

TOWN OF PALM BEACH

Office of The Town Clerk

REPORT OF THE ETHICS COMMITTEE MEETING HELD ON WEDNESDAY, AUGUST 19, 2009

I. CALL TO ORDER AND ROLL CALL

The Ethics Committee Meeting was called to order at 2:05 p.m. at the 3rd Floor Emergency Operations Center, 355 S. County Road, Palm Beach. On roll call, Chairman Diamond and Committee Member Kleid were found to be present.

II. PLEDGE OF ALLEGIANCE

Chairman Diamond led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

Chairman Diamond wished to add Comments From Citizens if there was anyone that wished to speak. Committee Member Kleid was in agreement.

Motion to approve the Agenda as amended made by Committee Member Kleid. The motion carried unanimously.

Bobbie Lindsay, 212 Caribbean Road, commented on the perception of receiving text messages or emails during a public meeting, when you are a Board or Commission Member, or on the Town Council. She stated she was opposed to allowing this and at best was a distraction and was also a violation of the Sunshine Law and should not be tolerated. Committee Member Kleid asked Ms. Lindsay how to distinguish between an e-mail received prior to the meeting, or during the break. She indicated it would be difficult to and she did not have a solution but felt strongly that if you are sitting on the dais and receiving text messages or emails, it creates a misperception of wrongdoing.

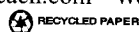
IV. PUBLIC NOTICE OF TOWN ELECTED OFFICIALS' EX PARTE MEETINGS REGARDING DEVELOPMENT REVIEW MATTERS.

Chairman Diamond indicated that when the Town Council has Development Review, the Council is in a quasi-judicial proceeding and must declare any ex-parte communications. He noted that what has been happening for the past few years is that there are a handful of attorneys

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1 and architects that have an "inside tract" to the Town Council Members and staff without having
2 to notify anyone else who may be concerned or involved in the projects. He gave the example
3 that if someone calls a Council Member and asked to meet with them, there should be advance
4 notice by that party to let the world know, so that they also have an equal opportunity to express
5 their opinion as well. If you sit as a judge, you should hear both sides of a case, and not just one.
6 Ex-parte disclosure is required and Chairman Diamond felt other people in the public should also
7 have the opportunity to discuss the projects. He would like to see advance notice to the public
8 and they should also be allowed to visit with the Town Council Members. He suggested some
9 sort of "notice" page on the Town's website.

10
11 Town Manager Elwell indicated it could be feasible, and if it were the Town Council's desire to
12 set up such a system, either to document ex-parte communications that have occurred, or to have
13 a system to make a request to have an opportunity for an ex-parte discussion, the town's website
14 could be that vehicle. One of the things that was important to consider, is that it would apply to
15 ALL ex parte communications, rather than just some of them.

16
17 Chairman Diamond stated that the public feels that the Town Council Members are being
18 reached in some way and they do not have the same access. He would like to correct that.

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20 Committee Member Kleid stated he was confused by the agenda item since he indicated that the
21 public does have the same access and has prior notification of Development Review items. He
22 said some councilpersons were talking about too many rules but now are creating more rules. He
23 asked what would happen under the proposed new policy if a Town Council member received an
24 e-mail in a development review matter.

25
26 Town Manager Elwell indicated that it would not relate to communications on other matters that
27 were not development reviews and not subject to the ex-parte rules. It would apply to all zoning
28 matters that are quasi-judicial proceedings. For those, anything received via e-mail or hard
29 copies would be distributed to all members and become public records.

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31 Committee Member Kleid noted that the letters received have been a matter of public record for
32 quite some time but he did not feel the public is even aware of them. Town Attorney Randolph
33 agreed and indicated that perhaps the Town Council should also disclose those times during the
34 ex-parte communications.

35
36 There was further discussion regarding how a policy would be implemented and what would be
37 posted. All of the names of anyone inquiring or wishing to have a meeting with any Council
38 Member would be posted and become a public record.

