

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

BOARD APPOINTMENT SUMMARY

Meeting Date: July 11, 2023
Department: Office of Financial Management & Budget
Advisory Board: Infrastructure Surtax Independent Citizen Oversight Committee

I. EXECUTIVE BRIEF



Motion & Title: Staff recommends motion to approve: appointment of the following individual to the County Infrastructure Surtax Independent Citizen Oversight Committee (Surtax Committee) for the term beginning July 11, 2023 to April 30, 2026:

<u>Nominee</u> Rex B. Kirby	<u>Seat No.</u> 17	<u>Nominated By</u> Associated General Contractors Association, Florida East Coast Chapter
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Summary: On December 20, 2016, the Board of County Commissioners (BCC) created the Surtax Committee. The Surtax Committee will meet quarterly, issue an annual report, may make recommendations to the BCC, and ensure that the proceeds of the surtax are expended for the purposes set forth in the ballot measure and are in compliance with the County’s surtax plan. Mr. Rex B. Kirby disclosed that he is employed by Verdex Construction, LLC that has several contracts with the County for services relating to construction projects. The Surtax Committee provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contracts. Disclosure of this contractual relationship at a duly noticed public meeting is being provided in accordance with the provisions of Sec. 2-443, of the Palm Beach County Code of Ethics. The Surtax Committee has 19 seats, and out of the current 11 positions filled, the diversity count is: 2 African-American (18%); 3 Hispanic (27%); and 6 Caucasian (55%). The gender ratio (female:male) is 5:6. Countywide (MJ)

Background and Justification The Surtax Committee will consist of the following: one member appointed by each District Commissioner; one member nominated by the Black Chamber of Commerce of Palm Beach County; one member nominated by the Hispanic Chamber of Commerce of Palm Beach County; two members nominated by the Business Forum of Palm Beach County; one member nominated by the Tri City Education Committee; one member nominated by the Florida Engineering Society Palm Beach Chapter; one member nominated by the Urban League of Palm Beach County; one member nominated by the Palm Beach County City Management Association; one member from the Economic Council of Palm Beach County; one member nominated by the Associated General Contractors Association Florida East Coast Chapter; and two members nominated by the Palm Beach – Treasure Coast AFL-CIO.

Attachments: Advisory Board Application

Recommended by:	 Department Director	5/30/2023 Date
Legal Sufficiency:	 For M. Jones Assistant County Attorney	5/31/23 Date

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
BOARDS/COMMITTEES APPLICATION**

The information provided on this form will be used in considering your nomination. Please **COMPLETE SECTION II IN FULL**. Answer "none" or "not applicable" where appropriate. Please attach a biography or résumé to this form.

Section I (Department): (Please Print)

Board Name: PBC Infrastructure Surtax Independent Citizen Oversight Committee Advisory Not Advisory

At Large Appointment or District Appointment /District #: _____

Term of Appointment: 3 Years. From: May 1, 2023 To: April 30, 2026

Seat Requirement: Associated General Contractors Association, FL East Coast Chapter Seat #: 17

Reappointment or New Appointment

or to complete the term of _____ Due to: resignation other

Completion of term to expire on: _____

*When a person is being considered for reappointment, the number of previous disclosed voting conflicts during the previous term shall be considered by the Board of County Commissioners: 0

Section II (Applicant): (Please Print)

APPLICANT, UNLESS EXEMPTED, MUST BE A COUNTY RESIDENT

Name: Kirby Rex B.
Last First Middle

Occupation/Affiliation: Verdex Construction LLC
Owner Employee Officer

Business Name: Verdex Construction LLC

Business Address: 1545 CARMER PARK DRIVE NORTH
City & State: WEST PALM BEACH, FL Zip Code: 33401

Residence Address: 17211 GALE PINE CIRCLE
City & State: WOWINGTON, FL Zip Code: 33414

Home Phone: () Business Phone: (561) 440-1200 Ext.

