



Palm Beach County Commission on Ethics

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December 12, 2014

Councilman Howard Coates, Jr.
505 South Flagler Drive, Suite 300
West Palm Beach, FL 33401

Re: RQO 14-036
Conflict of Interest

Dear Councilman Coates,

Your request for an expedited advisory opinion pursuant to Commission on Ethics (COE) Rule of Procedure 2.6 has been received and reviewed. The opinion was revised on December 11, 2014 by the COE as follows:

QUESTION:

Are you required to abstain from voting on matters involving a series of upcoming land development approvals related to the Wellington Country Place PUD project (the PUD), specifically Master Plan Amendment and Site Plan, Re-Plat and Special Use Permit applications?

ANSWER:

Based on the facts submitted, you are required to abstain from voting on and participating in the matters involving the Master Plan Amendment, the Site Plan application for Pod F, Phases V and VI, the Re-Plat application for Pod F, and any Special Use Permit application, which involves the properties of Pierwell or Chickering.

The Palm Beach County Code of Ethics (the Code) prohibits you from using your official position in any way which would result in a special financial benefit to a client or customer of your outside employer.¹ Since your law firm has provided services in excess of \$10,000 over the previous 24 months to Chickering South, LLC (Chickering), Chickering is a customer or client of your law firm.² Additionally, although your law firm ended its representation of Pierwell Properties, LLC (Pierwell) in November 2014, Pierwell falls under the Code's definition of a customer or client because your law firm provided services to Pierwell in excess of \$10,000 during the previous 24-month period.

Whether the Master Plan Amendment and Site Plan, Re-Plat, and Special Use Permit applications would create a voting conflict turns on whether the financial benefit involved is shared with similarly situated members of the general public. As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain into a gain or loss shared with similarly situated members of the general public.³ Therefore, the determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public

¹ §2-443(a)

² §2-442

³ RQO 10-013

turns on the size of the class of persons who stand to benefit from the measure. Where a class is large, a prohibited financial gain would result only if there are circumstances unique to you which would enable your property to benefit more than the other property owners within the class. Where the class of persons benefiting is small, the likelihood of prohibited financial benefit is much greater.⁴ The general line drawn by the Florida Commission on Ethics involves situations where the interest of the public official involves 1% or less of the class, in other words, 100 or more affected persons.⁵ While the "1% Rule" may be an arbitrary cut-off point, it provides certainty and guidance in an area of the law which otherwise lacks clarity.

Here, the Village of Wellington staff reports states that this Master Plan Amendment will affect 250 acres of the 958 acres within the PUD. Chickering owns 5.9293 of the 250 acres affected by the Master Plan Amendment, which results in a 2.37% interest in the affected class. Pierwell owns 15.4999 acres out of the 250 acres affected, which equals a 6.20% interest in the affected class. Therefore, because the class of persons affected is small and the Master Plan Amendment would provide a unique benefit to customer or clients of your law firm, the Code prohibits you from voting on or participating in this matter. Similarly, you are prohibited from voting on and participating in the Site Plan for Pod F, Phases V and VI, the Re-Plat application for Pod F, and any Special Use Permit application, which involves the properties of Pierwell or Chickering. Based on the information submitted, Pierwell's interest in Pod F, the area affected by the Site Plan, Re-Plat, and Special Use Permit applications, is approximately 29%; Chickering's interest in Pod F is approximately 11%. Since Pierwell and Chickering each own more than 1% of the property to be affected, the benefit to them would be considered a "special."

FACTS:

You are a Councilman on the Village of Wellington Village Council. You are also a member of the law firm, McDonald Hopkins, LLC. Another attorney at your law firm currently represents Chickering, a property owner within the PUD subject to the Master Plan Amendment, and formerly represented Pierwell, another property owner within the PUD. The representation of Pierwell ended on or about November 1, 2014. Your law firm has provided over \$10,000 in services to both Chickering and Pierwell during the previous 24 months.

A developer seeks to amend the Master Plan for the PUD. The PUD totals approximately 958 acres, but the Master Plan Amendment would only modify an area limited to approximately 250 acres. Of the 250 acres affected, the Chickering property totals 5.9293 acres and the Pierwell property totals 15.4999 acres. Pierwell and Chickering both consent to the Master Plan Amendment as affected parties.

The PUD is currently divided into several Pods and several of those Pods are further divided into several Phases. Under this Master Plan Amendment, the developer is seeking to:

- a) add three access points at various locations on the boundaries of the PUD,
- b) transfer density between two of the existing Phases within the PUD,
- c) realign the interior roadway within two of the exiting phases with the PUD, and
- d) modify the existing Condition #8 with regard to certain re-platting and roadway requirements.

As a condition of the Master Plan, the developer will also be required to re-plat Pod F. The developer has submitted a Site Plan application for Pod F, Phases V and VI, a Re-Plat application for Pod F, and a Special Use

⁴ CEO 92-37 (two percent or eight percent of the property to be affected is of sufficient size to result in a "special" gain); CEO 93-19 (measure to construct a sidewalk affecting 40 homes would not affect enough persons in order for its effect not to be considered "special" under the voting conflicts law).

⁵ CEO 93-12 (a Trustee of a firefighter's retirement system, who was a recipient under the pension plan, was not prohibited from voting on an issue involving the handling of a pension lawsuit that could benefit himself as a member of the class action because all members of the class action were similarly situated and stood to gain in the same way regarding firefighter retirement benefits).

Permit application for on street parking. The Chickering and Pierwell properties are located entirely in Pod F, Phase VI. Pod F, Phase V has approximately 12 acres. Pod F, Phase VI has approximately 40.85 acres. The Re-Plat, Site Plan, and Special Use Permit will involve the location of bridle trails and the orientation of internal roadways, perimeter landscape buffers, future drainage lakes, and easements.

LEGAL BASIS:

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

Sec. 2-442. Definitions.

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

Financial benefit includes any money, service, license, permit, contract, authorization, loan, travel, entertainment, hospitality, gratuity, or any promise of any of these, or anything else of value. This term does not include campaign contributions authorized by law.

Sec. 2-443 Prohibited conduct.

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

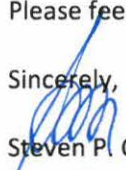
(5) A customer or client of the official or employee's outside employer or business;

(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.

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

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

Sincerely,


Steven P. Cullen,
Executive Director

CEK/gal