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Zoning & Building

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West Palm Beach, FL 33411-2741

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Contractors Certification 233-5525

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Board of County
Commissioners**

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February 16, 2011

Mr. Wesley Blackman, AICP, Chairman, and
Members of the Land Development Regulation Advisory Board (LDRAB)
241 Columbia Drive
Lake Worth, FL 33460

RE: February 23, 2011 LDRAB and Annual Organizational Meeting

Dear Mr. Blackman & Board Members:

Attached please find the agenda and supporting materials to assist you in preparing for the LDRAB meeting on Wednesday, February 23, 2011.

The meeting will commence at **2:00 p.m.** in the Vista Center 1st Floor Kenneth S. Rogers Hearing Room (VC-1W-47), located at 2300 North Jog Road, West Palm Beach, Florida.

If you should have any questions or require additional information, please contact me at (561) 233-5206 or via email at WCross@pbcgov.org, or Monica Cantor, Senior Site Planner at (561) 233-5205 or via email at MCantor@pbcgov.org.

Sincerely,

A handwritten signature in black ink, appearing to read "William Cross".

William Cross, AICP
Principal Site Planner, Zoning Division

Attachments: February 23, 2011 LDRAB Agenda and Supporting Materials

c: Verdenia C. Baker, Deputy County Administrator
Barbara Alterman, Esq., Executive Director, PZB
Lenny Berger, Assistant County Attorney
Bob Banks, Assistant County Attorney
Jon MacGillis, ASLA, Zoning Director
Maryann Kwok, Chief Planner, Zoning
Monica Cantor, Senior Site Planner, Zoning
Bryan Davis, Principal Planner, Planning
John Rupertus, Senior Planner, Planning

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PALM BEACH COUNTY

LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)

FEBRUARY 23, 2011

BOARD MEMBERS

Wes Blackman, AICP, Chair (PBC Planning Congress)

David Carpenter, RLA, Vice Chair (District 2)

Raymond Puzzitiello (Gold Coast Build. Assoc.)

Joanne Davis (District 1)

Vacant (League of Cities)

Barbara Katz (District 3)

Terrence Bailey (Florida Engineering Society)

Jim Knight (District 4)

Jose Jaramillo (A.I.A.)

Lori Vinikoor (District 5)

Rosa Durando (Environmental Organization)

Mike Zimmerman (District 6)

Michael Cantwell (PBC Board of Realtors)

Martin Klein, Esq. (District 7)

Gary Rayman (Fl. Surveying and Mapping Society)

Robert Schulbaum (Member at Large/Alternate)

Maurice Jacobson (Condominium Association)

Vacant (Member at Large/Alternate)

Vacant (Association Gen. Cont. of America)

Board of County Commissioners

Karen T. Marcus
Chairman, District 1

Shelley Vana
Vice Chair, District 3

Paulette Burdick
Commissioner, District 2

Steven L. Abrams
Commissioner, District 4

Burt Aaronson
Commissioner, District 5

Jess R. Santamaria
Commissioner, District 6

Priscilla A. Taylor
Commissioner, District 7

Robert Weisman
County Administrator



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**LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)
WEDNESDAY, FEBRUARY 23, 2011 AGENDA
2300 NORTH JOG ROAD
1ST FLOOR KENNETH S. ROGERS HEARING ROOM (VC-1W-47), 2:00 P.M.**

A. CALL TO ORDER/CONVENE AS LDRAB

1. Roll Call
2. Additions, Substitutions and Deletions
3. Elections – Chair and Vice Chair
4. Motion to Adopt Agenda
5. Adoption of November 17, 2010 Minutes (Exhibit A)

B. ANNUAL ORGANIZATION DISCUSSION

1. Meeting Procedures
 - a. Robert's Rules of Order (Exhibit B)
 - b. Review of Sunshine Law, Palm Beach County and State Code of Ethics (Exhibit C-1)
 - c. Palm Beach County Code of Ethics (Exhibit C-2)
 - d. LDRAB Rules of Procedure
 - Amendments (Exhibit D)
 - Motion to Adopt Amendments
2. 2010 Attendance (Exhibit E)
3. 2011 Board Members (Exhibit F)
4. 2011 Meeting Schedule (Exhibit G)
5. 2011 Work Plan
 - a. Deadlines/Scheduling for Proposed 2011 Amendments (Exhibit H)
 - b. Summary of Amendments Round 2011-01 (Exhibit I)
 - c. Subcommittees (Exhibit J)
 - 1) Pain Management Clinic Subcommittee [2011-01]
 - 2) Urban Redevelopment Area (URA) Subcommittee [2011-01]
 - 3) Renewable Energy (Wind) Subcommittee [2011-01]
 - 4) Use Regulations Subcommittee [2011-02]
6. Code Revision Webpage General Information (Exhibit K)

C. PUBLIC COMMENTS

D. STAFF COMMENTS

E. ADJOURN

EXHIBIT A

PALM BEACH COUNTY

LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB) LAND DEVELOPMENT REGULATION COMMISSION (LDRC)

Minutes of November 17, 2010 Meeting

On Wednesday, November 17, 2010 the Palm Beach County Land Development Regulation Advisory Board (LDRAB) met in the First Floor Conference Room (VC-1W-47), at 2300 North Jog Road, West Palm Beach, Florida.

A. Call to Order/Convene as LDRAB

1. Roll Call

Chair Wes Blackman called the meeting to order at 1:05 p.m. Zona Case, Code Revision Zoning Technician, called the roll.

Members Present: 11

Wesley Blackman (PBC Planning Congress)
David Carpenter (District 2)
Raymond Puzzitiello (Gold Coast Build. Assoc.)
Jose Jaramillo (AIA)
*Rosa Durando (Environmental Organization)
Gary Rayman (Fl. Soc. of Prof. Land Surveyors)
Maurice Jacobson (Condominium Assoc.)
Joanne Davis (District 1)
Jim Knight (District 4)
Lori Vinikoor (District 5)
Martin Klein (District 7)

Members Absent: 3

Michael Cantwell (PBC Board of Realtors)
Barbara Katz (District 3)
Mike Zimmerman (District 6)

Vacancies: 4

Vacant (League of Cities)
Vacant (Mem. At Large, Alternate)
Vacant (Florida Engineering Society)
Vacant (Assoc. Gen. Contractors of Amer.)

County Staff Present:

Leonard Berger, Assistant County Attorney
William Cross, Principal Site Planner, Zoning
Monica Cantor, Senior Site Planner, Zoning
Zona Case, Zoning Technician, Zoning
John Rupertus, Senior Planner, Planning
Patrick Rutter, Senior Planner, Planning
Michael Howe, Planning

Mr. Carpenter noted that the Meeting Room VC-1W-47 was renamed the Kenneth S. Rogers Auditorium in dedication to the late Ken Rogers. The Chairman suggested that in the future the new name be used for the meeting location.

2. Additions, Substitutions and Deletions

An Amendments to the Agenda sheet for Exhibit E, Emergency Structures and Exhibit R, (approved at the 10/27/10 LDRAB meeting), with a request made to pull the Exhibit from LDRC and include it at the end of the LDRAB portion of the agenda.

3. Motion to Adopt Agenda

Motion to adopt as amended by Martin Klein, seconded by Maurice Jacobson. The motion passed unanimously (10-0*).

4. Adoption of October 27, 2010 Minutes (Exhibit A)

Motion to adopt by Martin Klein, seconded by Maurice Jacobson. The motion passed unanimously (10-0*).

B. ULDC Amendments

1. Exhibit B: Article 2, Development Review Procedures

Mr. Cross stated that the proposed amendment clarifies that only an administratively approved development order may be abandoned by the Zoning Director.

Motion to adopt by Martin Klein, seconded by Raymond Puzzitiello. The motion passed unanimously (10-0*).

2. Exhibit C: Article 3 – Overlays & Zoning Districts

- Part 1 - codifies DRO conditions of approval for street tree phasing that are placed on final site plans. Ms. Cantor stated that street trees that are planted within ROWs

EXHIBIT A

or street tracts are under the jurisdiction of Engineering and Public Works and are subject to streetscape standards as well as standards specified in Article 7.

- Part 2 – restores Code language pertaining to State requirements for the rezoning of any lands that support mobile home uses, which was inadvertently deleted in Ordinance 2009-040.

Mr. Carpenter questioned street trees located within a landscape buffer abutting streets in a PUD. Mr. Cross clarified that the proposed amendments only applied to any street trees that were located within a R-O-W and that these standards did not apply to landscaping in buffers. Moreover, Mr. Cross indicated that staff would no longer be recommending any conditions of approval that required street trees on any R-O-W less than 50 feet in width, due to previous issues with the trees being adverse to other required engineering improvements. The BCC would also be advised of such in the event such trees were recommended.

Motion to adopt by Raymond Puzzitiello, seconded by Maurice Jacobson. The motion passed unanimously (10-0*).

3. Exhibit D: Pain Management Clinics

Mr. Cross stated that this amendment establishes a new expiration date of September 2011 to allow additional time for staff to ascertain if Zoning codes could be used to mitigate the adverse impacts of unscrupulous pain management clinics. Staff noted that several local politicians were continuing to press the State to establish Statewide standards and solutions on this issue.

Motion to adopt by Martin. Klein, seconded by Maurice Jacobson. The motion passed unanimously (10-0*).

*Rosa Durando arrives at 1:10

4. Exhibit E: Emergency Structures

Mr. Cross pointed out spelling errors and clarification on the Amendments to the Agenda sheet and stated that the amendment:

- revises the definition of emergency to include natural disasters;
- identifies the types of emergency structures allowed to be approved by the Zoning Director and the Executive Director of PZB;
- recognizes circumstances under which temporary structures might be required for longterm situations such as the ongoing Hoover Dike restoration being administered by the Army Core of Engineers for Lake Okeechobee that may require a multi-year temporary structures.
- establishes a mechanism whereby the Zoning Director can approve such structures by special permit; and,
- clarifies that Zoning Director has the authority within the language to submit it to the BCC through the Administrative Inquiry Process.

Motion to adopt as amended by Martin. Klein, seconded by Lori Vinikoor. The motion passed unanimously (11-0).

5. Exhibit F: Yard Waste

Mr. Cross indicated that there were interested parties in the audience who wished to speak on this item and requested that those persons be given the opportunity to speak before a decision is taken by the Board.

Ms. Cantor directed the Board's attention to the White Paper which explained the Yard Waste topic, explained the reason for the proposed amendment and set out the background on landscape service use, both principal and accessory. She said that over the years landscape service as a principal use, or as an accessory to wholesale and retail nurseries, have been allowed to temporarily store yard waste generated by the maintenance service they provide to their customers only. The proposed amendment will formalize continuation of that use associated with landscape service. Ms. Cantor further explained that the subject was thoroughly discussed at three subcommittee meetings resulting in the recommendations set out in the White Paper. The Zoning Director recommends that the amendments be done in two phases. The first phase is to make yard waste storage an accessory to landscape service. Based on the results of this presentation to the BCC and their direction, we may move to the second phase which will include yard waste storage as an accessory to both wholesale and retail nurseries, or possibly allowing for unrelated lawn care operators to also drop off yard waste.

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Ms. Cantor went on to state that Part 2 outlines the standards for the yard waste storage associated with landscape service, as follows:

- The storage area shall meet setbacks of 100 feet from any residence to protect residential use.
- The storage area shall be no more than 30 feet x 40 feet with a maximum 12 foot high wall.
- Positive drainage - paved area to avoid water accumulation and allow the water to drain away from the location.
- Yard waste not generated by landscape service shall be prohibited.
- Location criteria - only landscape services that are located fronting arterial or collector streets will be allowed to have yard waste storage.

Ms. Cantor emphasized the importance of the location criteria, which she said would reduce traffic and minimize impact in residential areas, especially in the Acreage where the roads are not designed to allow heavy traffic.

Responding to a question from the Chairman regarding regulation in the past, Ms. Cantor confirmed that this was done on an ad-hoc basis through the Zoning Director, from time to time, so the language is meant to formalize what has been common practice.

Public Comments

Mr. William E. Pruitt, Attorney at Law, representing Bushel Stop Nurseries said that the company has been engaged with Zoning, Code Enforcement and other departments for approximately two years on nursery operations. His clients support landscape services and through agreement with staff have found ways to regulate and monitor them. They also support the two phases of amendments proposed by the Zoning Director. Mr. Pruitt continued by saying that he had attended three productive sub-committee meetings and was disappointed that the October 25 meeting was cancelled as he had hoped to have some concerns addressed at that meeting. He told the Board that Mike Cantwell attended all meetings on behalf of the LDRAB and SWA was also represented at the meetings. SWA sees the amendments as beneficial to their operations which are designed for heavy mechanized waste transfer. Smaller landscape companies off-load by hand, a much slower process, and one which can result in liability issues with people off-loading from trailers and pick-up trucks. SWA is supportive of reasonable and monitored regulations to ensure that yard waste goes to an appropriate place, either one of their facilities or a permitted mulching and chipping facility. Bushel Stop, he went on to say, takes the product to their chipping and mulching yard for mulching and composting and it is re-introduced into potting soils and sold back to the community - a full recycling program!

Referring to the proposed amendment, Mr. Pruitt said that he favored codifying the language to level the playing field for all. He agreed restrictions are necessary to protect heavily residential areas but was of the opinion that economics will help to regulate proliferation as operation costs are high. Most landscape services will have to get rid of their waste as they don't have facilities for re-mulching, composting and putting into potting soil. Nurseries are a natural fit for this because of their size and the traffic flow.

Mr. Pruitt's stated the following concerns:

- Requirement that sites are fronted on collector or arterial streets: Mr. Pruitt said Traffic or Engineering was not consulted on this but he thought it might be better in some cases for a site to have access off a side street. Trucks and trailers lining up, slowing down and turning in on arterial or collector streets, might present a traffic problem. He asked that consideration be given to other locations where the operations do not impede traffic flow or cause a hazard. He suggested less specificity in the location language.
- Setback requirements could cause problem with internal traffic flow: Mr. Pruitt said that the language says loading and service areas, and not containment bin, which is a little vague. If trucks are lined up to deposit, it is not clear if that is the loading or service area and that would be difficult to measure. The language should allow internal flexibility to ensure the flow is appropriate for the location. Also, the fact that the bin is not allowed to face a residential use could pose limitations as the containment area would be three-sided, causing backflow.
- Twelve foot high wall around a 30 foot x 40 foot area: The supportive structure required for the wall would be difficult, costly and might be problematic with standing up to hurricanes. SWA would like to accept waste from hand off-loaders and the

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height of the wall would present a loading problem. Once the waste gets to the back it would be difficult to throw palm fronz, limbs etc. on top. Most landscape services have a 5ft high wall and the reason the walls are low on the sides is to allow loading from almost any area. He cautioned against the high wall proposed and suggested that consideration be given to screened buffers.

Mr. Pruitt ended by applauding the staff on the proposed amendments and expressed the desire to see them go forward with some tweaking.

The Chairman reminded those present that this is the first phase and there would be a subsequent phase if the Board gave its recommendation. He also pointed out that 12ft is the proposed maximum, no minimum has been proposed and the wall is on 3 sides only, so one side would be open. Mr. Pruitt responded that the waste can be stacked only as high as the wall, so in order to maximize storage you would have to go to a height of 12 foot.

