

Honesty - Integrity - Character

Amended Agenda

April 4, 2024 – 1:30 p.m.
Governmental Center,
301 North Olive Avenue, 6th Floor
Commissioners Chambers

Palm Beach County

Commission on Ethics

300 North Dixie Highway, Ste 450

West Palm Beach, FL 33401

561.355.1915

Hotline: 877.766.5920

E-mail: ethics@pbcgov.org

Commissioners

Kristin A. Vara-Garcia

Michael S. Kridel

Peter L. Cruise

Michael H. Kugler

Rodney G. Romano

Executive Director

Christie Kelley

General Counsel

Rhonda Giger

Intake & Compliance Manager

Gina A. Levesque

Education & Communications Manager

S. Lizabeth Martin

Investigator

Mark A. Higgs

Investigator

Abigail Irizarry

- I. Call to Order
- II. Pledge of Allegiance
- III. Swearing in ceremony by Judge Reid Scott
- IV. Roll Call
- V. Introductory Remarks
- VI. Approval of Minutes from March 7, 2024
- VII. Processed Advisory Opinions (Consent Agenda)
 - a. RQO 24-003
 - b. RQO 24-004
- VIII. Items Pulled from Consent Agenda
 - a.
- IX. Executive Director Comments
- X. Commission Comments
- XI. Public Comments
- XII. Adjournment

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

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

MARCH 7, 2024

**THURSDAY
1:30 P.M.**

**COMMISSION CHAMBERS
WEISMAN GOVERNMENTAL CENTER**

MEMBERS:

Michael H. Kugler, Chair
Kristin A. Vara-Garcia, Vice Chair
Peter L. Cruise
Michael S. Kridel
Rodney G. Romano

COMMISSION ON ETHICS STAFF PRESENT:

Rhonda Giger, General Counsel
Mark. A. Higgs, COE Investigator II
Abigail Irizarry, COE Investigator II
Christie E. Kelley, COE Director III
Gina A. Levesque, COE Intake and Compliance Manager
S. Lizabeth Martin, COE Communication and Education Manager

CLERK OF THE CIRCUIT COURT & COMPTROLLER'S OFFICE STAFF PRESENT:

Alyssa Berg, Board Meetings Specialist
Danielle Freeman, Deputy Clerk

I. CALL TO ORDER

The chair called the meeting to order at 1:30 p.m.

(CLERK'S NOTE: The roll call was conducted at this time.)

IV. ROLL CALL

All members were present.

II. PLEDGE OF ALLEGIANCE

Commissioner Kridel led the Pledge of Allegiance.

III. SWEARING IN CEREMONY BY JUDGE DANIELLE SHERRIFF

Judge Danielle Sherriff performed the swearing-in for Vice Chair Kristin Vara-Garcia.

V. NOMINATION AND ELECTION OF NEW CHAIRPERSON (to begin presiding over meeting immediately upon election)

Ms. Kelley opened the floor for the nomination of chairperson.

Commissioner Romano nominated Vice Chair Vara-Garcia as Chair, and Commissioner Cruise seconded.

No other nominations were made, and the nomination passed unanimously.

Vice Chair Vara-Garcia was appointed as Chair for the term of one year.

VI. NOMINATION AND ELECTION OF NEW VICE CHAIR

Chair Vara-Garcia opened the floor for the nomination of vice chair.

Commissioner Cruise nominated Commissioner Kridel as Vice Chair, and Commissioner Romano seconded it.

No other nominations were made, and the nomination passed unanimously.

VII. INTORDUCTORY REMARKS

Commissioner Romano congratulated the newly appointed chair and vice chair and said he looked forward to a great year.

Commissioner Cruise echoed Commissioner Romano's sentiments and congratulated the newly appointed chair and vice chair.

Vice Chair Kridel discussed his service as vice chair.

Chair Vara-Garcia stated that she was excited to work with everyone.

VIII. APPROVAL OF MINUTES

- a. JANUARY 11, 2024**
- b. FEBRUARY 1, 2024**

MOTION to approve the January 11, 2024, and February 1, 2024, minutes. Motion by Vice Chair Kridel, seconded by Commissioner Romano, and carried 4-0.

