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INQ 16-186 Auerbach

-----Original Message-----

From: Perez, Martha D. (COE)

Sent: Wednesday, July 20, 2016 3:02 PM

To: auntiewendy@aol.com

Cc: Centorino, Joseph (COE) <CENTORI@miamidade.gov>; Diaz-Greco, Gilma M. (COE)

<GDIAZGR@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>

Subject: Wendy Auerbach, Board member, County's Historic Preservation Board, Voting Conflict, INQ 16-186

Dear Wendy,

It was a pleasure meeting you today at the training. You inquire whether you have a conflict of interest in participating and voting on an item before the Historic Preservation Board (HPB) regarding the Bay Harbor Club located in Bay Harbor Islands.

#### Background

You serve on the County's Historic Preservation Board. You are having a meeting this afternoon and one of the items on the agenda is a historic site designation of Bay Harbor Club. You were a resident of Bay Harbor Islands for 15 years and sold your property 7 months ago and moved to another municipality. You have indicated that you never had nor do you presently have any connection or involvement, personal, financial or professional, with Bay Harbor Club. Another member of the board has objected to you voting on this item and, in fact, objects to you voting on any items that affect Commissioner Heyman's district.

#### Analysis

As a member of the HPB, you are a member of what is considered a "quasi-judicial" board. Section 2-11.1(v) of the Miami-Dade County Conflict of Interest & Code of Ethics sets out the conflict of interest standard for members of quasi-judicial boards. This section provides that a conflict exists if you are an "officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary" of an entity appearing before the board AND you would be "directly affected by the action of the board."

Based on the facts as you have presented, you do not have any of the listed relationships under Section 2-11.1(v) with Bay Harbor Club nor do you have any personal interest, financial or otherwise, which would be directly affected by your vote. You are a past resident of the municipality and that by itself, does not trigger a conflict. Accordingly, I am of the opinion that, as a member of the HIP, you are not prohibited by the County Ethics Code from voting or otherwise participating in this item before your board. RQO 06-52

While you have indicated that you do not possess any bias or prejudice with respect to this item, I wanted to inform you nevertheless that Florida law permits a quasi-judicial board member to abstain from a vote if the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding and the abstention is to assure a fair proceeding free from potential bias or prejudice. See Section 286.012, Florida Statutes.

This opinion is based on the facts as you have presented them to the Ethics Commission. Please contact us if these facts change. Inquiries regarding possible conflicts with departmental directives should be addressed with your Department Supervisor. Inquiries regarding possible conflicts under State law should be directed to the Florida Commission on Ethics. I am attaching a memorandum on potential issues for advisory board members for informational purposes.

Best regards,

Martha D. Perez  
Staff Attorney  
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST  
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-----Original Message-----

From: auntiewendy@aol.com [mailto:auntiewendy@aol.com]  
Sent: Wednesday, July 20, 2016 1:52 PM  
To: Perez, Martha D. (COE)  
Subject: Historic Preservation Meeting

Dear Ms. Perez,

I am on the H. P. B. And we are having a meeting today. One of the items to be addressed is a property in Bay Harbor Islands. I lived in Bay Harbor Islands for 15 years and 7 months ago sold my B. H. I. Property and moved to Aventura. There is one board member who personally objects to my voting on anything having to do with B. H. I. And has stated that I should not be voting on any items that come up in Sally Heyman's district. I personally have recused myself from part of one meeting because I did not want a perception of conflict. I do not believe that I am in violation or conflict by attending and voting on issues in BHI or Commissioner Heyman's district. If you refer to the minutes of October 21, 2015 and after you can read some of the comments that I have been subject to. As no other board member has agreed that I should recuse myself my intention is to continue to remain on the board and vote on all items.

Please advise if you see any conflict with my position.

Thank you for your time and expertise. Sincerely, Wendy Auerbach  
305 775-8998.

Sent from my iPhone