Cell Phone: (561) 722-4390 Fax: ()

Email Address: rex.kirby@verdex.com

Mailing Address Preference: Business Residence

Have you ever been convicted of a felony: Yes _____ No

If Yes, state the court, nature of offense, disposition of case and date: _____

Minority Identification Code: Male Female
 Native-American Hispanic-American Asian-American African-American Caucasian

Section II Continued:

CONTRACTUAL RELATIONSHIPS: Pursuant to Article XIII, Sec. 2-443 of the Palm Beach County Code of Ethics, advisory board members are prohibited from entering into any contract or other transaction for goods or services with Palm Beach County. Exceptions to this prohibition include awards made under sealed competitive bids, certain emergency and sole source purchases, and transactions that do not exceed \$500 per year in aggregate. These exemptions are described in the Code. This prohibition does not apply when the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction and the contract or transaction is disclosed at a public meeting of the Board of County Commissioners. To determine compliance with this provision, it is necessary that you, as a board member applicant, identify all contractual relationships between Palm Beach County government and you as an individual, directly or indirectly, or your employer or business. This information should be provided in the space below. If there are no contracts or transactions to report, please verify that none exist. Staff will review this information and determine if you are eligible to serve or if you may be eligible for an exception or waiver pursuant to the code.

<u>Contract/Transaction No.</u>	<u>Department/Division</u>	<u>Description of Services</u>	<u>Term</u>
Example: (R#XX-XX/PO XX)	Parks & Recreation	General Maintenance	10/01/00-09/30/2100
* VISTA COURT EXPANSION	FACILITIES	CONSTRUCTION	TBD
* MOSQUITA COURT	FACILITIES	CONSTRUCTION	TBD

(Attach Additional Sheet(s), if necessary)
OR

NONE

NOT APPLICABLE/
(Governmental Entity)

* SEE ATTACHED LETTER FROM COMMISSION ON ETHICS

ETHICS TRAINING: All board members are required to read and complete training on Article XIII, the Palm Beach County Code of Ethics, and read the State Guide to the Sunshine Amendment, Article XIII, and the training requirement can be found on the web at: <http://www.palmbeachcountyethics.com/training.htm>. Ethics training is on-going, and pursuant to PPM CW-P-80 is required before appointment, and upon reappointment.

By signing below I acknowledge that I have read, understand the Sunshine Law Overview for Advisory Board Members and agree to abide by the Florida Sunshine Law and the Florida and Palm Beach County Code of Ethics, and I have received the required Ethics training (in the manner checked below):

By watching the training program on the Web, DVD or VHS on 5-16 20 23
 By attending a live presentation given on _____, 20____

AND

By signing below I acknowledge that I have read, understand and agree to abide by the Guide to the Sunshine Amendment & State of Florida Code of Ethics:

*Applicant's Signature: [Signature] Printed Name: REX B. KIRBY Date: 5-16-23

Any questions and/or concerns regarding Article XIII, the Palm Beach County Code of Ethics, please visit the Commission on Ethics website www.palmbeachcountyethics.com or contact us via email at ethics@palmbeachcountyethics.com or (561) 233-0724.

Return this FORM to:
 Alicia DeAbreu, Assistant Budget Director, Office of Financial Management & Budget
 301 N. Olive Avenue, 7th Floor, West Palm Beach, FL 33401
 Telephone: (561) 355-4160/Fax: (561) 656-7181/Email: adeabreu@pbcgov.org

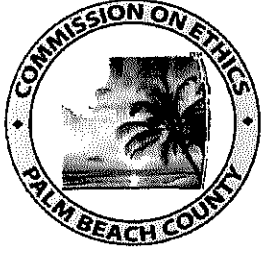
Section III (Commissioner, if applicable):

Appointment to be made at BCC Meeting on: _____

Commissioner's Signature: _____ Date: _____

Pursuant to Florida's Public Records Law, this document may be reviewed and photocopied by members of the public.

