

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, January 31, 2017 10:11 AM
To: Sanchez, Rodzandra (COE)
Subject: Jud Kurlancheek, Building, Zoning, Planning and Public Works Director, Village of Key Biscayne (Exploitation) INQ 17-28

INQ 17-28 Kurlancheek

From: Centorino, Joseph (COE)
Sent: Monday, January 30, 2017 4:25 PM
To: 'Robert Meyers' <RMeyers@wsh-law.com>
Cc: Jud Kurlancheek <jkurlancheek@keybiscayne.fl.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>
Subject: INQ 17-28 Jud Kurlancheek, Building, Zoning, Planning and Public Works Director, Village of Key Biscayne (Exploitation)

Dear Mr. Kurlancheek:

This is in response to the request of Robert Meyers, Esq., of Weiss Serota Helfman Cole & Bierman, P.L., regarding whether you would have a prohibited conflict of interest that would preclude you from exercising your duties as Building, Zoning, Planning and Public Works Director for the Village of Key Biscayne, in connection with a proposed development initiated by the Key Biscayne Yacht Club. You have informed that the Yacht Club is planning to demolish its existing building and to construct a new 15,000 sq. ft. building on the site where its present building is located. There are a number of stages that the process will need to go through before completion, where your involvement in the process will be required due to your positions in the Village. There will likely be demolition issues, a plan review process, zoning issues pertaining to parking, maximum lot coverage, floor area ratio, site plan approval and a variance needed to permit the new construction. There will likely be other approvals during construction related to building inspection and code compliance. The question of a conflict has been raised due to your ownership interest in a unit within the 17-unit building located adjacent to the Yacht Club, with a shared property line. You have indicated that the view from your unit includes the Yacht Club building as well as an extensive view of the bay and downtown Miami. You have stated that you are in the process of selling your unit, and that you intend to seek another unit in the building to rent or buy.

There is no question but that under the foregoing circumstances, there will be perception that you are in a position to have an impact on your ownership interests, past and/or future in the building, by virtue of your critical involvement in virtually all stages of the prospective development. At this point it is not known what position your fellow unit owners in your building will be taking on the project, but there is certainly a strong likelihood that they, including you, will be afforded an opportunity to comment on the project at various stages, and that the unit owners in the building may be taking a position on one or more of the issues that will be aired concerning the development of the project, due to their respective investments in an adjacent building that will likely be affected in some way by this project. Your current intent to sell your unit and possibly purchase another unit in the building would only add to this perception of a conflict.

I have reviewed the various provisions of the County Ethics Code that might be applied to your situation. I have concluded that there is no provision in the Code that would clearly prohibit your involvement in the Village's decision-making process. The provisions of Section 2-11.1(d) of the Code, that would prevent a board member from participating in a decision due to the possibility that he or she might profit or be enhanced, and that would create a prohibited conflict for a board member involved in this process, does not apply to public administrators who do not serve as

members of a public board. Since your ownership of a unit would not be considered either a business or an enterprise, the conflict provisions of Sections 2-11.1(n) and 2-11.1(l) would likewise not apply, assuming that your ownership in the property is for the purpose of residency and not conducted as a business investment.

What is difficult to ascertain at this point is whether Section 2-11.1(g) of the Code, which prevents exploitation of official position, may become applicable at some stage of the process, given the probable effect of this development on your ownership interest, and your central involvement in so many phases of the development. I see a distinct possibility that some decision made by you, that will be perceived as favorable or unfavorable to some aspect of the proposed development, will expose you to a potential claim of exploitation. This may occur even if you make every effort to tailor your decisions and involvement to what you perceive to be in the best interests of the Village, and without any regard to your personal interest or that of your fellow residents. This possibility, coupled with the obvious appearance of a conflict, could create serious issues for you and the Village at some future point in the process.

While I cannot advise you at this point that your involvement will definitely create a violation of an Ethics Code provision, I must advise you to carefully consider and weigh the impact on the public trust, in the event that you are placed in a position where your input may have a decisive impact on an aspect of the development that creates controversy among Village residents over the project. If you are concerned about such a possibility, then you should consider voluntarily recusing yourself from the process and delegating your role to another Village administrator or employee. If you think it likely that you will do so, then I advise you to do so immediately rather than at some later point where your prior involvement may be questioned.

If you decide to move forward and to be involved in the project, I suggest that you remain vigilant to any unforeseen development that would place you in an untenable situation and to take appropriate action at that time. We are always available to provide guidance on any issue that may arise which has not been previously foreseen.

Sincerely,

Joe Centorino

Joseph M. Centorino

Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
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From: Robert Meyers [<mailto:RMeyers@wsh-law.com>]
Sent: Wednesday, January 25, 2017 11:26 AM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Cc: Jud Kurlancheek <jkurlancheek@keybiscayne.fl.gov>
Subject: RE: YACHT CLUB CONFLICT OF INTEREST DETERMINATION

Hi Joe:

Per our conversation, please review the email from Jud Kurlancheek and provide me with a written opinion as to whether Mr. Kurlancheek has a conflict of interest which would preclude him from exercising his duties as Building, Zoning, Planning and Public Works Department regarding this Yacht Club matter.

To supplement the information contained in his email, Mr. Kurlancheek does not sit on the board of his townhouse association. Moreover, he has no idea whether the association will a position on the Yacht Club application – it may depend in part on the project’s scope, which has not been formulated yet by the Yacht Club.

Mr. Kurlancheek has an additional question, which he asked me to convey to you. Specifically, if you determine he has a conflict, can he brief the person who will prepare the staff recommendation for the site plan and variance applications? It is my understanding that the purpose of the briefing would be to convey factual information to the person making the recommendation. If you conclude that he has no conflict under the law, then I assume that he can decide at what stage in the process he wishes to step aside – although your guidance on this question would be appreciated.

