

TOWN OF PALM BEACH

Office of The Town Clerk

MINUTES OF THE ETHICS COMMITTEE MEETING HELD ON FEBRUARY 27, 2009, 11:00 A.M.

I. CALL TO ORDER AND ROLL CALL

The Ethics Committee meeting was called to order at 11:00a.m. and on roll call, Chairman Diamond and Member Kleid were found to be present.

II. PLEDGE OF ALLEGIANCE

Chairman Diamond led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

Chairman Diamond made some introductory comments since this was the first meeting of the newly formed Ethics Committee. He asked if anyone from the public wished to speak. There were no public comments.

Member Kleid made a motion to approve the Agenda. On roll call, the motion carried unanimously.

IV. CONFLICTS OF INTEREST

A. Limit on Number of Conflicts of Interest Per Year for Each Member of a Town Board or Commission

Chairman Diamond expressed that the topic had been bothersome to many people in the Town as to the allowability of the exception to State Law to permit local entities to set exceptions from the Conflict of Interest Statute. The Town has permitted five Conflicts of

1 Interests per year. He believes that in the current political climate, he would like to see zero
2 conflicts of interests allowed. He feels that if there is a problem filling in Boards and
3 Commissions positions by their expertise, there can be exceptions made.
4

5 Member Kleid described what the current Ordinances in the Town were. There are
6 Ordinances for the Planning and Zoning Commission, ARCOM, Landmarks Commission, and
7 the Recreation Commission. These Ordinances provide that if there are excessive conflicts of
8 interest, during any one calendar year, the member shall be subject to removal by the Town
9 Council. Excessive conflicts of interest are defined as five or more conflicts in one calendar
10 year. If a member has a conflict of interest resulting in that member, or that member's firm,
11 representing an applicant before the Commission, it shall be the obligation of the member to
12 comply with several requirements:
13

- 14 • Notification of the conflict shall be noted on the application form at the time of
15 submission, and the conflict will be identified on the Commission agenda.
- 16 • The member shall not participate in the discussion and shall leave the chamber or
17 the dais until the item is complete.
- 18 • The member shall not present the project except in a case where he is a sole
19 practitioner who is unable to represent a client through an associate.
20

21 Member Kleid indicated that in addition to the Town Ordinances, all appointed officials
22 are required to fill out an application seeking very specific information. They are requested to
23 appear before the Town Council to answer questions. Each member serves at the pleasure of the
24 Town Council and may be removed from office with or without cause. Excessive conflicts will
25 result in removal from offices. And lastly, when improper behavior is suspected, any resident
26 may file a complaint with the State Commission on Ethics and any elected or appointed official
27 may ask for an Advisory Opinion from the State Commission on Ethics or they may consult with
28 the Town Attorney or their own legal advisor.
29

30 Member Kleid stated that Chairman Diamond had gone to the County that morning and
31 obtained a copy of the complaint form for the Ethics Commission and the rules to abide by.
32

33 Chairman Diamond reiterated that he feels there should be no conflicts of interest
34 allowed.
35

36 Member Kleid stated that five conflicts per year may be too many, and he would be
37 agreeable to reducing that number to two or three. He feels that if anyone who lives and works in
38 the Town cannot serve with a conflict of interest there will be very few people serving. He cited
39 that Council Member Coniglio who owns restaurants in the Town, probably would not run for
40 election. He stated the Town would lose some very valuable people.
41

42 There are people appointed to the various commissions who have great experience in
43 their fields, and he feels the Town should use their expertise. This is a small Town and it is

1 difficult to find volunteers, particularly those who volunteer their time free of compensation, and
2 they have served the Town well.

3
4 Chairman Diamond stated that there is a method to accomplish both goals:

- 5
6 • Eliminate all allowable conflicts of interest
7 • Where the Town feels a certain level of expertise is necessary for the function of a
8 Board or Commission, that person's situation can be brought in front of the Town
9 Council and exceptions can be made.
10 • This procedure would be done in public, with that person citing all of their
11 possible conflicts of interest, and the Town Council acting as a body would be
12 able to approve or disapprove that person.

13
14 As far as complaints were concerned, Chairman Diamond offered the complaint forms
15 and outlined the procedures for the State Commission on Ethics.

16
17 Member Kleid added that currently, if there is a conflict of interest, the member must
18 declare a conflict, Form 8B must be filled out immediately and the member must recuse himself
19 and leave the dais for that item. He suggested that perhaps the Town Attorney could meet with
20 each Board and Commission and explain conflicts of interests. He also proposed having each
21 member of every Board and Commission and Council sign a statement that they have read and
22 understand the conflicts of interest rules. Member Kleid also suggested reducing the number of
23 conflicts to three from five, and when there is a conflict have the member leave the Chambers
24 entirely and not just the dais. In addition, he suggested the deletion of the provision whereby the
25 member can present the project to a commission when the member is a sole practitioner who is
26 unable to represent a client through an associate. And lastly, create a Palm Beach Ethics Code of
27 Conduct and an Ethics Pledge to be signed by all elected and appointed officials.