Mr. Klein requested that staff respond to the three issues raised by Mr. Pruitt, and questioned whether there are any issues raised by Mr. Pruitt that had not been considered before by the subcommittees.

Ms. Cantor responded that decision on the location criteria was taken in the interest of minimizing traffic into residential streets; the decision on the setbacks took into consideration the size of the sites, namely three acres minimum, which will also narrow down possibilities of having too many scattered all over the County. She confirmed to Mr. Klein that she was comfortable with the language in both cases.

With regard to the 12 foot high wall, Ms. Cantor said that the possibility of a buffer to screen the yard waste storage area was discussed at one of the earlier subcommittee meetings but eventually the conclusion was reached that although many sites, including retail and wholesale nursery sites, have buffers, they are not sufficiently high to screen yard waste. She said that the wall height will assist in limiting the storage height and also assist in code enforcement.

Mr. Puzitiello said that this would not affect Bushel Stop's clients as they collect yard waste from other services. Landscapers who do their own yard waste collection would be affected and he suggested that a berm be considered.

Mr. Cross said, for clarification, that he thought Mr. Pruitt's concerns were:

- that in the first phase a private business would be limited to accept and store only material generated by a landscape service business;
- in addition to the standards set out, Mr. Pruitt would like to see it specified that a wholesale nursery does not necessarily have to operate an associated landscape service. In addition to their activity the can accept material from smaller businesses that do not have the storage space and/or do not want to drive to the nearest SWA transfer station.
- Mr. Pruitt would like the Board to indicate to the BCC their approval of the Zoning Director's proposal, pending the BCC's decision.

Mr. Cross inquired whether Mr. Pruitt agreed with the clarification and if he had anything to add. Mr. Pruitt agreed with Mr. Cross' clarification and confirmed that the Bushel Stop is a Wholesale Nursery.

Wes Blackman requested a response to two questions:

1. Does staff think that the language "loading and service area" is vague in terms of measuring the setback from an adjacent property, FLU or existing residential land use?
2. Are landscape services in general permitted in any residential FLU designation?

In response to the first question, Mr. Cross said that at this time it is preferable to leave the language generic and approve it on a site plan or permit as there may be varying requirements for loading zones and rather than specify dimensions it would be more flexible to show it on the site plan and in case of non-compliance, the landscape service would be subject to code enforcement.

Replying to the second question, Mr. Cross said that landscape services are allowed in FLU designations only where accessory to nursery use has been permitted in a residential FLU designation. As a standalone use landscape services would not be permitted in a residential FLU designation., except for AGR.

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Ms. Durando expressed the view that all land has residential use but what should be defined is whether the land is still zoned AGR. Many residents in AGR-zoned land legitimize the AGR use by meeting minor agricultural requirements but are operating landscape maintenance service. There is heavy duty machinery and a lot of traffic coming in and out. She did not want those services to be required to build walls, and speaking specifically of the Acreage, she was of the opinion that they should have considerable leeway based on the size of the lot. She would not like to see legitimate businesses that have been operating there for years on 5 – 10 acre sites subject to these rules.

Mr. Carpenter said that most of the nurseries are on 60ft dirt roads and cannot be serviced by this Ordinance if the location is being limited to arterial or collector streets. He expressed the view that the necessary service will not be provided. Mr. Carpenter also said that a minimum height should be included in the language, bearing in mind the height of a storage container which is required for storing the waste. Berming should be considered because the high wall would present difficulties as containers have to be loaded from the front and sides in order to utilize the depth of the container. The wall has to be the same height as the container.

Mr. Cross replied that there is no container requirement – the waste can be loaded on a truck and the situations being considered do not use containers. He went on to say that some nurseries have been considered bona fide agricultural use but are technically more of a commercial operation. However they are still allowed in residential districts like the AR. There is no mechanism to decide if one business is more successful than another. If the yard waste is stored it could become a health hazard. There has to be a limit on the amount of material that can be safely stored on site, but removal will be in big vehicles which will impact a residential street.

Ms. Durando asked whether a private road is considered a residential street and referred specifically to Heritage Road where there are existing landscape businesses. She said those businesses do not meet the road requirements but their operations should not be limited.

Mr. Blackman gave a reminder that what was being considered at the meeting is the larger landscape businesses and whether or not they have the ability to store yard waste.

Ms. Durando said that's why the Acreage should be mentioned as they have 10 acre tracts and should be given what they want. However, they are not on arterials, they are on a private road.

Mr. Klein stated that he was satisfied that this is a cogent proposal that has been well thought out by the staff and that staff has reviewed the comments that were presented by Mr. Pruitt. He added that the White Paper states that regulations are needed to codify what has been done in the past and that the proposed standards and regulations will streamline whatever ad hoc process exists now. Whatever is not quite right now can be revisited and fixed later.

Mr Klein moved for approval of Exhibit F, Parts 1 and 2, seconded by Mr Jacobson. Ms. Durando voted nay. The motion passed 10 – 1.

7. Exhibit G: Density Bonus Programs

Martin Klein stated for the record that he had a discussion related to this item, with a member of Gold Coast Builders and also with the County Attorney, Lenny Berger.

Wes Blackman stated for the record that he had a discussion with Skeet Jernigen of the Community and Economic Development Council.

Maurice Jacobson stated for the record that he had a discussion with a representative of Gold Coast Builders.

Mr. Rayman stated for the record that he had a discussion with a representative of Land Design and County Attorney, Bob Banks.

All the above were of the opinion that they could be impartial in their review.

Michael Howe of the Planning Division, referred to the proposed changes outlined in the Exhibit. Part 1 is to codify the Acronym FRA, Florida Realtors Association which is the

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reference used for the median sales price data. He summarized the amendments to the Density Bonus Programs as follows:

- Workforce Housing Programs Limited Incentives: to clarify that the applicant may receive no more than 50% of the potential density of a project.
- Affordable Housing Program: Clarify and correct existing language and define the income ranges for rental units and for sale units under the Affordable Housing Program.
- Transfer of Development Rights (TDRs) Bank: Firstly, a proposal to take out the receiving area procedure and secondly to have the value and price of a TDR set annually by the BCC using the median sales price as established by the Florida Realtors Association for Palm Beach County. Two different pricing methods will be used, namely fee simple for a single family development and condo data for multi family development. Staff recommendation is to set those prices at 15% of the median sale price in each case.
- Part 5-Density Bonus Limitations: changes the Workforce Housing percent requirement from 50% to 35%.
- Transfer of Development Rights (TDRs) Special Density Bonus Programs: Receiving area Procedures discussed with developers previously. Under the existing language TDR payments are put in escrow or similar mechanism at the time of the final DRO. The language is being changed to place 50% of the funds in escrow at DRO, the balance of 50% to be paid prior to the first building permit, thus removing the requirement to pay in full up-front.
- Details of the language to be included in the TDR application to provide a little more certainty for the developer. Also clarifications on elevations, different types of drawings, different design standards and architectural compatibility.

The chairman questioned whether at any time a market rate for a TDR would be considered and Patrick Rutter of the Planning Division responded that it had been allowed once or twice

In response to a question from Maurice Jacobson as to what constitutes workforce housing and what the current selling prices are, Mr. Rutter said that today's selling price is 60% to 140% of area median income. Area median income is \$67,600, which is the mid point of the median income for a family of 4 in Palm Beach County. To translate that into sales prices, the range 60% to 140% is divided into 4 categories:

- Low 60 – 80 - low; - sales price is approx \$142,000
- Moderate 80 – 100; - sales price is approx \$182,000
- 100 – 120; - sales price is approx \$223,000
- Middle Category 120 – 140; - sales price is approx \$263,000

Those are maximums

Ms. Davis questioned what was the impetus to reduce from 50% to 35% and how many have been built, and she commented that presently the market is bad but when it turns around workforce housing will be needed and essentially the County does not have a program.

Mr. Knight followed up with a question on the TDR inventory at present.

In replying to both questions, Mr. Rutter stated that of the 1,800 approved, less than 20 had been built. He has not looked at the inventory in a long time but estimated 7,000 TDRs presently and went on to say that there were three projects that were in process when the Moratorium was put in place and those were able to move forward. The Moratorium is due to expire on December 5. Mr. Rutter continued that it was important to clarify that there is a Workforce Housing component to TDRs but at this time the pricing of TDRs is what is being discussed.

Mr. Rutter further stated that there was policy direction when the County began utilizing TDRs in the late 90s. In 2004-2005, before adopting a permanent program, there was an interim program which utilized the TDR as the vehicle to assist in meeting the requirement of the bonus part of it before the requirement was in place. A permanent program was created but we had been using TDRs. At that time the 50% requirement was introduced so Workforce Housing was working from two different angles. In looking at the WHP that is moving forward on its own now there did not seem to be the need to maintain such a high percentage of TDRs.

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Public Comments

Mr. Drew Martin, citizen of Lake Worth, stated that Commissioner Santa Maria mentioned that the cost of the TDRs are too low, they are not making money and the program was designed so that the developer pays into a fund to provide funding for other purposes. Mr. Martin said that the reason the program is not successful is that the prices of the houses, ranging from \$142,000 to \$263,000 are too high. They are not really workforce housing as the average citizen in PBC who really needs the housing cannot afford it. At those high prices houses are being built just for the wealthy. He also questioned what the 15% referred to.

Wes Blackman said that the reference to 15% would be addressed by other interested parties in the audience who would be speaking on this item. He added his view that the goal of TDRs should not be to make money but to provide affordable housing for people in the workforce.

Ms. Davis stated the TDR program was set up to maintain County owned natural areas. It is a fund that is supposed to be used for maintenance of the County's publicly owned lands. So there is a dual purpose.

Public Comments

Skeet Jernigan, president of the Community and Economic Development Council addressed the Board. He told members that he met with staff five or six times in the past 6 months on this topic. TDRs play a role in the Workforce Housing Ordinance but the pricing of TDRs is what is being considered. The stated purpose of TDRS is to use the money from their sales to offset the cost of exotic plant removal, maintenance and public use improvements to County owned conservation lands. The development rights were stripped from the properties and were put into the County bank. As long as TDRs are needed and correctly priced a consumer will buy them. He went on to say that the Council, at the County's request, put forward the proposal which is being presented to the Board. After doing extensive research, background analysis and historical gathering of information they concluded that TDRs should be priced at about \$10,000 per unit.

Mr. Jernigan presented 2 charts showing the following information:

- The yearly TDR price versus median home price from 2001-2004.
- TDRs were marketable and sold in the years 2001-2004 priced at \$9,000 to just slightly above \$15,000.
- From Jan 01 to Jan 04 the median price ranged from \$141,000 to \$300,000.
- The data for January 01 to January 04 showed that when TDRs are priced between 4 and 7% of the median price of a house they are saleable.

Mr. Jernigan continued by saying that the price of a TDR is tied to the price of a house and the median sales price of a house today is \$239,000 in the County. The County's position of 15% is more than double where the market says a TDR will sell and is not a sustainable position. It is counterproductive to even attempt to sell them. He did not believe anybody would be purchasing at \$36,000.

Mr. Jernigan further stated that some Commissioners expressed concern that the Affordable Housing TDRs were priced at \$1 as an incentive to build affordable housing but the price is too low and should be increased. The Council agreed and suggested that it should be priced at 10% of the TDR price so it would go from \$1 to \$1,000, and that the workforce TDR price contained in the Affordable Housing Program should be 20% of the suggested price of \$10,000.

The recommendation to staff is to make the process easy to maintain by attaching the price of the TDR to the median sales price of a home and allowing that information to flow from the realtors to the County so that it can be updated every year.

The County collected \$7million in TDR sales between 2001 and 2004 when the price of the TDR was a marketable price. Since then the County has collected virtually nothing from TDR sales. The money is needed to maintain the county's lands and staff has indicated to the Commissioners that they are running out of resources to do their job. The County gets a limited amount of additional funds from other sources but with bad economic conditions the money is dwindling and they will be at the bottom of the barrel in two years. To sum up, Mr. Jernigan said that the price being proposed is too high by two-thirds.

Mr. Roog, of the Gold Coast Builders Association supported the points raised by Mr. Jernigan and added that one point not raised is timing of TDR payments. He

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recommended that rather than breaking up the payments, and to simplify the process, the full amount should be paid at the recordation of the plat because at that point the development is set and there will not be much if any fluctuation with the TDR units. In this economic climate any effort to get the market back on its feet, whether symbolic or not, is essential at this time.

Kevin Rataree of GL Homes said he was asked by the Builders Association to meet with staff and with the Community and Economic Development Council. From the Industry standpoint the proposal put to the Board is viable. He reinforced Mr. Jernigan's view on pricing. Referring to escrow, Mr. Rataree said that the usual costs are between 1% and 3% of the total funds being held by the bank. He proposed that after platting and before a project moves forward, is the appropriate time for the funds to be paid. To put the money in escrow for what could be two or three years is too costly.

Bob Bentz of Land Design South gave his perspective on the economy and said that in today's market the residential units will not sell at \$36,000 and the cost should be reduced. Re the neighborhood plan he referred to the proposed language on reduction and stated that Commissioner Vana suggested a reduction of 5%. He would prefer a range in reduction to give the BCC flexibility, the intent being to encourage home builders to follow neighborhood plans. A developer is not required to follow the plan but if he chooses to do so there should be some potential benefit and that's why the reduction was proposed. He said that he would like to see a reduction range of 25% to 50%, based on the neighborhood plan and the complexity of what the developer has to do to meet the requirements of the plan.

Martin Klein requested staff's response to the comments from Industry, in particular Part 4 which referred to the \$36,000 price.

Mr. Rutter agreed with the following suggestions that were made:

- the 4 to 5% range is more appropriate;
- requiring full payment up front could stand modification, hence the suggestion to split the difference - 50% up front and 50% at permit;
- the concept with regard to pricing - moving up and down in accordance with median home prices.

He referred to the data that was presented by Mr. Jernigan in the charts and commented that the provision for \$1 TDRs was not made until 2005 and to date 500 have been sold. The reason for the reduction in revenue is because the \$1 TDR price came into effect. It was not there before. He reasoned that if demand is so great at that price then the price could stand to be raised. Looking at the chart there were some raises as a matter of percentage so that did not dissuade purchasers during the 3 year period 2001-2003. He went on to say that the decline in the housing market and the economy contribute to the lack of sales.

Mr. Rutter explained how the decision of 15% of the median sales price was arrived at:

- 20% of the value of a home is attributable to land (per study by the National Association of Homebuilders about 1-1/2 years ago);
- standard cost of finished lot is 20%, which is a little more valuable than a development right;
- The range over the past 15 years from 20 to 25%; and,
- Within the 20% is the dirt value which does not have a development right associated with it.
-

The decision was taken to reduce the price from 20% to 15% after taking all factors into account.

Mr. Klein said that in effect the value is going to be set annually by the BCC using any number and he inquired whether there was any sentiment among the group to omitting the 15% and allowing the BCC to adjust it yearly, depending on market conditions.

Mr. Rutter replied that the Code can change at any time but the language says that the Board shall use the median sales price as established by the realtors, so if it is codified this would be the methodology utilized. This way pricing will be done automatically. The Comprehensive Plan requires that there be a plan to estimate TDR pricing annually and an effort is being made to automate it as opposed to going back to a time when it was done indiscriminately. This establishes a threshold, a base line.

