

Sanchez, Rodzandra (COE)

Sent: Friday, July 13, 2018 3:21 PM
To: Vice Mayor John Dubois
Cc: Turay, Radia (COE); Perez, Martha D. (COE); Diaz-Greco, Gilma M. (COE); Centorino, Joseph (COE)
Subject: INQ 18-170 John Dubois, Vice Mayor, Village of Palmetto Bay (Voting Conflict)
Importance: High

Dear Vice-Mayor Dubois:

You have inquired as to whether or not you have a voting conflict with regard to an upcoming vote on a property located at folio number 33-5033-000-0860 owned by the Shores at Palmetto Bay, LLC (the Shores property).

You advised that the Shores property is an approximate three-acre property and the developer is seeking site-plan approval to allow development of “a couple of hundred dwelling units and commercial retail.”

Village of Palmetto Bay Land Development Code mandates that quasi-judicial Village Council Approval is required for approval of any site-plan which proposes 20 or more dwelling units.

You further advise that you are the principal/owner/manager of a Florida For-Profit corporation, Indigo Street, LLC. Indigo Street LLC owns two adjacent properties located at 9726 E. Indigo Street and 9730 E. Indigo street.

9726 E. Indigo street is a commercial office building and 9730 E. Indigo street is a vacant lot. These two properties have been held by Indigo street LLC since approximately 2011-2012 for “investment purposes.”

Both 9726 and 9730 are located along E. Indigo street.

You advise that you do not have any interest in or relation to Shores at Palmetto Bay. The Shores property is located on Franjo Road approximately two full blocks to the North East away from your Indigo Street properties. No part of your Indigo street properties adjoins or abuts the Shores property and, there is no indication from what you have communicated in your request for opinion that your properties would be affected in any way distinctly different than would other surrounding properties.

It is your belief that area traffic, property values and aesthetics may be affected for nearby property owners.

Section 2-11.1(d) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance is entitled “Further prohibition on transacting business with the County” and comprises the voting conflict section of the Code. It states that:

“ [N]o person included in the term defined in subsection (b)(1) shall vote on or participate in any way in any matter presented to the [Village Commission] 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 [Village 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 of the [Village Commission] shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter.

It should be noted that the standard established by 2-11.1(d) for a voting conflict is stricter than the standard established under State law (INQ 14-86). The State standard, specifically, Florida Statute 112.3143 (1)(d), provides that “ No county, municipal or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss...”

Circumstances that do not meet the State standard for a voting conflict could still create a voting conflict under the County ordinance where an official might , directly or indirectly, profit or be enhanced by a vote. The County standard does not require a definite or measurable private gain or loss, and may apply where there is a reasonable possibility or expectation of such an effect (RQO 15-04).

It should also be noted that Florida Statute 286.012 provides that if the official decision, ruling, or act occurs in the context of a *quasi-judicial proceeding*, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice. In other words, even if the proximity of your property to the Shores property does not constitute a conflict because you would not, directly or indirectly, profit or be enhanced by the action of the Village Council, you should abstain from voting in this quasi-judicial proceeding if you have a bias or prejudice that could interfere with a fair quasi-judicial proceeding.

While the Miami-Dade County Ethics Commission has not adopted the standard used by the State of Florida Ethics Commission in determining whether a voting conflict exists, we agree with State opinions that loss or gain to the public officer as a result of his or her vote should not be remote or speculative (See generally State of Florida Ethics Opinions CEO85-77 and CEO 14-3).

You have informed us, to your credit, that Mr. Rosen, the owner of the subject property, has supported you politically through his own personal campaign contributions, as well as having delivered to you contributions from his business entities and associates. The mere acceptance by you of such political support, if not provided by him with an intent to influence this vote, and not accepted by you with an intent to be influenced, and in compliance with all statutory requirements in Chapter 112, Florida Statutes, would not, by itself, create a voting conflict. However, if you should feel that your political or personal relationship with Mr. Rosen would prevent you from acting in a manner that would permit a fair hearing on the item, then you should consider recusing yourself from the vote.

It is our understanding, based upon our discussions with Town personnel, that the vote on the issue on which you inquired would not likely affect the development of your vacant parcel of land at 9730 E. Indigo street.

Based upon our review of the circumstances of this matter, we have been unable to conclude that your zoning or personal interests would be affected in a way that would create a voting conflict under Section 2-11.1(d) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance.

Sincerely,

Michael P. Murawski
Advocate
Miami-Dade County Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, Florida 33130
(305) 350-0609

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, July 19, 2018 12:29 PM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-170 John Dubois, Vice Mayor, Village of Palmette Bay (Voting conflict)
Attachments: INQ 18-170 John Dubois, Vice Mayor, Village of Palmetto Bay (Voting Conflict)

INQ 18-170 Dubois

From: Ethics (COE)
Sent: Friday, July 13, 2018 5:07 PM
To: 'JDubois@eyecast.com' <JDubois@eyecast.com>; jdubois@palmettobay-fl.gov
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; McGee, Frank (COE) <Jim.McGee@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Subject: INQ 18-170 John Dubois, Vice Mayor, Village of Palmette Bay (Voting conflict)

Vice Mayor Dubois,

Please see the attached opinion in response to your recent request.