28
29 The Committee agreed to disagree on this topic and will present the item to the full Town
30 Council for discussion at a future meeting.

31
32 Public comments on the topic were heard from:

33
34 Former Mayor Marix, 1570 N. Ocean Blvd., who said she was wary of grouping the
35 appointed and elected official together. Elected officials can be voted out of office if there is a
36 problem. She suggested being more careful with the appointing of members to the boards and
37 commissions.

38
39 Dan McConnell, 2784 S. Ocean Blvd., asked what the definition of a conflict of interest
40 is. He was informed that the definition is defined by State Statute. He added that at some point
41 this process is self-defeating and agreed with Member Kleid.
42

1 Bill Guttman, Chairman of Planning and Zoning Commission, told Chairman Diamond
2 that he is missing the point and discussed art juries, and how art is not in the eye of the beholder.
3 He discussed how important it was to have specialized people on the various boards and
4 commissions. He added that he agreed with Member Kleid and no conflicts being allowed is
5 unreasonable.

6
7 Town Attorney Randolph made a clarification that when a person recuses himself under
8 State Law they have to declare a conflict of interest and file a conflict of interest form (Form 8B).
9 There could not be a situation where you declare that a person cannot have a conflict of interest.
10 What needs to be distinguished was conflicts of interest as discussed, and it is difficult to know
11 before a person runs or is appointed, what topic may arise in which they would have a conflict.
12 There are also prohibited conflicts of interest which are when a person is not entitled to do
13 business before their own agency. He gave the example of an architect presenting to ARCOM,
14 when that person is also a member of ARCOM.

15
16 Morgan Wheelock, ARCOM Chairman, declared that this all amounts to a matter of trust.
17 The members are appointed by the Town Council with careful consideration. There should be no
18 limit to the number of conflicts of interest. He concurred with Member Kleid that no one will
19 want to serve if no conflicts are allowed. In his opinion, the conflicts should be measured form
20 project to project and not by an annual number.

21
22 Chairman Diamond stated that you cannot serve two masters. Being chairman of
23 ARCOM and being in the pay of the Developers of the Royal Poinciana Plaza is inherently a
24 conflict of interest. He informed Mr. Wheelock that he should take one position or the other.

25
26 Mr. Wheelock informed Chairman Diamond that The Royal Poinciana Development does
27 not come before ARCOM. Member Kleid defended Mr. Wheelock and indicated that when he
28 presented the Royal Poinciana Development to the Town Council he was not acting as a member
29 of ARCOM.

30
31 Member Diamond said that exceptions could be made to the no conflict of interests rule,
32 and therefore retain on the boards and commissions, those people who the Town cannot live
33 without. He expressed that those would be very few and far between.

34
35 John Ripley, Preservation Foundation, was opposed to more restrictions and feels a lot of
36 good, qualified people would no longer apply for the Boards and Commissions.

37
38 Member Kleid added that at the previous day's Shore Protection Board meeting, there
39 was a coastal engineer on the Board who provided expert opinions on the process and his
40 knowledge is invaluable to the board.

41
42 Bill Cooley, 8 Windsor Court, thanked Council President Rosow for creating the
43 Committee, and Members Kleid and Diamond for serving on it. He felt the Town Code needs to

1 be amended. He noted that it had been changed once before from permitting 10 conflicts per
 2 year down to five. He also scrutinized the number of conflicts of interest of Morgan Wheelock,
 3 Jeffrey Smith and Eugene Lawrence since January 2008. He submitted copies of the Quarterly
 4 Disclosures files with the number of conflicts listed as well as a Palm Beach Daily News article
 5 from May 14, 2008 into the record. He also cited a Conflict of Interest with Mr. Bill Guttman of
 6 the Planning and Zoning Commission due to his relationship with attorney Mr. Charles Siemon.
 7 Mr. Cooley stated that Mr. Siemon currently represents the Royal Poinciana Plaza
 8 redevelopment. He stated that there would not be any confidence in zoning matters when there
 9 appears such a blatant conflict of interest. Mr. Cooley supports no conflicts of interest.

10
 11 Mr. Cooley continued that there are two associations, the Civic Association and the
 12 Citizens Association. Most of the offenders of conflicts of interest are members of the Boards or
 13 Executive Committees of these Associations. For all intensive purposes, these two organizations
 14 run the Town, according to Mr. Cooley. He added that the Council allows the two organizations
 15 to direct the votes and alleged one large shadow government. Every Board and Committee in
 16 Town is full of members from the two association and cited the Shore Protection Board as an
 17 example. There is no free and open thought, only controlled thought, and in the meantime the
 18 Town spent over \$70 million dollars on beach re-nourishment.