Revised 01/09/2023



Palm Beach County Commission on Ethics

Commissioners

Rodney G. Romano, Chair
Michael H. Kugler, Vice Chair
Peter L. Cruise
Michael S. Kridel
Danielle A. Sherriff

Executive Director

Christie E. Kelley

Honesty - Integrity - Character

October 7, 2022

Mr. Rex Kirby, President
Verdex Construction
1545 Centrepark Drive N.
West Palm Beach, FL 33401

Re: RQO 22-023
Advisory Board Waiver

Dear Mr. Kirby,

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

QUESTION:

Does a conflict of interest arise for you as a member of both the Palm Beach County Construction Board of Adjustments and Appeals (CBAA) and the Infrastructure Surtax Independent Citizen Oversight Committee (ISICOC) if Verdex Construction (Verdex) submits bids in response to Requests for Proposals (RFP) with Palm Beach County (County) when you are the president of Verdex?

BRIEF ANSWER:

The Palm Beach County Code of Ethics does not prohibit Verdex from submitting a bid and entering into a contract with the County as long as you meet certain requirements. Should the contract ultimately be awarded to Verdex, these requirements are dependent on the roles of both the CBAA and the ISICOC and are determined by whether the boards are purely advisory and whether they play any role in the oversight of the subject contract(s).

FACTS:

You are the president of Verdex and are a member of two Palm Beach County advisory boards, the CBAA and the ISICOC. Verdex wishes to submit bids to the County in response to public RFPs for a Construction Manager at Risk for the Vista Center Expansion project and the 45th Street Complex.

The CBAA's function is to render interpretations and hear appeals of the provisions of various building, electrical, plumbing, and other construction codes. It also hears appeals of decisions and interpretations of the building official, consider variances of the technical codes, serves as the Local Construction Regulation Board, and disciplines contractors that willfully violate the building code or commit fraud. Finally, the board considers variance requests and appeals in accordance with possible flood issues arising during land development.

The ISICOC's function is to provide oversight and review expenditure reports produced by the County to determine if the expenditure of proceeds are correctly allocated and if those expenditures are in compliance with the surtax plan. Along with this, it makes funding and expenditure recommendations to the Palm Beach County Board of County Commissioners (BCC). Additionally, the committee submits annual reports to the BCC and County Administrator regarding the County's compliance with the requirements of ballot measures. The committee also provides a summary of the Committee's funding recommendations, proceedings, and activities.

300 North Dixie Highway, Suite 450, West Palm Beach, FL 33401 561.355.1915 FAX: 561.355.1904

Hotline: 877.766.5920 E-mail: ethics@pbcgov.org

Website: palmbeachcountyethics.com

ANSWER:

As a member of either the CBAA or the ISICOC, you would be considered an official under the Code. Section 2-443(d), Contractual relationships, prohibits public officials or employees or their outside employer or business from entering into any contract or other transaction for goods or services with the public entity they serve, unless certain criteria are met or an exception applies. In general, depending on the type of advisory board it is and whether the advisory board has any contract oversight, there are three possible requirements for advisory board members to overcome this contractual relationship prohibition: a disclosure, a waiver, or resignation from the board.¹

To determine which requirement would apply to your situation, it must be determined whether the CBAA and the ISICOC are purely advisory. A purely advisory board is authorized to only make recommendations to another board or a government administrator. A board with any measure of final decision-making authority is not purely advisory. Additionally, it must be determined whether the CBAA or the ISICOC have any contract oversight. A board has contract oversight if it plays any role in the oversight, regulation, management, or policy-setting recommendations regarding the subject contract. A disclosure by the advisory board member is required when the advisory board does not have any contract oversight, regardless of whether the board is purely advisory or not.² A waiver is required if the advisory board is purely advisory and has contract oversight.³ If the advisory board is not purely advisory and has contract oversight, then the advisory board member must resign from the advisory board or withdraw the bid to contract with the public entity they serve.⁴

Here, based on the facts provided, because of the limited statutory authority granted to both the CBAA and the ISICOC, it appears both boards are purely advisory. Because both boards are purely advisory, it must be determined whether a waiver or a disclosure is required.