IX. EXECUTIVE SESSION

- a. C23-026
- b. C23-031

RECESS

At 1:37 p.m., the chair declared the meeting recessed.

RECONVENE

At 2:21 p.m., the meeting reconvened with all members present.

RE: C23-026

Vice Chair Kridel read the final order for the record:

Christie Kelley, Executive Director of the Palm Beach County Commission on Ethics (COE), filed the above-referenced complaint against Respondent, Laura Danowski, Mayor of the Town of Loxahatchee Groves. In count 1, the complaint alleges that Respondent used or attempted to use her official position or office in a manner that may have resulted in a special financial benefit to a prohibited entity in violation of Section 2-443(a) of the Palm Beach County Code of Ethics, *Misuse of public office or employment*. In count 2, the complaint alleges Respondent violated Section 2-443(c) of the Palm Beach County Code of Ethics, *Disclosure of voting conflicts*, by voting on or participating in matters that may have resulted in a special financial benefit to a prohibited entity.

Pursuant to Sec. 2-258(a)¹ of the Palm Beach County Commission on Ethics Ordinance, the Palm Beach County Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics.

On March 7, 2024, the Commission conducted a probable cause hearing and reviewed the Report of Investigation, the Probable Cause Recommendation and response submitted by the Advocate, and the Response to the Advocate's Recommendation submitted by Respondent. After an oral statement by the Advocate, the Commission determined that, pursuant to Section 2-260.3, of the Palm Beach County Commission on Ethics Ordinance, public interest would not be served by proceeding further and dismissed the complaint.

Therefore it is:

ORDERED AND ADJUDGED that the complaint against Respondent, Laura Danowski, is hereby DISMISSED.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in public session on March 7, 2024.

RE: C23-031

Vice Chair Kridel read the final order for the record:

Complainant, Mavis Benson, filed the above referenced complaint alleging a possible ethics violation involving Respondent, Richard Burgess, who had applied for, and was ultimately appointed to, the advisory board of the Delray Beach Downtown Development Authority (DDA). The information Respondent provided on his application is the subject of this complaint and investigation. The complaint alleges that Respondent falsified information on his DDA application in violation of §2-443(h), *Honesty in applications for positions*.

Pursuant to §2-258(a)¹ of the Palm Beach County Commission on Ethics Ordinance, the Palm Beach County Commission on Ethics is empowered to enforce the Palm Beach County Code of Ethics. Respondent stipulated to Probable Cause, and Respondent and Advocate submitted a Negotiated Settlement including a Letter of Reprimand to the COE for approval. Respondent stipulated to the facts and circumstances as contained in the Letter of Reprimand. According to the Negotiated Settlement and based on the facts as set forth in the Letter of Reprimand, Respondent admitted to violating Section 2-443(h) of the Palm Beach County Code of Ethics and agreed to accept a Letter of Reprimand. After listening to the statements by Advocate and the Respondent, the Commission accepted the conditions of the negotiated settlement.

Pursuant to Commission on Ethics Ordinance §2-260.1, *Public hearing procedures*, the Commission found that there was clear and convincing evidence contained within the record to support a finding that the violation was intentional, and that Respondent has acknowledged that his actions violated the Palm Beach County Code of Ethics.

Therefore it is:

ORDERED AND ADJUDGED this matter is concluded upon the issuance of a LETTER OF REPRIMAND.

DONE AND ORDERED by the Palm Beach County Commission on Ethics in executive session on this 7th day of March, 2024.

X. EXECUTIVE DIRECTOR COMMENTS

Ms. Kelley reported the following updates:

1. On March 6, 2024, the Florida House and Senate passed SB 7014, which prohibited the COE office from self-initiating complaints, and the next step in the process would be for the governor to sign off on the bill. Staff would review the language and discuss the potential impacts on the COE office.
2. On February 21, 2024, COE Intake and Compliance Manager Gina Levesque provided an overview presentation of the COE office to the Palm Beach County Municipal Clerk's Association, and positive feedback was received.
3. At a recent BCC meeting, March 2024 was declared Ethics Awareness Month. It was a joint recognition alongside the Office of Inspector General (OIG), Florida Atlantic University Ethics Academy, and the State Attorney's Public Corruption Unit. She thanked the commissioners that were in attendance and stated that it provided a nice opportunity to remind the public of the commission's role and purpose. A joint meet and greet was held with the OIG outside the governmental center.
4. The City of Lake Worth Beach presented the COE office with a proclamation declaring March Ethics Awareness Month.
5. Staff presented at the Rotary Club of Boca Raton, and they also participated in the Junior Achievement Career Day at Emerald Cove Middle School.
6. Staff had resumed meetings at various municipalities.

