Footage</th> </tr> </thead> <tbody> <tr> <td>BAS BASE AREA</td> <td>1</td> <td>480</td> </tr> <tr> <td colspan="2">Total Square Footage : 480</td> </tr> <tr> <td colspan="2">Total Area Under Air : 480</td> </tr> </tbody> </table>	Description	Area	Sq. Footage	BAS BASE AREA	1	480	Total Square Footage : 480		Total Area Under Air : 480																																										
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16.	Stories	1																																																			

GARY R. NIKOLITS, CFA PALM BEACH COUNTY PROPERTY APPRAISER www.pbcgov.org/PAPA 6/9/2015

316 009

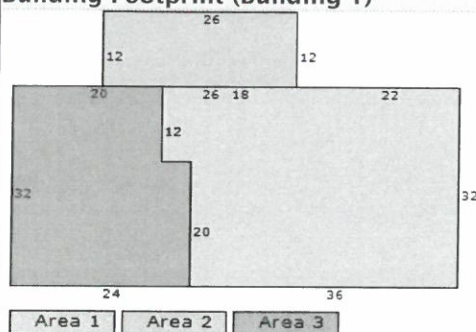
**Property Detail**

Parcel Control Number:	41414317014090010	Location Address:	1810 D RD
Owners:	TLH 25 VILLA LLC		
Mailing Address:	18205 BISCAYNE BLVD STE 2218, MIAMI FL 33160 2148		
Last Sale:	Not available	Book/Page#:	26645 / 355
		Price:	Not available
Legal Description:	LOXAHATCHEE GROVES TR 9 BLK D		

**2014 Values (Current)**

Improvement Value	\$105,354
Land Value	\$362,587
Total Market Value	\$467,941
Assessed Value	\$467,941
Exemption Amount	\$0
Taxable Value	\$467,941

All values are as of January 1st each year

**Building Footprint (Building 1)****2014 Taxes**

Ad Valorem	\$9,359
Non Ad Valorem	\$3,651
Total Tax	\$13,010

**2014 Qualified Exemptions**

No Details Found

**Applicants**

No Details Found

**Subarea and Square Footage (Building 1)**

Description	Area	Sq. Footage
BAS BASE AREA	1	1200
FEP FINISHED ENCLOSED PORCH	2	312
SFB SEMI FINISHED BASE AREA	3	720

Total Square Footage : 2232

Total Area Under Air : 1920

**Extra Features**

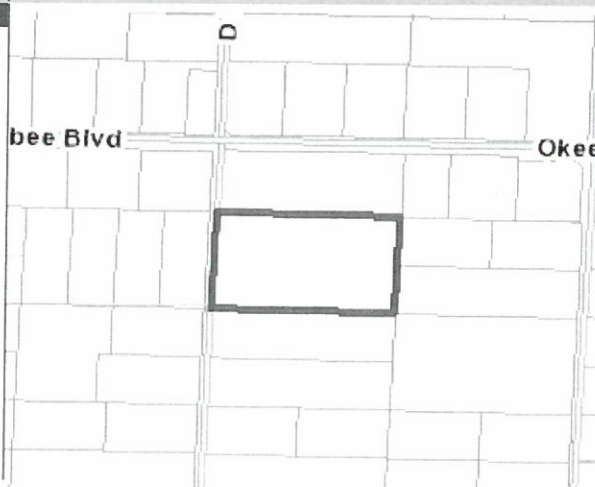
Description	Unit
No Extra Feature Available	

**Structural Details (Building 1)**

No	Description	
1.	Exterior Wall 1	CB STUCCO
2.	Year Built	1975
3.	Air Condition Desc.	HTG & AC
4.	Heat Type	FORCED AIR DUCT
5.	Heat Fuel	ELECTRIC
6.	Bed Rooms	0
7.	Full Baths	2
8.	Half Baths	0
9.	Exterior Wall 2	N/A
10.	Roof Structure	GABLE/HIP
11.	Roof Cover	ASPH/COMP. SHG.
12.	Interior Wall 1	PLASTER
13.	Interior Wall 2	N/A
14.	Floor Type 1	VINLY ASB.
15.	Floor Type 2	N/A
16.	Stories	1

Acres 20

MAP



Owner: TLH 25 VILLA LLC PCN: 41414317014090010 1 of 1



DAMON ROCKETT

**Property Detail**

Parcel Control Number:	41414317014080020	Location Address:	1686 D RD
Owners:	A CUT ABOVE LANDSCAPE MAINTENANCE INC		
Mailing Address:	1686 D RD, LOXAHATCHEE FL 33470 4862		
Last Sale:	NOV-2012	Book/Page#:	25659 / 1432
Legal Description:	LOXAHATCHEE GROVES N 1/2 TR 8 BLK D		
		Price:	\$375,000

**2014 Values (Current)**

Improvement Value	\$200,775
Land Value	\$191,958
Total Market Value	\$392,733
Assessed Value	\$243,623
Exemption Amount	\$0
Taxable Value	\$243,623

All values are as of January 1st each year

**2014 Taxes**

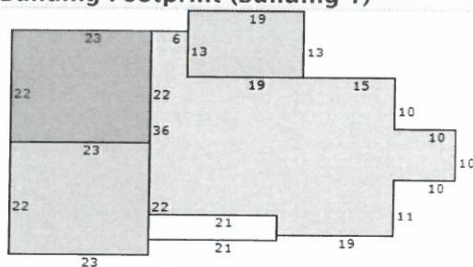
Ad Valorem	\$4,873
Non Ad Valorem	\$2,059
Total Tax	\$6,932

**2014 Qualified Exemptions**

No Details Found

**Applicants**

No Details Found

**Building Footprint (Building 1)**

Area 1

Area 2

Area 3

Area 4

Area 5

**Subarea and Square Footage (Building 1)**

Description	Area	Sq. Footage
BAS BASE AREA	1	1310
SFB SEMI FINISHED BASE AREA	2	247
SFB SEMI FINISHED BASE AREA	3	506
FCP FINISHED CARPORT	4	506
FOP FINISHED OPEN PORCH	5	105
Total Square Footage :		2674

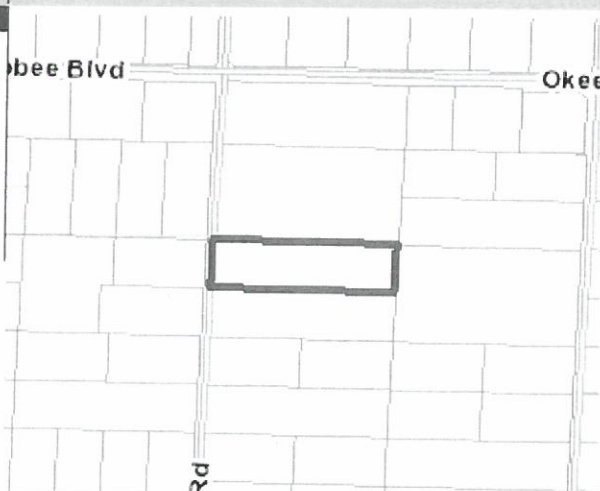
**Extra Features**

Description	Unit
PATIO	2240
PATIO ROOF	484
PATIO	1344
PATIO	248
PATIO ROOF	228
SCREEN ENCLOSURE	408

Unit may represent the perimeter, square footage, linear footage, total number or other measurement.

**Structural Details (Building 1)**

No	Description	
1.	BAS BASE AREA	1310
2.	SFB SEMI FINISHED BASE AREA	247
3.	SFB SEMI FINISHED BASE AREA	506
4.	FCP FINISHED CARPORT	506
5.	FOP FINISHED OPEN PORCH	105

**Acres 10  
MAP**

Owner: A CUT ABOVE LANDSCAPE MAINTENANCE INC PCN: 41414317014080020 1 of 1



FLORIDA DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS**Detail by Entity Name****Florida Profit Corporation**

A CUT ABOVE LANDSCAPE AND MAINTENANCE, INC.

**Filing Information**

<b>Document Number</b>	P98000092311
<b>FEI/EIN Number</b>	650884353
<b>Date Filed</b>	10/29/1998
<b>Effective Date</b>	01/01/1999
<b>State</b>	FL
<b>Status</b>	ACTIVE

**Principal Address**1686 D Road  
LOXAHATCHEE, FL 33470

Changed: 01/24/2013

**Mailing Address**1686 D Road  
LOXAHATCHEE, FL 33470

Changed: 01/24/2013

**Registered Agent Name & Address**ROCKETT, DAMON CPRES.  
14095 43RD ROAD NORTH  
LOXAHATCHEE, FL 33470

Name Changed: 01/17/2008

Address Changed: 01/17/2008

**Officer/Director Detail****Name & Address**

Title DPST

ROCKETT, DAMON  
14095 43RD ROAD NORTH  
LOXAHATCHEE, FL 33470**Annual Reports**

Report Year	Filed Date
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State of Florida, Department of State

CEO 79-14 -- March 22, 1979

**VOTING CONFLICT OF INTEREST****ABSTENTION FROM VOTING BY CITY COUNCIL MEMBER**

To: Michael E. Watkins, City Attorney, Homestead

Prepared by: Phil Claypool

**SUMMARY:**

A city council member may not abstain from voting on grounds of bias or prejudice against an individual when matters concerning that individual or the business he represents come before the council. It is present policy of this state that a public officer may vote upon any matter, so long as he files a memorandum of voting conflict. See s. 112.3143, F. S. 1977. He also may abstain as provided by s. 286.012, which has been interpreted by the Attorney General to require that a voting officer have a personal financial interest in a matter in order to abstain. Therefore, in the absence of any applicable provision of law which would override policy established by s. 112.3143, a public officer may abstain from voting only if there is or appears to be a conflict of interest under s. 112.311, s. 112.313, or s. 112.3143, none of which relate to bias or prejudice on the part of a public officer based on other than private economic interests or relationships.

**QUESTION:**

May a city council member abstain from voting on grounds of bias or prejudice against an individual when matters concerning that individual, or the business he represents, come before the council?

Your question is answered in the negative.

In your letter of inquiry you advise that the subject city council member in the past was involved in an altercation with another person which began with words and ended with blows. You also advise that this other person is the president and majority stockholder of a national bank located within the city and that, from time to time, matters come before the city council concerning this bank. In addition, you advise that the subject city council member believes that any items upon which he might vote involving this individual or his bank, depending on his vote, would present the appearance of impropriety on his part, based upon personal bias or dislike for the individual. Finally, you write that it is entirely possible for some bias or prejudice to exist, either conscious or unconscious, in the mind of the city council member, who wishes to avoid any impropriety and any appearance of impropriety.

Historically, in the absence of a statutory provision regarding conflicts of interest, abstention from voting, or disqualification of public officials, the Florida courts have adhered to the following rule:

The motives of a governing body of a municipality in adopting an ordinance of legislative character are not usually subject to judicial inquiry, while actions of judicial tribunals or bodies acting quasi-judicially can be reviewed. [City of Opa Locka v. State ex rel. Tepper, 257 So.2d 100, 104 (3 D.C.A. Fla., 1972).]



See also *Schauer v. City of Miami Beach*, So.2d 838 (Fla. 1959). However, even when a public body exercised a legislative function, the courts could determine whether that body's action involved fraud or overreaching. *City of Coral Gables v. Coral Gables, Inc.*, 160 So. 476 (Fla. 1935).

When a board acts in a quasi-judicial capacity, a member of the board might be disqualified to act in a particular case by reason of personal interest or prejudice. *State Board of Funeral Directors and Embalmers v. Cooksey*, 4 So.2d 258 (Fla. 1941), and *Board of Public Instruction of Broward County v. State ex rel. Allen*, 219 So.2d 430 (Fla. 1969).

However, when a statute or charter provision is applicable, it will control over the above rules. *Fossey v. Dade County*, 123 So.2d 755 (3 D.C.A. Fla., 1960), holding that under a county charter provision, a county commissioner was required to abstain from voting on a matter in which he had a special financial interest. Under s. 475.44, F. S., a member of the Florida Real Estate Commission may be disqualified in a particular matter on the same grounds as circuit judges, which include bias, prejudice, or interest. *State ex rel. Cannon v. Churchwell*, 195 So.2d 599 (4 D.C.A. Fla., 1967).

Similarly, a longstanding provision of the Administrative Procedure Act, s. 120.09, F. S., allowed the disqualification of a member of an administrative body for bias, prejudice, interest, or other causes. However, this provision was held not to apply to city commissions in *City of Opa Locka v. State ex rel. Tepper*, supra. Section 120.09 has been amended and presently exists as s. 120.71, F. S. It appears that the present section also would have no application to a city councilman, as Ch. 120 does not apply to municipal agencies. Section 120.52(1)(c), F. S.

In 1972, s. 286.012, F. S., was enacted. This statute, with only minor amendments, presently provides:

No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act, and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases said member shall comply with the disclosure requirements of s. 112.3143. [Section 286.012, F. S. 1977.]

The Attorney General has rendered numerous opinions interpreting this provision. Those most relevant to the question presented in this opinion include AGO 072-229 (a public official must cast his vote unless he has a personal interest in the matter); AGO 073-236 (a city councilman is not required to abstain on a request for zoning change made by a regular business customer unless such vote results in substantial benefit to the councilman's business); and AGO 074-31 (a county commissioner may not abstain on matters relating to a mental health board of which he is a director as he would not profit personally). Thus, it appears that under the Attorney General's interpretation of s. 286.012 and the provisions of the Code of Ethics referenced in that section, a public official was required to have a personal financial interest in a matter in order to abstain from voting on that matter.

The Attorney General has advised also that s. 286.012 should be regarded as mandating abstention in cases when it applies. See AGO's 073-121 and 073-215. However, in 1974 the Legislature enacted s. 112.3141, F. S., which appears now as s. 112.3143, F. S. 1977:

No public officer shall be prohibited from voting in his official capacity on any matter. However, any public officer voting in his official capacity upon any measure in which he has a personal, private, or professional interest and which inures to his special private gain or the special gain of any principal by whom he is retained shall, within 15 days after the vote occurs, disclose the nature of his interest as a public record

in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. (Emphasis supplied.)

Thus, it is the present policy of this state that a public officer may vote upon any matter, so long as he files a memorandum of voting conflict when required by the above-quoted section. He also may abstain as provided by s. 286.012, F. S.

Therefore, in the absence of any applicable provision of law which would override policy established by s. 112.3143 (for example, see s. 120.71, F. S. [1978 Supp.]), it appears that a public officer may abstain only if there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, or s. 112.3143, F. S. However, in our view, none of these three sections applies to the circumstances you have outlined.

Section 112.3143, quoted above, requires the filing of a memorandum of voting conflict when a public officer votes upon a measure "in which he has a personal, private, or professional interest and which inures to his special private gain or the special gain of any principal by whom he is retained . . . ." Here, there is no principal relationship between the parties involved, nor does it appear that matters coming before the city council regarding the bank or its president would inure to the gain of the subject councilman. Therefore, s. 112.3143 does not apply.

Section 112.313 contains numerous standards of conduct for public officers, none of which, however, would apply or even appear to apply here, as they relate primarily to conflicts of interest based upon the private economic interests of a public official.

Section 112.311 expresses the legislative intent behind the substantive provisions of the Code of Ethics. As a general statement of intent, this section provides broader grounds for one's abstention from voting than does s. 112.3143 or s. 112.313. See s. 112.311(1), regarding the independence and impartiality of public officials. Nevertheless, it is clear that, when adopting the Code of Ethics, the Legislature was concerned primarily with the effect of a public official's economic interests and relationships upon the performance of his public duties, rather than the effect of his personal preferences or animosities. See s. 112.311(5), F. S.

In short, the sections of the Code of Ethics referenced in s. 286.012 simply do not relate to bias or prejudice on the part of a public officer under the circumstances presented here. Moreover, it appears that, had the Legislature intended to allow abstention by, or disqualification of, a municipal official on grounds of bias or prejudice, it would have done so explicitly, as it has done in ss. 120.71 and 475.44, F. S., for other classes of public officers.

Accordingly, it is our opinion that a city council member may not abstain from voting on grounds of bias or prejudice against an individual when matters concerning that individual, or the business he represents, come before the council.

CEO 88-31 -- April 28, 1988

**VOTING CONFLICT OF INTEREST****CITY COUNCIL MEMBER VOTING ON ANNEXATION OF PROPERTY  
WHICH ADJOINS PROPERTY IN WHICH SHE OWNS AN INTEREST**

*To: Ms. Kathy Schmidt, Councilman, City of Venice*

**SUMMARY:**

A city council member is not prohibited by Section 112.3143, Florida Statutes, from voting on the annexation of property which adjoins property in which she owns an interest. Any gain or loss resulting from the annexation of the property would be too remote and speculative to constitute "special private gain" requiring the council member to abstain from voting. CEO's 85-17, 85-46, 85-77, and 85-87, are referenced.

**QUESTION:**

Are you, a city council member, prohibited by Section 112.3143, Florida Statutes, from voting on the annexation of property which adjoins property in which you own an interest?

Your question is answered in the negative.

In your letter of inquiry you advise that you are a member of the Venice City Council. You further advise that the owner of a large tract of land located east of the City has requested annexation of his property. The property is contiguous to the City on the north end of the west boundary of the property. The owner plans to develop the property into a planned unit development incorporating various types of housing and a golf course. He has stated that he intends to develop the property in the County if the City refuses annexation.

You own five acres of land with your former husband which is adjacent to the south end of the west edge of the property which may be annexed. Presently your property is not contiguous to the City on any side; however, it will become contiguous if the large tract of land is annexed. You question whether you may vote on the annexation of this property.

The Code of Ethics for Public Officers and Employees provides in relevant part:

No county, municipal, or other local public officer shall vote in his official capacity upon any measure which inures to his special private gain or shall knowingly vote in his official capacity upon any measure which inures to the special gain of any principal, other than an agency as defined in s. 112.312(2), by whom he is retained. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357 or an officer of an independent special tax district elected on a one-acre, one-vote basis is not prohibited from voting. [Section 112.3143(3), Florida Statutes (1987).]



This provision prohibits a local public officer from voting on any measure which inures to the special private gain of the officer or of any principal by whom she is retained.

In CEO 85-17, we advised that a city commissioner was prohibited by Section 112.3143, Florida Statutes, from voting on a petition for annexation of property owned by a developer who employed him. There, it appeared that the annexation petition would inure to the special gain of the developer. In a sequel to that opinion, CEO 85-46, we advised that the city commissioner was not prohibited by Section 112.3143, Florida Statutes, from voting on a petition for annexation of property, where the development company which employed the commissioner had sold the property but retained a mortgage on the property and also owned adjoining property. Under the circumstances presented, we determined that any gain or loss derived by the commissioner's employer from the annexation would be too remote and speculative to inure to the special gain of the employer.

Similarly, it is our opinion that any gain or loss resulting to you from the annexation of the subject property would be too remote and speculative to allow us to conclude that such matter would inure to your "special private gain." We have found no special private gain to exist in other instances in which there was uncertainty at the time of the vote as to whether there would be any gain or loss to an officer. For example, in CEO 85-77 we advised that a school board member who owned a retail clothing business near the site of proposed school district administration complex was not prohibited from voting on matters relating to the use of the school district's property. Also, in CEO 85-87 we advised that a city council member who was the vice president of a bank was not prohibited from voting on the sale and redevelopment of property located one block from the main office of the bank.