Based on the facts provided, while the CBAA has authority to hear appeals of the provisions of various construction codes and building official decisions and considers variances, the CBAA does not have any authority to oversee, regulate, manage, or make policy-setting recommendations regarding the subject construction management contract(s) themselves. As such, the CBAA would not be considered as having contract oversight. Therefore, because the CBAA is purely advisory and does not have any contract oversight, your membership on the CBAA does not prohibit such a contractual relationship between the County and Verdex as long as the existence of the subject contract is disclosed at a duly noticed public meeting of the BCC.

However, although the ISICOC also appears to be purely advisory, unlike the CBAA, the ISICOC appears to have contract oversight regarding the subject contract(s). Because of the ISICOC's authority to set policy and make funding and expenditure recommendations to the BCC, the ISICOC has the potential for oversight, regulation, management, or policy-setting recommendations regarding the subject contract(s). Because of this contract oversight, you must obtain a waiver if Verdex is awarded any contracts. According to Section 2-443(e) of the Code, a waiver will require the BCC, upon full disclosure of the contract at a public meeting, to waive the conflict of interest by an affirmative vote of a majority plus one (1) of the total membership of the BCC. If you were appointed by only one member of the BCC, the appointing board member alone can waive this conflict of interest. Thus, as long as the conflict of interest between your board membership and Verdex's contractual relationship with the County is properly waived, the Code does not prohibit you from continuing to serve as a member of the ISICOC.

Finally, in the event Verdex does enter into the contract with the County, you are reminded that you will have an ongoing responsibility to refrain from using your official position as a CBAA or ISICOC member in any way to give a special financial benefit to yourself or your outside business, Verdex.⁵ For example, if any matter comes before the CBAA or the ISICOC that would give Verdex a special financial benefit, then you must

¹ Sec. 2-443(d); Sec. 2-443(e)

² Sec. 2-443(d)

³ Sec. 2-443(e)

⁴ Id.

⁵ Sec. 2-443(a); Sec. 2-443(c)

disclose the nature of the conflict, refrain from participating in discussions and voting on the matter, and file a State of Florida Commission on Ethics Form 8B pursuant to the requirements of Section 112.3143, Florida Statutes.

LEGAL BASIS:

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

Sec. 2-443. Prohibited conduct.

- (a) **Misuse of public office or employment.** An official or employee shall not use his or her official position or office, or take or fail to take any action, or influence others to take or fail to take any action, or attempt to do any of these things, in a manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, for any of the following persons or entities:
- (1) Himself or herself;
 - (4) An outside employer or business of his or hers, or of his or her spouse or domestic partner, or someone who is known to such official or employee to work for such outside employer or business;
- (c) **Disclosure of voting conflicts.** County and municipal officials as applicable shall abstain from voting and not participate in any matter that will result in a special financial benefit as set forth in subsections (a)(1) through (7) above. The term "participate" as used in this section shall be defined as: "To take any action, or to influence others to take any action, or to attempt to do any of these things, in order to affect the passage or defeat of the specific matter before the voting body in which the official is required to abstain from voting." The official shall publicly disclose the nature of the conflict and when abstaining from the vote, shall complete and file a State of Florida Commission on Ethics Conflict Form 8B pursuant to the requirements of Florida Statutes, §112.3143. Simultaneously with filing Form 8B, the official shall submit a copy of the completed form to the county commission on ethics. Officials who abstain and disclose a voting conflict as set forth herein, shall not be in violation of subsection (a), provided the official does not otherwise use his or her office to take or fail to take any action, or influence others to take or fail to take any action, in any other manner which he or she knows or should know with the exercise of reasonable care will result in a special financial benefit, not shared with similarly situated members of the general public, as set forth in subsections (a)(1) through (7).
- (d) **Contractual relationships.** No official or employee shall enter into any contract or other transaction for goods or services with their respective county or municipality. This prohibition extends to all contracts or transactions between the county or municipality as applicable or any person, agency or entity acting for the county or municipality as applicable, and the official or employee, directly or indirectly, or the official or employee's outside employer or business. Any such contract, agreement, or business arrangement entered into in violation of this subsection may be rescinded or declared void by the board of county commissioners pursuant to section 2-443(c) or by the local municipal governing body pursuant to local ordinance as applicable. This prohibition shall not apply to employees who enter into contracts with Palm Beach County or a municipality as part of their official duties with the county or that municipality. This prohibition also shall not apply to officials or employees who purchase goods from the county or municipality on the same terms available to all members of the public. This prohibition shall also not apply to advisory board members provided the subject contract or transaction is disclosed at a duly noticed public meeting of the governing body and the advisory board member's board provides no regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction.
- (e) **Exceptions and Waiver.** The requirements of subsection (d) above may be waived as it pertains to advisory board members where the advisory board member's board is purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. No waiver shall be allowed where the advisory board member's board is not purely advisory and provides regulation, oversight, management, or policy-setting recommendations regarding the subject contract or transaction. Waiver may be effected by the board of county commissioners or by the local municipal governing body as applicable upon full disclosure of the contract or transaction prior to