EXHIBIT A

Mr. Berger interjected that once the language is decided the price is fixed.

The Chairman commented that it is a government-fixed price that has some regulation to it, but the price is fixed arbitrarily and not by the market.

Ms. Davis said that this is the decision making process of the sitting BCC that is not being talked about and she requested that it be placed on record that the BCC has been giving away TDR units. Developers have asked for increased density and have got it free of cost. She inquired as to how many vacant units are on market

Mr. Jernigan replied that there were approximately 15,000 units.

Mr. Knight also inquired as to the balance of money left for maintaining lands and what the County paid for the lands.

Mr. Jernigan replied that staff spends about \$6million per year for maintenance and public use improvements. He has been told they have less than 2 years of supply money left.

With regard to the prices paid for the land, Ms. Davis said that the prices vary according to what the market was at the time it was purchased. The units could have been retired but they were banked instead. Ms. Davis went on to say that the methodology for deciding median income is skewed as the HUD figures are used. In Palm Beach County the economic situation is unique - very very low and very very high income. It would be good to do an appropriate methodology for this County based on its facts and figures rather than on national data. She voiced the opinion that she does not object to pricing TDRs at a marketable rate if the rate is going to be followed and not given away but was not convinced that will be followed. She also said that the chart shows that the decline started when that particular sitting Commission was giving the units away.

Closing comments on this item are as follows:

Ms. Durando stated that no one can determine what the market will be and expressed concern that there is nothing in the language to prevent speculators from buying up the units and cornering the market if the price is reduced. The objective of the TDRs she stated, is to supply affordable housing. It was not created specifically to support ERM as such support should be an agenda item annually and not be dependent on the sale of TDRs. She closed by saying that the language has to be more restrictive and very definitive.

Wes Blackman stated that the marketplace still has to find equilibrium and it is uncertain what will happen next year as there might be falling property values. He said that there is no market for TDRs so they are given away and he expressed grave reservations to set the price at the recommended level. The price should be set annually based on market conditions and he suggested that it be left to the BCC to make the decision and have Industry deal with their representatives in the usual way.

Mr. Jacobson reminded all present of the problems of the economy, housing and lack of jobs in Florida, and in particular Palm Beach County. He went on to say that the focus ought to be on creating job opportunities, rather than it being on prices.

Ms. Vinikoor inquired as to whether everyone would be comfortable with a range.

Barbara Alterman, Executive Director of Planning, Zoning & Building, asked for clarification on what was meant by uniformity and questioned if the reference was to the varying prices for the Affordable Housing Units.

Wes Blackman replied in the negative.

Motion to approve by Mr. Klein, as amended to correct page 18, lines 32, 33 and 36, and to include a recommendation to the BCC to change the 15% and for the BCC to approve the TDR cost on an annual basis, seconded by Maurice Jacobson. The motion passed unanimously (11-0).

Reorder of Agenda per Add/Delete

Exhibit R, INST Future Land Use Amendments

Mr. Cross said that Exhibit R was moved from LDRC to LDRAB due to change made to the Exhibit in the Amendments to the Agenda. Ms. Vinikoor asked that the word "chiroprapist" be replaced by "podiatrist" as the term chiroprapist is not used any more.

EXHIBIT B

Robert's Rules of Order Summary

Pursuant to Art. 2.G.2.E.2, Robert's Rules of Order all meetings and board proceedings conducted by the Palm Beach County Zoning Division must be governed by Robert's Rules of Order. Robert's Rules of Order were created by Major Henry Robert in 1867 as a set of principles that guide and enforce order during formal assemblies and gatherings. These rules emulated parliamentary procedures applied by the US Congress, which in turn were based on the British Parliamentary Law. According to Robert's Rules of Order, parliamentary procedure is based on the consideration of the rights of the majority, the rights of the minority (especially a large minority greater than one-third), the rights of individual members, the rights of absentee members, and the rights of all of these groups taken together.

To view the revised Robert's Rules of Order please refer to the following website:
www.bartleby.com/176/72.htm.

Working in the Sunshine

*A Guide to the
Government in the
Sunshine Amendment
and the Code of Ethics*

**Palm Beach County
Board of County
Commissioners**



WORKING IN THE SUNSHINE

A Guide to the Sunshine Amendment and the Code of Ethics



Prepared by Palm Beach County Attorney's Office
Leonard Berger, Senior Assistant County Attorney

October 2007

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I. INTRODUCTION

This guide provides an overview of Florida's Government in the Sunshine regulations for Palm Beach County officials and employees. If you are an employee of Palm Beach County or a government official, whether elected or appointed to any County office or board, including any advisory body, then you are governed by these regulations: the Public Records Law, the Sunshine Law, and the Code of Ethics. While Florida's Government in the Sunshine regulations do not affect your every waking moment, chances are you will look to one or more of these laws for critical direction at various points in your public career. This guide also provides an overview of the federal honest services law.

Reading this guide will not make you an expert in the field, but it will give you a general understanding of the principles that drive these laws and the ability to recognize issues that need to be addressed *before* making a decision. You may wish to read the language of these laws for a complete understanding of what is required, and to be sure that anything contained in this guide has not been superseded by a more recent amendment.

Whenever in doubt about how these laws may apply to you, please contact the County Attorney's Office at (561) 355-2225. It is always best to identify and deal with a potential problem as early as possible, before it becomes a crisis.

II. CODE OF ETHICS

The public demands that its government operate ethically. As County officials and employees, you are held to a higher standard than your private sector counterparts. In order to meet this standard, you must be aware of any real or potential conflicts of interest that might arise between your public duties and your private pursuits. The Code of Ethics is not intended to

prevent you from participating in community activities or private economic pursuits available to the general public; it is intended only to ensure that public officials and employees carry out their duties fully, faithfully and ethically.

A good first step in avoiding a Code of Ethics violation, a potential violation, or even the appearance of one, is to ask yourself the following: How would an outside observer view this situation? Would it appear to the observer that you used your public position for your private benefit or the benefit of a relative or friend? Would it appear that you or your relative or friend received some sort of benefit or preferential treatment from the County as a result of your position? If the answer is yes, or even maybe, you should take steps to avoid a possible violation. If you are in doubt, the best approach for employees may be to disclose the situation to your supervisor so that, if necessary, the decision can be made for you by others. Whether you are a County official or employee, the County Attorney's Office is always available to answer questions about how to interpret a particular provision of the Code of Ethics, or how it may apply to you in a particular situation.¹

The following sections will take a closer look at the key provisions of the Code of Ethics.

A. PROHIBITED CONFLICTS OF INTEREST

Florida's Code of Ethics includes laws that prohibit public officials and employees from engaging in certain activities that create a conflict between one's public duties and private interests. These rules present absolute prohibitions that cannot be avoided by simply abstaining from a vote. Described briefly, County officials and employees acting as purchasing agents cannot in their private capacity do business with the

¹ Any County official or employee may request an advisory opinion of the state's Commission on Ethics. The Commission's duties include providing such opinions and recommending penalties to disciplinary officials for violations of the Code of Ethics. Many of the examples used to illustrate these rules are taken directly from published opinions of the Commission.

County. This prohibition extends to a spouse or child of the official or purchasing agent, and includes a business in which any of these individuals are officers or part owners.² County officials and employees are further prohibited from holding an employment or contractual relationship with any entity doing business with or being regulated by his or her agency, or having such a relationship that would create a frequently recurring conflict between public duties and private interests.³

Q & A

I do a lot of volunteer work for my local neighborhood association. Do I have a contractual relationship with them?

Whether you have a "contractual or employment relationship" with an entity doing business with or being regulated by your agency is generally a question of whether you receive some sort of compensation as a result of the relationship. Serving as a voluntary director of a nonprofit organization does not, for example, constitute a contractual relationship,⁴ nor does a marital relationship.⁵ On the other hand, you would have a contractual relationship with an entity as its paid corporate officer or a holder of its stock.⁶

These conflict of interest rules keep referring to my agency. What exactly does "agency" mean?

The Commission on Ethics has described an employee's "agency" as the "lowest departmental unit within which his influence might reasonably be considered to extend."⁷ This means that a County employee or official would not necessarily be precluded from doing business privately with every division

² §112.313(3), Florida Statutes.

³ §112.313(7)(a), Florida Statutes.

⁴ Commission on Ethics Opinion 89-33.

⁵ Commission on Ethics Opinion 90-77.

⁶ Commission on Ethics Opinion 86-36.

⁷ Commission on Ethics Opinion 93-31.

and subdivision of County government. The critical question in determining whether a prohibited conflict exists is whether the employee or official plays any conceivable role in the County's decision to do business with his or her private enterprise. Commission on Ethics Opinions on the subject are fact specific and do not always describe a clear boundary between prohibited and acceptable conduct. The best practice when confronted with a possible conflict under these rules is to contact the County Attorney's Office for an opinion.

These rules also prohibit me from working for a company that is regulated by the County. How can I avoid this conflict? If I am employed by a private company, isn't it bound to be regulated by the County in some way?

The Commission on Ethics interprets the term "regulate" narrowly, looking to the function of the regulation rather than the mere fact of it. An employee, for example, would not be prohibited from working for a pool cleaning service on weekends simply because the company holds an occupational license from the County. This sort of regulation involves a ministerial process from which the employee could not derive improper benefit by virtue of his or her public employment.⁸ On the other hand, a Code Enforcement Board member could not represent a person in a case before that board.

Can a person who serves on a board appear before that board on his or her own behalf?

The Code of Ethics does not prohibit a board member from appearing before his or her own board in the regulatory arena. Thus, a Board of Adjustment member could appear before the board to request a zoning variance on his or her own property, and a Code Enforcement Board member may appear before the board if his or her property is the subject of a code enforcement violation. Constitutional Due Process rights

⁸ Commission on Ethics Opinion 91-28.

ensure an individual's right to appear under such circumstances. Moreover, the rule in question simply prohibits a public officer from having a *contractual relationship* with an entity being regulated by his or her board.

MORE PROHIBITED CONFLICTS OF INTEREST

The remaining prohibited conflicts of interest can be described as "common sense" prohibitions. First, public officials and employees cannot accept anything of value when the official or employee knows, or should know under the circumstances, that it was given in order to influence some official act or decision. Public officials and employees cannot disclose or use information not available to the public obtained by reason of their position for private benefit. And finally, public officials and employees cannot corruptly use their position for private benefit.⁹

Q & A

How can I misuse government information? Isn't it all available to the public?

While Florida's open government laws require access to almost all government records, many government officials and employees have regular access to information not generally known to the public which could be used to their private advantage. For example, an employee with access to certain confidential information could violate this provision by using this information in his or her private capacity as a private investigator. A deputy clerk of the court who is also a real estate agent could violate this provision because of immediate access to information regarding property sales, foreclosure proceedings, probate proceedings, and matters in litigation. This provision could also be violated if an employee of a public agency forms a consulting firm offering a training program

⁹ See §112.313(2), -(4), -(6) and -(8), Florida Statutes.

based on the program the employee produced for the public agency.¹⁰

The law forbids me from accepting a gift when I “should know” that the gift was given to influence me. How am I supposed to know when a gift is given to me in order to influence me?

According to the Supreme Court of Florida, proof that a gift was given to a public official who might be in a position to help the donor one day is not enough by itself to establish a violation. Courts will look to the specific conduct of the official or employee and all of the surrounding circumstances to determine whether that person, with the exercise of reasonable care, should have known that a gift was given in exchange for some sort of improper benefit.¹¹ While there is no bright line test to guide your conduct in this area, courts explain that this law fairly describes a “zone of danger into which a public official or employee may not safely enter.” To avoid finding yourself in this “zone of danger,” it is wise to consider carefully who is giving you a gift and the possible reasons for the donor’s generosity. Would you feel comfortable explaining to your constituents, your supervisor, or the media that the gift in question was in no way related to your official duties? If you have any doubts about the propriety of accepting the gift, chances are that others will believe you have misused your public position.

B. EXCEPTIONS TO CONFLICTS OF INTEREST

In the years since these conflict rules were introduced, the Legislature has seen fit from time to time to adopt certain exemptions. The following is a partial list of the exemptions most commonly encountered.¹² You will not run afoul of the

prohibitions against doing business with your agency or having conflicting employment relationships if:

- 1) the business is rotated among all qualified suppliers of the product in the county;
- 2) the business is awarded by sealed, competitive bid and the official, his spouse, or child has not attempted to persuade County employees or officials to enter into the contract AND the official or employee files a statement with the County Supervisor of Elections disclosing his or her interest and the nature of the business AND this statement is filed before the bid is submitted;
- 3) the purchase is in response to an emergency and must be made to protect the health, safety and welfare;
- 4) the purchase is from a sole source in the county and the official or employee fully discloses his or her interest to the governing body;
- 5) the aggregate of such transactions does not exceed \$500 per calendar year;
- 6) public officials or employees in a private capacity purchase goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency; or
- 7) public officials or employees in a private capacity purchase goods or services from a business entity subject to the regulation of his or her agency where the price and terms of the transaction are available to similarly situated members of the general public and the official or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

¹⁰ See Commission on Ethics Opinions 83-46 and 79-8.

¹¹ See *Commission on Ethics v. Barker*, 677 So.2d 254 (Fla. 1996); *Goin v. Commission on Ethics*, 658 So.2d 1131 (Fla. 1st DCA 1995).

¹² See §112.313(12), Florida Statutes, for the complete list.

8) In addition, conflicts of advisory board members may be waived in a particular instance by a two-thirds vote of the appointing body, or the appointing individual if applicable, following full disclosure of the nature of the transaction.

C. VOTING CONFLICT, APPEARANCE OF VOTING CONFLICT, AND DISCLOSURE OF PERSONAL INTEREST OR RELATIONSHIP

When called upon to vote on a matter, a public official may be confronted with one of three possible scenarios: (1) a voting conflict, which requires the official to abstain from voting and publicly declare the conflict; (2) an appearance of voting conflict, in which the official may choose to abstain and publicly declare the apparent conflict; (3) a personal interest or relationship in the matter which does not amount to a voting conflict or an appearance of one, but still calls for public disclosure of the relationship or interest. All three scenarios will be addressed in turn.

1. VOTING CONFLICT

In cases where a relationship or interest does not amount to a prohibited conflict by one of the circumstances described above, officials may still be required to publicly declare certain conflicts and abstain from voting. This law applies when a vote would result in a special private gain or loss to the official, any principal that retains the official, any subsidiary or parent organization of a principal that retains the official, or the official's relative or business associate.¹³ For the purposes of this law, a relative is defined as a parent, spouse, child, sibling, or in-law.¹⁴ The term "special private gain or loss" in almost all

circumstances refers to a direct financial interest.¹⁵ Suppose, for example, that you serve on a code enforcement board which is hearing a case concerning excessive noise in a particular neighborhood. Your son works for a company causing the noise, and a decision by your board to eliminate the noise would cost your son his job. This scenario does not describe the sort of prohibited business or contractual relationship discussed above, yet it is easy to see how your decision in this case could be improperly influenced by your son's position with the company.

Q & A

What does "special private gain" mean? Can I vote on a matter that would improve my entire neighborhood?