Accordingly, we find that you are not prohibited by Section 112.3143, Florida Statutes, from voting on the annexation of property which adjoins property in which you own an interest.

CEO 89-34 -- September 14, 1989

**VOTING CONFLICT OF INTEREST****CITY COUNCIL MEMBER VOTING ON REZONING OF PROPERTY  
ADJACENT TO PROPERTY IN WHICH SHE OWNS AN INTEREST**

To: *(Name withheld at the person's request.)*

**SUMMARY:**

A city council member is prohibited by Section 112.3143, Florida Statutes, from voting on the rezoning of property which adjoins property in which she owns an interest. Where the council member's property would increase in value as a result of approval of the rezoning, the fact that the precise amount of such increase is uncertain does not mean that the measure would not result in "special private gain" to the council member, requiring the council member to abstain from voting. Also, the class of persons affected is sufficiently small to result in "special" gain.

**QUESTION:**

Are you, a city council member, prohibited by Section 112.3143, Florida Statutes, from voting on the rezoning of property which adjoins property in which you own an interest?

Your question is answered in the affirmative.

In your letter of inquiry and communications with our staff, you advise that you are a member of the Venice City Council. You further advise that the owner of a five acre parcel of land in the City intends to petition the Venice City Council for rezoning to a commercial classification. You own with your former husband five acres of land adjacent to the parcel which may be rezoned. You advise that your property currently is vacant and that there are four other vacant parcels which adjoin the property subject to the rezoning. You feel that approval of the rezoning would tend to increase the value of your property, but the degree to which it would increase is uncertain. You question whether you may vote on the rezoning of this property.

The Code of Ethics for Public Officers and Employees provides in relevant part:

No county, municipal, or other local public officer shall vote in his official capacity upon any measure which inures to his special private gain or shall knowingly vote in his official capacity upon any measure which inures to the special gain of any principal, other than an agency as defined in s. 112.312(2), by whom he is retained. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of his interest in the matter from which he is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357 or an officer of an independent special tax district elected on a one-acre, one-vote basis is not prohibited from voting. [Section 112.3143(3), Florida Statutes.]



This provision prohibits a local public officer from voting on any measure which inures to the special private gain of the officer or of any principal by whom she is retained.

In CEO 87-88, we advised that a city board of adjustment member was prohibited from voting on the petition of a church to establish a school on church property located adjacent to the board member's residential property. There it was clear that the measure would have an effect on the value of the member's property. We have previously advised that a voting conflict of interest is created where the public official or the principal by whom he is retained would stand to gain or lose as a result of the outcome of the decision. See CEO 84-116 and 85-37.

We also have advised that no voting conflict was created where it was not clear that a measure would benefit the individual, or where the class of persons benefited was so large that the benefit could not be said to be "special." See CEO 87-95, CEO 85-57, and CEO 87-18. However, in this case, you advise that the rezoning will tend to increase the value of your property. Both the parcel subject to the rezoning and your property currently are vacant and presumably available for future development. The fact that the amount of such increase cannot be readily calculated does not make that benefit speculative. Also, you and the owners of four other parcels are potential beneficiaries of this rezoning. The small size of this class would make this a "special" benefit within the meaning of this section.

Accordingly, we find that you are prohibited by Section 112.3143, Florida Statutes, from voting on the rezoning of property adjacent to property in which you have an interest.





# Palm Beach County Commission on Ethics

## Commissioners

Manuel Farach, Chair  
Robin N. Fiore, Vice Chair  
Ronald E. Harbison  
Daniel T. Galo  
Patricia L. Archer

## Executive Director

Alan S. Johnson

September 13, 2012

John C. Randolph, Esquire  
Town of Palm Beach Town Attorney  
Jones, Foster, Johnston & Stubbs, P.A.  
505 South Flagler Drive, Suite 1100  
West Palm Beach, FL 33401

Re: RQO 12-063  
Voting Conflicts

Dear Mr. Randolph,

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 September 12, 2012.

YOU ASKED in your submission dated August 28, 2012 whether an employee of a corporation that owns property within a study area may serve on an advisory board created to review potential development proposals for the study area and if so, whether he may participate and vote on any ultimate recommendation submitted to the Town.

IN SUM, advisory board members are prohibited from using their official position, participating or voting on an issue that would give a financial benefit to their outside employer, not shared with similarly situated members of the general public. There is no bright line as to whether a contingent financial benefit creates a conflict. In evaluating conflict of interest under the Palm Beach County Code of Ethics, the Commission considers 1) the number of persons who stand to gain from a decision and 2) whether the gain or loss is remote and speculative. Where the class of persons who stand to gain from a decision is small, it is more likely that a member will have a conflict. Similarly, where a gain or loss to an official or his or her employer is not subject to significant contingencies, it may result in a conflict of interest under the Palm Beach County Code of Ethics.

THE FACTS as we understand them are as follows:

You are the Town Attorney for the Town of Palm Beach (Town). The Town Council (Council) recently appointed an ad hoc committee to consider the future development of a five acre commercial area on Royal Poinciana Way (the study area). The Royal Poinciana Way Study Committee (RPWSC) has 7 members. The Chair was appointed by the full council, each councilperson appointed an RPWSC member and the final member, also appointed by the full council, is the Chair of the Town Planning and Zoning Commission. Members were selected from town residents and businesses who have expressed a special interest in the area or who, based upon special knowledge or interest, may lend a particular contribution to the RPWSC. The committee does not have authority to make changes to the zoning code, but can make recommendations to the Town Council. The Town did not provide the RPWSC with much direction regarding future development of the study area. Accordingly, the RPWSC along with Town staff have discussed traditional planning mechanisms such as potential increases in density, height, setbacks, etc. to the area. The RPWSC has heard various presentations and each member of RPWSC expressed individual opinions in regard to potential development in the area. At some point in time in the future, the RPWSC will vote on a recommendation to the Town Council.

One of the 7 appointees is an employee of the Breakers PB, Inc. (Breakers). The Breakers owns an office building located within the study area. In total, based upon the study area legend prepared by Town staff and submitted to COE staff, there are 15 property owners who may be affected by changes in the study area. In addition, the Breakers owns property on the south side of Royal Poinciana Way as well as resort and golf club properties not included in the study area in the Town. As mentioned above, the RPWSC has heard presentations detailing potential development options and has discussed these presentations at their meetings. Recommendations ultimately could include land use changes affecting density, height restriction and permitted uses within the study area. Changes could have a significant impact on property values, however, it is unknown at this time whether the recommendations will have a financial impact on the area. The RPWSC's next meeting is on September 14, 2012. The question has arisen as to 1) whether it is a conflict of interest for an employee of the Breakers to sit on the RPWSC and/or 2) to vote on any ultimate recommendation which may be made to the Town Council in an advisory capacity.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

**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;

Section 2-443(a) prohibits advisory board members from using their official position to take or fail to take any action *if they know or should know with the exercise of reasonable care that the action would result in a special financial benefit* not shared with similarly situated members of the general public, for certain entities or persons including themselves or their employer. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an advisory board member to abstain and not participate in any matter coming before his or her board which would result in a special financial benefit, not shared with similarly situated members of the general public, to themselves or their employer.

Under state statute, to constitute a prohibited voting conflict, the *possibility* of a financial gain must be direct and immediate, rather than remote and speculative.<sup>1</sup> 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>2</sup> Similarly, for a financial benefit to be "special", the benefit must inure uniquely to the voting member, rather than benefiting the Town as a whole. There is no bright line in determining the number of individuals who would need to be affected to transform a personal gain or loss into a gain or loss shared with similarly situated members of the general public. Where a class is large, a prohibited financial gain would result only if there are circumstances unique to the voting official which would enable him to gain more than the other members of the class. However, where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.<sup>3</sup>

Each advisory opinion is based upon a unique set of facts and circumstances. Whether a matter rises to the level of a voting conflict will be based upon the facts and circumstances presented to the COE. For example, the COE has previously opined that a municipal advisory board member was prohibited from presenting his client's project to his advisory board, participating in discussions regarding the project or voting on a matter financially benefiting his

<sup>1</sup> George v. City of Cocoa, Florida, 78 F.3d 494 (1996).

<sup>2</sup> CEO 05-15, CEO 91-61, CEO 12-19

<sup>3</sup> CEO 77-129



customer or client.<sup>4</sup> Under the facts presented the gain to the board member's customer or client was direct and immediate.

First, the board member's employer is one of 15 property owners that would be subject to any changes recommended by the RPWSC. The number of persons or entities directly affected by potential changes is too small a class to be considered similarly situated to members of the general public.

Second, the RPWSC was established to provide input and recommendations to the Town concerning a proposed ordinance that would, if adopted, make changes to the land use code in the study area. For example, should the Committee recommend a land use change resulting in an increase in density and that recommendation is adopted by the Town Council, the value of the Breakers property may be increased, regardless of whether or not the current owner takes advantage of the changes.


The sole purpose of the RPWSC is to consider changes to the study area containing these 15 properties. Therefore, any discussion, recommendation or vote of the Committee would present a conflict of interest for the board member. Because the Code prohibits participation as well as voting on the matter, the COE is of the opinion that the board member should resign from the Committee. That being said, the Code does not prohibit business owners, their employees or citizens with a vested financial interest in development of their property from providing meaningful and valuable comment to the Committee or Town Council provided they do not do so while serving as an official in an appointed advisory capacity.

IN SUMMARY, an advisory board member may not use his official position, including participation and voting on issues before the RPWSC, affecting the financial interests of his employer, where his employer is one of 15 landowning entities within an affected study area. Based upon the facts and circumstances provided, including the limited class of persons or entities that stand to gain from the RPWSC process and the absence of significant contingencies to obtain that gain if changes are approved, the potential financial benefit to a board member's employer is not so remote and speculative as to eliminate a conflict of interest under the Palm Beach County Code of Ethics.

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

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson  
Executive Director

ASJ/mcr/gal

cc: William O. Cooley

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<sup>4</sup> RQO 11-067





# Palm Beach County Commission on Ethics

## Commissioners

Manuel Farach, *Chair*  
Robin N. Fiore, *Vice Chair*  
Ronald E. Harbison  
Daniel T. Galo  
Patricia L. Archer

## Executive Director

Alan S. Johnson

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November 2, 2012

Eric Johnson, Planner II & CRS Coordinator  
City of Boynton Beach  
Planning & Zoning Division  
100 East Boynton Beach Boulevard  
Boynton Beach, FL 33435

Re: **RQO 12-070**  
**Misuse of office**

Dear Mr. Johnson,

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 November 1, 2012.

YOU ASKED in your submission dated October 11, 2012 whether as a certified urban planner for the City of Boynton Beach (the City) you may work in your professional capacity to develop a City transit project when you are the co-owner of a property within the development area.

IN SUM, City employees are prohibited from using their official position to give themselves a financial benefit, not shared with similarly situated members of the general public. In evaluating conflict of interest under the Palm Beach County Code of Ethics, the Commission considers 1) the number of persons who stand to gain from a decision and 2) **whether the gain or loss is remote and speculative.** Where the class of persons who stand to gain from a decision is small, it is more likely that an employee will have a conflict. However, based upon the size of the class presented here, you are not prohibited from working on the City transit project in your official capacity as a City planner even though you own property in the affected area.

THE FACTS as we understand them are as follows:

You are certified urban planner for the City of Boynton Beach and a co-owner of a condominium. Recently, staff from the Treasure Coast Regional Planning Council (TCRPC) approached the City about developing a train station in the downtown area located within walking distance of your condominium. While the City and TCRPC are in the preliminary stages of discussing this project, the City is in favor of having a train station at the proposed location.

As a joint effort, the TCRPC has asked City staff to consider studying the proposed location, including the surrounding properties located within a ¼-mile (125 acre) and ½-mile radius (500 acre) of the subject site. Your condominium is located within the affected ½-mile radius. The City of Boynton Beach provided a map of the affected area to Commission staff. Over 500 parcels are within the affected area.

The TCRPC has asked the City to consider making amendments to the existing Comprehensive Plan and to create a new zoning district or overlay zone to accommodate the desired development pattern. This transient-oriented-development (TOD) overlay zone/zoning district would most likely result in increasing the maximum allowable residential densities and commercial intensities, as well as relaxing certain development standards (e.g., parking, setbacks, etc.) within the 125-acre and 500-acre areas. You believe that these changes may have a positive effect on the value of your condominium.

The City has asked you to participate in this project and serve in a position of influence. This planning effort is part of your job, but you are asking for an opinion because you are concerned about the Code of Ethics (the Code), particularly the misuse of office prohibitions. You have also asked for an opinion from the American Planning Association (APA). The APA opined that your participation would be acceptable and expected; however, at all public hearings, they encouraged you to disclose that you own property within the affected area.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Commission on Ethics Ordinance and Code of Ethics, which took effect on June 1, 2011:

*§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:

- (1) Himself or herself;

Section 2-443(a) prohibits you from using your official position to give yourself a special financial benefit not shared with similarly situated members of the general public. The COE has previously opined that financial benefit, in the context of the Palm Beach County Code of Ethics, constitutes economic gain or loss.<sup>1</sup> For a financial benefit to be "special", the benefit must inure uniquely to you, rather than benefiting the City or a specific group of people or neighborhood. There is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain or loss into a gain or loss shared with similarly situated members of the general public. However, where a class is large, a prohibited financial gain would result only if there are circumstances unique to the employee which would enable him to gain more than the other members of the class. Where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.<sup>2</sup> The question then becomes, given the number of similarly situated members of the community, whether working on this project will result in a special financial benefit to you.

Under the facts you have submitted, you own a condominium in a building located in the proposed transportation development zone. That building is one of over 500 parcels in the proposed zone. Were you to own the entire building and not just one unit in one of over 500 properties located in the development area, the extent of your economic interest would still be less than .2 percent of the class. Under these circumstances, the economic benefit or loss affects a class large enough so as to remove any prohibited individual financial benefit.<sup>3</sup> If during the development of the project, the facts

<sup>1</sup>RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes either a private gain or loss).

<sup>2</sup>CEO 77-129

<sup>3</sup>State of Florida CEO Opinion 01-8, June 12, 2001

and circumstances change to reduce the size of the affected class to give you a special benefit, this opinion may not be applicable.<sup>4</sup>

IN SUMMARY, based on the facts and circumstances provided, the financial benefit that may be created by developing the train station project is "shared with similarly situated members of the general public" and does not constitute a unique circumstance whereby your personal gain or loss exceeds significantly other members of the affected class.

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

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,



Alan S. Johnson,  
Executive Director

ASJ/mcr/gal

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<sup>4</sup>CEO 77-129, RQO 12-058 (a historic preservation committee advisory board member was prohibited from voting and participating in a plan amendment where the property subject to amendment was 10.5 feet from her property line and where she and her spouse filed an objection to the project)





# Palm Beach County Commission on Ethics

## Commissioners

Manuel Farach, *Chair*  
Robin N. Fiore, *Vice Chair*  
Ronald E. Harbison  
Daniel T. Galo  
Patricia L. Archer

## Executive Director

Alan S. Johnson

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January 7, 2013

John C. Randolph, Esquire  
Town of Palm Beach Town Attorney  
Jones, Foster, Johnston & Stubbs, P.A.  
505 South Flagler Drive, Suite 1100  
West Palm Beach, FL 33401

Re: RQO 12-082  
Voting Conflicts

Dear Mr. Randolph,

Your request for an expedited advisory opinion pursuant to Commission on Ethics Rule of Procedure 2.6 has been received and reviewed. The opinion rendered is as follows:

YOU ASKED in your submission dated December 28<sup>th</sup>, 2012 whether an elected official is prohibited from voting on a "cure plan" proposed by the Florida Department of Transportation and Town of Palm Beach Staff where an employee who works for the official's outside employer is a part-owner of two restaurants within the plan area.

IN SUM, public officials are prohibited from using their official position, by participating or voting on an issue that would give a special financial benefit not shared with similarly situated members of the general public, to themselves, their outside employer or anyone who is known to the official to work for that outside employer. Based on the facts presented Councilman Wildrick is not prohibited from voting on this matter.

THE FACTS as we understand them are as follows:

You are the Town Attorney for the Town of Palm Beach (the Town). In November of 2012, the Town Council voted on whether to approve an application for a special exception and variance made by Del Frisco's restaurants (Del Frisco's). Prior to that vote, you asked whether an elected official, who serves as Chairman of the Board of a publically traded company (PTC) was prohibited from voting on the application because his fellow Board member is one of several owners of local restaurants in opposition to the Del Frisco's application.

This Commission opined that the public official was prohibited from voting on the matter, reasoning that the potential financial loss to the restaurant owner, should the competitor restaurant's application be approved, was not remote and speculative. Conversely, avoiding additional competition was a financial benefit to an existing restaurant standing in opposition to such approval.<sup>1</sup> Councilman Wildrick

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<sup>1</sup> RQO 12-075

subsequently abstained from participating and voting on the application for special exception by Del Frisco's.

At its January 9, 2013 meeting, the Town Council will be considering a "cure plan" proposed by the Florida State Department of Transportation (DOT) and Town Staff in connection with bridge construction at Royal Poinciana Way. A "cure plan" is a resulting by-product of a "taking" or right of way expansion sought by DOT in road and bridge repair scenarios. In this instance, DOT is seeking to repair and expand access to the Flagler Memorial Bridge, adjacent to Royal Poinciana Way. One of the effects of the proposal will be to determine the number of parking spaces available for use in the Royal Poinciana Plaza (the Plaza) as well as Royal Poinciana Way.

Should Del Frisco's move forward with its plan to open a Palm Beach location, the restaurant will be located in the Plaza and the Town Council approved Del Friscos application for special exception. While the "cure plan" does not specify the number of public parking spaces available for each business, it will establish the total number of spaces available for the entire Plaza site and for public parking along Royal Poinciana Way. There are 71 businesses in the Plaza itself. Additionally, there are over 30 businesses adjacent to the Plaza located along Royal Poinciana Way. *No particular business or businesses would be significantly affected to a greater or lesser extent.* This plan would ultimately affect the number of public parking spaces available for use by all the businesses and shops along the Plaza and adjacent street.

THE LEGAL BASIS for this opinion is found in the following relevant sections of the revised Palm Beach County Code of Ethics (the Code) which took effect on June 1, 2011:

**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 spouse or domestic partner, or someone who is *known to such official or employee to work for such outside employer or business.* (emphasis added)

**§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.

Section 2-443(a) prohibits elected officials from using their official position to take or fail to take any action if they know or should know with the exercise of reasonable care that the action would result in a special financial benefit not shared with similarly situated members of the general public, for certain entities or persons including themselves, their outside business or employer, or someone who works for their outside business or employer. Section 2-443(c) *Disclosure of voting conflicts*, similarly requires an elected official to abstain and not participate in any matter coming before his or her board which would result in a special financial benefit to a person or entity as described in subsection (a).

