



CITY OF NORTH BAY VILLAGE

IND 03-75

7903 East Drive (Kennedy Causeway)
North Bay Village, Florida 33141 • (305) 756-7171 • FAX (305) 756-7722

July 17, 2003

Mr. Robert A. Meyers
Executive Director
Miami Dade County Commission on Ethics & Public Trust
19 West Flagler Street, Suite 207
Miami, Florida 33130

FAX (305) 579-0273

Dear Mr. Meyers:

I have a dilemma with respect to my position as a commissioner in the City of North Bay Village.

Although I have sought a legal opinion from the City Attorney, Earl Gallop, with reference to my ability to vote on the Al Coletta/Burt J. Harris Issue and whether there is a conflict of interest. I was assured by Earl Gallop, who also contacted your office regarding this issue, that there was no conflict. I still have a concern and I hereby request a written opinion from the Ethics Commission.

The following are my circumstances:

- I rent my home from Al Coletta.
- Al Coletta is my very close friend.
- My children refer to Al Coletta as "Uncle Al", as he is an integral part of our family.
- We travel together, our family and Al Coletta.
- Al Coletta owns the penthouse floor of the Bayshore Yacht and Tennis Club Condominium.
- The penthouse floor is zoned half RM70 and half Commercial General, rendering the property unusable in either zone.
- Al Coletta has initiated an action under the Burt J. Harris Act requesting relief from the City to allow him to use the property as either RM70 or Commercial General.
- The Condominium Documents grant Al Coletta, as a right of ownership of the commercial unit of the penthouse floor, the right to use the property as either commercial or residential and according to the condominium documents, no owner member of the Bayshore Yacht and Tennis Club Condo. Assoc., Inc., may prevent any other owner from using his unit for its proper, authorized use.

Mayor
Alan Dorne

Vice Mayor
George A. Kane

Commissioner
Frank Joe DiMaggio

Commissioner
Robert A. Dugger, Sr.

Commissioner
David M. Fleischer



ETHICS COMMISSIONERS

Kerry E. Rosenthal, Chairman
Robert H. Newman, Vice Chairman
Gail Dotson
Dawn Addy
Elizabeth M. Iglesias

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

July 21, 2003

The Honorable Robert A. Dugger, Sr.
City of North Bay Village
7903 East Drive
North Bay Village, FL 33141

RE: REQUEST FOR OPINION

Dear Commissioner Dugger:

You requested an opinion regarding a potential voting conflict as it relates to your close friend, Al Coletta. According to the facts presented in your letter, you rent your home from Mr. Coletta, who is requesting a zoning variance from the City. The matter is scheduled before the City Commission on July 30th, 2003.

The Conflict of Interest and Code of Ethics Ordinance, permits you to vote on the matter. Section 2-11.1 (d) provides, in part:

“Additionally, no person included in the term defined in subsection (b) (1) shall vote on or participate in any way in any matter presented to the Board of County Commissioners if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships or who would or might, directly or indirectly, profit or be enhanced by the action...shall not vote on or participate in any way in said matter.”

As stated in your letter, you do not have any of the enumerated relationships outlined under Section 2-11.1 (d). Furthermore, although you rent your home from Mr. Coletta, your letter does not indicate that you stand to benefit or profit, directly or indirectly, such as receiving a rent reduction, for example.

You would be legally prohibited from participating in and voting on this matter, however, if you or your immediate family could acquire a financial interest. Section 2-11.1 (o), "Acquiring financial interest," states that:

"No person included in the terms defined in subsections (b)(1) through (6) shall acquire a financial interest in a project, business entity or property at a time when he believes or has reason to believe that the said financial interest will be directly affected by his official actions or by official actions by the County or County agency of which he is an official, officer or employee."

This opinion construes the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, you may reach me at (305) 579-2594.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal line extending to the right.

ROBERT MEYERS
Executive Director

IMO 03-75

FAX

DATE: July 17, 2003

TO: ROBERT A. MEYERS
Fax: 305-579-0273

FROM: ROBERT A. DIGGER, SR.

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CITY OF NORTH BAY VILLAGE
CITY COMMISSION MEETING
Tuesday, July 27, 1999, 7:30 p.m.

ITEM 7.A.

An ordinance of the Mayor and City Commission of the City of North Bay Village, Florida, relating to zoning; amending code section 152.029 high density multiple family residential district; providing that when a structure is located in RM-70 and general commercial districts as an additional permitted use, certain of those uses permitted in the general commercial district shall apply as well to such structural uses permitted in the RM-70 district; providing for repealer; providing for codification; providing for severability and an effective date.

The above cause came on for hearing before the City of North Bay Village City Commission.