19
 20 Chairman Diamond assured Mr. Cooley that the Town is not run by those two
 21 organizations. The duty is to the people of the Town and not any one organization.

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 23 Member Kleid directed Mr. Cooley to file an Ethics Commission complaint if he felt that
 24 strongly about the issue.

25
 26 Stan Rumbough, CEO and Co-Chairman of the Civic Association, read part of their
 27 mission statement and what their role is.

28
 29 Chairman Diamond stated that as a prior member and executive board member of the
 30 Civic Association they are only looking out for the best interests of the people of the Town. He
 31 added that they are well aware of the conflicts of interests regarding politics and do not enter into
 32 the political system. He does not feel it is helpful to be pejorative to people in the Town,
 33 organized or unorganized, who are trying to do the right thing. We can all have different points
 34 of view, but we need to work together.

35
 36 Member Kleid stated that both organizations work hard to help the Town and educate the
 37 public. They have on occasion, come up with funding for the Town and took umbrage with Mr.
 38 Cooley's remarks.

39
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 41 B. Creation of a Conflict of Interest Review Board
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1 Chairman Diamond announced that after further research on this topic, it appears
2 that there is already a State Procedure in place with the Commission on Ethics and showed the
3 audience the Ethics complaint form to file if a person felt there was a conflict. He noted that the
4 City of Miami has an Ethics Board and it consumes a lot of time and money. He does not feel it
5 is necessary at this time.

6
7 Member Kleid agreed with Chairman Diamond and said the mechanism has been in place
8 for a while with the Commission on Ethics. There is also a way to seek advisory opinions from
9 them.

10
11 Chairman Diamond added that if such a Board were created, they must meet in the
12 Sunshine. There are no anonymous complaints permitted and there are Florida Statutes and
13 procedures that must be followed.

14
15 Former Mayor Marix stated that perhaps that best way to avoid numerous conflicts is to
16 be more selective in the Board and Commissions appointment process.

17
18 Chairman Diamond stated that the buck stops here at the Town Council level. Member
19 Kleid stated that many of the Boards and Commissions applications have been updated in recent
20 years and more stringent requirements have been added.

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24 V. FUNDING AND CONDUCT OF POLITICAL CAMPAIGNS

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26 A. Limit on Campaign Fund Raising and/or Campaign Spending by Candidates for
27 Town Elected Office

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29 B. Limit on Outside Expenditures by Political Action Committees on Behalf of
30 Candidates for Town Elected Office

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32 For items V. A. and B., Chairman Diamond stated that he had been informed that there
33 cannot be a limit on campaign fund raising, or controlling what a PAC spends on a candidate and
34 that the Town will have to rely on the Federal and State Campaign Laws and Supreme Court
35 decisions for regulations and limiting contribution amounts.

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37
38 C. Code of Ethical Conduct During the Election Season for Elected Officials and for
39 Candidates for Town Elected Office

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41 Chairman Diamond said he can appreciate the concerns, having just run for political
42 office. He was shocked at the amount of money, including what he spent on his own campaigns.
43 This time there were Political Action Committees to get around the \$500 contribution limit.

Member Kleid stated that the amount of money spent on campaigns has increased each year, and commented on PACS and the conduct during campaigns. In this year's elections, there was \$612,000+ raised as of the last filing period in the Town for one Mayor and two Town Council seats. That breaks down to \$175 for each vote. He stated that was unconscionable. He read into the record a recent Palm Beach Daily News editorial about the ethical conduct of candidates. The citizens of Palm Beach deserve better than personal insults, attack ads, anonymous e-mail campaigns, threatened lawsuits, disappearing signs, and rancorous rhetoric. He would add also the dirty tricks such as the post card sent to residents of the condos implying that the condo associations were endorsing a slate of candidates, and that no one admitted to sending out or allowing that postcard to be sent out. Another trick was putting an ad into the newspaper the last day before the election so that the opponent had no chance to respond to it if they were accused of wrongdoing.

It was Member Kleid's opinion that candidates should practice civility, they should only talk about positive things, and state why their platform is better than their opponent. Unfortunately, civility cannot be legislated. Member Kleid suggested drafting an Ethical Code of Conduct and have all candidates abide by it. Although it would not be legally enforceable, at least the candidates would be accountable to the public. This should be included when filing the candidate paperwork.

Chairman Diamond agreed and stated that he would endorse a Code of Ethics and that the candidates could curtail their spending voluntarily. He added that while the Town cannot prohibit the spending of money, because it is constitutionally protected, the candidates could voluntarily agree to curtail spending.