As established in RQO 12-075, Councilman Wildrick is prohibited from taking official action or voting to give a special financial benefit to an employee of his outside employer. Under the Code, to constitute a



prohibited voting conflict, the *possibility* of a financial gain must be direct and immediate, rather than remote and speculative.<sup>2</sup> For a financial benefit to be "special", the benefit must inure uniquely to the prohibited person or entity, rather than benefiting the Town, a class of residents or a particular neighborhood.<sup>3</sup>

Based on the facts presented here there is no prohibited special financial benefit. The "cure plan" is unrelated to the Del Frisco's application and by its very nature does not benefit a particular business, shop, or restaurant. Rather, it is a plan of general application related to the available public parking spaces for over 100 businesses, shops and restaurants. The number of parking spaces, if any, ultimately reserved for Del Frisco's as compared to other plaza shops or restaurants is not contemplated by the "cure plan" vote. Because all existing similarly situated businesses would be affected equally by plan, there is no prohibited special financial benefit.

IN SUMMARY, the Town Councilman may not use his official position, including participation and voting on an issue before the Town Council, to give a special financial benefit to a person who is known to him to work for his outside employer. However, where a general issue affects all members of an affected class of business entities equally, or, where a financial benefit to a particular business is remote and speculative, participation in the general matter may not be prohibited under the Code. Based upon the specific facts and circumstances provided, any financial benefit or loss is shared equally by all affected business entities in the area. Therefore, Councilman Wildrick is not prohibited by the Palm Beach County Code of Ethics from voting or participating in the DOT "cure plan."

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

Please feel free to contact me at 561-233-0724 if I can be of any further assistance in this matter.

Sincerely,



Megan C. Rogers  
Staff Counsel

MCR/gal

<sup>2</sup> George v. City of Cocoa, Florida, 78 F.3d 494 (1996), RQO 12-063

<sup>3</sup> 12-070





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## 78 F3d 494 George v. City of Cocoa Florida:

### 78 F3d 494 George v. City of Cocoa Florida:

78 F.3d 494

Mary GEORGE; Charles L. Stovall; Martha Ray Bethel; W.O. Wells, Reverend; Joann Stovall; Barbara Jenkins; Sylvester Weaver, Plaintiffs-Appellants,  
v.

CITY OF COCOA, FLORIDA: Cocoa City Council; Lester Campbell, Mayor-Councilmember of the City of Cocoa; Ray Debord, John Lee Blubach, Dave Salisbury, members of the Cocoa City Council, et al., Defendants-Appellees, Ray Griffin, Member of the Cocoa City Council; Fred Galey, Brevard County Supervisor of Elections, Defendants.

No. 94-3453.

United States Court of Appeals,  
Eleventh Circuit.

Feb. 29, 1996.

Cristina Correia, Florida Rural Legal Services, Inc., Tallahassee, FL and Jacqueline A. Berrien, NAACP Legal Defense and Educational Fund, Inc., New York City, for appellants.

Bradly Roger Bettin, Amari, Theriac & Eisenmenger, P.A., Cocoa, FL, for appellees.

George N. Meros, Jr. and Mary W. Chaisson, Rumberger, Kirk & Caldwell, P.A., Tallahassee, FL, for all amicus.

Appeal from the United States District Court for the Middle District of Florida.

Before ANDERSON and BLACK, Circuit  
Judges, and HENDERSON, Senior Circuit  
Judge.



PER CURIAM:

1

This case comes to us on appeal from the district court's order denying the parties' joint motion to approve a consent decree and enter judgment. We have jurisdiction and for the reasons set forth in this opinion, we reverse and remand for further proceedings not inconsistent with this opinion.

Factual and Procedural Background

2

On April 12, 1993, appellants filed a complaint in the United States District Court for the Middle District of Florida; they alleged that the at-large method of electing city council members in Cocoa dilutes minority voting strength in violation of section 2 of the Voting Rights Act of 1965.<sup>1</sup> In July 1993, the Cocoa City Council appointed Rudolph Stone, one of the African-American plaintiffs in the voting rights litigation, to fill a vacant council seat. Immediately upon his appointment, Stone withdrew as a plaintiff and was named a defendant. In November 1993, Stone was elected under the at-large system to keep his council seat for another three-year term.

3

Settlement negotiations in the voting rights litigation ultimately led to an agreement. The Cocoa City Council voted to replace the system of at-large elections for all five of its members with a system under which four members would be elected from single member districts and the fifth council member, who also serves as the mayor, would continue to be elected at-large. African-American voters would constitute a majority of the voters in one of the proposed single member districts. Three members of the city council, including Stone, voted in favor of the proposed consent decree; the remaining two members voted against it.

4

On July 28, 1994, the parties to the voting rights litigation filed a joint motion in the district court to enter the consent decree. Four Cocoa voters, appearing as amici curiae in opposition to the proposed consent decree, suggested to the district court that Stone should have abstained from the city council's decision whether to adopt the redistricting plan. The district court ordered a hearing on the consent decree, and instructed the parties and amici to limit their arguments to the issue of Stone's participation in the city council's consideration of the redistricting plan. Following this hearing, the district court concluded that Stone's participation in the vote constituted a conflict of interest under Florida's ethics statutes, and that Stone's vote could not be counted. In its October 25, 1994, order, the court explained:

5



In this case, Mr. Stone was in a unique position to gain from the redistricting decision made by the Cocoa City Council. Mr. Stone had originally filed this suit as a plaintiff seeking to increase the voting power of Cocoa's black community. Though Mr. Stone had been dropped as a plaintiff and had been elected along with the other council members through the at-large process, as an African-American candidate he stood to gain inordinately from the vote. The consent decree's solution to the problem of increasing black voting power would create a district where the black majority was expected to elect a black representative, and Mr. Stone would be a resident of that district. In short, by voting on this decree, Mr. Stone facilitated his own chances for reelection and involved himself in a situation fraught with the potential for conflicting interests.

6

R2-40-6-7. With the disqualification of Stone's tie-breaking vote, the remaining city council members were deadlocked (two-two) on the redistricting plan. The district court thus held that the consent decree was void and refused to enter judgment.

#### Discussion

7

The issue is whether the district court misapplied Florida law in disqualifying Stone's vote on the redistricting plan.<sup>2</sup> Neither party argues in support of the district court's decision; both parties agree that Stone's vote should not have been disqualified. We also conclude that the district court erred.

8

Florida law imposes on elected officials an affirmative duty to vote on all matters before them; abstaining from a vote is prohibited unless "there is, or appears to be, a possible conflict of interest under § 112.311, § 112.313, or § 112.3143." Fla.Stat. Ann. § 286.012 (West 1995). Section 286.012 speaks only of when a public official may abstain from voting; it does not describe the circumstances under which a public official must abstain from voting. The statutory provision dealing with mandatory abstention from city council voting is Fla.Stat. Ann. § 112.3143(3)(a) (West 1995); it provides that "[n]o county, municipal, or other local public officer shall vote in his official capacity upon any measure which would inure to his special private gain or loss...." Under § 112.3143(3)(a), the identification of a "special private gain or loss" to the city council member as a result of his or her vote is a necessary condition for disqualification.

9

A "special private gain" described by the voting conflicts statute almost always (if not always) refers to a financial interest of the public official that is directly enhanced by the vote in question. See *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170, 1173 n. 8 (Fla.App. 3 Dist.1984) (explaining that § 112.3143 does not apply "to bias or prejudice on the part of a public officer based on other than private economic interests or relationships" (quoting Op.Fla.Comm. Ethics 79-14 (1979))); see also Op.Fla.Comm. Ethics 90-20 (1990) (holding that a city council member, whose property would be affected by proposed special assessment, must abstain from voting, "[g]iven the direct, personal



financial effect striking the assessment would have on [his] interests) (emphasis added); Op.Fla.Comm. Ethics 79-14 (1979) (holding that a city council member may not abstain from voting on matters involving his personal foe and stating that "it is clear that, when adopting the Code of Ethics, the Legislature was concerned primarily with the effect of a public official's economic interests and relationships upon the performance of his public duties, rather than the effect of his personal preferences or animosities.").

10

Stone's vote on the redistricting plan did not result in any direct financial benefit to him. If a "special private gain" under § 112.3143(3)(a) is limited to a financial gain, then Stone's vote should not have been disqualified. The district court, however, stated that it would be "inappropriate" to limit the application of § 112.3143 to conflicts surrounding finances,<sup>3</sup> and held that Stone's status as a potential African-American candidate in a district in which the majority of voters were also African-American was a "special case" that presented a "heightened potential for conflict." R2-40-8.

11

Assuming arguendo that § 112.3143(3)(a) is not limited to financial matters, we address potential non-economic "interests" of Stone. We can imagine only two such putative "interests" that may have been affected by his vote: his ideological interests as an African-American voter and former plaintiff in the voting rights litigation; and his political interests as an incumbent city council member planning to run for reelection. Neither of these interests would have required Stone to abstain from voting.

12

Because Stone is a former plaintiff in the voting rights litigation, it may be reasonable to infer that Stone has an ideological interest in changing the way that city council members in Cocoa are elected. The plaintiffs in the voting rights litigation contended that the at-large electoral system unlawfully diluted minority voting strength, and sought to have it replaced with a system of single-member districts. Because the city's redistricting plan adopts some of the relief requested in the voting rights litigation, Stone's putative ideological interest was no doubt furthered by his vote as a city council member. Nevertheless, an ideological victory is not the kind of "special private gain" that disqualifies an elected official's vote. The Izaak Walton case clearly establishes that a person who holds a preconceived and publicly expressed opinion on a particular matter is not barred from voting on that matter as a public official. See *id.*, 448 So.2d at 1171 (holding that "political officeholders may not be prevented from performing the duties they have been elected to discharge [i.e., voting] merely because ... they have previously expressed, publicly or otherwise, an opinion on the subject of their vote"); see also Op.Fla.Comm. Ethics 88-18 (1988) (same). If ideology presented a conflict of interest situation, no public official could vote on any of his or her campaign promises. More specifically relevant to this case, there is precisely the same inference of an ideological interest on the part of the other council members arising from their status as defendants in the litigation and the positions they apparently took in the case.

13

The district court recognized that Stone's ideological interests as a former plaintiff in the voting rights litigation could not serve as a valid basis for disqualification,<sup>4</sup> and focused instead upon Stone's political interests as an incumbent city council member planning to run for reelection in one of the new single member districts. The district court reasoned that Stone's vote on the redistricting plan inured to his "special private gain" because it "facilitated his chances for reelection." R2-40-7. To constitute a prohibited voting conflict, however, the possibility of gain must be direct and immediate, not remote and speculative. In Op.Comm. Ethics 93-4 (1993), for example, a city council member asked the ethics commission whether he could vote on rent increases at the city's mobile home park, where he proposed to build a similar park across the street. The ethics commission found that the assumption that the city commissioner could charge higher rents at his "still to be built" park was too remote and speculative to create a voting conflict. See also Op.Fla.Comm. Ethics 94-018 (1994) ("[W]here the official's ... gain (or loss) would require many steps and be subject to many contingencies, with the outcome by no means certain, any gain or loss would be remote and speculative."). In this case, the district court speculated that Stone planned to run for reelection in 1996<sup>5</sup> and that Stone's chances for reelection were improved by the redistricting plan. As an incumbent who won an election under the at-large system, however, the transformation to single-member districts actually may have impaired Stone's interests as a candidate by increasing the competitiveness of elections. See, e.g., *McMillan v. Escambia County*, 748 F.2d 1037, 1045 (5th Cir.1984) (noting that at-large electoral systems may deter candidacies, particularly by African-American candidates, for elected office). In short, Stone's interests as a potential candidate were too "speculative and remote" to warrant disqualification of his vote.

14

Furthermore, every one of the incumbent city council members, not just Stone, had an interest in shaping districts favorable to his or her reelection. For example, district boundaries may have been drawn to avoid future contests between incumbent city council members. Cf. *Karcher v. Daggett*, 462 U.S. 725, 740, 103 S.Ct. 2653, 2663, 77 L.Ed.2d 133 (1983) (describing the avoidance of contests between incumbents as a "legitimate objective" in legislative redistricting); *Gaffney v. Cummings*, 412 U.S. 735, 752-54, 93 S.Ct. 2321, 2331-32, 37 L.Ed.2d 298 (1973) (recognizing that legislators involved in redistricting decisions inevitably take into account various "political considerations" in drawing district lines). In this regard, there is no difference in principle between Stone and the other city council members: each member's chances for reelection was directly affected by the drawing of district lines. It would be absurd to interpret Florida's voting conflicts statute in such a way that would disqualify all members of legislative bodies from participating in legislative redistricting decisions. Cf. *United States v. Will*, 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980) (construing the judicial disqualification statute as implicitly incorporating a common-law "rule of necessity" exception, which applies when all federal judges have an interest in the outcome of a case); Op.Fla.Comm. Ethics 86-57 (1986) (advising that the threat of a lawsuit arising from a vote does not require disqualification; "otherwise, any person might be able to disqualify an entire board").

15

In its order disqualifying Stone's vote, the district court appears to understand that its interpretation of Florida's voting conflicts statute could undermine the ability of all legislators to participate in the redistricting process.<sup>6</sup> To distinguish Stone from the other



city council members, the district court reasoned that Stone was somehow in a "unique position to gain from the redistricting decision." R2-40-6. However, the district court was vague in its identification of Stone's supposed unique position. As demonstrated above, there is no legitimate basis to distinguish Stone from the other council members.

16

If the district court relied on Stone's race to distinguish Stone and disqualify his vote,<sup>7</sup> that reliance was inappropriate. Any benefit enjoyed by hundreds of African-American residents of Cocoa is not a "special private gain" within the meaning of Florida's voting conflicts statute, § 112.3143(3)(a). See Op.Fla.Comm. Ethics 93-012 (pension board trustee, who is also a participant in a class action against the city regarding the pension plan, is not disqualified from voting on measures concerning the lawsuit, because the number of persons who stand to benefit from such measures (297) is sufficiently large that any gain to the trustee would not be "special"). Moreover, any interpretation of § 112.3143(3)(a) that disqualifies an elected official's vote on a matter of public concern because of race obviously could not withstand scrutiny. Cf. *Brown v. Moore*, 583 F.Supp. 391, 395-96 (M.D.Ala.1984) (African-American school commissioner is not disqualified from voting on a school desegregation consent decree on the basis that the plaintiff class is composed of members of his race). We therefore hold that race could not be a valid basis for disqualifying an elected official's vote under § 112.3143(3)(a).

#### Conclusion

17

For the foregoing reasons, the judgment of the district court is REVERSED and REMANDED for further proceedings not inconsistent with this opinion.

1

Pub.L. No. 89-110, § 2(b), 79 Stat. 437, codified at 42 U.S.C. § 1973(b) (1988)

2

We do not address the merits of the proposed consent decree

3

The only authority cited by the district court for this proposition is *Garner v. State Com'n on Ethics*, 439 So.2d 894 (Fla.App. 2 Dist.1983)--a case that has nothing to do with voting. In *Garner*, the ethics commission considered a complaint alleging that a college president abused his official position by seeking sexual favors from female subordinate personnel. The ethics commission found that this behavior violated Fla.Stat.Ann. § 112.313(6) (West 1994), which provides that "No public officer or employee of an agency ... shall corruptly use or attempt to use his official position ... to secure a special privilege, benefit, or exemption for himself or others." The Florida appeals court held that sexual favors constitute a "special benefit" within the meaning of the statute. *Garner*, 439 So.2d at 895

4



See R2-40-5 ("Respect for a citizen's right to express opinions on matters of public importance requires courts to permit officials to vote on issues even when they have previously filed suits to protest the burdening of their rights.")

5

The record indicates that Stone was elected under the at-large system in November 1993, and that city council members in Cocoa serve three-year terms. Stone would therefore be up for reelection in November 1996--more than two years after the district court entered its order in this case

6

The court cautioned that "[t]his holding should not be construed to disqualify all legislators from participating in all issues related [to] voting and elections." R2-40-7

7

In the hearing on the proposed consent decree, counsel for amici (Mr. Meros) repeatedly emphasized Stone's race as a basis for distinguishing him from the other city council members. When asked by the court what "stake" Stone had that would create a "special private gain," Mr. Meros responded as follows:

His stake was, number one, as a voter of the council, which is more general. Number two, as an African-American. He was asserting that he, that his rights as an African-American were not sufficiently protected and as a result of that he wanted the opportunity to have his vote enhanced by virtue of the creation of single member districts. That is a personal stake by Councilman Stone.

....

What personal stake did he have in this? His personal stake as an African-American.

R3-6-7.

In closing his argument, Mr. Meros repeated:

I would suggest that when you talk about a "special private gain," special means as opposed to communal, individual as opposed to group, and Councilman Stone in this litigation asserted that he had a private direct interest in this litigation, clearly special and individual due to his race as an African-American.

R3-13.

Although some of the district court's language could be construed to indicate that the district court accepted the foregoing invitation to consider race, we decline to believe that. Rather, we surmise that the district court simply failed to think the matter through thoroughly.

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39 pages



Item 6.a.

**RESOLUTIONS**

**Resolution No. 2015-09**

**Big Dog Ranch**

**Quasi-Judicial/Public Hearing**

**ATTACHMENT C**  
**Big Dog Ranch Final Site Plan: SP 2014-01**  
**DRC Comments and Applicant Responses**

**PBC COOPERATIVE EXTENSION SERVICE COMMENTS:**

1. I have reviewed the plans for this rather ambitious project. It seems as though the number of animals per acre is not excessive and although the concept appears to be well thought through, I am not knowledgeable about the building requirements, fire codes and any specialized building requirements for the Vet. Clinic. Is there any resistance from surrounding residents about the proposed number of animals on this site?

***Response: At the time of submittal, no resistance from surrounding residents, regarding the proposed number of animals has been presented to the Applicant.***

**FLORIDA DEPARTMENT OF HEALTH COMMENTS:**

1. Prior to demolition of existing buildings, applicant needs to contact Mr. Alex Ortega (561-837-5963) with the Florida Department of Health to discuss Asbestos regulations.

***Response: Acknowledged, the Applicant will contact Mr. Ortega prior to the demolition of existing buildings.***

2. Water and wastewater connection will be required. Proof of concurrency needed.

***Response: Acknowledged, the appropriate connections will be made for water and wastewater services.***

3. Bio-medical and hazardous waste permits will be required.

***Response: Acknowledged, the appropriate permits will be submitted following the approval process.***

**SOLID WASTE AUTHORITY COMMENTS:**

1. I have reviewed the application, and I have no comments concerning solid waste management issues.

***Response: Acknowledged.***

**PBC FIRE-RESCUE COMMENTS:**

1. Water supply for fire flow requirements for buildings.



***Response: Acknowledged.***

2. Buildings 5000 square feet and over automatic sprinkler systems shall be installed.

***Response: Acknowledged.***

**ENGINEERING CONSULTANT COMMENTS:**

1. Please provide the projects drainage statement describing the proposed stormwater management system.

***Response: A Drainage Statement was provided as part of the initial submittal. Copies have been provided again, as part of the resubmittal for your reference.***

2. Provide a 25' corner clip at the intersection of Okeechobee Boulevard and D Road.

***Response: Acknowledged, a 25' corner clip has been provided at the intersection of Okeechobee Boulevard and D Road.***

3. Provide a 20' Easement along D Road dedicated to the town for Roadway, Drainage and Utility Purposes (We may want to consider road R/W).