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40 Chairman Diamond wanted to have advanced disclosure in order to give the public an
41 opportunity to provide an opinion as well. He had another solution and that would be to not
42 accept any meetings or conversations prior to the meeting, but that would deprive the Town
43 Council of knowledge that they may need.

44
45 Town Manager Elwell gave examples of how to notify in advance by posting of names and
46 inquiries but that is ultimately a policy question. Committee Member Kleid asked who has the
47 onus and if it were the sender's responsibility to post their name with the Town on the website.

1
2 Town Attorney Randolph offered that if what chairman Diamond was trying to do was inform
3 the public of who they have spoken to prior to the meeting, he felt it should be up to the town
4 Council Member, as opposed to the sender of communication because it would be difficult to
5 enforce upon the sender. The Town Council members also have the knowledge of knowing the
6 difference between a quasi-judicial hearing and a legislative hearing. Committee Member Kleid
7 opined that, before talking to the caller, the Town Council member would have to inform the
8 caller that his name would be posted on the website.
9

10 Chairman Diamond stated that this was a move towards transparency. He asked about placing it
11 on a Town Council Agenda.
12

13 Mr. Norman Goldblum, former Town Council Member, warned that if the Council adopts such a
14 policy, they open themselves up to everyone that wants to speak has that right, and the Council
15 would spend all day hearing from people, especially if it were a hot topic.
16

17 Town Manager Elwell asked that since there was a split decision by the Committee, it would be
18 appropriate to bring it back to the Town Council in a two step procedure. At the September
19 Town Council Meeting, seek a majority vote from the Town Council under the Ethics
20 Committee Report to move forward with creating a policy. If a majority is obtained, then bring
21 back a written policy at the October Town Council Meeting.
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25 VII. DISCUSSION REGARDING E-MAILS, TEXT MESSAGES, NOTES, AND PHONE
26 CALLS DURING PUBLIC MEETINGS AND EXECUTIVE SESSIONS OF THE TOWN
27 COUNCIL.

28 *This item was heard after Item III, APPROVAL OF THE AGENDA.*
29

30 Chairman Diamond read proposed rule 12 of the City of Lake Worth. The City of Lake Worth
31 recently decided to pass Rule 12, under Preserve Order. "City Commission Members shall not
32 accept receipt of, read or place e-mails, text messages notes or phone calls during public
33 meetings and executive sessions of the City Commission." Chairman Diamond felt that that the
34 Town should adopt and make it apply to the Boards and Commissions as well.
35

36 Committee Member Kleid is open-minded to such a concept, but would like it discussed by the
37 entire Town Council. He noted that by passing it, it might dispel a perception of wrong doing.
38 However, he did not like following Lake Worth's precedent since that city is not exemplary. He
39 noted that he has been on the Town Council for close to five years and he has not seen or heard
40 of any improprieties. He went on to state that technology is moving quickly. The fact that he
41 now owns a Kindle and an iPhone is indicative of technological advances, even for those who
42 profess to be Luddites. The new Town Council chambers will allow for advanced technology.
Committee Member Kleid noted that two Town Council members presently use laptops for their
back-up material and bring laptops to the dais.

Committee Member Kleid also asked how would someone acknowledge that an e-mail or texted message was received and how would it be enforced.

Chairman Diamond recognized in the audience the distinguished Mayor McDonald, Council President Pro Tem Coniglio, Council Member Wildrick and a well represented audience. His opinion was that there is a need to have a policy. Of course there is a certain amount of honor system involved, with anything. It would not apply during a break period. But when you are in session, he does not feel anyone should be receiving e-mails, texting messages, receiving messages, or even if you have a computer, it should be prohibited behavior and should apply to the Boards and Commissions as well as the Town Council.

Committee Member Kleid noted he was not opposed to such a policy and was amendable to placing it on a town Council Agenda for further discussion. He was concerned that there had not been any violations that he was aware of. For a town that prides itself on civility, this might be an overreach.

Bill Cooley, 8 Windsor Court, agrees with Committee Member Kleid. Mr. Cooley asked if it would apply to staff. He personally stated the he does not distrust anyone on the Town Council and does not think there is anything going on that should not be happening. He did not feel there needed to be an ordinance.