XI. COMMISSION COMMENTS

1. Responding to a question posed by Commissioner Romano, Ms. Kelley and Ms. Giger provided clarification on the "1 percent" rule regarding the determination of special benefits for public employees and public officials.

Discussion ensued.

2. Commissioner Cruise thanked Ms. Kelley for the proactive steps she took to inform the commission of the legislative changes, and he spoke with some members of the Legislative Delegation regarding the passage of SB 7014.
3. Vice Chair Kridel thanked staff for their work.
4. Chair Vara-Garcia elaborated on the discussion concerning the "1 percent" rule.

XII. PUBLIC COMMENTS

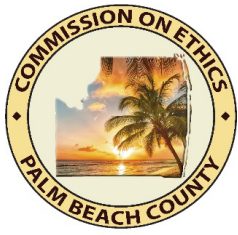
No comments were made.

XIII. ADJOURNMENT

At 2:42 p.m., the chair declared the meeting adjourned.

APPROVED:

Chair/Vice Chair



Palm Beach County Commission on Ethics

Commissioners
Kristin A. Vara-Garcia, Chair
Michael S. Kridel, Vice Chair
Peter L. Cruise
Michael H. Kugler
Rodney G. Romano

Executive Director
Christie Kelley

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April 1, 2024

Dr. Lori Vinikoor
10626 La Reina Road
Delray Beach, FL 33446

Re: RQO 24-003
Conflict of Interest/Voting Conflict

Dear Dr. Vinikoor:

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

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit you, as a member of the Palm Beach County Zoning Commission (ZC), from participating in discussions and voting on an agenda item that involves a property located directly adjacent to your home address?

BRIEF ANSWER:

Based on the size of the class affected by this project, the Code would prohibit your participation in discussions or any vote on this project.

FACTS:

You are a recently appointed member of the ZC. The general function of the ZC is to “initiate, review, hear, consider and make recommendations to the Board of County Commissioners [(BCC)] to approve, approve with conditions, or deny applications for development permits to amend the Official Zoning Map of the ULDC...” Additionally, the ZC will perform those same functions as they relate to a variety of different planned developments and conditional use proposals throughout the various permitting processes. Importantly, the ZC is the final decision maker for certain zoning variances.

You have learned of an application that will be coming before the ZC via a hearing notification letter. You received this notice because you are a property owner in close proximity to the project. The application seeks to delete a portion of preserve area from the Valencia Cove development, and replace that deleted preserve area with land elsewhere (i.e. “swap out” a portion of the required preserve land). In zoning terms, they are seeking a Development Order Amendment to delete preserve area from the “Valencia Cove AGR PUD,” and then replacing the deleted preserve area by rezoning other land elsewhere from “AGR” to “Valencia Cove AGR PUD.” For reference, an AGR PUD is a type of residential development that requires a certain percentage of land be set aside as “preserve.”

The application seeks to spread out the “replacement” AGR PUD preserve area across multiple different parcels. One of the parcels that would be included in the new preserve area is across the street from your

home, which is located at 10626 La Reina Road, Delray Beach, FL. The proposed replacement property address is 10635 La Reina Road (10635).

In simple terms, the property owners of the lot directly north of your home are requesting to rezone their property from AGR to AGR PUD, so it can be used as part of the required preserve area for the Valencia Cove AGR PUD. At this point it appears that only a portion of the property would be designated as preserve. With respect to this specific zoning proposal, the ZC will make a recommendation to the BCC on the subject request. The BCC then will make a final decision on the proposal.