***Response: Acknowledged, a 31' right-of-way has been provided along D Road.***

4. Please provide a copy of the landscape plan.

***Response: Acknowledged, a copy of the revised Landscape Plan has been provided as part of the resubmittal.***

5. Describe the proposed sanitary sewer system that will serve the site. Include the location of a private lift station, if necessary.

***Response: The site is served by a private lift station, gravity sewer system and force main connecting into the PBCWUD owned force main within Okeechobee Road R/W adjacent to the site. The location of the lift station, gravity sewer and force main is shown on the conceptual engineering plans.***

6. It is anticipated that PBCWUD will require a looped water system to provide service to the site. The proposed water main shall be publically owned and installed within the 20' Easement dedicated to the Town. The proposed water main shall be constructed to the southern property limits of the site.

***Response: The conceptual engineering plan shows a looped water main coming internal to the project and going to the south property line. We have already met with PBCWUD and they will be requiring that this portion of the water main from Okeechobee Road to the south property line of the property will be dedicated to PBCWUD by easement and bill of sale to them.***

7. Was an Alta Survey required for the site plan submittal? If so, please provide a copy for our review.

***Response: A copy of the Survey has been provided as part of the resubmittal.***

8. Provide a typical parking stall detail with wheel stops or curb. Identify vehicle overhang if applicable.

***Response: Acknowledged, a typical parking stall detail has been provided as part of the resubmittal.***

9. There appears to be angular parking stalls along the west side of the site. Please provide a detail for review.

***Response: No angled parking is being proposed at this time.***

#### **TRAFFIC CONSULTANT COMMENTS:**

1. Please provide a detail and description of what type of gates (i.e., rolling, swinging, etc.) will be utilized at the project access points.

***Response: The proposed gates along Okeechobee Boulevard and D Road are swing gates.***

2. Provide a narrative in the justification statement outlining the utilization of the gates at the project access points. More specifically, time periods when the gates will be open and who will have access.

***Response: The Justification Statement has been revised to provide information as to the utilization of the proposed gates on site.***

3. Relocate gates as far away from the right-of-way as possible at each project access point.

***Response: The proposed gates have been located as far as possible from the right-of-way.***

4. Dimension throat distance at each project access point measured from the ultimate right-of-way line to 1.) the location of the proposed gates and 2.) the first conflict point.

***Response: The requested dimensions have been provided on the revised Site Plan.***

5. Provide a parking detail clearly showing dimensions of the typical parking stalls to be utilized.

***Response: A Parking Detail with the appropriate dimensions has been provided as part of the resubmittal.***

6. Clearly identify the centerline of both Okeechobee Boulevard and "D" Road.

***Response: The centerlines for both Okeechobee Boulevard and D Road have been included on the revised Site Plan.***

7. Dimension the existing and/or ultimate right-of-way for Okeechobee Boulevard and "D" Road.

***Response: The right-of-ways for Okeechobee Boulevard and D Road have been dimensioned on the revised Site Plan.***

8. Show the required safe sight triangle (corner clips) at all project access points.

***Response: The required safe sight triangles have been identified on the revised Site Plan.***

9. The Site Plan calls out a portion of the development as retail, but does not address a retail component in the traffic study.

***Response: The Visitor Center building proposed for the subject site is not retail in nature. The classification of the use as retail was utilized for the calculation of parking spaces due to the lack of compatible uses in the Town Code. As such, the Visitor Center was not identified as a retail use within the Traffic Study.***

10. Provide a copy of the traffic study for the Folke Peterson Center for Animal Welfare.

***Response: Acknowledged, a copy of the Traffic Study for the Folke Peterson Center for Animal Welfare has been provided as part of the resubmittal.***

11. Please justify the large discrepancy between the minimal amount of trips outlined by the programmatic approach in the traffic study and the proposed 133 parking study.

***Response: Please refer to the revised Traffic Study.***

12. Please provide project build-out date in traffic study.

***Response: Please refer to the revised Traffic Study, which indicates a build out year of 2020.***



Big Dog Ranch 23  
Special Exception and Site Plan (SP) Application 14-1  
January 23, 2015



**TOWN OF LOXAHATCHEE GROVES**

**RESOLUTION NO. 2015-09**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPROVING THE BIG DOG RANCH SPECIAL EXCEPTION AND SITE PLAN, FOR LAND OWNED BY TLH 25 VILLA, LLC CONSISTING OF 33.16 ACRES MORE OR LESS, LOCATED AT THE SOUTHEAST CORNER OF OKEECHOBEE BOULEVARD AND "D" ROAD LOXAHATCHEE GROVES, FLORIDA, LEGALLY DESCRIBED IN EXHIBIT "A" TO THIS RESOLUTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council, as the governing body of the Town of Loxahatchee Groves, Florida ("Town"), pursuant to the authority vested in Chapter 163 and Chapter 166, Florida Statutes, is authorized and empowered to consider applications relating to special exceptions and site plans for development on property within the Town; and

**WHEREAS**, the Council, pursuant to Article 2 (Development Review Process) of the Town of Loxahatchee Groves Unified Land Development Code is authorized and empowered to consider, approve, approve with conditions or deny special exceptions and site plans; and

**WHEREAS**, the notice and hearing requirements, as provided for in Article 2 of the Town of Loxahatchee Groves Unified Land Development Code have been satisfied; and

**WHEREAS**, the Town Planning and Zoning Board (P&Z Board), at its meeting of January 22, 2015 recommended approval of the Big Dog Ranch Special Exception and Site Plan Application SP 2014-01; and

**WHEREAS**, the Big Dog Ranch Site Plan Application SP 2014-01, was presented to the Town Council at a quasi-judicial public hearing conducted on February 17, 2015; and

**WHEREAS**, the Town Council has considered the evidence and testimony presented by the applicant and other interested parties and the recommendations of Town staff and Town P&Z Board; and

**WHEREAS**, this approval is subject to Article 2.E (Monitoring) of the Town of Loxahatchee Groves Unified Land Development Code (Town ULDC) and other provisions requiring that development commence in a timely manner.

**NOW, THEREFORE**, be it resolved by the Town Council of the Town of Loxahatchee Groves as follows:

**Section 1.** Each "WHEREAS" clause set forth above is true and correct and herein incorporated by this reference.



**Section 2.** The Town Council has considered the findings in the staff report dated January 23, 2015 and Town Planning and Zoning Board recommendation and makes the following findings of fact:

1. The Special Exception and Site Plan are consistent with the purposes, goals, objectives and policies of the Town of Loxahatchee Groves Comprehensive Plan, including standards for building and structural intensities and intensities of use.
2. This Site Plan as presented in Exhibit C hereto, complies with relevant and appropriate portions of applicable Town of Loxahatchee Groves land development regulations, including Section 8-060 "*Rescued Animal Care*", Article 155 "*Site Plans*", and Article 170 "*Special Exceptions*". This Site Plan, along with the Statement of Use, as adopted and presented in Exhibit C, and Conditions of Approval, as adopted and presented in Exhibit D hereto, complies with standards imposed on it by all other applicable provisions of the Town ULDC. The Town Council finds the conditions, as presented in Exhibit D hereto, to be reasonable, and rationally related to the proposed development, and consistent with the Town's character.
3. This Site Plan and Statement of Use, as presented in Exhibits B and C hereto, along with Conditions of Approval, as adopted and presented in Exhibit D hereto, are compatible and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for development.
4. The proposed design, with Conditions of Approval as adopted and presented in Exhibit D hereto, minimizes adverse effects, including visual impact and intensity of the proposed use on adjacent lands.
5. This Site Plan and Statement of Use, as presented in Exhibits C and D hereto, along with Conditions of Approval, as adopted and presented in Exhibit D hereto, minimize environmental impacts, including but not limited to water, air, storm water management, wildlife, vegetation, wetlands and the natural functioning of the environment.
6. This Site Plan and Statement of Use, as presented in Exhibits C and D hereto, along with Conditions of Approval, as adopted and presented in Exhibit D hereto, will result in logical, timely and orderly development patterns.

**Section 3.** The Town of Loxahatchee Groves Unified Land Development Code requires that the action of the Town Council of Loxahatchee Groves be adopted by resolution. Therefore, the Town Council of the Town of Loxahatchee Groves approves the Big Dog Ranch Special Exception and Site Plan SP 2014-01 for the parcel of land legally described in EXHIBIT "A", attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT "A", attached hereto and made a part hereof. A copy of the Site Plan, and Statement of Use, subject to the approved Conditions of Approval presented in Exhibit D, are attached hereto as Exhibits B and C and made a part hereof.

**Section 4.** All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

**Section 5.** If any clause, section, other part or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

**Section 6.** This Resolution shall become effective upon adoption.

**RESOLVED AND ADOPTED** by the Town Council of the TOWN OF LOXAHATCHEE GROVES, Florida this 17 day of February, 2015.

ATTEST:

TOWN OF LOXAHATCHEE GROVES,  
FLORIDA

\_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
Mayor David Browning

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Vice Mayor Ron Jarriel

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Council Member Jim Rockett

\_\_\_\_\_  
Council Member Ryan Liang

\_\_\_\_\_  
Council Member Tom Goltzene

**EXHIBIT A**

**LEGAL DESCRIPTION AND LOCATION MAP**

**The following Legal Description is applicable to Resolution 2015-05:**

Parcel Control Numbers: 41-41-43-17-01-411-0010  
41-41-43-17-01-409-0010

**PARCEL I:**

TRACT 11, BLOCK D, "LOXAHATCHEE GROVES", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 12, PAGE 29 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

**PARCEL II:**

TRACT 9, BLOCK D, "LOXAHATCHEE GROVES", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 12, PAGE 29 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CONTAINING: 1,444,527 SQUARE FEET OR 33.162 ACRE, MORE OR LESS, SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS, AND RIGHT OF WAY OF RECORD.

**LOCATION MAP**



**EXHIBIT B**  
**BIG DOG RANCH FINAL SITE PLAN 2014-02**



**EXHIBIT C**  
**BIG DOG RANCH FINAL SITE PLAN: SP 2014-01**  
**STATEMENT OF USE**

**APPLICANT'S STATEMENT OF USE**

The request of the proposed amendment is to modify +/-21.73-acres from the current AR (Agricultural Residential) Zoning designation to Planned Commercial Development (PCD). Loxahatchee Groves Commons has been designed to enhance and preserve the rural character of the area and promote economic development in the Town through the placement and design of each proposed use.

Concurrent with this rezoning request is the creation of the Planned Commercial Development (PCD) district. The intent of the PCD district is to allow for creative use of land resulting in quality development. The PCD district will encourage ingenuity and imagination with an intent to promote sustainable development, creates logical street and transportation networks, preserves the natural environment, enhances the built environment, provides services to the community and minimizes impacts on the surrounding areas through the use of flexible and innovative land development techniques. The subject property has been designed to be consistent with the proposed PCD Zoning requirements.

The location for the requested PCD Zoning designation is the most appropriate location for commercial retail uses, as it is located at the corner of a major intersection with a State SIS roadway, and located across B Road from a proposed commercial and office project located on the east side of B Road. This will create a node of community-serving uses at a logical intersection. The planned western campus of the Palm Beach State College will wrap around the west and north sides of the site as well with cross access being proposed to the campus's main entrance from Southern Boulevard. In addition, B Road connects to Binks Forest Drive to the south. The proposed commercial retail uses have been designed to promote economic development and create jobs within the Town of Loxahatchee Groves.

The subject property has been designed to locate a lake tract along the northern boundary, adjacent to the future Palm Beach State College western campus and to cluster the uses along the high traffic area of Southern Boulevard. The applicant has previously made changes to the master plan pursuant to comments received at the Planning and Zoning Board Meetings. These changes addressed the two previous main concerns of parking space sizes and circulation. Further changes have evolved with the current layout which also further the ease of circulation, cross connection with the neighboring college, and access between users on the site.

One of the changes made was to relocate the community park to be adjacent to the lake and project entrance. The location has been modified slightly to help the circulation for the center, while keeping the park area in a prominent location. In addition, the applicant is also proposing an equestrian trail around the lake providing an additional amenity for the community. The applicant has also been working with their anchor tenants to provide safer access from B Road and better vehicular circulation throughout the property. Along with these changes, one of the most important changes was to create better visibility to ensure the project is viable. This was accomplished by pulling the entire development and all buildings closer to Southern Blvd. The proposed revisions are being made to create a better site plan for the community and the customers who will be frequenting the proposed businesses.

All exotic vegetation will be removed from the subject property. In addition, the subject property has been designed with a 10' landscape buffer along the western boundary of the property and a 15' landscape buffer along the southern boundary of the property.



**STATEMENT OF INTENT TO SUBDIVIDE**

The subject property is consistent with the provisions of ULDC Article 41.1.E.4.b. The development plan has been designed to allow subdivision of the outparcels (Buildings D, E, F, & G) by fee title conveyance of these internal lots, upon approval of the Town Manager. Each of these outparcels have been designed to be consistent with the requirements of Article 41.1.E.4.b.

**STATEMENT OF ACKNOWLEDGEMENT OF THE DELINEATION OF NATIVE VEGETATION TO BE PRESERVED**

Pursuant to the Town's comprehensive plan and land development regulations, the applicant is proposing to cluster the commercial development on the +/-21.73-acres located at the corner of the intersection of B Road and Southern Boulevard. The majority of the first +/-300' into the property along the frontage of Southern Boulevard has been used for grazing thus is not heavily vegetated. However, the portion further into the development does include an area of pines, oaks, sabal palms, other native species and exotic plants such as Brazilian Pepper. This area lies mostly where the applicant is proposing a lake to be consistent with South Florida Water Management regulations such as compensating storage and retention requirements for the property which equates to approximately 6.5 acres of required area. The lake was located on the Northern third of the property to help buffer and transition into the PBSC property to the north and west. The applicant is proposing to cluster the commercial area as close to Southern Boulevard and B Road as possible to be consistent with the Town's comprehensive plan and land development regulations. It is important to note that most of the native plant material would fall under the retention area and thus not being suitable for preservation. The areas in and around the development area will also be re-graded to meet SFWMD drainage requirements and keep the site and off-site areas from flooding. Lastly, the applicant has provided several open space areas and perimeter buffer's where trees could be preserved however most of these areas are encompassed by brazilian pepper and not native vegetation. The applicants intends on removing all exotic vegetation from the open space areas and install new, healthy native vegetation and will utilize any existing sabal palms if they are able to be relocated from the proposed lake area.

**BUFFER DETAIL FOR ANY PROPERTY LINE ADJACENT TO A RESIDENTIAL ZONING DISTRICT**

This requirement is not applicable due to the commercial property bordering the future Palm Beach State College Property. The applicant has provided landscape buffers on the master plan/site plan which will be stripped of all exotic plant material and re-planted with native vegetation.

**EXHIBIT D  
FINAL SITE PLAN CONDITIONS OF APPROVAL**

**GENERAL**

1. The conditions of approval herein shall apply to the Owner, Applicant and their successors and assigns.
2. Development of the site is limited to the uses approved by the Town of Loxahatchee Groves in Exhibit A (Big Dog Ranch Final Site Plan). The approved Final Site Plan is dated December 30, 2014. All modifications to the Final Site Plan must be approved by the Town Council unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC, as determined by the Town Manager.
3. Prior to submittal of any building permit applications for processing by Palm Beach County, the Town Manager shall review and approve the following plans for consistency with the approved Final Site Plan Site Plan, Landscape Plan, Floor Plans, and Photometric Plan.
5. The location of 0.99 acres of preserve area shall be identified on the Final Site Plan and included in Phase 1 improvements.

**ARCHITECTURAL**

1. Building sidings and signs materials shall mimic wood lap siding
2. Trim shall be applied at the corners of buildings
3. Wall breaks on the larger buildings shall be enhanced by using arcades, banding, and projections
4. Arcades (porch) shall be used as a means of creating human scale along the fronts of buildings
5. Metal roofing shall be used on all buildings
6. Mansard roofs and other vertical elements shall be used to break up the roof line
7. Integration of complex window elements on buildings shall be used.
8. Mechanical and service areas shall be screened from public view
9. Signage structures shall mimic building architecture

**ENGINEERING**

1. Consistent with the Palm Beach County Mandatory Traffic Performance Standards criteria in place at the time of this approval, no building permits for the site shall be issued after December

31, 2020. A time extension for this condition may be approved by the Palm Beach County Engineer based upon an approved traffic study which complies with Mandatory Traffic Performance Standards in place at the time of the request.

2. During the plat process the Okeechobee Boulevard and "D" Road rights-of-way, as indicated on the Final Site Plan shall be dedicated to Palm Beach County and the Town, respectively.

3. An Irrigation plan shall be included with documents submitted to Palm Beach County for building permit approval.

#### **LAND CLEARING AND LANDSCAPING**

1. Any land clearing activities shall comply with the permit requirements of Article 87 "Native Tree Preservation, Soil Stabilization and Invasive Exotic Removal" of the Loxahatchee Groves Unified Land Development Code. Included in the required land clearing permit application, a "Created Ecological Community Installation and Management Plan" shall be submitted for the 0.99 acre "Reserve" to satisfy the requirements of ULDC Section 85-025 (C) "*Preserved/created ecological communities.*"

2. Project landscaping shall conform to the Landscape Plan dated December 30, 2014.

3. Prior to demolition of any structures, the Florida Dept. of Health shall be contacted regarding Asbestos removal.

4. The Agility Course and all Dog Runs and Supervised Dog Areas shall be covered by natural turf grass or permeable artificial surface.

5. A continuous solid opaque hedge, a minimum 4-feet high at installation, shall be required around the perimeter of the entire 33.16 acre property. All hedging shall be included as part of the Phase 1 improvements and permanently maintained at a height of 6-feet.

#### **EXTERIOR LIGHTING**

1. A Photometric Plan shall be submitted for review and approval by the Town Manager prior to submittal of the initial building permit application.

2. All exterior lighting shall be directed downward and contain shields to contain lighting within the property boundaries.

#### **PALM TRAN**

1. Not Applicable.

#### **PARKING AND LOADING**

1. All parking and loading shall occur on site as indicated on the approved Final Site Plan dated



December 30, 2014.

## **SIGNS**

1. Sign permit applications shall be submitted to the Town as required by ULDC Section 90-070 *Sign permit requirements*
2. Mandatory building identification signs (maximum sign face of 4 sq. ft.) shall be attached to each structure.