In determining whether a voting conflict exists, the Commission on Ethics looks to the size of the class of individuals relative to the official's opportunity for gain that would result from the vote. There was no voting conflict where, for example, a planning commissioner voted on a comprehensive plan amendment affecting 29,000 acres, merely because the commissioner's principal leased 300 of those acres.¹⁶ On the other hand, a planning commissioner would be prohibited from voting on a comprehensive plan amendment affecting 32,000 acres where the commissioner, his relatives, and business associates own 1,200 acres.¹⁷

Please explain what being "retained by a principal" means.

Whether you are "retained" by a principal for the purposes of voting conflicts is usually a function of whether you are receiving some sort of compensation from this principal. If,

¹⁵ See, e.g., *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170, 1173 n. 8 (Fla. 3d DCA 1984); *George v. City of Cocoa*, 78 F.3d 494 (11th Cir. 1996) ("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.")

¹⁶ Commission on Ethics Opinion 87-18.

¹⁷ Commission on Ethics Opinion 95-4.

¹³ §112.3143(3)(a), Florida Statutes.

¹⁴ §112.3143(1)(b), Florida Statutes.

for example, you are providing legal, engineering or other professional services for a client, or if you are a paid director of a corporation, you are “retained” under this law.¹⁸ You would not, on the other hand, be retained by your church simply because you are a member,¹⁹ or by a nonprofit corporation which you serve as an uncompensated director.²⁰ Finally, there is no voting conflict if you are retained by another public agency.²¹

What do I do if I have a voting conflict?

In the event of a voting conflict, a public official must abstain from voting, declare publicly the nature of his or her interest in the matter before the vote occurs, and within fifteen days of the vote, file a memorandum of voting conflict with the person responsible for recording the minutes of the meeting to be incorporated into the minutes.²² Elected officials are nevertheless allowed to participate in a matter prior to abstaining. Appointed officials, on the other hand, may not participate in matters that give rise to a voting conflict. Appointed officials must provide a copy of their memorandum of voting conflict to the other board members, and read the memorandum at the next public meeting after it has been filed. The term “participate” means any attempt to influence the decision by oral or written communication, whether made by the officer or at his or her direction.²³

2. APPEARANCE OF VOTING CONFLICT

There may be circumstances where a vote does not directly result in a special private gain or loss, but does create

the appearance of one. In this case, section 286.012, Florida Statutes, allows a public official to declare the apparent conflict and abstain from voting. But while this law allows the official to abstain, it also imposes an affirmative duty on the part of officials to vote on all matters unless “there is or appears to be a possible conflict of interest” under Florida’s Code of Ethics.²⁴ This law discourages use of the abstention to avoid a politically unpopular vote or otherwise manipulate the outcome of a particular vote. In determining what constitutes a possible conflict of interest under this statute, the Attorney General has explained that a public official must have a personal financial interest in a matter in order to abstain from voting.²⁵ The Commission on Ethics has similarly explained that a city council member may not abstain on a matter involving the member’s personal foe, explaining that the Code of Ethics is primarily concerned with a public official’s economic interests.²⁶

Q & A

Is there no better definition in the law of what constitutes a possible conflict of interest?

There is a fine line between a possible conflict where a public official may abstain, and an absence of conflict where the public official must vote. Of the few opinions that give guidance on the subject, the timing of an official act in relation to some private transaction plays an important role. In one case where no actual conflict existed at the time of a vote, the Commission on Ethics explained that a recent transaction connected to the matter gave rise to the appearance of a conflict. In that case, a city commissioner entered into a partnership to purchase a parcel of land which was ultimately sold to a third party. A few months later, the third party approached the city regarding a possible voluntary annexation. The Ethics

¹⁸ Commission on Ethics Opinions 84-11 and 84-107.

¹⁹ Commission on Ethics Opinion 90-24.

²⁰ Commission on Ethics Opinion 84-50.

²¹ See, e.g., Commission on Ethics Opinions 91-20, 88-20 and 86-86.

²² The memorandum of voting conflict is known as Form 8B and is available from the County Attorney’s Office or may be printed directly from the Commission on Ethics Web site at <http://www.ethics.state.fl.us/>.

²³ §112.3143(4)(c), Florida Statutes.

²⁴ §286.012, Florida Statutes.

²⁵ Attorney General Opinion 87-17.

²⁶ Commission on Ethics Opinion 79-14.

Commission noted that the commissioner had no ongoing relationship with the third party and expected none in the future. While no actual voting conflict existed under these facts, the Commission on Ethics noted that the commissioner could elect to abstain based on an appearance of voting conflict.²⁷ The scarcity of opinions on the subject suggests that abstention for a possible conflict is rarely used. When there is clearly no actual voting conflict, the best practice in most cases is simply to vote and disclose the nature of the personal interest or relationship that raised the concern.

3. DISCLOSURE OF A PERSONAL INTEREST OR RELATIONSHIP

Even when required by state law to cast a vote, a public official can ensure maximum transparency in government decision-making by disclosing certain relationships and interests related to the matter. For example, voting on a matter that would benefit a grandparent, longtime friend, former employer, former business associate, or favorite charity, may not amount to a voting conflict under state law. But by fully disclosing the nature of these facts and relationships before the vote, the public official eliminates the possibility of any secret motive, and can better demonstrate that the vote was made for the public good, not for private gain. This serves not only the primary intent of Florida's Code of Ethics, but also the dictates of the federal "honest services" law.

D. THE INTANGIBLE RIGHT TO HONEST SERVICES

Federal law prohibits engaging in fraudulent activity that would deprive another of the intangible right of honest services.²⁸ While not part of the state's Code of Ethics, this law certainly impacts local government officials and employees. Typical examples of activities prosecuted under this law include

bribery or failure to disclose a conflict of interest that results in personal gain.²⁹ Federal courts have not uniformly interpreted the reach of this law. The Fifth and Fourth Circuits have tied a deprivation of honest services to a violation of state law.³⁰ The First Circuit, on the other hand, has explained that while the defendant in one case violated a state law, such a violation is not necessary to find a conviction under the federal law.³¹ The Eleventh Circuit, the federal court that hears cases in Florida, has also ruled that proof of violation of state law is not necessary for a conviction under the federal law.³²

The Eleventh Circuit's interpretation of this law suggests a broader reach than some other circuits, but public officials in Florida convicted under this law uniformly misused their public office for personal gain which, in one fashion or another, could have amounted to violations of Florida's Code of Ethics. In *United States v. Hasner*, for example, the chairman of the Housing Finance Authority concealed commissions paid to him in connection with a real estate transaction where the property was to be developed with bonds issued by the Housing Finance Authority.³³ In *Lomelo v. United States*, the mayor of the City of Sunrise took part in a scheme in which public dollars were funneled to individuals for services that were never performed.³⁴ *Castro v. United States* was one of several trial court cases emanating from the so-called "Operation Court Broom" in which judges were convicted of appointing attorneys as special public defenders in exchange for kickbacks.³⁵ Finally, in *United States v. Lopez-Lukis*, a Lee County Commissioner took bribes from a lobbyist in exchange for votes and participated with the lobbyist in a blackmail campaign

²⁹ *United States v. Woodard*, 459 F.3d 1078 (11th Cir. 2006).

³⁰ *United States v. Brumley*, 116 F.3d 728 (5th Cir. 1997).

³¹ *United States v. Sawyer*, 85 F.3d 713 (1st Cir. 1996).

³² *United States v. Hasner*, 340 F.3d 1261 (11th Cir. 2003).

³³ *Hasner*, 340 F.3d at 1265-1266.

³⁴ 891 F.2d 1512, 1514 (11th Cir. 1990).

³⁵ 248 F.Supp.2d 1170 (S.D. Fla. 2003).

²⁷ Commission on Ethics Opinion 87-96.

²⁸ 18 U.S.C. §1346.

against a county commission candidate to maintain a balance on the Commission that was favorable to the lobbyist.³⁶ By any standard imaginable, the public officials in each of these cases clearly stepped over the line.

In describing its understanding of the federal law, the Eleventh Circuit may not specifically adopt standards established by Florida's Code of Ethics, but it certainly remains consistent with it. The very first sentence of Florida's Code of Ethics provides: "It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain"³⁷ As for the Eleventh Circuit's reading of the federal law:

When a government officer decides how to proceed in an official endeavor—as when a legislator decides how to vote on an issue—his constituents have a right to have their best interests form the basis of that decision. If the official instead secretly makes his decision based on his own personal interests—as when an official accepts a bribe or personally benefits from an undisclosed conflict of interest—the official has defrauded the public of his honest services.³⁸

Both laws serve the same end, and the federal court decisions thus far have hardly been shocking given the actions of the public officials at issue. But the Eleventh Circuit has made it clear that its understanding of the federal law will not be limited to duties imposed by state law. As such, it is not possible to simply resort to the body of opinions regarding Florida's Code of Ethics to determine how the federal law might apply. While not foolproof, full disclosure of the nature

³⁶ 102 F.3d 1164 (11th Cir. 1997).

³⁷ §112.311(1), Florida Statutes.

³⁸ *Lopez-Lukis*, 102 F.3d at 1169.

of personal interests and relationships related to a vote, even when there is no conflict under state law, best addresses the issue. Properly done, the nature of this disclosure should demonstrate that the decision is based on the best interests of the public and not secretly made to serve a private interest. Better still, this practice will further enhance transparency in local government decision-making.

E. FINANCIAL DISCLOSURE AND THE GIFT LAW

These rules require certain County officials and employees to regularly report their financial interests and receipt of certain gifts. The Gift Law also sets forth a number of prohibitions and rules regarding gift valuation for reporting purposes.³⁹

Applicability

The following employees and officials are subject to the state's financial disclosure requirements and the requirements of the Gift Law:

- 1) All persons elected to office or appointed to fill an elective office, including any person who has qualified for elective office or who has been elected but has yet to assume responsibilities of the office.
- 2) All persons appointed to boards having the power to enforce local codes.
- 3) All persons appointed to local zoning or planning boards, including boards of adjustment or appeal boards, except those boards having only advisory functions.
- 4) All persons serving on a pension or retirement board having the power to invest pension or retirement funds, or the power to make a binding determination of

³⁹ See §§112.3145 and 112.3148, Florida Statutes, for a complete list of covered officials, rules and prohibitions.

one's entitlement to or amount of a pension or other retirement benefit.

5) All persons appointed to any other board who are required to file a financial disclosure by the appointing authority, or by state or local law or regulation.

6) The County Administrator, County Attorney, County Building Official, water resource coordinators, environmental control director, fire chief, any administrator with the authority to grant or deny land development permits, and purchasing agents with authority to make purchases exceeding \$15,000 in value.

If you are subject to the financial disclosure requirements, you should receive a financial disclosure form by mail no later than June 1. These forms are also available from the Palm Beach County Supervisor of Elections Office and online from the State Commission on Ethics Web site at <http://www.ethics.state.fl.us>.

What to file, when to file, where to file it

If you are covered by these rules you must file the financial disclosure form by July 1 of each year. You are also required to file this form no later than 30 days after taking the position. Elected officials file their form with the Commission on Ethics; others file with the Palm Beach County Supervisor of Elections Office. If you fail to timely submit the completed financial disclosure form, you will receive a delinquency notice. If you fail to respond to this delinquency notice, you will be subject to civil penalties. This disclosure form requires you to report your non-public sources of income and certain types of financial interests including certain types of real property holdings, ownership interests in certain types of businesses such as banks and utility companies, and certain financial liabilities you may have. If, after reading the form, you realize that you have nothing to disclose, mark "not applicable" on the form and file it anyway.

You are also required to file a final financial disclosure statement within 60 days of leaving your public position for the period between January 1 of the year in which you leave office and the last day of service. You are not required to file this final financial disclosure form if during this period you assume another public position that requires financial disclosure.

Those required to file a financial disclosure form are also subject to quarterly gift reporting requirements. You must file a quarterly gift report with the Commission on Ethics for any calendar quarter in which you receive a gift worth over \$100. The disclosure form is due no later than the last day of the following calendar quarter. For example, if the gift is received in March, it must be disclosed no later than June 30. This disclosure form requires a description of the gift, its value, the name and address of the donor, and the date received. You do not have to report gifts from relatives.⁴⁰ Like the financial disclosure form, this form is also available at the Commission on Ethics Web site. Unlike the financial disclosure form, you do not have to file the quarterly gift reporting form if you have nothing to report.

Gift definition and valuation

The gift reporting rules seem simple enough but, as the following section will reveal, a "gift" is not always a gift, and its value may not always be what it is worth. The law describes a "gift" as anything accepted by you or by another on your behalf including but not limited to real or personal property or its limited use; forgiveness of a debt; preferential terms on a debt, loan or other service; food or beverage; tickets to events, or membership dues. A "gift" does not include your salary or fees or gifts associated primarily with your employment; any award or plaque given in recognition of your civic, charitable or professional service; transportation provided to you by a public agency in relation to officially approved governmental business,

⁴⁰ See §112.3148(8)(a)1, Florida Statutes.

or the use of a public facility made available to you for a public purpose.

Q & A

How do I calculate the value of a gift?

Determining the value of a gift is not as simple as checking its price tag. The following rules address the more common questions of valuation:⁴¹

- 1) The value of a gift is determined using the actual cost to the donor, less taxes and gratuities. With respect to personal services provided, the reasonable and customary charge regularly charged for such service in your community shall be the value for reporting purposes.
- 2) Membership dues paid to the same organization during any twelve-month period shall be considered a single gift.
- 3) The value of entrance fees, admission fees, or tickets shall be the face value of the ticket or fee.
- 4) Transportation is valued on a round-trip basis and considered a single gift, unless only one-way transportation is provided. Transportation provided by private carrier is valued based on the same transportation provided by comparable commercial carrier. Lodging provided on consecutive days is considered a single gift.
- 5) The value of the gift is reduced by any compensation provided by you to the donor. This compensation must be given to the donor within ninety days of your receiving the gift. For example, a \$110 gift given to you may be valued at \$90 and therefore not subject to quarterly reporting if, within ninety days of

⁴¹ See §112.3148(7), Florida Statutes.

receiving the gift, you paid \$20 to the donor in exchange for it.

Prohibitions

The Gift Law prohibits you from receiving gifts from a lobbyist or the lobbyist's principal if the value of the gift exceeds \$100.⁴² According to the Gift Law, a lobbyist is one who, for compensation, seeks or sought during the preceding twelve months to influence some measure of governmental decision-making. Those who lobby Palm Beach County are required by local ordinance to register. A complete listing of registered lobbyists is maintained by the County and available online for your review at: <http://www.pbcgov.com/legislativeaffairs/lobbying.htm>. In order to avoid violating this prohibition, it is important to know first, whether you have a gift at all and second, whether the gift's value exceeds the \$100 limit.

F. RESTRICTION ON EMPLOYMENT OF RELATIVES

This law prohibits County officials and employees from seeking to appoint, employ, promote, or advance a relative in the agency in which the official or employee serves, or over which the official or employee exercises jurisdiction or control. For the purpose of this law, the term "relative" is quite broad. It is defined as one related to the official or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, 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.

