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October 26, 2011

Jess Linn  
Principal Planner  
Department of Planning and Zoning  
111 N.W. First Street  
Suite 1210  
Miami, Fl 33128

**RE: REQUEST FOR ADVISORY OPINION-RQO 11-28**

Dear Mr. Linn:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 25, 2011 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding voting conflicts for Planning Advisory Board members.

In your request, you advised the Commission that the Planning Advisory Board is comprised of thirteen members appointed by the Board of County Commissioners. The Planning Advisory Board is responsible for holding public hearings and making recommendations on Comprehensive Development Master Plan (CDMP) amendments prior to review by the Board of County Commissioners. The Planning Advisory Board is required by state statute to review those changes. In recent years, the Department of Planning and Zoning has created charrettes to study defined areas in the community and make recommendations for public improvements and zoning changes. The charrettes are comprised of members of the affected community.

The Palmer Lake Charrette Area Plan Report is scheduled to be presented to the Planning Advisory Board. The study group was chaired by a member of the Planning Advisory Board. The board member owns property and operates a business in the Palmer Lake area. The charrette recommendations are not binding. Any zoning changes or CDMP changes that are the result of the study will occur in later items to be considered by the PAB and the BCC.

The Ethics Commission found the Planning Advisory Board member may participate in discussion and vote on the Palmer Lake Charrette Area Plan Report but may be prohibited from voting on later zoning or CDMP plan changes if he or she will financially benefit from those changes. Section 2-11.1(v) provides that a board member is only prohibited on voting on a matter if he or she "will be directly affected by the action of the board on which the member sits and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor."

In the instant case, the PAB member is an officer of the entity that is presenting the report but will not be directly affected by the board's actions of reviewing and accepting the report. The acceptance of the report will not create CDMP or other zoning changes that will directly affect the board member.

Further, the Ethics Commission has generally held that a person is not prohibited from voting on a matter because they reside or own property in the area because they will not be uniquely affected by their decision. A person is uniquely affected, for voting conflict purposes, if the decision directly affects

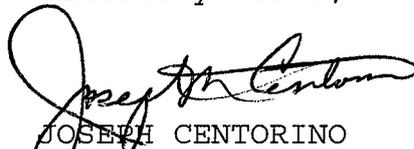
the owners of a particular parcel of land or residential development. For example, if the change benefits the entire Kendall community, the board member is not uniquely affected. However, if the planned change will only benefit the Lakes of the Bay development, then the board member could have a conflict.

As for CDMP or other zoning changes, PAB members are also subject to 2-11.1(n) (actions prohibited when financial interests involved) which prohibits covered persons from making decisions that affect their financial interests. PAB members may be prohibited from voting on CDMP or zoning changes that may have a direct financial impact their residences or businesses.

This opinion construes the Miami-Dade 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 if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel, at (305) 350-0616.

Sincerely Yours,

  
JOSEPH CENTORINO  
Executive Director