## **USE LIMITATIONS**

1. Veterinary services and dog boarding as accessory uses may be provided by a licensed veterinarian for adopted or previously adopted animals. Veterinary services and dog boarding as accessory uses may be provided by a licensed veterinarian to the public provided that the facility maintains direct access to Okeechobee Boulevard.
2. An accessory caretaker unit may be provided.
3. The number of dogs allowed shall be based upon square footage of the facility and PBC Animal Control Center regulations.
4. Outdoor animal runs shall be located a minimum of 200 feet from a directly abutting residential zoning district, be hard surfaced or grassed with drains every 10 feet and be connected to a central or individual sanitary facility approved by the PBCHD.
5. A minimum 6-foot high vinyl chain-link fence enclosing Phase 1, 2 and 3 facilities shall be included as part of the Phase 1 improvements.
6. Separate, minimum 6-foot high vinyl chain-link fences shall be required around each outdoor run area.
7. Outdoor runs shall not be used earlier than 7:00 a.m. or later than 8:00 p.m. seven days per week.
8. Swing gates shall be installed at the Okeechobee Boulevard and "D" Road entrances.
  - a. The gate along Okeechobee Boulevard shall be used as the primary facility access and open to the public from 10am to 6pm. Said gate shall be accessed after hours only by managerial and veterinary staff.
  - b. The gates along D Road shall be located a minimum of 35 feet from the western property line.

## **UTILITIES AND SERVICES**

1. A Developer's Agreement shall be executed by the Property Owner and the Palm Beach County Water Utility Department and approved by the Town of Loxahatchee Groves for the provision of central water and wastewater services to the project prior to issuance of the first project building permit.
2. Solid waste collection and disposal shall be accomplished by contract between the Property Owner and a third-party hauler prior to issuance of the initial certificate of occupancy
3. The operation shall comply with the following waste disposal standards, as appropriate: (1) PBC ECR 1 and ECR 2 and rules of FDEP, PBCHD and PBCSWA.
- 4 Prior to a Certificate of Occupancy for Phase 1, the Florida Dept. of Health shall be contacted regarding the need for bio-medical hazardous waste permits.
5. Buildings of 5,000 sq. ft. and larger shall contain automatic sprinkler systems.



April 2, 2015

Mr. Jim Fleischmann  
Town of Loxahatchee Groves  
14579 Southern Blvd. Suite 2  
Loxahatchee Groves, FL 33470

**RE: Big Dog Ranch Rescue (SP 2014-01) Special Exception/Site Plan Review – Postponement Request**

Dear Mr. Fleischmann,

On behalf of the Applicant, Wantman Group, Inc. is respectfully requesting a postponement of the Big Dog Ranch Rescue Special Exception and Site Plan Review Application(s) to the April 21, 2015 Town Council Hearing. We are requesting the postponement, in order to provide additional time to work with Town Staff to solidify the Conditions of Approval for the project, based on the outcome from recent public meetings.

We appreciate all of your assistance with this project, and look forward to continuing to work with the Town on this project. If you have any questions, please don't hesitate to contact me at 561.537.4507.

Thank you.

Sincerely,

**WANTMAN GROUP, INC.**

A handwritten signature in black ink, appearing to read 'J. Brophy', written in a cursive style.

Jeff Brophy, RLA, ASLA  
VP, Land Development



**TOWN OF LOXAHATCHEE GROVES**  
**TOWN COUNCIL**  
~~February 17, 2015~~  
**April 7, 2015**

**Staff Summary: Big Dog Ranch Special Exception and Site Plan Review**

**A. Site and Applicant Information**

<b>Project Name</b>	Big Dog Ranch Special Exception and Site Plan Approvals
<b>Project No.</b>	SP 2014-01
<b>Agent</b>	Lindsay Libbes, Land Design South
<b>Applicant</b>	Big Dog Ranch Rescue, Inc.
<b>Owner</b>	TLH 25 Villa, LLC
<b>Parcel Control No.</b>	41-41-43-17-01-411-0010 (1930 "D" Road); and 41-41-43-17-01-409-0010 (1810 "D" Road)
<b>Location</b>	Southeast corner of Okeechobee Boulevard and "D" Road
<b>Size (Acreage)</b>	33.16 acres
<b>Zoning</b>	AR Agricultural Residential
<b>Future Land Use</b>	Rural Residential 5 (RR 5)
<b>Existing Use</b>	Vacant/undeveloped
<b>Approved Use</b>	No prior approvals
<b>Proposed Use</b>	Rescued Animal Care (Permitted Use subject to Section 80-60 of the ULDC and Special Exception Approval)

**B. Adjacent Properties (Existing Use, Future Land Use and Zoning)**

<b>Land Use</b>	<b>North</b>	<b>South</b>	<b>East</b>	<b>West</b>
<b>Existing Use</b>	Okeechobee Blvd. followed by a tree nursery and vacant land	Landscape maintenance business	Palm Beach County Fire Rescue Station (R-75-530) and 2 residential lots	"D" Road followed by a tree nursery and vacant land
<b>Future Land Use</b>	RR 5 (Rural Residential 5)	RR 5 (Rural Residential 5)	RR 5 (Rural Residential 5)	RR 5 (Rural Residential 5)
<b>Zoning</b>	AR (Agricultural Residential)	AR (Agricultural Residential)	AR (Agricultural Residential)	AR (Agricultural Residential)

### C. Submitted Support Documents

Item	Content
Final Site Plan	Rescued Animal Care Facility; dated 12/30/2014
Justification Statement	Project description, and justifications for Special Exception and Site Plan Approvals; dated 12/30/2014
Architectural Plans/Elevations	Elevations and floor plans for the following: Main Visitor Building; Vet Building; Adoptable Dog House Building; Quarantine Building; and Maintenance Building.
Landscape and Tree Removal and Transplant Plans	Phases 1 - 3 plan, including tree inventory
Drainage Statement	Description of storm water system and legal positive outfall
Photometric Plan	Not Included
Traffic Statement	Consultant TPS evaluation; updated 11/26/2104
Environmental Assessment	Ecosystems descriptions, listed species and soils and conclusions; 8/12/2014
Conceptual Engineering Plan	On and off-site central water and sewer service plan; ; 12/20/2014

### D. Narrative Information

#### 1. Property History

The 33.16 acre property, located at the southeast corner of Okeechobee Boulevard and "D" Road in Loxahatchee Groves, consists of two parcels (20 acres and 13.16 acres respectively) that were jointly purchased in February 2014. Although the parcels currently have Single Family Use Code designations by the Palm Beach County Property Appraiser, they historically contained a tree nursery. Many of the trees remain on-site and most will be used for landscaping in the proposed Big Dog Ranch development. A vacated single-family home and nursery-related structures remain on the property. These structures will be demolished during construction of the Big Dog Ranch facility.

#### 2. Summary of Request

The Big Dog Ranch no-kill rescued animal care facility is to be developed on 33.16 acres in three phases, with a portion of Phase III (9.78 acres) designated for future development, as illustrated on the attached Final Site Plan. Final Site Plan approval for Phases 1 (13.07 acres), 2 (4.79 acres) and a portion of Phase 3 (5.52 acres) is currently proposed. Development of the balance of Phase 3 (9.78 acres) will require a future Site Plan Amendment application. In total, the current Site Plan application represents 23.38 acres.

Big Dog Rescue is a non-profit 501(c) (3) corporation which intends to develop the facility for the purpose of accepting adoptable dogs from high-kill shelters throughout the southeast United States. Once accepted, dogs will be rehabilitated and medically

treated and sheltered until they are adopted, or permanently sheltered on-site due to age. The facility will also accept dogs directly from owners who can no longer care for them and offer emergency care services to the community at large. The proposed Final Site Plan is presented in Exhibit "A". The following descriptions summarize each of the proposed development phases:

**Phase 1 (13.07 acres) – 31,388 sq. ft., including the following facilities:**

- Main Visitor Center (4,500 sq. ft.): Reception area for visitors and administrative offices.
- Veterinary Clinic (4,000 sq. ft.): Medical treatment facility, including surgery, spay/neuter and vaccinations, including evening and weekend emergency care services to local households.
- Animal Housing (14,592 sq. ft.): Main housing facility consisting of 4 wings with a central covered pavilion. Daily care is provided for approximately 250 dogs and 50 puppies, including feeding, cleaning and exercise. Each wing has its own fenced area and serves dogs by size (small, Medium and large).
- Puppy Land (1,848sq. ft.): Ten 168 sq. ft. building pods to house pregnant and/or nursing females and their puppies and a 168 sq. ft. support building. Each pod has a fenced area for exercise.
- Caretaker House (2,720 sq. ft.): Home for a live-in on-site facility manager.
- Intake Building (2,728 sq. ft.): All dogs are initially quarantined and screened and treated as necessary in this building to ensure that they are fit to be moved to other on-site facilities.
- Maintenance Building (1,000 sq. ft.): Houses tools, equipment and maintenance supplies.
- Other Phase 1 Facilities: A 1.50 acre retention lake and two fenced areas (agility course and play pool).

**Phase 2 (4.79 acres) – 15,528 sq. ft., including the following facilities:**

- Weimaraner World (4,024 sq. ft.): Specialized care and housing for the Weimaraner or other breeds that suffer from separation anxiety.
- Senior Sanctuary (3,142 sq. ft.): Housing, including four fenced areas, of senior dogs that are too old for adoption or have medical issues preventing adoption.
- Mausoleum/Sanctuary (862 sq. ft.)
- Other Phase 2 Facilities (7,500 sq. ft.): Open covered Education Pavilion to be used for educational classes for school-age children, dog training classes and fund-raising events, and a play pool.

**Phase 3 (5.52 acre portion) – 7,930 sq. ft.**

- Boarding/Housing Building (7,930 sq. ft.): Housing of guest dogs that need to be boarded, including four fenced areas.



- Other Phase 3 Facilities: Fenced play pool.

## E. Staff Finding and Recommendation

Staff finds the proposed Final Site Plan consistent with the Town's Comprehensive Plan, ULDC zoning requirements and Conditional Use, Special Exception and Site Plan criteria and recommends approval of Special Exception and Site Plan Approval Application 2014-01.

**F. Planning and Zoning Board (P&ZB) Recommendation:** At its January 22, 2015 meeting, P&ZB voted to recommend approval, subject to several Conditions of Approval revisions, by a 5 – 0 vote. Recommended revisions have been included in the proposed Conditions of Approval (Ref: Attachment B).

## G. Staff Review Summary

### 1. Adjacent Land Uses

Direction	Uses	Potential Issues
North	Okeechobee Blvd (110' R.O.W.) followed by a tree nursery and vacant land	Noise. Addressed in Conditions of Approval
South	Landscape maintenance business	Noise. Addressed in Conditions of Approval
East	Palm Beach County Fire Rescue Station (R-75-530) and 2 residential lots	Noise. Addressed in Conditions of Approval
West	"D" Road (60' R.O.W.) followed by followed by a tree nursery and vacant land	Noise. Addressed in Conditions of Approval

### 2. Infrastructure Impacts

Infrastructure Service	Summary
Water/wastewater	Property can be served by County central water/wastewater along Okeechobee Boulevard. Letter from County provided indicating water, water reuse water and wastewater lines adjacent to property. Reclaimed Water Development Agreement will be required to reserve capacity for irrigation. A Conceptual Engineering Plan has been provided indicating tie-in locations to the existing wastewater force main and potable water main on Okeechobee Boulevard and the on-site collection and distribution systems.
Surface Water Management	Drainage Statement provided. On-site storm water will be collected in a system of catch basins, storm drainage pipe and swales directed to the existing on-site lake to be used for water quality, retention and detention. Legal positive outfall provided by discharge into the existing "D" Road Canal. Storm drain system indicated on Conceptual Engineering Plan
Solid Waste Disposal	Solid Waste Authority letter confirms disposal capacity available. Applicant must execute contract with private hauler for collection.
Transportation	Traffic Statement Provided. The Applicant's Traffic Engineer has concluded that less than 19 peak-hour trips will be generated therefore complying with the PBC TPS Ordinance.
Parks and Recreation	Not Applicable – Commercial land use and zoning
Public Schools	Not Applicable – Commercial land use and zoning

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FIRE/EMS	Letter from Palm Beach County Fire/Rescue indicating an estimated response time less than the average for the nearest station.
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### 3. Environment

Item	Summary
Natural Resources	The applicant has submitted an Environmental Assessment and Phase 1 Environmental Assessment for the area encompassing Phases 1 and 2 of the property. No native upland habitats are identified, although some native trees will be removed or relocated. No wetlands are identified. Two ponds are located on-site, likely classified as Other Surface Waters by SFWMD and Waters of the State by the USA Corps of Engineers (COE). Filling of a pond could require COE permit. No listed protected species were witnessed during a site visit. The Phase 1 concluded no evidence of: (1) the release of hazardous wastes from current or past activities; or (2) environmental concerns from on-site activities.
Historical Resources	According to Staff records there are no historical or cultural resources on the property listed on the Florida Master Site File or the National Register of Historical Places.
Flood Zone	Zone X-500, per Map # FLU 1.5 of the Comprehensive Plan. Zone X-500 is generally the area between the limits of the 100-year and 500-year flood.

### 4. Comprehensive Plan and Zoning Consistency

Proposed SP 14-1 is consistent with the Comprehensive Plan

- The current Future Land Use Map designation of the property is Rural Residential 5 and no change is proposed
- The current Zoning Map designation of the property is Agricultural Residential (AR) and no change is proposed.
- The proposed rescued animal care facility is a permitted use within the AR zoning district subject to meeting the conditions of Article 80 (i.e. Section 80-60 *Rescued Animal Care*) and receiving Special Exception approval, per Article 170 of the ULDC.

### 5. Zoning Requirements: AR Zoning District Regulations

Regulation	Standard	Property Complies?
Minimum lot size	10 acres - ULDC Section 80-060(A)	Yes – 33.16 acres
Frontage and Access	ULDC Section 100-35: legal access from a publically dedicated street	Yes – Proposed access to Okeechobee Blvd. and "D" Road
Minimum frontage/width	200 feet	Yes – 1,293 ft. on Okeechobee Blvd.
Minimum depth	200 feet	Yes - 1,114 feet
Maximum Floor-Area-Ratio	0.15	Yes (Phases 1, 2 and 3 (portion) 54,846 sq. ft. on 23.38 acres = 0.054 F.A.R.

<b>Regulation (continued)</b>	<b>Standard</b>	<b>Property Complies?</b>
Maximum building and roofed structures lot coverage	15%	Yes – 5.4% (Same as F.A.R.)
Front setback	100 feet	Yes – 122 feet
Side setback	50 feet	Yes – 200 feet
Side street setback	80 feet	Yes – 124 feet
Rear setback	50 feet	Yes – 85 feet
Minimum pervious area	70%	Yes – 85%
Maximum building height	35 feet	Yes – 35 feet

## 6. ULDC Section 80-60 Conditional Use Criteria

A rescued animal care petition must comply with the following Rescued Animal Care facility Conditional Use criteria:

<b>Criterion</b>	<b>Compliance</b>
Section 80-060 (A) Minimum plot size of 10 acres	Phases 1, 2 and 3 (portion comprise 23.38 acres. Total site is 33.16 acres
Section 80-060 (B)(1) Veterinary services and dog boarding as accessory uses may be provided by a licensed veterinarian for adopted or previously adopted animals.	Condition of Approval
Section 80-060 (B)(2) Veterinary services and dog boarding as accessory uses may be provided by a licensed veterinarian to the public provided that the facility is located on and has access to an Urban Collector or Arterial Roadway.	Location on Okeechobee Blvd., an Urban Collector. Access to Okeechobee Blvd. provided
Section 80-60 © A facility may include an accessory caretaker's single-family unit.	Includes an accessory caretaker unit
Section 80-060 (D) shall comply with the following waste disposal standards: (1) PBC ECR 1 and ECR 2 and rules of FDEP, PBCHD and PBCSWA.	Condition of Approval
Section 80-060 (E) the number of dogs based upon square footage of the facility and PBC Animal Control Center regulations and indicated as a condition of approval of the Special Exception	Condition of Approval
Section 80-060 (F) Outdoor animal runs shall be located a minimum of 200 feet from a directly abutting residential zoning district, be hard surfaced or grassed with drains every 10 feet and be connected to a central or individual sanitary facility approved by the PBCHD	Fenced Dog Runs in Phases 1 and 3 a minimum of 200 feet from any AR district.



<b>Criterion (continued)</b>	<b>Compliance</b>
Section 80-060 (F) A minimum 6-foot high chain-link fence, including a continuous solid opaque hedge a minimum 4-feet high shall be required around outdoor runs.	Condition of Approval
Section 80-060 (F) Outdoor runs shall not be used earlier than 7:00 a.m. or later than 8:00 p.m. seven days per week	Condition of Approval
Section 80-060 (G) architecture shall be designed to reflect the Town's Rural Vista Guidelines (RVG)	RVG Features: Standing seam tin hip roof, windows with barn wood shutters, hard plank wood-like siding, covered porches with wood posts, limit of 2 rows of parking along Okeechobee Blvd., limited removal of native trees, heavily landscaped road frontages, Elevations and Architectural Renderings provided.

## 7. ULDC Article 85: Landscape Plan Requirements

<b>Requirement</b>	<b>Response</b>
Section 85-025 (C) Plots of 2 acres or more shall preserve or create and maintain an ecological community of at least 3% of area of the property	Needs to identify 0.70 acre preserve for proposed Final Site Plan (23.38 acres) or 0.99 acre preserve for entire parcel.
Section 85-040 (D) (2) and (3) A tree survey, including trees to be removed or relocated, including proposed relocation sites	Provided in Landscape Plan: Summary: 1. Plant list (trees and shrubs) 2. Vegetation to be retained relocated or removed. 3. Required tree mitigation
Section 85-040 (D) (7) The location, including height, caliper and canopy spread of all landscape materials	Provided in Tree Survey and indicated on Landscape Plan.
Section 85-040 (E) Irrigation plan if irrigation system to be used	Condition of Approval
Section 85-050 (A) (1) No substances that prevent water percolation in areas not containing structures or paving	Calculated pervious area @ 85% - meets ULDC requirement of 70%.
Section 85-050 (A) (2) Primary structures treated with shrubs @ 2.5 foot height along 20% of the structure frontage	Primary structures treated with shrubs and hedges per Landscape Plan – meets requirement
Section 85-050 © Interior open space area defined and located @ 10% of the area of vehicular use areas, excluding landscape strip or perimeter buffers	Provided in Landscape Plan – meets requirement.

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<b>Requirement (continued)</b>	<b>Response</b>
Section 85-050 (B) Meets interior open space tree and shrub requirements	Calculated in Landscape Plan – meets requirement
Section 85-050 (D) Dumpsters, mechanical equipment and electrical transformers screened	Dumpster screened per Landscape Plan – meets requirement
Section 85-050 (E) Signs screened	No monument signs proposed at this time. Condition of approval
Section 85-050 (F) Existing vegetation credit requested and calculated	Calculated per Landscape Plan – meets requirement
Section 85-055 (B) Landscape buffer along property line abutting AR District	20 feet provided on south and east property lines.
Section 85-050 (C) 15 foot vehicular use landscape strip (not counted as interior open space)	20 feet buffer provided on both Okeechobee Blvd. and "D" Road
Section 85-050 (C) (1) Vehicular use landscape requirements	Vehicular use areas provided with landscape islands per Landscape Plan – meets requirement
Section 85-065 Site distance requirements (Ref: ULDC Article 105)	25 foot corner clip provided at the D"D Road/Okeechobee Boulevard intersection.