According to this law, the term "jurisdiction and control" does not include mere approval of budgets. Nor would

⁴² See §112.3148(4), Florida Statutes.

approval of across the board salary increases constitute a violation of this law.⁴³

G. PENALTIES

Penalties for violating the Code of Ethics include removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary, forfeiture of no more than one-third salary per month for no more than twelve months, a civil penalty not to exceed \$10,000, and restitution of any financial benefit received as a result of the violation.⁴⁴ Any contracts entered into by the County in violation of the Code of Ethics are voidable as well. Violations of the federal honest services law carry the possibility of substantial fines, forfeiture of any gains received in violation of the law, and a prison sentence of up to twenty years.

III. PALM BEACH COUNTY POST-EMPLOYMENT ETHICS ORDINANCE

This local ordinance prevents certain employees from representing other parties in matters in which the County has an interest for at least six months following cessation of their employment with the County. Level-two employees, *i.e.*, assistant county administrators, assistant county attorneys, department heads, assistant department heads, division heads, auditors within the internal audit department, and deputy fire chiefs, must refrain from such representation for an additional six months in matters in which the employee participated substantially. Level-one employees, *i.e.*, county administrator, county attorney, internal auditor, fire rescue administrator, county engineer, deputy county administrator, chief deputy county attorney, deputy county engineer and director of planning, zoning and building, must refrain from such

⁴³ Commission on Ethics Opinion 90-62.

⁴⁴ See §112.317, Florida Statutes.

representation for an additional twelve months in matters in which the employee participated substantially.⁴⁵

This ordinance does not prevent former employees from representing themselves before a County board or department in personal matters. Nor does this ordinance prevent a former employee from contracting with the County to provide goods or services.

IV. SUNSHINE LAW

The principal aim of the Sunshine Law is to prevent government from conducting business behind closed doors. The law requires all meetings of any board or agency at which official acts are to be taken to be public. Since its adoption, the law has been broadly applied to cover each step of the decision-making process which leads to a board's official act. All advisory bodies that recommend action to the ultimate decision-making body must therefore meet "in the sunshine." In fact, any group, whether formally assembled or ad hoc in nature, must adhere to the Sunshine Law if it has been delegated any measure of decision-making authority. Complying with the requirements of the Sunshine Law is really rather simple and will be covered in a later section. The more difficult issues concern whether the Sunshine Law applies at all.

A. WHEN DOES THE SUNSHINE LAW APPLY?

According to Florida Statutes, all meetings of any agency or authority of the County at which official acts are to be taken are declared to be public meetings open to the public at all times.⁴⁶ The term "official acts" does not simply refer to the final vote of a board. Rather, this term describes every step in the decision-making process which leads to a board's final act. As such, a board cannot evade the law by meeting in private to resolve an issue only to summarily affirm its decision in a

⁴⁵ Palm Beach County Ordinance 88-30.

⁴⁶ See §286.011, Florida Statutes (1995).

subsequent public meeting.⁴⁷ Nor does the law allow two or more board members to privately discuss matters which may foreseeably come before their board.⁴⁸ This prohibition extends to all forms of electronic communication as well. Moreover, an individual who has been delegated the authority to act on behalf of an agency may be an "agency" for the purposes of the Sunshine Law.⁴⁹ In sum, any entity that has been delegated some measure of decision-making authority is covered by the Sunshine Law.

The critical factor in determining whether a board or committee is covered by the Sunshine Law is whether it functions as a decision-making body. For example, a staff committee formed to screen and recommend applicants for the position of dean at a state university was subject to the Sunshine Law. Even though applicants rejected by the committee nevertheless could be considered for hire, and the committee's recommendations overall could be disregarded, a court reasoned that the law applied because of the committee's involvement in the decision-making process.⁵⁰ In contrast, a group formed only for the purpose of fact finding in order to help the decision-making authority come to its own conclusion was not a committee covered by the Sunshine Law.⁵¹

It should be clear from the examples above that if you are appointed by the Board of County Commissioners to serve on an advisory board, your board is most certainly subject to the Sunshine Law. It should also be clear that there is no staff exception to the Sunshine Law. Employees for the most part only carry out the policies of the governing body and are not, therefore, covered by the Sunshine Law. But there are some limited situations where employees are called upon to engage in

decision-making on behalf of the governing body. In these circumstances, the Sunshine Law applies to employees as well.

B. WHAT IS REQUIRED TO COMPLY WITH THE SUNSHINE LAW?

The law requires reasonable notice of a meeting in order to make it a "public" meeting.⁵² Whether notice is reasonable depends on the board and the facts surrounding the required board action.⁵³ "Reasonable notice" can best be described as notice that, in light of the surrounding circumstances, is sufficient to inform and enable interested persons to attend the meeting. Public meetings must also be held at facilities that are reasonably accessible to the public.⁵⁴ The Sunshine Law prohibits government from conducting meetings at any facility which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in such a manner as to unreasonably restrict public access.⁵⁵

In addition, the Sunshine Law requires minutes of public meetings to be promptly recorded and made available for public inspection.⁵⁶ Minutes must be in written form and need only contain a brief summary of the meeting.⁵⁷ There is no requirement to tape record public meetings, but if done, these recordings become public records and must be available for public inspection.⁵⁸

C. PENALTIES FOR VIOLATING THE SUNSHINE LAW

Any member of a board or committee subject to the Sunshine Law who knowingly violates its provisions is guilty of

⁵² *Yarbrough v. Young*, 462 So.2d 515 (Fla. 1st DCA 1985).

⁵³ *See, e.g., News and Sun-Sentinel Company v. Cox*, 702 F.Supp. 891 (S.D. Fla. 1988).

⁵⁴ *See, e.g., Attorney General Opinion 76-141.*

⁵⁵ *See* §286.011(6), Florida Statutes (1995).

⁵⁶ *See* §286.011, Florida Statutes (1995).

⁵⁷ *Attorney General Opinion 82-47.*

⁵⁸ *See* §119.01, Florida Statutes (1995); *Attorney General Opinion 86-21.*

⁴⁷ *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974).

⁴⁸ *Rowe v. Pinellas Sports Authority*, 461 So.2d 72 (Fla. 1984).

⁴⁹ *Krause v. Reno*, 366 So.2d 1244 (Fla. 3d DCA 1979).

⁵⁰ *Wood v. Marston*, 442 So.2d 934 (Fla. 1983).

⁵¹ *Cape Publications v. City of Palm Bay*, 473 So.2d 222 (Fla. 5th DCA 1985).

a second degree misdemeanor, punishable by a prison term of up to sixty days, a fine of up to \$500, or both.⁵⁹ Furthermore, any elected or appointed official convicted of a misdemeanor may be removed from office by executive order of the Governor.⁶⁰ The statute provides in addition that any violation of the Sunshine Law is a noncriminal infraction punishable by a fine of up to \$500. Finally, reasonable attorneys' fees may be assessed against a board that violates the Sunshine Law.

Q & A

What happens to actions taken in violation of the Sunshine Law?

The Sunshine Law specifically provides that "no resolution, rule, or formal action shall be considered binding except as taken or made at an open meeting."⁶¹ Courts have accordingly nullified actions taken by a board in violation of the Sunshine Law. A zoning ordinance, for example, was declared invalid because it was adopted based in part upon the recommendations of a citizens' planning committee which met in private.⁶² In another instance, the court rendered void a contract to purchase property because the agency failed to give proper notice of a meeting.⁶³ A Sunshine Law violation can be cured with respect to the official action provided that the matter is given full consideration at a later public meeting.⁶⁴

Does the reasonable notice/reasonable access requirement include the right of the public to speak at a public meeting?

The statute does not address the public's right to speak at a public meeting. Courts have suggested, however, that the right to "participate" in public meetings does not include the

right to speak to each item.⁶⁵ There also exists ample authority to support a government's right to reasonably restrict the public's right to speak during public meetings.⁶⁶

Does the reasonable notice requirement include the requirement to prepare an agenda?

There is no requirement that an agenda be published as part of the reasonable notice requirement.⁶⁷ Moreover, in the event one is published, there is no requirement that the board adhere in lock step to the agenda as drafted.⁶⁸

V. PUBLIC RECORDS LAW

Along with the Sunshine Law, the Public Records Law forwards the principle of open government by ensuring public access to nearly all government records. This law is applied broadly by the courts to accomplish its intended effect. And while there exist hundreds of exceptions to the law, each is drafted narrowly by the Legislature and construed by the courts in like fashion. Nearly all documents concerning County business are more likely than not public records which must be made available for public inspection and copying upon request.

A. PUBLIC RECORDS DEFINED

State law defines "public records" as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of any

⁵⁹ See §286.011(3)(b), Florida Statutes (1995).

⁶⁰ See §112.52, Florida Statutes (1995).

⁶¹ See §286.011, Florida Statutes (1995).

⁶² *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974).

⁶³ *TSI Southeast, Inc. v. Royals*, 588 So.2d 309 (Fla. 1st DCA 1991).

⁶⁴ See *Tolar v. School Board of Liberty County*, 398 So.2d 427 (Fla. 1981).

⁶⁵ See *Law and Information Services v. City of Riviera Beach*, 670 So.2d 1014 (Fla. 4th DCA 1996) (citing *Wood v. Marston*, 442 So.2d 934 (Fla. 1983)).

⁶⁶ See, e.g., *Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989).

⁶⁷ See *Law and Information Services v. City of Riviera Beach*, 670 So.2d 1014 (Fla. 4th DCA 1996).

⁶⁸ *Hough v. Stembridge*, 278 So.2d 288 (Fla. 3^d DCA 1973).

agency.⁶⁹ The Supreme Court of Florida added to this definition that public records are all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.⁷⁰ As such, public records include not only those final or "official" government documents intended for public review, but also include drafts and interdepartmental memoranda which gave rise to the final document.

Carefully considering the terms used by the court in describing a public record—"perpetuate," "communicate" and "formalize"—should help you understand what is and what is not a public record. Was the document created in order to communicate an idea to another? Was it created in order to perpetuate or prolong the existence of an idea? Was it created in order to formalize an idea, to give it shape or definition? Consider the following common examples in light of these questions.

Public record—is it or isn't it?

Interoffice or intra-office memoranda which communicate information from one employee to another are likely public records. Drafts of official documents circulated among employees for comment are also public records, even if the information contained in them does not later become part of a formal public document. On the other hand, uncirculated rough drafts or notes intended only for your personal use, or dictation notes or tapes, would not be public records.⁷¹ Your appointment calendar, to the extent it includes your official duties, is a public record, as are travel itineraries and plane reservations related to your official duties.⁷² Tape recordings of

advisory board meetings are public records.⁷³ E-mail sent or received in connection with official business is a public record. Resumes, salaries and performance evaluations are all public records as well.⁷⁴

Q & A

Is my entire personnel file a public record?

Most personnel records are subject to the Public Records Law. The Supreme Court of Florida has explained that all records related to an employee's qualifications for the job or performance on the job are public records.⁷⁵ As noted above, records including your resume, salary and performance evaluations are public records. Any letter of reprimand or censure for failing to do your job properly is also a public record.⁷⁶ The Legislature has, however, enacted a number of exemptions to the law in order to strike a balance between the public's right to access government records and an employee's right to privacy. Social Security numbers of all current and former County employees are exempt.⁷⁷ Any medical information in your file which, if disclosed, would reveal your identity is exempt.⁷⁸ Examination questions and answer sheets of examinations administered by the County for employment purposes are also exempt.⁷⁹ Names and addresses of certain employees, such as code enforcement officers and firefighters, are exempt as well.⁸⁰

⁷³ Attorney General Opinion 86-21.

⁷⁴ See, e.g., *Byron, Harless*, 379 So.2d at 639-640.

⁷⁵ See *Michel v. Douglas*, 464 So.2d 545 (Fla. 1985).

⁷⁶ *News-Press Publishing Co. v. Wisher*, 345 So.2d 646 (Fla. 1977).

⁷⁷ §119.071(4)(a)1, Florida Statutes.

⁷⁸ §112.08(7) and §119.071(4)(b), Florida Statutes.

⁷⁹ §119.071(1)(a), Florida Statutes.

⁸⁰ §119.071(4)(d)1 and 5, Florida Statutes.

⁶⁹ §119.011(1), Florida Statutes.

⁷⁰ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633 (Fla. 1980).

⁷¹ See, e.g., *Byron, Harless*, 379 So.2d 633; *State v. Kokal*, 562 So.2d 324 (Fla. 1990).

⁷² Attorney General Opinion 72-356.

Is written correspondence with the County Attorney's Office protected by the attorney-client privilege?

No. The Public Records Law provides a limited work product exemption, but it is not nearly as broad as the attorney-client privilege enjoyed by the private sector. The exemption is limited to documents prepared by or at the direction of the agency attorney exclusively for ongoing or imminent litigation which reflect the attorney's legal theory or litigation strategy. These documents lose exemption status at the close of the litigation.⁸¹ Florida Statutes provide certain additional exemptions for documents regarding insurance claims negotiations and claims filed with Risk Management.⁸²

How does the Public Records Law apply when the County does business with the private sector?

The Public Records Law balances the public's demand for open government with the private sector's need to maintain some level of confidentiality in the competitive marketplace. Sealed bids or proposals solicited by the County, for example, are exempt from disclosure until the County makes a selection, or within ten days after the bid or proposal opening, whichever comes sooner.⁸³ Trade secrets, under certain circumstances, are also exempt.⁸⁴ Private businesses, however, acting on behalf of the County may be subject to the Public Records Law.⁸⁵ Whether a company doing business with the County is acting "on behalf of" the County, however, is not an easily answered question. Courts view the issue on a case by case basis analyzing, for example, whether the business through its contract with the County performs a governmental function or

⁸¹ §119.071(1)(d)1, Florida Statutes; *State v. Coca Cola Bottling Co.*, 582 So.2d 1 (Fla. 4th DCA 1990).
⁸² §624.311(2) and §768.28(16), Florida Statutes.
⁸³ §119.071(1)(b), Florida Statutes.
⁸⁴ See §119.071(1)(f), Florida Statutes, which exempts computer processing software obtained by the County under a licensing agreement.
⁸⁵ See §119.011(2), Florida Statutes, including as part of the definition for "agency" businesses acting on behalf of a government agency.

whether the business plays an integral role in the County's decision-making.⁸⁶ Simply put, a government cannot evade the Public Records Law by entrusting its documents to private entities with which it does business.⁸⁷

B. WHAT IS REQUIRED TO COMPLY WITH THE PUBLIC RECORDS LAW?

The law requires that all public records remain available for examination and inspection at any reasonable time and under reasonable conditions. In responding to a request, you should take only the amount of time necessary to retrieve the record and review it to see if any exemptions to the law apply. The law also provides that copies of public records must be furnished upon request and payment of a fee.⁸⁸ Generally, the fee for copying a public record cannot exceed the actual cost of copying. The County may impose a special service charge if the nature or volume of records requested requires extensive clerical or supervisory assistance.⁸⁹ The County's policy regarding reproduction of public records, including fee assessment, is currently found in PPM CW-F-002.

Q & A

What exactly do "reasonable times" and "reasonable conditions" mean?