ANSWER:

The Code prohibits public officials from using their official position in any manner which would result in a special financial benefit, not shared with similarly situated members of the general public, to certain persons or entities, including to themselves.¹ Similarly, the Code also prohibits public officials from voting on an issue or participating in any matter coming before their board which would result in a special financial benefit to themselves.²

Whether a matter rises to the level of a prohibited conflict of interest depends on whether the official will receive any special financial benefit. The COE has previously opined that "financial benefit" constitutes economic gain or loss.³ In evaluating a conflict of interest under the Code and whether a benefit is "special," the COE considers the number of persons who stand to gain or lose financially from a decision and whether the gain or loss is remote and speculative. As the COE has previously opined, there is no bright line in determining the number of individuals who would need to be similarly affected to transform a personal gain into a gain or loss shared with similarly situated members of the general public.⁴ Therefore, the determination of whether a measure will result in a financial benefit not shared with similarly situated members of the general public turns on the size of the class of persons who stand to benefit from the measure.⁵ Where the size of the class is large, a prohibited financial gain would result only if there are circumstances unique to the official that would enable his or her property to benefit more than the other property owners within the class. However, where the class of persons who stand to gain or lose from a decision is small, it is more likely that an official will have a conflict.⁶ The general line drawn by the COE, and by the Florida Commission on Ethics, is that no voting conflict is present in situations where the interest of the public official involves 1% or less of the class, in other words, where 100 or more persons are affected.⁷

Your home is directly south of 10635. You also own the parcel immediately west of your home. La Reina Road ends just to the west of your address. The major cross street to the east is State Road 7 (US 441). For the purpose of this opinion, the COE has counted all parcels east of State Road 7 on both the north and south sides of La Reina Road until it ends at the canal. The two privately owned parcels to the north

¹ Section 2-443(a), *Misuse of official position or employment.*

² Section 2-443(c), *Disclosure of voting conflicts.*

³ RQO 10-013 (For the purpose of ordinance construction, the commission finds that a financial benefit includes either a private gain or loss).

⁴ *Id.*

⁵ RQO 14-036

⁶ 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).

⁷ CEO 78-96; CEO 84-80; CEO 87-18; CEO 87-95; CEO 92-52; CEO 93-12

and east that share a property line with 10635 were also included in the final count.⁸ Ultimately, there are 29 parcels that are in the close vicinity of 10635. You own or jointly own two of those parcels. Thus, your percentage of the class is 6.89%.

At this time, because the final use of 10635 is unknown, it is difficult to assess if the location of your property provides a unique circumstance wherein your personal gain or loss by this vote would exceed significantly that of other property owners in the immediate vicinity of 10635. Considering the area is unincorporated and generally residential, it is likely that all members of the class would be equally impacted. However, because the economic gain or loss from the proposal does not affect a class large enough to remove any prohibited individual financial benefit, the Code prohibits you from voting on or participating in discussions regarding the “swap” of property.

You are also reminded that whether a conflict of interest exists depends on the facts and circumstances of each situation. Thus, best practices dictate that you carefully review any matter appearing before the ZC if it relates to your home or to any other prohibited entity to be sure that none of your actions as a ZC member give a special financial benefit to a prohibited entity.⁹ If there is ever any doubt about your vote or participation on a particular matter, we recommend you seek an additional advisory opinion.

Finally, you are also reminded that Sec. 2-443(b), *Corrupt misuse of official position*, also prohibits public officials from using their official position to corruptly secure or attempt to secure a special privilege, benefit, or exemption for themselves or others. Corruptly means done with a wrongful intent and for the purpose of obtaining any benefit resulting from some act which is inconsistent with the proper performance of the official’s duties. Therefore, you also must ensure you do not use your position as a ZC member to take some action which would corruptly secure a special privilege, benefit, or exemption for yourself or anyone else.

LEGAL BASIS:

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

Sec. 2-443. Prohibited conduct.

- (a) ***Misuse of public office or employment.*** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, or attempt to do any of these things, 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;
- (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

⁸ The COE has included a map indicating each parcel included in the final tally used to determine the size of the class.

⁹ The COE has included this caution based on your position with “Alliance of Delray Residential Associates, Inc.” as it appears you hold the title of “President” of this organization.

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

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

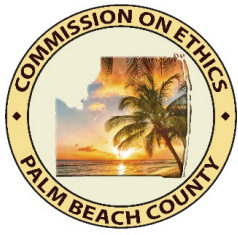
Please feel free to contact me at 561-355-1915 if I can be of any further assistance in this matter.