## 6. ULDC Supplementary Requirements

### a. ULDC Article 90 Signs

<b>Allowed Signs</b>	<b>Response</b>
Sections 05-040 Permits required and 90-070 Sign permit requirements	Condition of Approval
<b>Section 90-040(B) Standards by sign type and zoning district (CL District shopping center or other multi-tenant center)</b>	
(1) Mandatory attached building identification (i.e. address) sign : 1 per structure or business @ maximum sign face of 4 sq. ft.	Condition of Approval
(2) Attached awning sign (optional): Maximum 1 per structure or business @ maximum sign face of 4 sq. ft.	None proposed
(3a) Outparcel or individual stand-alone building wall sign(s): 1 per building, 2 if corner location @ maximum sign face of 18 sq. ft. to 36 sq. ft. Applies to Buildings D, E and F.	To be determined at the time of Sign Permit Application per ULDC Section 90-070 requirements.
(4) Attached canopy sign: 1 per canopy or 2 per building which ever is less @ 16 sq. ft. to 24 sq. ft.	None proposed

<b>Allowed Signs (continued)</b>	<b>Response (continued)</b>
(5a) Outparcel or individual stand-alone building free-standing monument or panel sign(s): Primary sign - 1 per building @ maximum sign face of 60 sq. ft.; Drive-thru secondary sign @ maximum sign face of 12 sq. ft. Applies to Buildings D, E and F.	None proposed
(6) Real Estate or Project Sign (to be removed after sale or project completion) 1 per street frontage @ maximum sign face of 12 sq. ft.	None proposed
Sections 90-065 Landscaping around signage to meet the requirements of Section 85-050 Landscape design for interior open space	Not applicable.

**b. ULDC Article 95 Parking and Loading**

<b>Requirement</b>	<b>Response</b>
Section 95-010 Minimum parking space requirements – 51 spaces required. 2 handicap spaces required (Ref: Table 208.2 PBC ULDC – 2% of total)	144 spaces provided. 9 handicap spaces provided. Additional spaces provided for visitors and special events at Education Center.
Section 95-025 Size of parking spaces – Standard space = 11' x 22.5". Handicap space = 14' x 22.5'	Required standard spaces provided
Section 95-050 Minimum loading space requirements (i.e. for uses that receive materials by truck).	Loading area provided (2 @ Maintenance Building)
Section 95-070 Size of loading spaces – 12' x 45' with 14' vertical clearance	Loading area meets requirements

**7. ULDC Section 155-020: Substantive Requirements (Site Plan)**

<b>Criterion</b>	<b>Compliance</b>
Section 150-020 (A) Conformance to the approved and/or recorded plat, if applicable	The property consists of 2 lots (Tracts 9 and 11 of Block D) recorded on the Replat of Loxahatchee District Subdivision on 6/12/1925 (ORB 12, Page 29).
Section 150-020 (B) Consistency with the Loxahatchee Groves Comprehensive Plan	Yes – Refer to Section D, above.
Section 150-020 (C) Conformance with the Town of Loxahatchee Groves ULDC	Yes – Refer to Sections G1 to G11.
Section 150-020 (D) Conformity with the water control district's requirements and regulations.	Proposed drainage discharge "D" Road Canal. No LGWCD issues identified.



### 8. ULDC Article 170-025 Special Exception Review Standards

Standard (paraphrased)	Response
Section (A) (1) No detrimental impact to contiguous and proximate uses	ULDC requirements and Conditions of Approval will insure that potential impacts are minimized.
Section (A) (2) Compatible with existing uses on contiguous and proximate properties	The application of ULDC and Conditional Use requirements, coupled with a low (0.54) F.A.R and a 35-foot height limitation will insure compatibility.
Standard (paraphrased) (continued)	Response
Section (A) (3) Adequate screening and buffering for adjacent uses to address potential incompatibilities	Screening, buffering, landscaping, setbacks and separation requirements meet or exceed ULDC requirements.
Section (A) (4) Adequate parking and loading to be provided and access designed to minimally interfere with traffic on abutting streets	Proposed parking exceeds ULDC requirements. 25-foot corner clip aids visibility. Final Site Plan indicates loading area. Site access is through controlled gates limiting access during night hours.
Section (A) (5) Use will not cause detrimental environmental impact upon adjacent properties	Environmental Assessment and Phase 1 Environmental Assessments indicate no current environmental issues. Conditions of Approval will insure environmental compatibility.
Section (A) (6) Use will not cause detrimental effect upon vehicular, pedestrian or equestrian traffic	Peak-hour trips are estimated at 19 trips per day; a minimal impact upon vicinity roads. A 25-foot corner clip is planned for the Okeechobee Blvd/"D" Road intersection to maximize visibility.
Section (A) (7) Use will not utilize turning movements onto public roads or intersections that result in a public hazard	Access is from Okeechobee Boulevard and "D" Road. Vehicles travelling west on Okeechobee can access the property via the "D" road entrance.
Section (A) (8) The use will not have a detrimental on the future development of contiguous properties or the vicinity	The Final Site Plan indicates substantial screening and buffering and separation distances that will mitigate potential impacts.
Section (A) (9) The use will not create incompatible noise, lights, vibrations, fumes, odors, dust or physical activities, taking into account existing uses on contiguous properties or the vicinity	Required photometric plan and Conditions of Approval will ensure compatibility with neighboring properties. Site design, including the location of uses, buffering, setbacks, landscaping and separation distances, coupled with limited hours of operation will minimize noise impacts.
Section (A) (10) The use will not overburden public services and facilities	Infrastructure and services impacts discussed in Section G.2. indicate no significant impact.

## 9. Architecture (Discussion of Rural Vista Guidelines by Applicant)

The proposed development plans are consistent with the Rural Vista Guidelines as outlined below. The Applicant has considered these guidelines and applied the following design elements throughout the project. **(NOTE: EXAMPLES, IN 11" x 17" FORMAT, MAILED TO P&ZB MEMBERS UNDER SEPARATE COVER).**

- Areas of materials applied to mimic wood lap siding on the building and signs
- Trim at corners of buildings
- Breaks at larger building walls using arcades, banding and projections
- Use of the continuous arcade (porch) to keep the human scale along the fronts of buildings
- Use of metal roofing where applicable
- Use of vertical elements to bring down the scale of the buildings and break up the roof line
- Integration of complex window elements on buildings
- Screening of mechanical and service areas
- Use of Native Landscape material
- All exterior lighting directed downward with shields

## H. Compatibility

An inventory of land uses adjacent to the subject property is presented in Section B. All adjacent properties are assigned RR 5 future land use and AR zoning designations. Adjacent properties to the north (Okeechobee Boulevard) and west ("D" Road) lie beyond street rights-of way.

The adjacent properties to the north, beyond Okeechobee Boulevard, include tree nursery and vacant land. The adjacent property to the south is a landscape maintenance business. Properties to the east include a Palm Beach County Fire Rescue facility and two residential lots. The adjacent properties to the west, beyond "D" Road, include tree nursery and vacant land.

Compatible land uses are defined as those which are consistent with each other in that they do not create or foster undesirable health, safety, or aesthetic effects arising from direct association of dissimilar activities, including the impacts of intensity of use, traffic, hours of operation, aesthetics, noise vibration, smoke, hazardous odors, radiation, and other land use conditions. Conditions of Approval can be imposed to

address these issues.

To be compatible, it is not necessary that two uses have the exact same function (e.g. residential, commercial, institutional, etc.). Rather, compatibility is attained when uses do not adversely affect each other. Further, uses whose functions are different can compliment and support each other. For example, a residential use can help support a service use and, conversely, the service use can provide essential services to residents of surrounding neighborhoods.

The greatest potential for incompatibility between Big Dog Ranch and its neighbors is noise generated by barking dogs. Separation from neighboring uses can act to fully or partially mitigate potential effects. To the west and north the subject property is separated from adjacent properties by 60- foot (i.e. "D" Road) and 100-foot (i.e. Okeechobee Boulevard) rights-of-way. In addition, a Rescued Animal Care Conditional Use requirement is that outdoor dog runs must be located no closer than 200 feet from a residential zoning district. Further, the proposed limitation on the hours that dogs can be outside provides further noise incompatibility insurance.

In addition to separation of uses and hours of operation, access management, buffering, screening, setback, height, landscaping, and architectural requirements further compatibility, and reduce the potential negative impacts.

A review of the subject site vicinity leads to the conclusion that the area is comprised of a mixture of agricultural, institutional, residential vacant properties. The low proposed F.A.R (0.054) and traffic generation, 35-foot height limitation and compatibility measures discussed above insure that the proposed Big Dog Ranch is a compatible neighbor.

## I. Development Review Committee (DRC) Comments

The following were notified and requested to provide any comments during the review process regarding issues or concerns with the proposed Big Dog Ranch Site Plan:: **(Note: Detailed comments and Applicant responses presented in Attachment C)**

Agency/Entity	Comment/Response Summary
County Agricultural Extension Office	Any objections from neighbors/None at this time
PBC Sheriff's Department	No response
PBC Health Department	Prior to demolition contact Florida Dept. of Health regarding Asbestos removal regulations and bio-medical hazardous waste permits/Condition of Approval
Lox. Groves Water Control District	Response (verbal)/"D" Road r.o.w. to be dedicated to the Town. No drainage issues.



Agency/Entity (continued)	Comment/Response Summary
PBC Solid Waste Authority	No issues/NA
Keschavarz & Assoc. (Town Engineer)	Several comments regarding drainage, traffic, parking and water and sewer/Ref: Attachment C)
PBC Fire Rescue	Buildings 5,000 sq. ft. and larger must contain automatic sprinklers/Condition of Approval
Simmons & White (Town Traffic Engineer)	Several comments regarding entry gates, traffic study, site plan detail, and road improvements/Ref: Attachment C)

**ATTACHMENT A**  
**Big Dog Ranch Final Site Plan: SP 2014-01**

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**ATTACHMENT B**  
**Big Dog Ranch Site Plan: SP 2014-01**  
**Conditions of Approval, as Revised by P&ZB; 1/22/2015**

**FINAL SITE PLAN CONDITIONS OF APPROVAL**

**GENERAL**

1. The conditions of approval herein shall apply to the Owner, Applicant and their successors and assigns.
2. Development of the site is limited to the uses approved by the Town of Loxahatchee Groves in Exhibit "A" (Big Dog Ranch Final Site Plan). The approved Final Site Plan is dated December 30, 2014. All modifications to the Final Site Plan must be approved by the Town Council unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC, as determined by the Town Manager.
3. Prior to submittal of any building permit applications for processing by Palm Beach County, the Town Manager shall review and approve the following plans for consistency with the approved Final Site Plan Site Plan, Landscape Plan, Floor Plans, and Photometric Plan.
5. The location of 0.99 acres of preserve area shall be identified on the Final Site Plan and included in Phase 1 improvements.

**ARCHITECTURAL**

1. Building sidings and signs materials shall mimic wood lap siding
2. Trim shall be applied at the corners of buildings
3. Wall breaks on the larger buildings shall be enhanced by using arcades, banding, and projections
4. Arcades (porch) shall be used as a means of creating human scale along the fronts of buildings
5. Metal roofing shall be used on all buildings
6. Mansard roofs and other vertical elements shall be used to break up the roof line
7. Integration of complex window elements on buildings shall be used.
8. Mechanical and service areas shall be screened from public view
9. Signage structures shall mimic building architecture



## **ENGINEERING**

1. Consistent with the Palm Beach County Mandatory Traffic Performance Standards criteria in place at the time of this approval, no building permits for the site shall be issued after December 31, 2020. A time extension for this condition may be approved by the Palm Beach County Engineer based upon an approved traffic study which complies with Mandatory Traffic Performance Standards in place at the time of the request.
2. During the plat process the Okeechobee Boulevard and "D" Road rights-of-way, as indicated on the Final Site Plan shall be dedicated to Palm Beach County and the Town, respectively.
3. An Irrigation plan shall be included with documents submitted to Palm Beach County for building permit approval.

## **LAND CLEARING AND LANDSCAPING**

1. Any land clearing activities shall comply with the permit requirements of Article 87 "Native Tree Preservation, Soil Stabilization and Invasive Exotic Removal" of the Loxahatchee Groves Unified Land Development Code. Included in the required land clearing permit application, a "Created Ecological Community Installation and Management Plan" shall be submitted for the 0.99 acre "Reserve" to satisfy the requirements of ULDC Section 85-025 (C) *"Preserved/created ecological communities."*
2. Project landscaping shall conform to the Landscape Plan dated December 30, 2014.
3. Prior to demolition of any structures, the Florida Dept. of Health shall be contacted regarding Asbestos removal.
4. The Agility Course and all Dog Runs and Supervised Dog Areas shall be covered by natural turf grass or permeable artificial surface.
5. A continuous solid opaque hedge, minimum 4-feet high at installation, shall be required around the perimeter of the entire 33.16 acre property. All hedging shall be included as part of the Phase 1 improvements and permanently maintained at a height of 6-feet.

## **EXTERIOR LIGHTING**

1. A Photometric Plan shall be submitted for review and approval by the Town Manager prior to submittal of the initial building permit application.
2. All exterior lighting shall be directed downward and contain shields to contain lighting within the property boundaries.

## **PALM TRAN**

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1. Not Applicable.

## **PARKING AND LOADING**

1. All parking and loading shall occur on site as indicated on the approved Final Site Plan dated December 30, 2014.

## **SIGNS**

1. Sign permit applications shall be submitted to the Town as required by ULDC Section 90-070 *Sign permit requirements*
2. Mandatory building identification signs (maximum sign face of 4 sq. ft.) shall be attached to each structure.

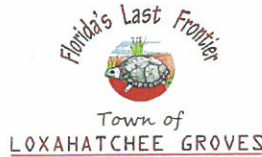
## **USE LIMITATIONS**

1. Veterinary services and dog boarding as accessory uses may be provided by a licensed veterinarian for adopted or previously adopted animals. Veterinary services and dog boarding as accessory uses may be provided by a licensed veterinarian to the public provided that the facility maintains direct access to Okeechobee Boulevard.
2. An accessory caretaker unit may be provided.
3. The number of dogs allowed shall be based upon square footage of the facility and PBC Animal Control Center regulations.
4. Outdoor animal runs shall be located a minimum of 200 feet from a directly abutting residential zoning district, be hard surfaced or grassed with drains every 10 feet and be connected to a central or individual sanitary facility approved by the PBCHD.
5. A minimum 6-foot high vinyl chain-link fence enclosing Phase 1, 2 and 3 facilities shall be included as part of the Phase 1 improvements.
6. Separate, minimum 6-foot high vinyl chain-link fences shall be required around each outdoor run area.
7. Outdoor runs shall not be used earlier than 7:00 a.m. or later than 8:00 p.m. seven days per week.
8. Swing gates shall be installed at the Okeechobee Boulevard and "D" Road entrances.
  - a. The gate along Okeechobee Boulevard shall be used as the primary facility access and open to the public from 10am to 6pm. Said gate shall be accessed after hours only by managerial and veterinary staff.
  - b. The gates along D Road shall be located a minimum of 35 feet from the western property line.

## **UTILITIES AND SERVICES**

1. A Developer's Agreement shall be executed by the Property Owner and the Palm Beach County Water Utility Department and approved by the Town of Loxahatchee Groves for the provision of central water and wastewater services to the project prior to issuance of the first project building permit.
2. Solid waste collection and disposal shall be accomplished by contract between the Property Owner and a third-party hauler prior to issuance of the initial certificate of occupancy
3. The operation shall comply with the following waste disposal standards, as appropriate: (1) PBC ECR 1 and ECR 2 and rules of FDEP, PBCHD and PBCSWA.
- 4 Prior to a Certificate of Occupancy for Phase 1, the Florida Dept. of Health shall be contacted regarding the need for bio-medical hazardous waste permits.
5. Buildings of 5,000 sq. ft. and larger shall contain automatic sprinkler systems.





**Town of Loxahatchee Groves**  
**Town Council Meeting**  
**Tuesday, April 7, 2015 - 7:00 p.m. to 10:30 p.m.**

*(Times established by Resolution No. 2014-08... commencing at 7:00 p.m., and ending no later than 10:30 p.m., which can be extended by motion of the Council.)*

Loxahatchee Groves Water Control District, 101 West "D" Road

Mayor David Browning (Seat 4)  
Vice-Mayor Ronald D. Jarriel (Seat 1)  
Councilman Tom Goltzené (Seat 5)  
Councilman Ryan Liang (Seat 3)  
Councilman Jim Rockett (Seat 2)

Town Manager William F. Underwood, II  
Town Clerk Janet K. Whipple  
Town Planning Consultant Jim Fleischmann  
Town Attorney Michael D. Cirullo, Jr.

**MINUTES**

**1. OPENING**

a. Call to Order & Roll Call

Mayor Browning called the meeting to order at 7:01 p.m. Present were Mayor David Browning, Vice-Mayor Ron Jarriel, Councilmen Tom Goltzené, Ryan Liang, and Jim Rockett. Also present were Town Manager Bill Underwood, Town Planning Consultant Jim Fleischmann, Town Attorney Mike Cirullo, and Town Clerk Janet K. Whipple.

b. Pledge of Allegiance & Invocation – Mayor Browning

c. Approval of Agenda

**Motion: Councilman Rockett made a motion to approve the Agenda as presented. Vice-Mayor Jarriel seconded the motion.**

Vice-Mayor Jarriel requested to table New Business, 10.c. until the May 5, 2015, Town Council Meeting.

Councilman Goltzené felt this should be left up to Councilman Liang. He also requested to switch Item 11. b. and 11. c. as he will have to recuse himself for the Minto discussion.

DRAFT

Councilman Liang requested to add under New Business, which will become the new 10.c. a discussion on landscape maintenance operations in Loxahatchee Groves.

**Motion: Councilman Rockett amended his motion to approve the Agenda as amended. Vice-Mayor Jarriel agreed to change his second. Upon vote, the motion passed 4/1 with Councilman Goltzené casting the dissenting vote.**

**d. Appointment of Mayor**

**Motion: Councilman Goltzené made a motion to appoint David Browning to continue as Mayor for the new three-year term. Vice-Mayor Jarriel seconded the motion. Upon vote, the motion passed 5/0.**

**e. Appointment of Vice-Mayor**

**Motion: Councilman Rockett made a motion to appoint Ron Jarriel to continue as Vice-Mayor for the new three-year term. Councilman Liang seconded the motion. Upon vote, the motion passed 5/0.**

**2. CONSENT AGENDA**

a. Invoice from Goren, Cherof, Doody & Ezrol, P.A.

b. Minutes:

- **January 6, 2015** – Town Council Meeting
- **January 20, 2015** – Town Council Meeting
- **February 3, 2015** – Town Council Meeting

**Motion: Councilman Rockett made a motion to approve the Consent Agenda as presented. Vice-Mayor Jarriel seconded the motion. Upon vote, the motion passed 5/0.**

**3. PUBLIC COMMENTS**

Vice-Mayor Jarriel stated that he felt the people who are here this evening will be saying the same thing during the next meeting (concerning the Big Dog Ranch), and wanted to know if that was alright.

Karen Piesley, 2201 D Road, provided a presentation concerning issues she felt were important concerning the Big Dog Ranch. She spoke for herself, and four (4) other people, which allowed her a fifteen (15) time frame to present her concerns.