Despite the fact that laws often use the term "reasonable" to govern our conduct, the word can mean different things to different people. To help understand what the law considers reasonable, it is best to review what is considered *unreasonable*. Government cannot, for example, impose an automatic delay before a requested record is

⁸⁶ See, e.g., *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group*, 596 So.2d 1029 (Fla. 1992).
⁸⁷ See, e.g., *L.E. Harold v. Orange County*, 668 So.2d 1010 (Fla. 5th DCA 1996); *Wisner v. City of Tampa*, 601 So.2d 296 (Fla. 2d DCA 1992); *Times Publishing Co. v. City of St. Petersburg*, 558 So.2d 487 (Fla. 2d DCA 1990).
⁸⁸ §119.07(1)(a) and (4), Florida Statutes.
⁸⁹ §119.071(4)(d), Florida Statutes.

disclosed.⁹⁰ Nor can a government establish a fixed time period during which records may be inspected.⁹¹ Courts have determined that it is unreasonable to require a person to give some reason for reviewing a public record.⁹² It has also been found unreasonable to require a person to give his or her name or address, or to require that the request be made in writing.⁹³ Courts have also disapproved of a government's refusal to honor a public records request because it was overbroad.⁹⁴ If presented with a request that is too broad or vague to identify the records sought, you must notify the requesting party that you require more information in order to produce the document. In sum, this "reasonableness" standard has been construed to prevent a government from adopting policies that hinder the public's broad right of access to public records.

How will I know if a document is exempt under the law?

There are literally hundreds of exemptions to the Public Records Law scattered throughout all five volumes of the Florida Statutes, so chances are pretty good that you will not know whether an exemption applies. While these exemptions number in the hundreds, they are extremely narrow in scope, so chances are also pretty good that an exemption will not apply to the document being requested. Please contact the County Attorney's Office *before* you decide to refuse a public records request because of an exemption.

⁹⁰ *Tribune Company v. Cannella*, 458 So.2d 1075 (Fla. 1984).
⁹¹ See Attorney General Opinions 92-9; 75-70, and Attorney General Informal Opinion Letter to Christina Riotte, May 21, 1990.
⁹² *News-Press Publishing Co., Inc. v. Gadd*, 388 So.2d 276 (Fla. 2d DCA 1980).
⁹³ See, e.g., *Bevan v. Wanicka*, 505 So.2d 1116 (Fla. 2d DCA 1987); Attorney General Opinions 91-76 and 92-38.
⁹⁴ *Lorei v. Smith*, 464 So.2d 1330 (Fla. 2d DCA 1985).

What if a public document contains some information that is exempt?

Consult the County Attorney's Office first to determine whether the portion of the record in question is exempt. If an exemption applies, you are required to provide only that portion or portions of the document that is not exempt.⁹⁵ To do so, you may employ any method, such as masking the exempt information, as long as you do not destroy the exempted portion.⁹⁶

What if the record requested does not exist?

The Public Records Law requires that the public be allowed access to public documents. It does not, however, require you to create a new report to accommodate a request. Under this law, a person may examine the County's records regarding its road improvement expenditures, for example, but you do not need to honor a request to examine a report of those expenditures by Commission District if such a report does not exist.

What if I cannot answer questions about what the record means?

The Public Records Law requires access, not explanations. A finance officer would be required to produce the County's finance records for public inspection, but is not required by the Public Records Law to explain or answer questions regarding those finance records.⁹⁷

C. PENALTIES

Those who knowingly violate the Public Records Law are guilty of a first degree misdemeanor, punishable by a fine of up to \$1,000, a prison term of up to one year, or both. Elected officials are in addition subject to suspension and removal from office or impeachment.

⁹⁵ §119.071(1)(b), Florida Statutes.
⁹⁶ Attorney General Opinion 84-81.
⁹⁷ Attorney General Opinion 92-38.



**Palm Beach County
Board of County Commissioners**

Jeff Koons,, Chairman
Burt Aaronson, Vice Chairman
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Prepared by the County Attorney's Office
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PALM BEACH COUNTY CODE OF ETHICS

A guide for advisory board members

I. Misuse of Public Position

As an appointee to a quasi-judicial or advisory board, you are County Official under the Code of Ethics. As such, you must carry out your duties fully, faithfully and ethically. Misusing your position for private benefit is a breach of the public trust.

Prohibited Conduct: You cannot use your position in any way when you know or should know with exercise of reasonable care that it would result in FINANCIAL BENEFIT to:

- A. you;
- B. a member of your household -- this includes domestic partners and all dependents and any employer of these people;
- C. your relatives -- parents, children, siblings, grandparents, grandchildren, nieces, nephews, uncles, aunts, spouse, or any of their employers;
- D. an outside employer or a business of yours, your spouse or domestic partner, or someone who works for the outside employer or business; for the purposes of this law, it is considered your business if you or any combination of members of your household own at least 5 percent of the business' assets;
- E. someone who owes you, or who you owe, at least \$10,000, NOT including a loan you might have with a financial institution;
- F. civic, union, social, charitable or religious organizations where you, a spouse or domestic partner serve as an officer or director.

What does FINANCIAL BENEFIT mean for the purposes of this law?

Anything of value that can be obtained through the exercise of your public position that is not shared with similarly situated members of the general public.

Examples: Money, permit, contract, loan

Voting Conflict: You must abstain from voting on and not participate in any matter before the board that will result in a FINANCIAL BENEFIT as described in this section.
Procedure:

- 1) Publicly disclose the nature of the conflict before your board discusses the issue;
- 2) Abstain when the vote takes place;
- 3) Complete and file a voting conflict form with the clerk to the advisory board and send a copy to the Palm Beach County Commission on Ethics.

II. Prohibited Contractual Relationships

Section one regulates the way you perform your duties as a County Official. This section prohibits certain contractual relationships you might have in your private capacity that would conflict with your public duties.

A. You cannot enter into any contract or other transaction to provide goods or services with Palm Beach County. This prohibition includes any contract between Palm Beach County and you, your employer, or any business you own (minimum 5 percent of the business' assets).

B. Exceptions:

(1) The business is awarded under a system of sealed, competitive bidding to the lowest bidder, and

(a) you or a member of your household has not participated in the determination of the bid specifications or the determination of the lowest bidder;

(b) you or a member of your household has not used or attempted to use your influence to persuade the agency or any personnel thereof to enter into such a contract other than by the mere submission of the bid;

(c) prior to or at the time of the submission of the bid, you file a statement with the Supervisor of Elections and the Commission on Ethics disclosing the nature of your interest in the bid submitted.

(2) An emergency purchase or contract, which would otherwise violate this provision, must be made in order to protect the health, safety, or welfare of the citizens of Palm Beach County.

(3) Your outside employer or business involved is the only source of supply and you fully disclose your interest in the outside employer or business to Palm Beach

County and the Commission on Ethics prior to the purchase, rental, sale, leasing, or other business being transacted.

(4) The total amount of the transactions in the aggregate between your outside employer or business and Palm Beach County government does not exceed \$500 per calendar year.

C. Waiver: Conflicts prohibited under this section can be waived by the Board of County Commissioners upon full, public disclosure of the conflict and an affirmative vote of at least five members of the County Commission.

III. Honesty in Applications for Positions

No person seeking appointment to a Palm Beach County government advisory board may make any false statement, submit any false document, or knowingly withhold information about wrongdoing.

IV. Disclosure or Use of Certain Information

As a County Official, you cannot disclose or use information gained through your public position, but not available to members of the general public, for personal gain or benefit or for the personal gain or benefit of others.

V. Gift Law Prohibitions

A. You cannot ask for or accept a gift worth more than \$100 if you know the gift is coming from a lobbyist, or the lobbyist's employer, who lobbies your advisory board or a Palm Beach County government department that is subject in any way to the advisory board's authority. Lobbyists are required to register with Palm Beach County and to identify their employers. You can access this information at: http://www.pbcgov.org/plrapplication/asp/PLRSearchPublicView_New.aspx

B. You cannot accept a gift of any value given to you in exchange for the way you perform your duties as a County Official.

VI. Gift Law Reporting

A. County Officials who receive any gift worth more than \$100 must file an annual gift disclosure report with the Palm Beach County Commission on Ethics no later than November 1 of each year beginning November 1, 2011, for the period ending September 30 of each year. If you do not receive a gift worth more than \$100 during a given reporting period, you do not have to file an annual gift disclosure report. Those officials who are already required by state law to report gifts shall continue to follow state law requirements and do not need to file Palm Beach County's annual form. Copies of the state's gift reporting forms must be filed with the Palm Beach County Commission on Ethics. Information required in the gift report includes:

- (a) date received
- (b) description of gift
- (c) value of gift
- (d) name and address of person giving the gift

B. A **gift** means anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, or goods you do not pay for. Food and beverages consumed at a single setting or a meal are considered a single gift.

C. A gift does NOT mean:

- (1) Political contributions specifically authorized by state law;
- (2) Gifts from relatives or members of one's household;
- (3) Awards for professional or civil achievement;
- (4) Materials such as books, reports, periodicals or pamphlets which are solely informational or of an advertising nature;
- (5) Gifts solicited by County Officials on behalf of Palm Beach County government in performance of their official duties for use solely by Palm Beach County government in conducting official business.

VII. Noninterference with Commission on Ethics and Inspector General

A. County Officials shall not retaliate against, punish, threaten, harass, or penalize anyone for communicating, cooperating with, or assisting the Commission on Ethics or the Inspector General.

B. County Officials shall not interfere with or obstruct, or attempt to interfere with or obstruct, any investigation conducted by the Commission on Ethics or the Inspector General.

VIII. Palm Beach County Commission on Ethics

A. The Commission on Ethics is an independent body that will interpret the Code of Ethics, provide advisory opinions to all County Officials upon request, and provide ongoing training programs.

B. The Commission on Ethics will hear cases involving violations of the Code of Ethics.

(1) A violation of the Code of Ethics subjects a County Official to removal, public reprimand, and a fine of up to \$500. The Commission on Ethics may also order a County Official to pay restitution when the County Official or a third party has received a monetary benefit as a result of the County Official's violation. In addition, contracts, permits, or any other government approvals gained as a result of a violation may be rescinded or declared void by the Board of County Commissioners.

(2) The Commission on Ethics may refer certain violations of the Code of Ethics to the State Attorney to be prosecuted as a second degree misdemeanor. Violation of a second degree misdemeanor will subject you to a fine not to exceed \$500, imprisonment not to exceed 60 days, or both. Provisions that may subject you to prosecution:

- (a) Misuse of public position
- (b) Entering into prohibited contractual relationships
- (c) Using false information in advisory board applications
- (d) Accepting gifts that are prohibited by the Code of Ethics
- (e) Interfering with investigations of the Commission on Ethics or the Inspector General

IX. Summation

This guide is intended only as a summary of provisions contained in the Palm Beach County Code of Ethics that would apply to a majority of County Officials a majority of the time. The complete Code of Ethics is available online at:

http://www.pbcgov.com/ethics/pdf/Ethics_Code.pdf or ask your advisory board liaison.

Source: Palm Beach County Commission on Ethics

LAND DEVELOPMENT REGULATION ADVISORY BOARD

"Rules of Procedure"



~~May 14, 2004~~ February 23, 2011

Exhibit B

Article I Introduction

- A. The Palm Beach County Unified Land Development Code, hereinafter referred to as the ULDC, authorizes the Land Development Regulation Advisory Board and Land Development Regulation Commission, herein after referred to as the LDRAB and LDRC to Rules of Procedures for the transaction of business.
- B. The within Rules of Procedure have been adopted by the LDRAB and LDRC, and all previously adopted Bylaws or Rules of Procedure are deemed repealed.

Article II Powers and Duties

- A. The LDRAB shall have the powers and duties as outlined in ULDC Art.~~17.C.1.B~~ 2.G.3.A.2, Powers and Duties, as amended.

Article III Membership, Officers and Staff

- A. The LDRAB shall be composed of members as outlined in ULDC Art.~~17.C.1.C~~ 2.G.3.A.3, Board Membership, as amended.
- B. The Zoning Director shall serve as the Secretary and the professional staff of the LDRAB as outlined in ULDC Art.~~17.C.1.D~~ 2.G.3.A.4, Staff, as amended.

Article IV Meetings

- A. General meetings and special meetings of the LDRAB shall be governed as outlined in ULDC Art.~~17.B.5~~ 2.G.2.E, Rules of Procedure, as amended.
- B. A member of the LDRAB shall be permitted to participate in a general or special meeting via telephone or teleconference if the following conditions are met:
 - 1. That the quorum necessary to take action and transact business is physically present at the meeting; and
 - 2. That the LDRAB, by a majority vote of the quorum present, determines that the extraordinary circumstances justify the members' absence.

Exhibit B

Article V Subcommittees

- A. The LDRAB may create subcommittees, which will be governed by the regulations in Art. ~~17.C.1.E.2~~ 2.G.3.A.5.b, Subcommittees, as amended, as well as the following regulations:
1. At a minimum, the subcommittee shall be composed of two ~~one~~ LDRAB members. Membership shall include at least one and two non-LDRAB members. Interested parties who have the necessary expertise on the specific Code amendment ~~It shall~~ may be determined appointed by a majority vote of the LDRAB ~~that the non-members have the necessary expertise on the specific Code amendment~~;
 2. The subcommittee shall meet as often as determined necessary by the LDRAB;
 3. The presence of at least two members of the subcommittee, one of whom must be an LDRAB member, shall constitute a quorum necessary to take action and transact business;
 4. The location of all meetings shall be in PBC, Florida and all meetings shall be open to the public;
 5. The Zoning Director shall serve as the Secretary and the professional staff of the subcommittee;
 6. The County Attorney's Office shall provide counsel and interpretation on legal issues; and
 7. The subcommittee shall submit their findings at the next scheduled LDRAB meeting.

Article VI Amendments to the Rules of Procedures

- A. The LDRAB may amend these rules at a regular meeting by a majority vote of the quorum present.
- B. The LDRAB Secretary shall maintain a copy of the "Rules of Procedures" in the Zoning Division for the Public to view.