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the waiver and an affirmative vote of a majority plus one (1) of the total membership of the board of county commissioners or the local municipal governing body as applicable. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after full disclosure of the contract or transaction at a public hearing, by the appointing person.

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

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

Sincerely,



Christie E. Kelley,
Executive Director

RG/gal



Headquarters
1545 Centrepark Drive N.
West Palm Beach, FL 33401
561.440.1600
info@verdex.com
www.verdex.com
Lic. No. CGC1512424

REX B. KIRBY - BIO

As a 40+ year veteran of the construction industry, Rex founded Verdex Construction in 2014 and has built the firm into a notable contractor with projects spanning the multifamily, industrial, hospitality, commercial, and public sectors. Approaching \$300+ million in revenues, Verdex has expanded beyond South Florida with offices in Tampa and Gainesville. Prior to starting Verdex, Rex was the Southeast Region President for a large national construction firm where he grew his division to \$500,000,000 in annual revenues. As the leader of Verdex, he has attained many notable achievements both individually and on behalf of his company. He is active in many industry and civic groups and frequently serves in leadership positions.

BUSINESS ACHIEVEMENTS

Named "Best Places to Work" in South Florida (SFBJ-2022), Builder of the Year (AIA Palm Beach Chapter - 2020); Business of the Year Finalist (SFBJ and Chamber of Commerce of the Palm Beaches -2021 and 2020); #22 on the Gator 100 List (University of Florida—2020); Top Project of the Year, Indigo Station Apartments (ABC Florida East Coast Chapter - 2020), Excellence in Construction Eagle Awards (ABC Florida East Coast Chapter—2017-2022); among the Top 10 Largest General Contractors in South Florida (SFBJ—2020 - current); Build Florida Award (AGC—2019); #3 Fastest Growing Company in South Florida (SFBJ—2019); Excellence in Safety Awards (AGC—2017, 2019); Structures Award Finalist for Central Gardens Grand (SFBJ—2019); 2019 President/Partner Palm Beach County Apogee Award (South Florida Business and Wealth—2019); Business of the Year Finalist (Chamber of Commerce of the Palm Beaches—2018, 2019, 2020, 2021); Start Up Business of the Year (SFBJ—2017); Structures Awards for Best Industrial Development Project—Turnpike Business Park (SFBJ—2016)

ASSOCIATIONS/COMMUNITY INVOLVEMENT

Associated General Contractors Board of Directors (Senior Vice President 2023-24, member 2016-current); Economic Council of Palm Beach County Board of Directors (2007-current); HomeSafe Board (President of the Board 2018-2019, member since 2009); Business Development Board (Corporate Investor level 2015- current, Chairman, 2012-2013); Palm Beach County Construction Board of Adjustments and Appeals (2015– current); Infrastructure Surtax Independent Citizen Oversight Committee Member (2017– Current); Chamber of Commerce of the Palm Beaches, Trustee (2017– current)

PERSONAL

For 15 years, including volunteer service as President and Gala Chair, he has been most passionate about HomeSafe, an organization that provides prevention and intervention services for children and adults that are victims of abuse and domestic violence. Rex is a licensed Professional Engineer and a licensed General Contractor with a BS in Civil Engineering from University of Florida.