Sincerely,



Christie Kelley
Executive Director

RG/gal



Palm Beach County Commission on Ethics

Commissioners
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April 1, 2024

Ms. Judith Cooper, MALIS, Library Director
Lake Park Public Library
Lake Park, FL 33403

Re: RQO 24-004
Conflict of Interest/Nepotism

Dear Ms. Cooper:

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

QUESTION:

Does the Palm Beach County Code of Ethics (Code) prohibit your niece from volunteering at the Lake Park Public Library where you serve as director?

BRIEF ANSWER:

The Code does not prohibit your niece from volunteering at the library where you are the director because she will be an unpaid volunteer who will not exercise any discretionary authority and will therefore not be covered by any of the prohibitions outlined in the Anti-nepotism section of the Code.

FACTS:

You are the director of the Lake Park Library (LPL). A critical component of your job description is to administer the daily operation and activities of the LPL, supervise LPL staff to include employee selection (subject to approval by the Town Manager), complete evaluations, conduct training, and decide upon salary determinations.

Historically, the LPL has relied upon volunteers to perform a variety of library functions. All volunteer positions are directly under your leadership and are considered a part of the daily operations of LPL. Your niece has expressed a desire to volunteer at LPL. As such, she would assist in tasks both off and on site. You have agreed you will not provide your niece a reference based on her volunteer work. Additionally, your niece is not mandated by any outside agency or organization to complete volunteer hours.

This volunteer position is not a stepping-stone to a paid position within either LPL or the town of Lake Park (Town). You understand that the Code would preclude you from being involved in any way in any hiring process involving your niece, were that ever to transpire.

ANSWER:

The Anti-nepotism provision under Section 2-445 of the Code prohibits an official from appointing, employing, promoting, or advancing a relative, or advocating for any of those actions on behalf of a

relative.¹ In this context, an official means any “employee in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the county or municipality as applicable.”² As the LPL director, you are considered an official under the Code.³ A niece is considered a relative.⁴

However, under the Code, municipal volunteers do not fall within the definition of an employee if they do not exercise any discretionary authority.⁵ Thus, based on the facts provided, the Anti-nepotism section of the Code would not apply to this situation because your niece’s volunteer work for LPL does not make her an employee of LPL and she will not have any discretionary authority in her role. Therefore, your supervision of her volunteer work does not run afoul of the Anti-nepotism restrictions.

While the Code does not restrict your ability to supervise your niece in her volunteer capacity, it does prohibit you from using your official position, or influencing others to take or fail to take any action, to give a special financial benefit to your niece.⁶ The Code also prohibits you from using your official position to corruptly secure a special benefit for anyone, including your niece.⁷ Corruptly is defined as an act that is done with a wrongful intent and inconsistent with the proper performance of your public duties.⁸ Therefore, you also must ensure you do not use your position as LPL Director to take some action which would corruptly secure a special privilege, benefit, or exemption for yourself, your niece, or anyone else.

We remind you that if the current factual scenario were to evolve into your niece’s possible employment with either the LPL or the Town, you should seek additional guidance from the COE to ensure any future actions do not violate the Code.

LEGAL BASIS:

The legal basis for this opinion is found in Sec. 2-442 and Sec. 2-445 of the Code:

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 "employee" includes but is not limited to all managers, department heads, and personnel of the county or the municipalities located within the county. The term also includes volunteers of the county or the municipalities located within the county when such volunteers exercise discretionary police, fire, or parking enforcement department authority.

Sec. 2-445. Anti-nepotism law.

An official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement in or to a position in the county or municipality as applicable in which the official is serving or over which the official exercises jurisdiction or control, any individual who is a relative or domestic partner of the official.

¹ Sec. 2-445, Anti-Nepotism

² Sec. 2-445(1)

³ Id.

⁴ Id.

⁵ Sec. 2-442, Definitions

⁶ Sec. 2-443(a), Misuse of public office or employment

⁷ Sec. 2-443(b), Corrupt misuse of official position

⁸ Id.

- (1) For the purposes of this section, "official" means any official or employee in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated to appoint, employ, promote, or advance individuals or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in the county or municipality as applicable.
- (2) For the purposes of this section, "relative" means spouse, parent, child, sibling, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

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

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

Sincerely,



Christie Kelley
Executive Director

RG/gal