EXHIBIT E

LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB) 2010 ATTENDANCE MATRIX

(Updated 11/23/10)

Seat	Member	District or Organization	Term Expires	2010 Dates												
				1/27	2/24	3/24	4/28	5/26	6/09	7/14 (Special)	7/28 (Canceled)	8/25 (Canceled)	9/22	10/27	11/17	12/9 (Canceled)
1	Joanne Davis	District 1	Feb. 5, 2013	Y	N	N	Y	N	Y	Y			Y	Y	Y	
2	David Carpenter	District 2	Feb. 7, 2012	Y	Y	Y	Y	Y	Y	N			Y	Y	Y	
3	Barbara Katz	District 3	Feb. 5, 2013	Y	Y	Y	Y	Y	N	N			N	N	Vacant	
4	Jim Knight	District 4	Feb. 7, 2012	Y	Y	N	Y	Y	N	Y			Y	Y	Y	
5	Lori Vinikoor	District 5	Feb. 5, 2013	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	
6	Mike Zimmerman	District 6	Feb. 7, 2012	N	Y	N	Y	Y	Y	Y			N	Y	N	
7	Martin Klein	District 7	Feb. 5, 2013	Y	Y	Y	Y	Y	Y	Y			N	Y	Y	
8	Raymond Puzzitiello	Gold Coast Builders Association	Feb. 5, 2013	Y	Y	Y	Y	Y	Y	Y			Y	Y	Y	
9	Vacant	League of Cities	Feb. 7, 2012	Y	Y	Y	Vacant	Vacant	Vacant	Vacant			Vacant	Vacant	Vacant	
10	Terrence Bailey	Florida Eng. Society	Feb. 5, 2013	Y	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant			Vacant	Vacant	Vacant	
11	Jose Jaramillo	American Institute of Architects	Feb. 7, 2012	N	N	N	Vacant	Vacant	Vacant	Y			Y	Y	Y	
12	Rosa Durando	Environmental Org.	Feb. 5, 2013	Y	N	Y	Y	N	Y	N			Y	Y	Y	
13	Michael Cantwell	PBC Board of Realtors	Feb. 7, 2012	Y	Y	Y	Y	Y	Y	Y			Y	Y	N	
14	Gary Rayman	Florida Society Prof. Surveyors	Feb. 5, 2013	Vacant	Y	Y	N	N	Y	Y			Y	Y	Y	
15	Maurice Jacobson	Condominium/HOA	Feb. 7, 2012	Y	N	Y	Y	Y	Y	Y			N	Y	Y	
16	Vacant	Assoc. General Contractors of America	Feb. 3, 2010	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant			Vacant	Vacant	Vacant	
17	Wes Blackman	PBC Planning Congress	Feb. 7, 2012	Y	Y	Y	Y	Y	Y	N			Y	Y	Y	
18	Robert Schulbaum	Alternate #1	Feb. 7, 2012	Vacant	Vacant	Vacant	Vacant	Vacant	Vacant	Y			N	Y	N	
19	Vacant	Alternate #2	Feb. 7, 2012	n/a	n/a	n/a	n/a	Vacant	Vacant	Vacant			Vacant	Vacant	Vacant	
Total Attendees:				13	11	11	12	10	11	11			10	14	11	

Legend/Notes:	
Y	Present
Y	Present (Participated via teleconference with quorum physically present and Board approval)
N	Absent
N	Absent (Attended less than ¼ of meeting)
	ULDC Art. 17.B.2.A.3, Attendance: 1) "Lack of attendance is defined as a failure to attend three consecutive meetings..." or 2) "...a failure to attend two-thirds of the meetings scheduled during the calendar year. Also "Participation for less than three-fourths of a meeting shall be the same as a failure to attend a meeting."
	A total of 12 meetings have been scheduled for 2010. Minimum attendance – eight meetings. Therefore, members cannot miss any more than 4 meetings.
	*Special meeting of 7/14/10 will not be a factor in calculating total attendance.
3.	Barbara Katz removed for lack of attendance November 22, 2010. Reappointed January 2011.
9.	Joni Brinkman resigned March 25, 2010.
10.	Ron Last resigned February 22, 2010. Terrence Bailey appointed November 16, 2010.
11.	Jose Jaramillo removed for lack of attendance April 28, 2010. Re-appointed June 2010.
14.	Gary Rayman appointed January 2010 – eligible for first meeting February 2010.
16.	Steven Dewhurst removed for lack of attendance December 9, 2009.
18.	Brian Waxman resigned January 26, 2010. Robert Schulbaum appointed June 2010).
19.	Frank Palen resigned April 30, 2010.

U:\Zoning\CODEREV\2011\LDRAB\Meetings\2-23-11\Exhibit E- Attendance Matrix.docx

EXHIBIT F

**PALM BEACH COUNTY PLANNING, ZONING AND BUILDING
LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)
CURRENT MEMBER LIST**

Updated February 9, 2011

SEAT	MEMBER (OCCUPATION)	DISTRICT OR ORGANIZATION	TERM ENDS
1	Joanne Davis (Growth Management Development)	District 1 Commissioner Marcus	February 5, 2013
2	David Carpenter (Landscape Architect)	District 2 Commissioner Burdick	February 7, 2012
3	Barbara Katz (Land Use Advisor)	District 3 Commissioner Vana	February 5, 2013
4	James Knight (Builder/Developer)	District 4 Commissioner Abrams	February 7, 2012
5	Lori Vinikoor (Community Activist)	District 5 Commissioner Aaronson	February 5, 2013
6	Mike Zimmerman (Registered Consulting Arborist)	District 6 Commissioner Santamaria	February 7, 2012
7	Martin Klein (Commercial Law)	District 7 Commissioner Taylor	February 5, 2013
8	Raymond Puzziello (Residential Builder)	Gold Coast Builders Association	February 5, 2013
9	Vacant (Municipal Representative)	PBC League of Cities	-
10	Terrence N. Bailey (Engineer)	Florida Engineering Society	February 5, 2013
11	Jose Jaramillo (Architect)	American Institute of Architects	February 7, 2012
12	Rosa Durando (Environmentalist)	Environmental Organization	February 5, 2013
13	Michael Cantwell (Realtor)	The PBC Board of Realtors	February 7, 2012
14	Gary Rayman (Surveyor)	Florida Surveying & Mapping Society	February 5, 2013
15	Maurice Jacobson (Citizen Representative)	Condominium/HOA Association	February 7, 2012
16	Vacant (Commercial Builder)	Associated General Contractors of America	-
17	C. Wesley Blackman, AICP (AICP Planner)	PBC Planning Congress	February 7, 2012
18	Robert Schulbaum (At Large)	Alternate #1	February 7, 2012
19	Vacant	Alternate #2	-

EXHIBIT G

**LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB)
LAND DEVELOPMENT REGULATION COMMISSION (LDRC)**

2011 MEETING DATES

(Updated 11/30/10)

DATE	DAY
January 26, 2011 (Canceled)	Wednesday (4 th)
February 23, 2011	Wednesday (4 th)
March 23, 2011	Wednesday (4 th)
April 27, 2011	Wednesday (4 th)
May 25, 2011	Wednesday (4 th)
June 22, 2011	Wednesday (4 th)
July 27, 2011	Wednesday (4 th)
August 24, 2011	Wednesday (4 th)
September 28, 2011	Wednesday (4 th)
October 26, 2011	Wednesday (4 th)
November 16, 2011*	Wednesday (3 rd)*
December 14, 2011*	Wednesday (2 nd)*
January 25, (2012)	Wednesday (4 th)
* Meeting dates rescheduled to accommodate holidays.	

Meeting location and start times are typically as follows:

Planning, Zoning and Building Department
Vista Center
2300 North Jog Road
West Palm Beach, Florida 33411
Kenneth S. Rogers Hearing Room (VC-1W-47)
Meetings typically commence at 2:00 p.m.

Meetings are subject to cancellation, or may be continued, rescheduled, relocated, or commenced at a different time as necessary (e.g. due to length of agenda, as needed to respond to Hurricanes or other similar natural disasters, etc.).



INTER-OFFICE COMMUNICATION
DEPARTMENT OF PLANNING, ZONING AND BUILDING
ZONING DIVISION

TO: Interested County Staff and Related Agencies
 FROM: Jon MacGillis, ASLA, Zoning Director
 DATE: December 20, 2010
 RE: **Deadlines/Scheduling for Proposed 2011 Unified Land Development Code (ULDC) Amendments**

Department of Planning,
Zoning & Building
2300 North Jog Road
West Palm Beach, FL 33411-2741
(561) 233-5000

Planning Division 233-5300
Zoning Division 233-5200
Building Division 233-5100
Code Enforcement 233-5500
Contractors Certification 233-5525
Administration Office 233-5005
Executive Office 233-5228
www.pbcgov.com/pzb

This memo serves to notify interested County staff and related agencies of the deadlines for submittal and scheduling for 2011 ULDC amendments. The Zoning Division is proposing to undertake two rounds of amendments for 2011. As always, it is critical that you coordinate with Zoning to meet the established schedule and deadlines if you are anticipating any amendments. The tentative schedules for both rounds are provided below:

AMENDMENT ROUND 2011-01	
ACTIVITY	DATE
Deadline to submit amendment requests.	January 19, 2011
Deadline to submit backup documentation.	February 16, 2011
Land Development Review Advisory Board (LDRAB)/Land Development Regulation Commission (LDRC) Meetings.	February 23, 2011
	March 23, 2011
	April 27, 2011
	May 25, 2011
BCC Hearing – Request for Permission to Advertise.	June 27, 2011
BCC Hearing – 1 st Reading.	July 28, 2011
BCC Hearing – 2 nd Reading and Adoption.	August 25, 2011
(1) Annual Meeting	

AMENDMENT ROUND 2011-02	
ACTIVITY	DATE
Deadline to submit amendment requests.	June 30, 2011
Deadline to submit backup documentation.	August 1, 2011
Land Development Review Advisory Board (LDRAB)/Land Development Regulation Commission (LDRC) Meetings.	August 24, 2011
	September 28, 2011
	October 26, 2011
BCC Hearing – Request for Permission to Advertise.	December 1, 2011
BCC Hearing – 1 st Reading.	January 5, (2012)
BCC Hearing – 2 nd Reading and Adoption.	January 26, (2012)

Deadlines to submit amendment requests must include the following:

- 1) Cover letter from Department or Division Director, or other authorized staff;
- 2) Name, title and contact information of primary contact person (will be required to attend LDRAB, LDRC and BCC Hearings to answer any questions);

"An Equal Opportunity
Affirmative Action Employer"



- 3) Location in ULDC of proposed amendment(s), to include exact article citation and title (or nearest relevant title), and page number(s); and,
- 4) A summary of each proposed amendment.

In addition to the above, deadlines to submit backup documentation shall include the following for each proposed amendment:

- 1) Verification that any interested or affected persons or organizations have been consulted during the initiation of amendments, and are being updated where applicable;
- 2) A detailed background and summary of each proposed amendment (including White Papers or other summaries, where necessary); and,
- 3) Preparation of amendment exhibits using file template provided by Zoning, providing citation and title, reason for amendment, and text, tables or images to be deleted, relocated or added. Templates and will be provided upon request.

Kick Off Meeting – Code Amendment Training:

A meeting will be held to review amendment submittal requirements and answer any questions. Attendance is not mandatory, but is highly encouraged.

Location: Vista Center, 2300 North Jog Road, Room VC-2E-12

Time: January 12, 2011, 3:00 – 4:00 p.m.

Please RSVP to Ann DeVeaux, Zoning Technician, at (561) 233-5213, or at odeveaux@pbcgov.org.

If you should have any questions or require additional information regarding the proposed schedules, please contact me at 561-233-5234, or William J Cross, Principal Site Planner, at (561) 233-5216, or at WCross@pbcgov.org.

JPM/WC

- c. Distribution List Attached

DISTRIBUTION LIST

Primary Recipients

The Honorable Karen T. Marcus, Chair, and Members of the Board of County Commissioners
Verdenia Baker, Deputy County Administrator
Robert P. Banks, Assistant County Attorney
Lenny Berger, Assistant County Attorney
Bevin Beaudet, Director, Water Utilities
Liz Bloeser, Director, Financial Management and Budget
Chuck Cohen, Executive Director, Surface Transportation (Palm Tran)
Lisa DeLaRionda, Director, Public Affairs Department
Eric Call, Director, Parks and Recreation
Bonnie Finneran, Director, Resources Protection Division
Sherry Howard, Director, Economic Development
Edward Lowery, Director, Housing and Community Development
Paul Milelli, Director, Public Safety
Bruce Pelly, Director, Department of Airports
Channell Wilkins, Director, Community Services
Joanne Koerner, Interim Director, Land Development
Gary M. Sypek, Director of Planning, Department of Airports
James Titcomb, Executive Director, League of Cities
Maurice Tobin, Director, Utilities Eng. Division, Water Utilities
Rich E. Walesky, Director, Environmental Resources Management
George Webb, County Engineer
Dan Weisburg, Director, Traffic Division
Robert Weisman, County Administrator
Randy Whitfield, Director, Metropolitan Planning Organization
Audrey Wolf, Director, Facilities Development and Operations

Other Internal Distribution

Lorenzo Aghemo, Director, Planning Division
Barbara Alterman, Executive Director, PZ&B
Rebecca Caldwell, Director, Building Division
William Cross, Principal Site Planner, Zoning Division
Bryan Davis, Principal Planner, Planning Division
Kurt Eismann, Director, Code Enforcement Division
Allan Ennis, Assistant Director, Traffic Division
Wendy Hernandez, Zoning Manager, Zoning Division
Michael Howe, Senior Planner, Planning Division
Isaac Hoyos, Principal Planner, Planning Division
Robert Kraus, Env. Program Supervisor, Environmental Resources Management
Maryann Kwok, Chief Planner, Zoning Division
John Pancoast, Principal Planner, Monitoring
John Rupertus, Senior Planner, Planning Division
Patrick Rutter, Chief Planner, Planning Division
Willie Swoope, Impact Fee Coordinator, PZ&B
Houston L. Tate, Manager, Office of Community Revitalization
Bruce Thomson, Principal Planner, Planning Division
Lisa Amara, Senior Planner, Planning Division

Other Key Contacts

Dr. Alina Alonzo, M.D., Director, Health Department
Pete Banting, Real Estate Specialist, Facilities Development and Operations
Richard Bogatin, Manager, Property Management, Facilities Dev. and Operations
Eric McClellan, Senior Site Planner, Facilities Development and Operations
John O'Malley, Director, Env. Health and Engineering
Tim Granowitz, Principal Planner, Parks and Recreation Department
Michael Hambor, Engineer Supervisor III, Palm Beach County Health Department
Arthur Kirstein, IV, Agricultural Economic Development Coordinator, Coop. Ext. Service
Thomas LeFevre, Engineer Supervisor, Palm Beach County Health Department
Jean Matthews, Planner, Parks and Recreation
Elizee Michel, Executive Director, Westgate/Belvedere Homes CRA
Kristin Garrison, Planning Director, Palm Beach County School Board

EXHIBIT I

ULDC SUMMARY OF AMENDMENTS

Round 2011-01

Updated 2/9/2011

BCC Zoning Hearing Dates

June 27, 2011 (Request Permission to Advertise)

July 28, 2011 (First Reading)

August 25, 2011 (Adoption)

2011-01 Scheduled LDRAB/LDRC Meeting Dates:

March 23, 2011 LDRAB

April 27, 2011 LDRAB

May 25, 2011 LDRAB/LDRC

Article	Amendment Summary	Cases Number	LDRAB Meeting	LDRC Meeting	Subco mmitte	Status	PM
<u>1</u>	Art. 1.1.2.C.36, Coastal Construction: Consolidate applicability of the definition. [ERM]	CR-2011-009	3/23/2011	5/25/2011	No	Open	Monica Cantor
<u>2</u>	Consolidate waiver provisions for IRO, URA and LCC; and, incorporate other similar BCC waivers (TDD and PDD): The waiver standards for IRO, URA and LCC are redundant and shall be relocated to Art. 2 under Administrative Processes. Staff will review other non-standardized waivers, including PDD cul-de-sacs, TMD block structure, etc.	CR-2010-057	5/25/2011	5/25/2011	No	Open	Bill Cross
<u>2</u>	Clarify Threshold for Rezoning of Development with Non-conforming Zoning/FLU designation: Provide direction on when amendments to existing Dev. Orders on sites subject to Art. 3.C.1.C, Previous Zoning Districts require rezoning or where district is no longer permitted; clarifies how to proceed, including analysis of Sec. 1002.33(18) Facilities (c), Fla.	CR-2010-073	3/23/2011	5/25/2011	No	Open	Bill Cross
<u>2</u>	Clarification of Appeals Process and Hearing Officer: Reconcile Art. 1.B.1, Interpretations, Art. 2.A.1.S, Appeal, and Art. 2.G.3.G, Hearing Officers, to clarify provisions for Zoning Confirmation Letters, Zoning Appeals and Hearing Officers.	CR-2011-005	3/23/2011	5/25/2011	No	Open	Monica Cantor
<u>2</u>	Public Ownership Zoning District Deviations: Amend to include deviations in to the approval process of PO zoning districts.[FDO]	CR-2011-016	4/27/2011	5/25/2011	No	Open	Monica Cantor
<u>2</u>	Public Notice Requirements: Clarify applicability for mail notice requirements to HOA, POA, Condominium Associations, Municipalities within one-mile including future anexation.	CR-2011-019	3/23/2011	5/25/2011	No	Open	Monica Cantor
<u>2</u>	Reasonable Accomodation: Add provisions to address Federal Laws defined under FHA and ADA requirements for reasonable accomodations for the disabled. [BUILDING DIVISION/ZONING]	CR-2011-027	4/27/2011	5/25/2011	No	Open	Bill Cross
<u>2</u>	Art.2.F.6.A related to Monitoring Program: To delete general language inadvertently kept in the Monitoring Program when the Ordinance 2010-022, exhibit L deleted the requirements for the submittal of an Annual Public Facilities Update Report.	CR-2011-030	3/23/2011	5/25/2011	No	Open	Monica Cantor

Article	Amendment Summary	Cases Number	LDRAB Meeting	LDRC Meeting	Subcommittee	Status	PM
<u>3</u>	Lion Country Safari FLUA and Text Amendment Consistency: Amend PDD's to accommodate Plan Policies allowing for unified site design with MUPD, RVPD and PUD; address any open space requirements; and, specific development requirements.	CR-2011-004	5/25/2011	5/25/2011	No	Open	Bill Cross
<u>3</u>	Update URAO in Art. 3.B.16: Amend for consistency with on-going Comprehensive Plan changes to the URAO; delete scrivener's error in Art. 3.C.1.H, Priority Redevelopment Area Districts and table 3.D.1.A, PDR incorrect reference.	CR-2011-011	5/25/2011	5/25/2011	Yes	Open	Monica Cantor
<u>3</u>	TDD Clubhouse Permanent Generators: TDD clubhouse 2,500 SF in size or more required to have permanent generators is here amended to increase the clubhouse square footage to 20,000 before a permanent generator is required. Also for consistency with requirements existing in article 5.B.1.A.18, Permanent Generators. Includes glitch correction in Art. 5	CR-2011-021	3/23/2011	5/25/2011	No	Open	Monica Cantor
<u>3</u>	Civic Pod Frontage and Access Requirements.	CR-2011-029	4/27/2011	5/25/2011	No	Open	Bill Cross
<u>3</u>	Community Residential Homes - New F.S regulating Planned Residential Community: Amend to introduce Plan Residential Community as a type of PUD that allows dwelling units licensed to serve residents who are licensed by health or public safety agency to have amenities designed to serve residents with development disabilities and other provisions.	CR-2011-043	4/27/2011	5/25/2011	No	Open	Monica Cantor
<u>4</u>	Review definitions of Auto Service Station and Convenience Store with Gas Sales: 1) Check Art. 4.B.1.A.18 Auto Service Station and Art. 4.B.1.A.37 Convenience Store with Gas Sales for clarification of what activities pertain to every use; 2) clarify accessory or collocated uses such as general repair and maintenance; and, 3) Update use matrices.	CR-2010-072	4/27/2011	5/25/2011	No	Open	Bill Cross
<u>4</u>	Pain Clinic Amendments: IPARC Coordination. Potential ULDC Amendments to regulate pain management clinics as may be recommended by the IPARC Task Force to address implementation of, or proposals for, State laws that will address this issue.	CR-2010-077	5/25/2011	5/25/2011	Yes	Open	Bill Cross
<u>4</u>	Type III Excavation in EAA: BCC initiated amendments (4/22/10) to revise the review and approval processes for Type III Excavations in the Everglades Agricultural Area (EAA) to be processed concurrently with Comprehensive Plan text amendments.	CR-2010-532	5/25/2011	5/25/2011	No	Open	Bill Cross
<u>4</u>	Renewable Energy - Wind Farm, Turbines and Related: Possible revisions to Art. 1 and Art. 4 as relates to development of wind farms, wind turbines and related equipment in the Glades.	CR-2011-024	4/27/2011	5/25/2011	Yes	Open	Bill Cross

Article	Amendment Summary	Cases Number	LDRAB Meeting	LDRC Meeting	Subco mmitte	Status	PM
<u>4</u>	Family Daycare Home - Large Family Childcare Home: Amend to implement new F.S.that regulates daycares operated from residential units. The amendments also include daycare uses to be prohibited at end of runways of PBC airports. [ZONING/HEALTH/DEPT. OF AIRPORTS]	CR-2011-036	4/27/2011	5/25/2011	No	Open	Monica Cantor
<u>5</u>	Mechanical Equipment: Correct glitch indicating intention of the mechanical equipment screening exemptions that incorrectly included non-industrial uses adjacent to industrial to be exempted.	CR-2010-046	3/23/2011	5/25/2011	No	Open	Monica Cantor
<u>6</u>	Correct Scriveners Error in Figure 6.A.1.D, Striping Standards: Amend range of separation for striping to be consistent with text.	CR-2011-020	3/23/2011	5/25/2011	No	Open	Monica Cantor
<u>6</u>	ADA Parking Standards: Amend for consistency between ULDC and Building Code regulations related to ADA parking requirements. [BUILDING DIV.]	CR-2011-040	3/23/2011	5/25/2011	No	Open	Monica Cantor
<u>8</u>	Table 8.G.2.A - Free Standing Signs - Maximum Height R-O-W width determination: Amend to indicate correct use of greater than or less than for 80 ft and 110 ft R.O.W. width to determine free standing signs height.	CR-2011-015	3/23/2011	5/25/2011	No	Open	Monica Cantor
<u>11</u>	Survey type: Amend to introduce boundary survey language for consistency with the Florida Surveyor and Mapper regulations adopted in 2010. [CTY. ENGINEERING]	CR-2011-045	3/23/2011	5/25/2011	No	Open	Monica Cantor
<u>12</u>	Art. 12, Traffic Performance Standards - General Revisions: Traffic Division will be proposing a number of changes of a cleanup nature, including clarification of questions that have come up during the project review process. No major substantive changes are proposed so no associated Comp Plan amendments are anticipated at this time. [CTY. ENGINEERING]	CR-2011-035	4/27/2011	5/25/2011	No	Open	Monica Cantor
<u>13</u>	Minor corrections to Ordinance 2010-018: Amend scrivener's errors included in Ordinance 2010-018, Impact Fee amounts and regulations.	CR-2011-042	4/27/2011	5/25/2011	No	Open	Monica Cantor
<u>15</u>	Health Regulations: To update Article 15, Health Regulations related to Chapter A, Environmental Control rule I, Onsite Sewage System and Disposal Systems for compliance with Chapters 381, 386, and 403 FS and 64E-6 FAC. [HEALTH DEPT.]	CR-2011-041	4/27/2011	5/25/2011	No	Open	Monica Cantor

EXHIBIT J

LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB) 2011 SUBCOMMITTEES	
PAIN MANAGEMENT CLINICS TASK FORCE	
Develop regulations for the application and zoning approval process for Pain Management Clinics engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and are required to register with the Florida Department of Health pursuant to Section 458.309 or Section 459.005, Florida Statutes (2009). Explore other jurisdictions approach to the establishment of pain management regulations. Make recommendation for an amendment to the Zoning Director for potential inclusion in ULDC prior to expiration of Moratorium.	
Scheduled Meetings: March 2, 2011	Location: Vista Center Room VC-2E-12
Project Manager: <i>William Cross</i>	LDRAB Meeting: May 25, 2011
RENEWABLE ENERGY – WIND FARM	
Review existing provisions for Renewable Energy Facility and develop new regulations to accommodate the development of a proposed major wind farm facility, wind turbines and related equipment in the EAA of the Glades Tier. Determine the need to allow for windmill exemptions from setbacks from property lines for parcels used primarily for farming and make recommendations for an amendment to the Zoning Director.	
Scheduled Meetings: March 2, 2011	Location: Vista Center Room VC-2E-12
Project Manager: <i>William Cross</i>	LDRAB Meeting: April 27, 2011 (Tentative)
URBAN REDEVELOPMENT AREA OVERLAY (URAO)	
The Board of County Commissioners adopted amendments to the Unified Land Development Code (ULDC) which implements the County’s redevelopment strategy in the URA. At that hearing concerns were raised by interested parties about some of the provisions in the ULDC. The BCC directed staff to meet with interested parties to discuss their issues and then make the necessary amendments to the Comprehensive Plan and ULDC in 2011. Amendments to the Plan are proposed to be discussed at a Public Meeting on February 22; presented to the Planning Commission on March 11; and, submitted to the BCC for Transmittal in April.	
Scheduled Meetings: TBA	Location: Vista Center Room VC-2E-12
Project Manager: <i>William Cross</i>	LDRAB Meeting Date: May 25, 2011
APPROVAL PROCESES FOR SPECIFIC USES	
Comprehensive review of all Use Matrices within the ULDC to address the following: Ensure that uses permitted in districts are consistent with the future land use designation or other requirements of the Plan, with an emphasis on industrial and commercial uses; amend matrices and supplemental standards so that the most restrictive approval process is consistently applied in the matrices; and, consider other clarifications or improvements that may allow for additional flexibility.	
Scheduled Meetings: TBA	Location: Vista Center Room VC-2E-12
Project Manager: <i>William Cross & Monica Cantor</i>	LDRAB Meeting: TBD (Scheduled for Round 2011-02)

POTENTIAL SUBCOMMITTEE DATES:

Round 2011-01

Wednesday, March 2, 2011
 Friday, March 11, 2011
 Wednesday, March 30, 2011
 Monday, April 18, 2011

Round 2011-02

Monday, May 23, 2011
 Monday, June 20, 2011
 Monday, July 18, 2011
 Monday August 15, 2011
 Monday, September, 19, 2011

EXHIBIT J

<p align="center">PBC ZONING DIVISION PRIOR 2010 MEMBERSHIP ADDITIONAL INTERESTED PARTIES/STAFF</p>				
Subcommittee Member	Interested Party	PBC Staff	Name	Agency/Background
Taskforce/Subcommittee Pain Management Clinics				
X			Lori Vinikoor	LDRAB/BCC District 5
	X		Lt. Bruce Hannan, M.S.	PBC Sheriff's Office
	X		Thomas Lanahan	City of Green Acres
	X		Sgt. Brady Myers	PBC Sheriff's Office (Multi Agency Diversion Task Force)
	X		Frank Palen	Esquire
	X		James Titcombe	League of Cities
	X		Charles Wu	City of West Palm Beach
	X		Anna Yeskey	IPARC- Intergovernmental Plan Amendment Review Com
		X	Robert P. Banks	County Attorney
		X	Leonard Berger	Assistant County Attorney
		X	William Cross	PBC Zoning Division
		X	Kurt Eisman	Contractors Certification
		X	Maryann Kwok	PBC Zoning Division
		X	Deb Wiggins	Code Enforcement
		X	Kenny Wilson	PBC Health Department
Subcommittee Renewable Energy				
X			Joanne Davis	LDRAB Member
X			Barbara Katz	LDRAB Member
X			Raymond Puzzitiello	LDRAB Member
	X		Joshua Escoto	FPL
	X		Ryan Fair	FPL
	X		Kieran Kilday	Urban Design Kilday Studios
	X		Chuck Millar	FPL
	X		Cindy Tindell	FPL
	X		Joseph Verdone	Carlton Fields, Inc.
	X		Bill Whiteford	Team Planning, Inc.
		X	Lorenzo Aghemo	PBC Planning Division
		X	Lisa Amara	PBC Planning Division
		X	Maryann Kwok	PBC Zoning
		X	John MacGillis	PBC Zoning
		X	Barbara Pinkston-Nau	PBC Zoning Division
Workshop/Subcommittee Urban Redevelopment Area (URA)				
X			C. Wes Blackman	LDRAB Member
X			David Carpenter	LDRAB Member
X			Joanne Davis	LDRAB Member
X			Jose F. Jaramillo	LDRAB Member
X			Barbara Katz	LDRAB Member
X			Jim Knight	LDRAB Member
X			Raymond Puzzitiello	LDRAB Member
	X		Joni Brinkman	Urban Design Kilday Studio
	X		Jeff Brophy	Land Design South
	X		Rick Gonzalez	Architect
	X		Ron Last	Last Development
	X		Nancy Lodise	Pleasant Ridge HOA - IRTF
	X		Bradley Miller	Miller Land Planning
	X		Chris Roog	Gold Coast Builders Association
	X		Katharine Murray	Land Use Advisory Board
	X		Ken Tuma	Urban Design Kilday Studio
	X		Wendy Tuma	Urban Design Kilday Studio
		X	William Cross	PBC Zoning

LAND DEVELOPMENT REGULATION ADVISORY BOARD (LDRAB) LAND DEVELOPMENT REGULATION COMMISSION (LDRC)

How to Access Code Revision Website and Related Information

To access the Planning, Zoning & Building main web page, enter the following address:

<http://pbcgov.com/pzb>



Click "Zoning" to access the Zoning Division Webpage

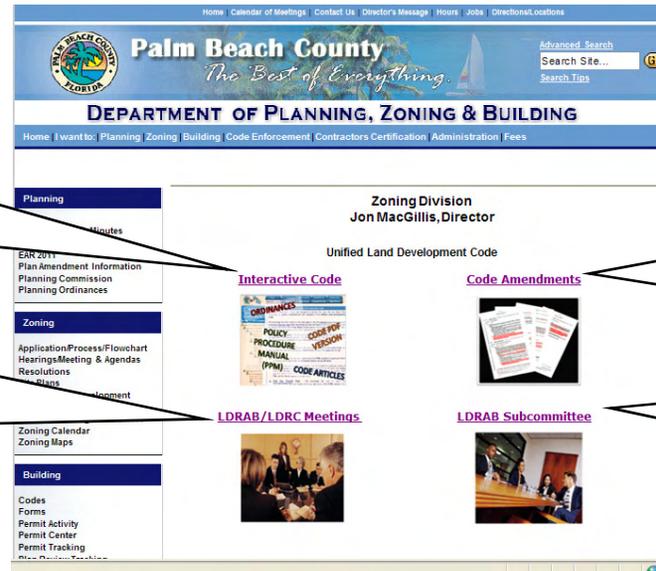


Click "Unified Land Development Code" to access the Code Revision web page.

Exhibit K

Click "Interactive Code" to access the interactive ULDC web page, pdf version of ULDC articles, and the ordinances summary

Click "LDRAB/LDRC Meetings" to access general information pertaining to the LDRAB/LDRC such as agendas/minutes; meetings schedule; members; and, rules.



Click "Code Amendments" to access ULDC scheduled amendments per year, including Amendment packets presented to LDRAB/LDRC and BCC

Click "LDRAB Subcommittees" to access subcommittees' minutes, agendas, and schedule that take place within the round of amendments.