Michael P. Murawski, Ethics Commission Advocate

From: John DuBois [<mailto:JDubois@eyecast.com>]
Sent: Thursday, July 12, 2018 1:55 PM
To: Ethics (COE) <ethics@miamidade.gov>
Cc: jdubois@palmettobay-fl.gov; mdcpr.jl@gmail.com; John DuBois <JDubois@eyecast.com>
Subject: RE: Need Binding Opinion from County Ethics

This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected emails. Please click here if this is a suspicious message reportspam@miamidade.gov **Enterprise Security Office**

To: Ethics investigators,

For the sake of full disclosure, I have some more background information regarding the requested opinion below.

I don't believe it is relevant to your decision, but just in case ...

Mr. Rosen, who is the owner of the property in subject matter below was a significant contributor to my campaign in 2012.

In addition to bringing me checks for a total of somewhere around \$5-7K, a couple from himself/his entities, the rest from his business associates friends (many of which were related to the Charter School business), he also funded a PAC that sent out a few mailers supporting my candidacy that probably cost between \$10K-\$20K.

The 2016 election contributions are online on the village web site. Don't recall Rosen's contributions during that election but can dig through my reports if you need that info.

John DuBois

Chief Executive Officer | EyeCast |
8360 W. Oakland Park Blvd, Suite 201, Sunrise, Florida 33351
Office – 954 615-2390 | Cell 786 888-4000 |



JDubois@EyeCast.com | www.EyeCast.com

From: John DuBois
Sent: Wednesday, June 20, 2018 2:14 PM
To: 'ethics@miamidade.gov'
Cc: John DuBois; mdcpr.jl@gmail.com; John DuBois (JDubois@eyecast.com)
Subject: Need Binding Opinion from County Ethics

Miami Dade County Commission on Ethics & Public Trust
19 W. Flagler Street, Ste 820
Miami, FL 33130

June 20, 2018

VIA EMAIL

RE: Advisory Opinion Request – Application of conflict of interest and code of ethics ordinance

To whom it may concern:

Please allow this correspondence to serve as a formal request for an advisory opinion as to the applicability of the Miami Dade County Conflict of Interest and Code of Ethics Ordinance Sec. 2-1.1(l)-(n) to an upcoming quasi-judicial zoning hearing (presently scheduled July 16, 2018) regarding the approval of a Site Plan submitted by Shores Development LLC.

Question Presented

- (1) Does an elected municipal councilmember have a conflict of interest precluding them from voting on approval of a site plan application when the councilmember has an ownership interest in a corporation owning property, both developed and undeveloped, in close proximity (est. 500'-700') to the proposed site plan?

Relevant Authorities

Village of Palmetto Bay Charter Sec. 7.2

Village of Palmetto Bay Code Sec. 30-30.2; Sec. 30-30.5

Miami Dade County Conflict of Interest and Code of Ethics Ordinance Sec. 2-1.1 (l), (m), (n)

Statement of Facts

I, John E. DuBois, was elected Vice Mayor of the Village of Palmetto Bay in 2012 and subsequently re-elected and have served in the same position since 2016. I am also a principal/owner/manager of the Florida for-profit corporation Indigo Street, LLC. Indigo Street LLC presently owns two (2) adjacent properties located at 9726 E. Indigo St (folio: 33-5032-007-0210) and 9730 E. Indigo St (folio: 33-5032-007-0220), Palmetto Bay, FL (“Indigo St properties”). The Indigo St properties were purchased and have been held for investment purposes since 2011-2012. 9726 E. Indigo St presently operates as a commercial office building and 9730 E. Indigo is a vacant lot.

In 2016, Shores at Palmetto Bay, LLC submitted a site-plan application for proposed development on a then approximately five (5) acre parcel of property located within the Village of Palmetto Bay, FL. In December 2017 the Village Council voted to purchase approximately 2.34 acres (folios: 33-5033-000-0862, 33-5033-000-0863) of the (5) acre parcel of property from Shores at Palmetto Bay, LLC. Shores at Palmetto Bay, LLC retained ownership of approximately three (3) acres. Shores at Palmetto Bay, LLC wishes to proceed with development of a couple of hundred dwelling units and commercial retail on their remaining three (3) acres of property (folio: 33-5033-000-0860). To that end, the Village has now set Shores at Palmetto Bay, LLC’s 2016 site-plan application for approval at a quasi-judicial hearing before the Village Council on July 19, 2018. The Village of Palmetto Bay Land Development Code mandates that quasi-judicial Village Council Approval is required for approval of any site-plan which proposes 20 or more dwelling units. *Village Code Sec. 30-30.5(f)*.

The Indigo St Properties, in which I hold an ownership interest, are in close proximity to the property subject of the pending site-plan application (approx. 500’-700’). I do not have any interest in or relation to Shores at Palmetto Bay, LLC. Should Shores at Palmetto Bay, LLC’s site plan application be approved, I believe area traffic, property values, aesthetics, etc. may be affected for nearby property owners.

I respectfully request timely consideration of this advisory opinion prior to the presently scheduled zoning hearing at 7pm on July 19, 2018.

Sincerely,

John E. DuBois

Village of Palmetto Bay Vice Mayor

Cell# 786 888-4000