Town Attorney Randolph stated that texting can occur if it is personal but it really is a matter of courtesy and perception. There is no legal problem. Notes and texts regarding the business before the Town Council or Boards is prohibited, but the rule as applied, would be to make sure there is no perception of anything going on.

Chairman Diamond stated that there could be violations of the Sunshine Law and Town Council members should refrain from accepting text emails and messages while the Town Council is in session.

Ms. Lindsay agreed with the Committee that it is not an easy subject. She feels it is a perception issue more than anything else. But she added that when there is a meeting, there are people in the audience and the public is allowed to speak at public meetings for three minutes. If someone in the audience is texting a Board Member or Town Council member, the rest of the audience is not aware of the opinion being expressed. She urged to be careful of public perception. She cited a recent Shore Protection Board Meeting where the Chairman left the dais and went to speak to a Town Council Member who was in the audience. No one knew what was discussed and it may have been nothing related to the agenda. It was discourteous.

Chairman Diamond thanked her for her comments and indicated they were stated well, and he shared the same point of view. Committee Member Kleid asked how a policy would be enforced. Ms. Lindsay suggested it would have to be an honor system. He feels it should be left up to the Town Council to decide. He felt it was worthy of more discussion by the full Town Council.

Town Manager Elwell clarified it would be on the next Town Council Agenda as the Ethics Committee Report for the September 10th meeting. The Committee Report will reflect that there was not a recommendation, but asks the Town Council for further discussion.

V. POLITICAL FUND RAISING BY TOWN ELECTED OFFICIALS FOR THEIR OWN CAMPAIGNS AND FOR THE CAMPAIGNS OF OTHERS.

Chairman Diamond placed this item on the agenda because he has hosted fundraisers and he wanted to make sure that what he was doing was correct and proper. He had asked the State of Florida Ethics Commission and Division of Elections for opinions and received them. There is no prohibition for an elected official to host a fundraiser as long as he does not use his title or position in the Town to solicit funds.

Committee Member Kleid indicated that he had also read the responses and felt that it was allowable to host fundraisers.

This was an informational item only.

VI. USE OF ANONYMOUS MAILINGS DURING ELECTION CAMPAIGNS IN WHICH THERE IS NO MENTION OF WHO IS RESPONSIBLE FOR THE MAILINGS.

Chairman Diamond said anonymous mailings are a violation of State Election Law. He announced that there is a Florida Elections Commission (FEC) and if you had information about anyone sending anonymous mailings, they should fill out a confidential complaint form with the FEC.

Committee Member Kleid stated that he had asked that this item to be placed on the agenda. During the last election cycle, he received an anonymous mailing that appeared to come from his condo board. It did not indicate who it was from and did not have any disclaimers on it. He thought it was not fair advertising and implied it was sponsored by the various condo boards, which it was not. He wanted to propose that the Town Council go on record that they condemn anonymous messages. Chairman Diamond agreed that he supported Committee Member Kleid 100%. The remedy would be to fill out the complaint form.

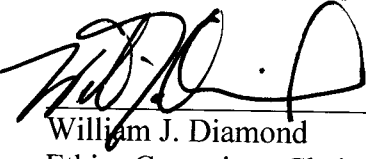
Town Manager Elwell indicated that the committee can recommend to the Town Council to adopt a Resolution that declares the Town Council's rejection of that type of tactic and provides the information to the public on how to file a complaint. If the Town Council approves the recommendation in September, the Resolution could be prepared for the October Town Council Meeting. The Ethics Committee agreed to recommend a resolution to the Town Council for approval.

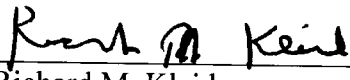
VIII. ANY OTHER MATTERS

There were none.

IX. ADJOURNMENT

There being no further business, the Ethics Committee Meeting of Wednesday, August 19, 2009, was adjourned at 2:48 p.m.


William J. Diamond
Ethics Committee Chair


Richard M. Kleid
Ethics Committee Member