Laura Danowski, 1032 E Road, noted that two (2) members of the Town Council were under investigation. This matter has to be repaired, and the Town cannot move forward until the matter has been taken care of. She cautioned the Council.





Simon Fernandez, 14701 Okeechobee Boulevard, stated he was against the Big Dog Ranch proposal.

Rick Eifler, 2141 D Road, stated he was against government getting involved. Dogs barking can affect property values. If Council votes to allow Big Dog Ranch, they will be responsible to all the residents

Canidad Trujillo, 14689 21<sup>st</sup> Road North, is opposed to Big Dog Ranch; as feels the barking will increase the heart rate and affect health.

Joyce Batcheler, 760 E Road, thanked those involved for the research. She also felt the Municipal Election was an embarrassment. Town residents have constantly asked for horse trails and roads, she is not sure the trail system will ever happen. She also feels there are safety issues with dust on the roads.

Ken Johnson, 15409 Collecting Canal Road, felt the Town does need horse trails, but he wanted to talk about fairness for all residents. He discussed the garbage pickup in Town noting that businesses should have dumpsters and not put their garbage on the roads for the residents to pay for. The Town needs an ordinance, to in fact, insure that commercial businesses do have dumpster, and to also establish a fee based on what is or is not on the property.

Josh Lininger reported he has a situation of the nursery adjoining his property. Their trash is a problem; he requested Council please help stop this from happening.

Todd McLendon, reference illegal activity during the Municipal Election.

Mayor Browning stated public comments should not be personal.

**4. PRESENTATIONS – NONE**

**5. COMMITTEE REPORTS**

- a. Virginia Standish, Chair of the Finance Advisory and Audit Committee (FAAC) to present the Financial Report ending February, Fiscal Year 2015.

Virginia Standish, Chair of the Finance Advisory and Audit Committee provided the Financial Report ending February Fiscal Year 2015.

Council asked questions pertaining to revenue, and when roads could be paved.

Councilman Rockett requested a discussion at the next Town Council meeting allowing public comments for all committee meetings.

Town Manager Underwood reported that a Bill had been passed and that he would discuss the topic with the Town Attorney.



**Motion:** Councilman Rockett made a motion to approve the Financial Report ending February, Fiscal Year 2015. Vice-Mayor Jarriel seconded the motion. Upon vote, the motion passed 5/0.

## **6. RESOLUTIONS**

- a. **RESOLUTION NO. 2015-09: QUASI JUDICIAL/PUBLIC HEARING:** (*Big Dog Ranch Special Exception & Site Plan Approval*)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPROVING THE BIG DOG RANCH SPECIAL EXCEPTION AND SITE PLAN, FOR LAND OWNED BY TLH 25 VILLA, LLC CONSISTING OF 33.16 ACRES MORE OR LESS, LOCATED AT THE SOUTHEAST CORNER OF OKEECHOBEE BOULEVARD AND "D" ROAD LOXAHATCHEE GROVES, FLORIDA, LEGALLY DESCRIBED IN EXHIBIT "A" TO THIS RESOLUTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE. (*Staff recommends continuation to a date certain of the April 21, 2015, Town Council Meeting*).

Town Manager Underwood noted the request to remove came from the applicant.

Council relayed their opinions on delaying the discussion as it might weaken the opposition, and that Council has already approved the proposed development. This resolution is only the site plan approval.

Mayor Browning stated if the applicant asked for a continuance the Council should comply, but he suggested that is be established that no more will be granted.

Council discussed the special exception request and needing due process; dumping along private property and Southern Boulevard and that the organization is making a lot of money even though they are not for profit.

**Motion:** Councilman Rockett made a motion to deny Resolution No. 2015-09. Vice-Mayor Jarriel seconded the motion.

Town Attorney Cirullo stated there has to be a Public Hearing and to not pass the motion.

Councilman Rockett withdrew his motion.

**Councilman Goltzené made a motion to move Resolution No. 2015-09 to the Town Council Meeting of April 21, 2015. Councilman Liang seconded the motion. Upon vote, the motion passed 4/0 with Councilman Rockett abstaining.**

Mayor Browning called for a break 8:10 p.m. to 8:16 p.m.





**ORDINANCES – NONE**

**7. MANAGER'S REPORT – *Town Manager Underwood***

- a. **Agenda Item Report (AIR)** - Updates on various activities and issues concerning the Town

Town Manager Underwood provided his Manager's Report, noting the Town is now the owner of a new Town Hall Building on one and one-half acres. The new address is at 155 F Road.

Town Attorney Cirullo explained the procedures to schedule a workshop.

**Motion: Vice-Mayor Jarriel made a motion requesting a one (1) hour workshop with the Loxahatchee Groves Water Control District in order to settle the trails issue on April 21, 2015, at 6:00 p.m. prior to the regular Town Council Meeting. Councilman Rockett seconded the motion.**

Councilman Goltzene reminded Council that Big Dog Ranch is on the Town Council Agenda that evening.

**Vice-Mayor Jarriel amended his motion to schedule the workshop the second Town Council Meeting of May, on May 19, 2015, at 7:00 p.m. Councilman Rockett amended his second, and requested to dedicate the workshop to horse trails. Upon vote, the motion passed 5/0.**

There was a brief discussion on quick claiming a deed from the Loxahatchee Groves Water Control District (LGWCD) to the Town for B Road. Town Attorney Cirullo will conduct research and bring the item back for the April 21, 2015 Town Council Meeting.

**Motion: Councilman Rockett made a motion to draft a letter for the Mayor to sign, and send it the LGWCD to confirm paving B Road per the agreement. Vice-Mayor Jarriel seconded the motion. Upon vote the motion passed 4/0. Councilman Goltzené recused himself as he has a business relationship with the developers of the Loxahatchee Groves Commons.**

**8. OLD BUSINESS**

- a. Consideration to hire a reliable hunter/trapper contractor who is licensed and bonded, and having the capability and resources to remove or eradicate the current coyote nuisance problem within the Town of Loxahatchee Groves.

Town Manager Underwood explained each vendor's proposal and noted that approval would have to come from each property owner for access on their land.



Council discussed cost to hunt coyotes, residents contacting the vendors personally, the Town establishing a bounty, and that residents needing a trapper could come to Town Hall and fill out a permit. Council felt something had to be done about the coyote situation.

Members of the audience also expressed their ideas and opinions.

**Motion: Councilman Rockett made a motion to move forward and hire the Jupiter hunter/trapper, have legal get involved and bring a proposal back to Council for immediate action. Vice-Mayor Jarriel seconded the motion. Motion failed 2/3 with Mayor Browning, Councilman Goltzené and Councilman Liang casting dissenting votes.**

### **NEW BUSINESS**

- a. Notification to Council that during the Town Council Meeting on April 21, 2015, each Council Member will be appointing board members of their choice to the respective Town Boards.

Town Manager Underwood stated that during the next Town Council Meeting of April 21, 2015, each Council Member will appoint/reappoint their choice for members of the various Town Boards. He also stated that he would be bringing an ordinance forward to put all appointees on the same schedule for a one year term. An ordinance establishing criteria for the Planning and Zoning/Land Planning Agency (P&Z/LPA) will be presented during the April 21, 2015, Town Council Meeting. The Finance, Advisory, and Audit Committee (FAAC) and the Roadway, Equestrian Trials and Greenway Advisory Committee (RETGAC) Members will be selected during the April 21, 2015, Town Council Meeting, and the Planning and Zoning Board will be selected at the May 5, 2015 Town Council Meeting.

Mayor called for a break 9:00 – 9:10 p.m.

- b. Requesting consideration for work authorizations to perform miscellaneous ordinances and Unified Land Development Code (ULDC) reform.

Town Manager Underwood explained the need for the work authorizations.

**Motion: Vice-Mayor Jarriel made a motion to proceed with a work authorization for \$3,000 to take care of the residual issues. Councilman Goltzene seconded the motion. Upon vote, the motion was approved 5/0.**

- c. Consideration in determining whether forfeiture provisions to remove a Town Council Member in question, falls within the parameter of the Town Charter. *Note: New Business, Item 10. c. was removed from this meeting.*

New Business, Item 10.d. was added - referencing landscape maintenance operations in Loxahatchee Groves. Councilman Liang explained his request, noting that landscape companies are not allowed in the Town's Unified Land Development Code.





Town Attorney Cirullo stated this information needs to be placed on a future agenda.

Motion: Councilman Liang made a motion to place the landscaping discussion on the agenda for the first June meeting, Councilman Goltzene seconded the motion pending review by the Planning and Zoning Board first.

Members of the audience expressed their opinions.

Mayor Browning explained that there was a difference between landscaping and nurseries.

Upon vote, the motion failed 2/3, with Mayor Browning, Vice-Mayor Jarriel and Councilman Goltzené casting dissenting votes.

## **11. COUNCIL REPORTS**

Vice-Mayor Jarriel:

- a. Discussion requesting the Town Attorney to draft a resolution supporting three (3) man rescue vehicles at Fire Stations 21 and 26 and all other stations.

**Motion: Vice-Mayor Jarriel made a motion for legal to draft a resolution to be sent to the Palm Beach County Board of County Commissioners requesting to up staff Station 21 Fire Rescue Truck 21 to three (3) personnel units, as well as Station 26 Fire Rescue Truck in the Acreage. Councilman Rockett seconded the motion.**

Town Attorney Cirullo reiterated comments by Council that in order to expedite the request, it would be more effective that a motion to write a letter to the Palm Beach County Board of County Commissioners stating that the Town of Loxahatchee Groves supports the up staffing of Station 21 and Station 26 Fire Rescue to three (3) personnel per unit, and that Vice-Mayor Jarriel has been authorized to approach topic with them personally.

The motion was changed to reflect the discussion.

**Upon vote, the motion passed 5/0.**

*Note: 11.b. and c. were placed in reverse order at the beginning of the meeting.*

- b. Discussion concerning class III waste delivery to Town properties, (class III waste is yard trash, construction and demolition debris, processed tires, asbestos, carpet, cardboard, paper, glass, plastic, furniture other appliances, or other materials approved by the Department that are not expected to produce leachate which poses a threat to public health or the environment. *(Attachment)*

**Motion: Vice-Mayor Jarriel made a motion to have an ordinance drafted to stop all mulch from coming into Loxahatchee Groves by the tractor trailer loads.**



Council discussed stopping illegal dumping now; class III mulch is trash; not banning legitimate mulch; the mulch site on D Road is not a good neighbors, and having to protect the community.

**Motion dies for lack of a second.**

**Motion: Councilman Goltzene made a motion to deny class III waste.**

Discussion by Council.

**Councilman Liang seconded the motion.**

Members of the audience provided their opinions and thoughts on this matter.

**Upon vote, the motion passed 4/0.**

Town Attorney Cirullo will get information for this ordinance.

- c. Discussion requesting reconsideration of cooperation with John Carter from Minto West for assistance in the planning of the Okeechobee Boulevard Corridor.

**Councilman Goltzené and Councilman Liang both recused themselves from the discussion, and left the dais at 9:55 p.m.**

Council discussed the need to be proactive in regard to Minto, and that the Town needs to provide a design of its own concerning the Okeechobee Boulevard Corridor before it is too late.

Councilman Rockett read, for the record, a comment from Suzanne Hetrick who was against Minto.

Comments were heard from members of the audience who expressed their opinions for or against the development.

- a. Public

Mayor Browning read into the record a Comment Card from Damon Rockett, 14095 43<sup>rd</sup> Road North and 1686 D Road North, stating of his strong opposition to the Big Dog Ranch proposal.

Bill Louda, 1300 E Road, addressed various issues of his concern regarding trails, parking at the District office, and permits for trailers/recreational vehicles.

Keith Harris, 7580 C Road, would like to offer thoughts to Council. He recommends highly that residents be available to serve the Town on committees. The Roadway Equestrian Trails and Advisory Committee (RETGAC) are passionate Board Members. He apologized for his actions during one specific meeting, and to those Board Members he may have offended.





Virginia Standish, 15410 North Road, requested the easements be referred to as recreational trails for anything non-motorized, make safety a priority, for Council and their attorneys to review the house bills, provide information to the public, and the get surveys.

Councilman Liang back at 10:10 p.m.

Dennis Lipp, 13402 North Road, regarding the Planning and Zoning Workshops for the Okeechobee Boulevard Corridor, the Board will be recommending ten foot (10') equestrian lanes, and is hoping people will drive slower. The Board will need to know how people will be getting into and out of locations, and that the results of the Workshops will be presented to Council soon, as a vision of the future

**b. Town Attorney**

Town Attorney Cirullo had no additional reports; however, he turned his time over to Town Manager Underwood.

Town Manager Underwood advised Council of the Town Hall move which should be April 23<sup>rd</sup> and 24<sup>th</sup> and at that time the offices will be closed.

**c. Town Council Members**

Vice-Mayor Jarriel read into the record a letter concerning illegal absentee ballots, which was not signed; he had a problem with the contents. He reminded everyone to be safe going home.

Councilman Liang thanked Keith Harris for his apology, which he appreciated. He wished everyone a good night.

Councilman Rockett wished everyone a good night.

Mayor Browning encouraged everyone to come back for the next Town Council Meeting in order to participate in the Big Dog Ranch discussion. He also wished everyone a good night, and thanked Council for re-appointing him as Mayor for another year.

**12. ADJOURNMENT**

There being no further business to come before the Town Council, Mayor Browning adjourned the meeting at 10:20 p.m.

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**Janet K. Whipple, Town Clerk**

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**David Browning, Mayor**

*These minutes were approved during the June 16, 2015 Town Council Meeting.*





## Town of Loxahatchee Groves

### Town Council Meeting

Tuesday, April 21, 2015 - 7:00 p.m. to 10:30 p.m.

*(Times established by Resolution No. 2014-08... commencing at 7:00 p.m., and ending no later than 10:30 p.m., which can be extended by motion of the Council.)*

Loxahatchee Groves Water Control District, 101 West "D" Road

Mayor David Browning (Seat 4)  
Vice-Mayor Ronald D. Jarriel (Seat 1)  
Councilman Tom Goltzené (Seat 5)  
Councilman Ryan Liang (Seat 3)  
Councilman Jim Rockett (Seat 2)

Town Manager William F. Underwood, II  
Town Clerk Janet K. Whipple  
Town Planning Consultant Jim Fleischmann  
Town Attorney Michael D. Cirullo, Jr.

### MINUTES

#### **1. OPENING**

- a. Call to Order & Roll Call

Mayor Browning called the meeting to order at 7: 01 p.m. Present were Mayor David Browning, Vice-Mayor Ron Jarriel, Councilmen Tom Goltzené, Ryan Liang, and Jim Rockett. Also present were Town Manager Bill Underwood, Town Planning Consultant Jim Fleischmann, Town Attorney Mike Cirullo, and Town Clerk Janet K. Whipple.

- b. Pledge of Allegiance & Invocation – Mayor Browning
- c. Approval of Agenda

**Motion: Councilman Liang made a motion to approve the Agenda as presented. Councilman Rockett seconded the motion. Upon vote, the motion passed 5/0.**

#### **2. CONSENT AGENDA**

- a. Minutes: **February 17, 2015** – Regular Town Council Meeting



Motion: Councilman Liang made a motion to approve the Consent Agenda as presented. Councilman Rockett seconded the motion. Upon vote, the motion passed 5/0.

### 3. PUBLIC COMMENTS

*Virginia Standish responding to Jim rockets request , ken wanted a motion during the the meeting*

### 4. PRESENTATIONS – NONE

### 5. COMMITTEE REPORTS - NONE

*(Clerk Note: Due to potential lengthy discussion on Resolution No. 2015-09, it will be placed on the Agenda as the last resolution. The resolution numbers will be out of sequence).*

### 6. RESOLUTIONS

- a. **RESOLUTION NO. 2015-13:** *(Council Board Appointments for Financial Audit and Advisory Committee (FAAC)).*

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPOINTING (2) ROCKETT - GREG TIDBALL,  
(3) LIANG - ELISE RYAN, (4) BROWNING - KEN JOHNSON,  
(1) JENNIE - LONG CHIU, AND  
(5) GOUTZENS - VIRGINIA STANDISH, AS VOTING MEMBERS OF THE FINANCE ADVISORY AND AUDIT COMMITTEE, TO SERVE TERMS OF ONE (1) YEAR; PROVIDING FOR AMENDMENT OF SECTION 2(I)(E) OF RESOLUTION 2009-014, TO PROVIDE FOR TERMS OF VOTING MEMBERS TO BE ONE (1) YEAR; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

*(Clerk Note: There will be two motions – one for approval of the names selected, and one for the Resolution)*

- b. **RESOLUTION NO. 2015-14:** *(Council Board Appointments for Roadway, Equestrian Trails and Greenway Advisory Committee (RETGAC)).*

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPOINTING \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, AND  
\_\_\_\_\_, AS VOTING MEMBERS OF THE ROADWAY, EQUESTRIAN TRAILS AND GREENWAY ADVISORY COMMITTEE, TO



SERVE TERMS OF ONE (1) YEAR; PROVIDING FOR AMENDMENT OF SECTION 2(I)(E) OF RESOLUTION 2011-005, AMENDED BY RESOLUTION 2015-014 TO PROVIDE FOR TERMS OF VOTING MEMBERS TO BE ONE (1) YEAR; PROVIDING FOR CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

*(Clerk Note: There will be two motions – one for approval of the names selected, and one for the Resolution)*

**QUASI JUDICIAL**

- c. **RESOLUTION NO. 2015-09 / QUAIS JUDICIAL/PUBLIC HEARING:** *(Big Dog Ranch Special Exception & Site Plan Approval). (Moved to a date certain from the April 7, 2015 Town Council Meeting).*

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, APPROVING THE BIG DOG RANCH SPECIAL EXCEPTION AND SITE PLAN, FOR LAND OWNED BY TLH 25 VILLA, LLC CONSISTING OF 33.16 ACRES MORE OR LESS, LOCATED AT THE SOUTHEAST CORNER OF OKEECHOBEE BOULEVARD AND “D” ROAD LOXAHATCHEE GROVES, FLORIDA, LEGALLY DESCRIBED IN EXHIBIT “A” TO THIS RESOLUTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Attorney Cirullo explained the quasi-judicial hearing process, and provided the procedures for the amount of time allowed for each presentation. After all presentations, reverse order would be in play. He explained relevancy. At the end of the hearing Council will determine the outcome, and the Town Attorney will prepare a written order.

Town Attorney Cirullo swore in those wished to speak under the quasi-judicial hearing.

Marty Perry, Esq., attorney for the Big Dog Ranch, asked if there were any Council Members who have had ex parte communications.

Mayor Browning stated that various people call him who were sent to him for **information**??

Mr. Perry questioned whether Councilman Rockett would be recusing himself.

Councilman Rockett stated yes, he would be recusing himself, as he owns property south of the Big Dog Ranch proposed location. He left the dais.

Perry made his introductions, and noted others will be utilizing the 30 minutes. This big dg ranch is similar to the existing facility and compared to peggy adams.

Mike interjected the special exceptions are included in agenda

Perry address the town requirements to date. Licensed vet is being withdrawn.