23 ATTORNEY DUBBIN: It's not your
 24 fault. Go ahead.
 25 JOE GELLER: Thank you, sir.

Page 69

1 ROBERT DUGGER: Good evening,
 2 Commissioners, ladies and gentlemen. My
 3 name is Robert Dugger, and I reside on North
 4 Bay Island for approximately two years now.
 5 I happen, as a profession for the last 25
 6 years, to manage condominium associations
 7 and homeowner associations.

8 I am forced on a daily basis in the
 9 courts of law because of the governing
 10 documents of those associations, and I think
 11 it's important for this Commission to
 12 understand that you can't legislate for or
 13 away from Mr. Coletta his rights that are
 14 given to him under the condominium documents
 15 that he purchased his property under, and
 16 each of the homeowners who purchased there,
 17 also as a matter of law, was required to
 18 receive a set of condominium documents at
 19 the time you paid your deposit before you
 20 could close and take title to your property.

21 And if that wasn't done, that's a
 22 problem of the seller who sold it to you,
 23 but every buyer of a condominium in the
 24 State of Florida under the Florida state
 25 laws is required to receive a set of the

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1 condominium documents, and they have the
 2 ability to read the restrictions in those
 3 documents before they take title to the
 4 property.
 5 And if these were commercial
 6 requirements or commercial allowances on the
 7 roof of that building and on the ground
 8 floor of that building, it's something that
 9 each of you had the ability to learn and
 10 understand and know prior to your taking
 11 title to that unit.

12 I think it's extremely important
 13 for this Commission to realize that what
 14 you're doing to try to comply with a court
 15 order is to make a quasi-judicial decision
 16 for this City, and you really cannot
 17 legislate for the condominium owners in that
 18 condominium. They have their own documents,
 19 and as was stated earlier, there is a
 20 vehicle at law for people who want to amend
 21 their governing documents, whether it be the
 22 declaration, the articles of incorporation,
 23 or the bylaws. They can all be amended by a
 24 percentage of the homeowners.

25 So with all due respect to everyone

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1 involved, I believe that the Commission's
 2 job is to legislate the zoning and resolve
 3 the issues of the settlement of the court
 4 action and not to attempt to legislate the
 5 responsibilities of the owners in that
 6 building.

7 Thank you.

8 (Audience applause.)

9 MAYOR DIAZ: Anyone else? Guess
 10 not.

11 The public hearing is closed then.

12 ATTORNEY DUBBIN: Mr. Mayor, this
 13 is one of the two required public hearings
 14 on this particular issue. It's now up to
 15 the Commission, the four of you, to
 16 deliberate and decide whether you want to
 17 vote yes or no.

18 If you vote yes, it carries the
 19 court to the next public hearing, so that
 20 would be the final vote. If you vote no,
 21 that would be the end of it at this time.

22 So, you have your choice. You can
 23 either approve the proposed Ordinance on the
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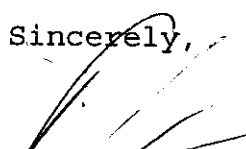
Page Two

- Al Coletta has owned this particular piece of property for 22 years under these conditions and has not been able to use the property. In other words, 8,000 sq. ft., surrounded by windows, on the 12th floor, overlooking downtown Miami and Miami Beach, has been rendered useless.
- In 1999, I spoke at a public hearing, under oath, and rendered my opinion to the City Commission as to the use of the property and what I thought the City Commission should do. A transcript of that statement is attached hereto.
- I was elected to the City Commission in late November of 2002.
- I am still of the opinion that the City should grant zoning to allow the use of the property.
- I do not stand to gain monetarily in any way, shape or form from this decision whether I vote on it or not.
- The City is being asked, as a settlement under the Burt J. Harris Act to grant zoning for the use of the property.
- Commissioner George Kane sponsored this settlement agreement and zoning ordinance.
- Both the settlement agreement and the zoning ordinance granting the zoning passed unanimously on the first reading.
- Since the first reading, the services of the City Attorney, Earl Gallop, have been terminated. Attorney, Joe Geller has been hired as the interim City Attorney. The settlement agreement has been rescinded by the Commission and the zoning ordinance has been tabled.
- This issue is coming before the Commission again for an action to be taken on July 30, 2003.

Mr. Meyers, do you perceive a conflict of interest under Florida Statutes and pursuant to your Ethics Commission pertaining to my vote on this issue under the circumstance I have explained to you?

I respectfully request your written opinion at your earliest convenience, as this vote is scheduled to take place on July 30, 2003 and I still have a concern relative to the vote.

Sincerely,


Robert A. Dugger, Sr.
(305) 799-8752

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