Laurel Baker, Palm Beach Chamber of Commerce, entered into the record the Palm Beach County Ethics Pledge that all County Commissioners have been asked to sign.

Chairman Diamond would recommend the Town Council draft a Code of Ethics for campaigns in Palm Beach.

Luis Pryor, 227 Brazilian Ave., commended the Committee for addressing the issue.

Former Mayor Marix indicated that, in her opinion, the reason the candidates raised and spent a lot of money was to get their messages across. She suggested having more free open forums, suggested using the Chambers and not have a formal debate but allow citizens to come and meet with the various candidates.

Member Kleid thanked Mayor Marix and said it may be an idea to pursue, but suggested that a facilitator be used to provide a framework for the meetings.

VI. PROHIBITION OF LOBBYING TOWN OFFICIALS OR TOWN EMPLOYEES APPLIED TO FORMER EMPLOYEES (FOR A PERIOD OF TIME AFTER THEY LEAVE TOWN EMPLOYMENT) AND TO TOWN ELECTED AND APPOINTED OFFICIALS (FOR A PERIOD OF TIME AFTER THEY COMPLETE THEIR TERM OF OFFICE AS MAYOR, TOWN COUNCIL MEMBER, OR MEMBER OF A TOWN BOARD OR COMMISSION)

Member Kleid described this as a revolving door problem. It occurs in all forms of government. He stated that the Town Attorney is in the process of drafting an Ordinance that would define the prohibitive activities. He assumed a prohibitive activity would preclude appearing before Town Council or Board within two years. The question is whether that person should be able to discuss the matter with Town staff and this may be a gray area.

Town Manager Elwell clarified that the Ordinance will address the prohibition and would be for influencing for a fee, decisions that would be subjective, and where discretion is being exercised or where there is an effort to change Town policy. The intent of the Ordinance was not to prohibit the transaction of business. There were a lot of questions about that when this appeared for first reading in front of the Town Council a few months ago. The revised Ordinance will be brought back in April to the Town Council for a new first reading. The Ordinance was never intended to prohibit a former employee from doing business in the Town as a private provider so long as they are not coming and using influence in Town Hall.

Member Kleid said another factor to be considered is how many years the prohibition will last for. The other question is if it is limited to just employees, or would it be extended to Town Council Members, and also Board and Commission members.

Town Manger Elwell added also that something to consider would be the penalty clause. Initially there was a very harsh penalty clause, because it would be the standard. He wanted the penalty to be explicitly clear in the Ordinance, and added the standard language from other Code penalty clauses.

Chairman Diamond stated he wanted the Ordinance to be very clear about what is prohibited conduct and what is allowable.

Member Kleid stated that he had an open mind about having officials have the same limits and that there will be more opportunities to look at the Ordinance.

The Committee Members deferred to the full Town Council on the question whether the Ordinance should apply to Town elected officials and members of Town Boards and Commissions.

VII. REVIEW OF PRACTICE OF TOWN OFFICIALS PERSONALLY FUNDING A TOWN PROJECT

Chairman Diamond indicated that he had received correspondence opposing town Council Members paying for Town projects personally by donating money. Member Kleid said he was personally concerned about elected officials funding projects and it possibly could put pressure on the Town Council to accept the project because it does not come out of budgetary funds and is privately funded.

Member Kleid stated that if a project is worthwhile, it should be funded through the budget. It also would put pressure on the other members of the Town Council or the Mayor to contribute. In the past, there have been two instances where there has been private funding from members of the Town Council and in one case, a Council Member objected. He applauds the generosity, but would be hesitant to set a precedent.

Chairman Diamond suggested that anytime any member of the Town Council wishes to make a personal contribution to a Town project, that contribution should be voted on separately.

Town Manager Elwell stated that in the past year, the Town Council researched the donations policy. The general outcome of that was that a majority of Council members were concerned and did not wish to place too many barriers on donations being offered. There is a clear policy now that encourages donations from citizens for Town projects, but provides more transparency. **Recommend the same policy but add the provision that when an elected official of the Town wants to donate funds, it must first be approved separately by the Town Council.**

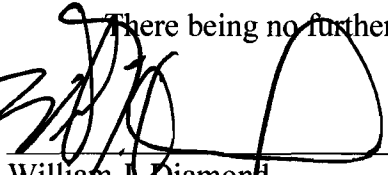
Chairman Diamond agreed and suggested that the recommendation be made to the Town Council. Member Kleid seconded.

VIII. ANY OTHER MATTERS

There were none.

IX. ADJOURNMENT

There being no further business, the Ethic Committee was adjourned at 12:40p.m.


William J. Diamond
Ethics Committee Chair


Richard M. Kleid
Ethics Committee Member