Mike what is in the agenda is correct

Jef brophy? land design south introduced himself and provided a powerpoint on site plan which was redesigned. Described location and showed photos of current big dog ranch facility. Addressed the text amendment that was approved in 2013. 2013-013. He reviewed the requirements for the condition of approval. Minimum set backs architecture must meet rural vista guidelines. Location. Provided the original site plan. On march 24, 2015 community meeting they presented the plans at the chamber. Noise housing of dogs and supervised dog runs-landscaping security fencing 10 acre parcel –sound system for acoustics to listen for barking, waste disposal, pressure washers and drains and sanitized, outdoor manure it is promptly pick up and put in dumpster and picked up three time per week it will be a puppy toilet it will be put into a dog toilet that will go into the sanitary sewer system. Site plan redesigned and dogs are within the nw part of the site next to fire rescue. # of dogs 400 grown dogs, 100 additional puppies, all dogs housed inside, bdg 15 +/- dogs per acre. Community contribution-as not profit it would be no money to the town they will give approx. 7000 a year in lieu of taxes. Horse trail 15 ft easement on d road and Okeechobee. There are 10 criteria that need to be met, 10-6 every day for adoption of dogs. No public access d

Perry will offer thumb drive for the record

Ta said some of those who spoke on the video were not sworn in so the council will have to take it as it is.

Jarriel asked ...

Jeff responded

Tom relative to the pilot payment explain

Marty perry reference the 50000 for the ogem the 7000 is a down payment. Perry would build the road or however he want the town to proceed

Tom wants town to do the road and the town get the road. not include the district

Perry we can work this out

Tom not objecting to getting the money or the

Perry it is an open page

Tom re ogeming there may be a traffic light or some other traffic calming devise was he aware re the dedication to the turn lanes



Perry cost of turn lane in negligible  
Mayor urine will go into the ground  
Are you connecting to the sewer system

Jeff county sewer system

Tom can't they put drain under runs

Mike swore in lori simmons

Lori simmons dir? Of bdr spoke on how drainage is will be disbursed liner under to pea rock

Tom re noise monitoring will they be monitoring so that residents do not have to call in  
Tom current location does not meet our requirements. This is one of the most valid complaints

Perry we will be several steps above peggy adams

Ron how many acres for peggy adams 30 acres

Town staff jim fleischmann explained staff responsibility. Tonight is special exception and site plan approval currently is rr5 Ar zoning – no changes required. Staf finds the proposed site plan consistent with the towns criteria and recommends approval subject to the conditions of approval staff approval on pgs 51-54. He provide floor to area ratio. He noted 10 conditions which need to be met. 3 site plan requirements must be met. Special exception review standards was evaluated. Noise and buffers had been addressed. Restriction for time use on outdoor runs. Sound monitoring devices must be approved by council. Applying 1.2 mills it came to about 6000 per year. The 7000 is a little more.

Ron would theybe willing to go up if we raise our millage rate

Jim fleischmann actually they are paying more. A condition of approval will be on okee from m10am to 6 pm. This is not peak time on okee, horse trail requirements. Single driveway. On okee. Recommendation staff finds the plan .....recommends approval of recommended site plan.

Ron ?

Public comments:

Dennis lipp

Peisley??

Major Daniel smith pbso responds to dog calls and this is a problem. Big dog has been

very beneficial to them they support the bdr.

Brenda skaggs. Are the residents here are they from lox groves. Will they ever allow the residents to vote.

Collend choquest in support of bdr a wonderful cause

Jeff choquet 13472 compton a great addition to our community in support

Ira groosaman was originally concerned with the mixing and the boarding?? What about cats not against rescue organizations his big concerns is the importing new animals into our pet population if animal care does not get their pets adopted they are euthanized what will happen if these dogs don't get adopted . he is against

Brian tuttle hilsboro, a developer trying to help bdr move to lox groves. He came a few years ago and council said they like the idea and gave them ideas. They have met every conditions of approval. They are following every criteria he is the finance guy. We have to stick with the basics. There are no variances asked for. They have fulfilled all the rules. Vote to approve this project.

James

Ta swore him in

James lox groves is fortunate to have an organization like this come into town. He know the simmons professionally. He referred to generators that create a loud noise level. Birds crickets guns make noise. Professional facility this is an asset to the community

Video- (janet??) lives about 2000 yds away from the current bdr excess traffic, barking dogs, her big concerns barking and traffic make sure the residents have someone to turn to if there are concerns.

Frank Schiola wasn't going to speak until he got a flyer from bdr about those opposed the bdr. Asking for his support

Harold murphy in support he has 10 acres on d road he explained about an abused dog that his family adopted

Doreen baxter was for bdr then started doing research she is still in support of bdr. Noise is a concern she averages 9 to 12 dogs at a time during the day there should be phone number for residents to call. She would like bdr to participate in the exchange program and not take from out of state. Property values are a concern

Sharyn browning reported on the speaker who had selective hearing and said the town wanted the facility. there is a lot of noise we want no noise low light low traffic we want a rural lifestyle. She would not like to deal with all the complaint follow up staff has to handle common sense should prevail she is against don't insult our intelligence she is concered about the noise throughout the day. She doesn't want complaints



Perry point of order shouldn't Sharon request herself

Mayor to Mike

Mike everyone can give their opinion or fact.

Jessica was sworn in in support of bdr. This is bringing communities together. Lucky they picked our town. There is a group who has spent their own money to help animals?? Huge gain to our community.

Carol Chapus approve bdr and spoke about the first attempt on Bryan Road she owns a rescue and has been out here for 20 years. This is not going to be a cage rage issue. We have to defend old people kids and animals, there is a lot of support within Loxgroves residents.

Candice Lafontaine, staff are the experts here. Bdr is in compliance with the town's comp plan in support

Jim from Peggy Adams spoke of their facility no complaints

Dr Susan Baker has been sworn in and is vet for bdr she explained how the dogs are processed. She spoke of vet facilities

Virginia Overmeyer was sworn in. She has two dogs from bdr Dr Grossman has treated her dogs. She is fully in support the facility was so clean

Alex Fedor from Raymond Dr lived there 145 years bdr will be an asset to our community

Damon Howell been here for 15 yrs Mrs Simmons has a reputation that is nationwide. This is a state of the art facility. This will be an asset. In support

Ted Obermeyer in favor

Guys from Wellington fostering a dog from Big Dog Ranch and thinkd Big Dog Ranch would be a great asset. His friend lives next to bdr and there is no barking"

Tim Acoustic specialist knows noise is a concern. He explained how the facility is designed to alleviate noise decibels.

Tricia on Casey Rd full time resident for 13 years. In support of bdr. Shared her experience with her backyard neighbor who has dogs in a cage free environment. She does hear anything out of the ordinary. Other neighbors have barking dogs. In support of bdr and hopes council will support she also lives next to 3 drug rehabs

Laurie Simmons director of bdr she is here to save lives. They take 10 to 15 dogs a

week from owner surrender. They have done everything the otwn has asked them to do. She wants something for the residents to be proud of. She has reported the lady on the video for neglect of horses and her dogs are infested. She does not like their current facility she will not be noisy, she wants the residents to be proud.

James CrowleyMike swore him in an attorney wants council in support bdr

Terry marcela blv supports bdr. They are a wonderful asset

Mayor read 1 for 1 for 1 for 1 for 1 for 1 for 1 for

Jennifer swanson not a neighbor but this community needs another small animal facility. Give them a chance

?? pbc only saved 44 dogs. Did the noise test at peggy adams come from dogs outside. Not in support

Grace joyce 147 ave she also sits on the lpa they wanted a land use amendment the lpa said no. the lpa created regulations council approved, nobody came they spent hours and weeks on this for standards and criteria no one came to the public meetings. The lpa provided recommendations for council. This app must be based on consistency of the code and standards. Council has to go with the regulation and they have brought everything required.

Mayor 1 oppose 1 oppose 1 oppose

Damien rockett mike swore him in he asked council if they wanted this facility next to them

Ken Johnson has questions; there are al least two homes on their facility he wants to know how many people will live in those homes, housekeepers home how many people, 2 nd question garbage pick for the residences, how much of the road are they paving, how much of the taxes will affect the neighbors,???noise what is the penalty if they do not control noise. How many man hours have we spent move 10 miles west on southern blv

Cassie suchie a staunch advocate but received a call bad mouthing residents who were against them, she felt she had to speak is this commercial facility disguised as a non profit. She in jan 3091 people came to the animal care and control who needed helpnot to mention other visitors. She did not support

Gay okee lived here 25 years she like the concept but does not want the facility next to her. She cannot get out of her driveway now. They need to locate somewhere else. She does not want this across the street from her

Karen piesley provided her presentation concerning she reported the dogs from animal care wh were put down she does not like the dogs from coming in from out of town. She



Ryan receive and file no second

Karen simmons own 35 acres on gunclub why do they not want to put their facility there. How loud and consistency of noise.

Todd mclendon agrees with grace joyce and does not see how the council cannot approve this. He does not think they should get a tax credit for the road. we do not have animal control rules

Closed public comments 9:48

Mayor called for a break 9:48-9:58

Mike explained the reverse rules of order.

Jim fleischmann

Perry rebuttal especially on violation of noise, re ogem issue mr tuttle will pay for the ogem vet services are stricken from plan. Every effort has been made to adhere to the requirements they want to be a member of the community. Council are judges tonight since it is a quasi judicial. How is the mayor going home if they vote in favor after sharyns comments. They must vote what has been presented and complied with. He wanted to see people from lox groves. They phone surveyed 100 residents.

#### Council comments

Tom commented on dumped dogs. It would be nice to have dogs poicked up in lox groves be sent to bdr and given back to owners. Re mr tuttles comments on paying and he wants the turn lanes done. And the road done in asphalt.

Perry comments

Tuttle wants comments of the rest of council before he commits.

Ron He is voting on facts he listened to pros and cons from residents. The engineering design is beautiful. He like the facility will be spread out . he will make his decision after he listens to both sides.

Ryan after listening to both sides. Are they currently participating to count down to zero program.

Simmons yes she has been apart of that program. They only take last day dogs.

Tom what are the plans in case of hurricanes or natural disaster

Perry generators are available

Mayor staff did not tell him that pbc did not allow this type of facility in rural residential. Shame on everyone who did not know this. Staff included. He does not want the residents picking up the cost of dumping, he would like to raise the 7000 per year. Wants an excavator he like that they will pay for the road. something surprised him he had 35 emails 30 live outside lox groves only three were registered voters. Listen to numbers....

He does not appreciate people coming in from somewhere else

Tuttle said mabe we can do the same as save our homes maybe he can make a donation to the town of 100000 and the town can do whatever they want. There is no issue with the dumpster. No more than 8 people live in the homes

Mike read the resolution and explained the need to address the conditions in the motion

Withdrawn public vet public boarding , 10000 for road on d road to end of property line

Motion to go adjourn AT 10:27 AND AND TABBLE THE REST OF THE ITEMS TILL NEXT MEETING passed 10:30

## **ORDINANCES**

- a. **ORDINANCE NO. 2015-02 / FIRST READING:** *(Council Board Appointment for Planning & Zoning Board / Local Planning Agency (LPA) Members).*

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, AMENDING ORDINANCE 2011-011, WHICH ESTABLISHED THE TOWN'S PLANNING AND ZONING BOARD, AS AMENDED BY ORDINANCE 2012-02, TO AMEND SECTION 2, SUBSECTION ENTITLED "COMPOSITION AND TERM OF OFFICE", TO CHANGE THE TERM OF OFFICE FOR PLANNING AND ZONING BOARD MEMBERS FROM THREE YEAR TERMS TO ONE YEAR TERMS; PROVIDING FOR CONFLICT, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

- b. **ORDINANCE NO. 2015-03 / FIRST READING:** *(Prohibiting Disposal of Waste Materials)*

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOXAHATCHEE GROVES, FLORIDA, PROHIBITING THE DISPOSAL OF WASTE MATERIALS, AS DEFINED HEREIN, WITHIN THE TOWN; PROVIDING FOR DEFINITIONS; FINDING



THAT A VIOLATION OF THIS ORDINANCE SHALL BE DEEMED A NUISANCE; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

**7. MANAGER'S REPORT** – *Town Manager Underwood*

- a. **AGENDA ITEM REPORT (AIR)** - Updates on various activities and issues concerning the Town.
- b. **PBSO District 15, Loxahatchee Groves Monthly Report March 2015:** *(On File)*
- c. **Fire Rescue Response Time for February and March 2015:** *(On File)*

**8. OLD BUSINESS**

- a. Consideration for donation to the Loxahatchee Groves Elementary School's PTO Annual Spring Carnival and Silent Auction. Presentation was made during the January 20, 2015 Town Council Meeting, and Council chose to make a decision during a following meeting.

**9. NEW BUSINESS**

- a. Consideration to engage the Town's engineer to undertake and perform all activities necessary to implement the B Road improvements as envisioned through the B Road Agreement, the Town's portion of the B Road improvements and Resolution No. 2015-08.

**10. COUNCIL REPORTS**

**11. CLOSING COMMENTS**

- a. Public
- b. Town Attorney
- c. Town Council Members

**12. ADJOURNMENT**

*The next regular Town Council Meeting is tentatively scheduled for May 5, 2015.*

**TOWN COUNCIL MEETING MINUTES, TUESDAY, APRIL 21, 2015**

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**Comment Cards:** Anyone from the public wishing to address the Town Council must complete a Comment Card before speaking. This must be filled out completely with your full name and address and given to the Town Clerk. During the meeting, before public comments, you may only address the item on the agenda in which is being discussed at the time of your comment. During public comments, you may address any item you desire. Please remember that there is a three (3) minute time limit on all public comment. Any person who decides to appeal any decision of the Council with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose, may need to ensure that a verbatim record of the proceedings is made which included testimony and evidence upon which the appeal is to be based. Persons with disabilities requiring accommodations in order to participate should contact the Town Clerk's Office (561-793-2418), at least 48 hours in advance to request such accommodation.

PALM BEACH COUNTY COMMISSION ON ETHICS  
**PROBABLE CAUSE RECOMMENDATION**

To: Commission on Ethics  
From: Christie E. Kelley, Esquire  
Re: C15-016 – James Rockett, Council Member, Town of Loxahatchee Groves

All background information and facts from the Legal Sufficiency Determination, Memorandum of Investigation, and supporting documents are adopted by reference into this Probable Cause Recommendation.

- **Recommendation**

A finding of NO PROBABLE CAUSE should be entered in the above captioned matter as to the allegations made in the Complaint, but a LETTER OF INSTRUCTION should be issued.

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

- **Jurisdiction**

The COE has jurisdiction pursuant to Chapter 2, Article V, Division 8, section 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) Countywide Code of Ethics;
- (2) County Post-Employment Ordinance, and
- (3) County Lobbyist Registration Ordinance.

Sec. 2-442. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*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...

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:
  - (3) A sibling or step-sibling, child or step-child, parent or step-parent, niece or nephew, uncle or aunt, or grandparent or grandchild or either himself or herself, or of his spouse or domestic partner, or the employer or business of any of these people;

- (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). (Emphasis added)

- **Analysis**

The investigation revealed that on April 7, 2015, Respondent participated in a discussion on the merits of a Town of Loxahatchee Groves (Town) Resolution that Respondent believed he could not vote on because of a conflict of interest concerning property owned by his son situated directly south of the Resolution's subject property. When the Town Council voted on the issue of rescheduling the public hearing, Respondent abstained from voting, but he did not announce this potential conflict of interest or recuse himself until after he had participated in extensive discussions during the meeting that addressed the merits of the Resolution. Then, at the April 21, 2015 Town Council meeting, Respondent stated that he was recusing himself from the matter and left the dais prior to the public hearing. He did not participate in the discussions or vote on the Resolution at the April 21, 2015 meeting.

The evidence shows that Respondent believed he had a possible conflict of interest in the matter. Thus, the issue here is whether the mere "belief" that one has a prohibited conflict of interest in a matter is sufficient to find a violation of Sec. 2-443(c) if the official participates in discussions or votes on the matter, or whether an unlawful "special financial benefit" must be proven in order for such a violation to occur, regardless of whether the party believes that such a special financial benefit may exist. As stated in the investigative report, this area of law is unsettled, with no cases or advisory opinions directly on point. Florida cases and advisory opinions that involve voting conflicts tend to be based on whether a financial benefit meets the standard of a private gain or loss and whether the potential benefit is remote and speculative.

There is some evidence showing that a financial benefit or loss to Respondent's son would occur from the passage of the Resolution. The most significant evidence on this point is Respondent's recusal from voting and his Form 8B which listed his reason for not voting on the issue as "potential of property south of the Big Dog Ranch request for variance could be perceived to benefit a member of my family. To avoid any risk of perceived or subsequent accusation of impropriety, I recuse myself from the vote relative to the Big Dog Ranch request." Additionally, Respondent's son made a statement during the April 21, 2015 meeting which could infer that he believed the proposed project would negatively impact the value of the adjoining (family-owned) property.

However, while Respondent's participation in a discussion on the merits of the Resolution at the April 7, 2015 meeting may have violated Sec. 2-443(c) of the Palm Beach County Code of Ethics, Respondent's error in participating in that discussion was corrected at the April 21, 2015 meeting, when Respondent did not participate in the discussions or vote on the Resolution, which Respondent opposed. Since the Resolution was passed 3-1, Respondent's initial error did not affect the passage of the Resolution.

Finally, the Town Attorney stated that he advised Respondent to seek guidance from both the Florida Commission on Ethics and the Palm Beach County Commission on Ethics. The facts show that Respondent only contacted the Florida Commission on Ethics and followed their advice on the matter by not voting. Respondent failed to contact the Palm Beach County Commission on Ethics regarding this issue. Respondent's decision to not fully follow the Town Attorney's advice is significant because state law only prohibits Respondent from voting on a matter where he has a potential conflict of interest, while the Palm Beach County Code of Ethics prohibits Respondent from both participating in any way and voting on such matters.

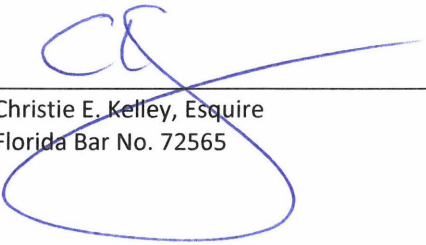


- **Conclusion**

Based on the facts and circumstances, I recommend that a finding of **NO PROBABLE CAUSE** for Respondent's alleged violation of §2-443(c), *Disclosure of voting conflicts*, be entered because the evidence may not support a probable cause finding if an actual "special financial benefit" must be proven by clear and convincing evidence.

However, I also recommend that the Palm Beach County Commission on Ethics issue Respondent a **LETTER OF INSTRUCTION** advising him that in the future, where he believes he has a voting conflict on a matter before him, he must abstain from voting and not participate in any way in such a matter, publically disclose the nature of the conflict, file a completed Form 8B with the person responsible for recording the minutes and file a copy of the completed form contemporaneously with the Palm Beach County Commission on Ethics.

By:



Christie E. Kelley, Esquire  
Florida Bar No. 72565

7-29-15  
Date