If you need additional information before drafting your opinion, please contact me at your convenience. I don’t know what your timeframe is for issuing this opinion, but an opinion from your office by the end of this week would be most helpful.

Thanks,

Robert

From: Jud Kurlancheek [<mailto:jkurlancheek@keybiscayne.fl.gov>]

Sent: Friday, January 20, 2017 2:22 PM

To: Chad Friedman <cfriedman@wsh-law.com>

Cc: Robert Meyers <RMeyers@wsh-law.com>; John C. Gilbert <jgilbert@keybiscayne.fl.gov>; Jennifer Duque <jduque@keybiscayne.fl.gov>

Subject: YACHT CLUB CONFLICT OF INTEREST DETERMINATION

Good Afternoon,

I own an apartment at 166 Harbor Dr. # 4 in a building that contains 17 units. My unit is approximately located in the center of the building and directly faces the Bay. My view includes the Bay, downtown Miami, the Key Biscayne Yacht Club boat docks and a portion of their land including the current building. The Yacht Club is immediately adjacent to my building as we share a common side property line. I am in the process of selling my unit and I am in negotiations to buy and/or rent another unit in the building. I am the Building, Zoning, Planning, and Public Works Director for the Village of Key Biscayne. I am not a member of the Yacht Club nor have I ever applied for membership.

During the past week, I have been contacted by two members of the Yacht Club including Councilmember Gary Gross and Jose Ortega regarding the potential demolition of the building and the construction of a new 15,000 sq. ft. structure. The conversations were limited to zoning issues related to the plan review process, the required number of parking spaces and maximum lot coverage and floor area ratio. Since this is a new building, our Zoning and Land Development Regulations require a public hearing before the Village Council in order to consider the approval of a site plan. There will also be a second public hearing related to a variance from the required parking. There are no plans. An application or any documents were not submitted. As required by the Zoning and Land Development Regulations, I am required to provide the Council with an analysis and recommendation regarding the site plan and parking variance applications.

It is customary that persons who wish to develop property in the Village to contact me at the preliminary stages of a project to discuss the zoning requirements. The project is in the initial stages as the leadership of the Yacht Club is

meeting with members to ascertain their desires and needs. When that process is completed, I was told the membership would vote and if in the affirmative, they would then engage the services of an architect to prepare the plans and submit the site plan and variance applications for approval by the Village Council.

I am asking for a determination if I have a conflict of interest.

Sincerely,

Jud Kurlancheek

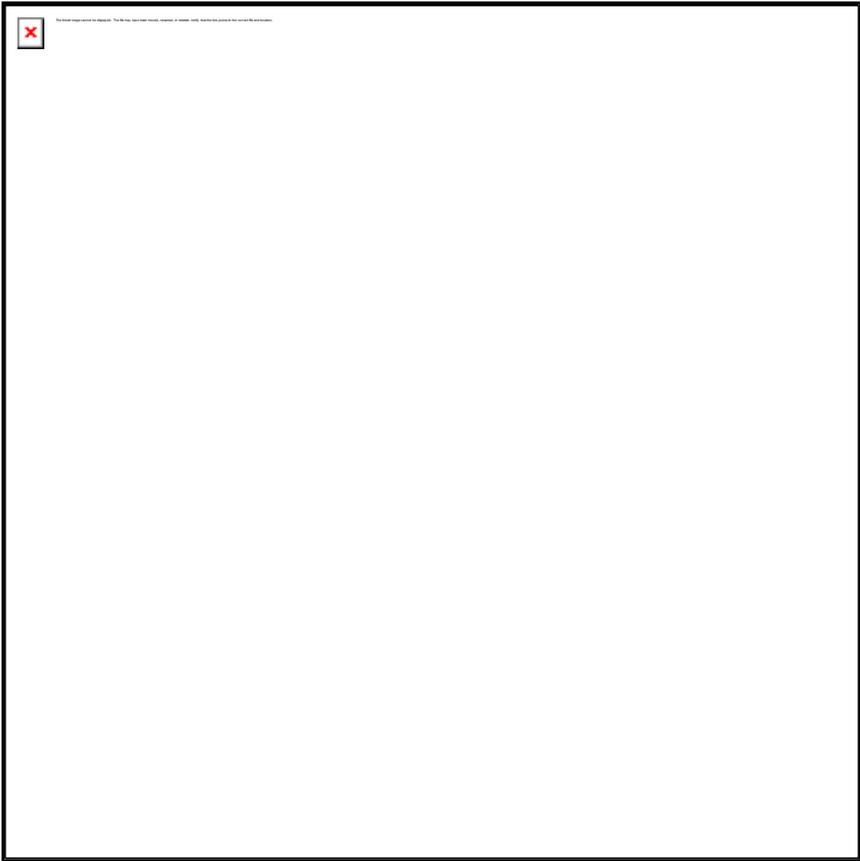
Jud Kurlancheek, AICP
Village of Key Biscayne
Building, Zoning and Planning Director
Public Works Director
88 W. McIntyre St, Suite 210
Key Biscayne, FL 33149

305 365 8908 Office
305 365 5556 Fax



From: Chad Friedman [<mailto:cfriedman@wsh-law.com>]
Sent: Friday, January 20, 2017 10:46 AM
To: Jud Kurlancheek <jkurlancheek@keybiscayne.fl.gov>
Cc: Robert Meyers <RMeyers@wsh-law.com>
Subject: please follow up with Robert

Chad Friedman
Member



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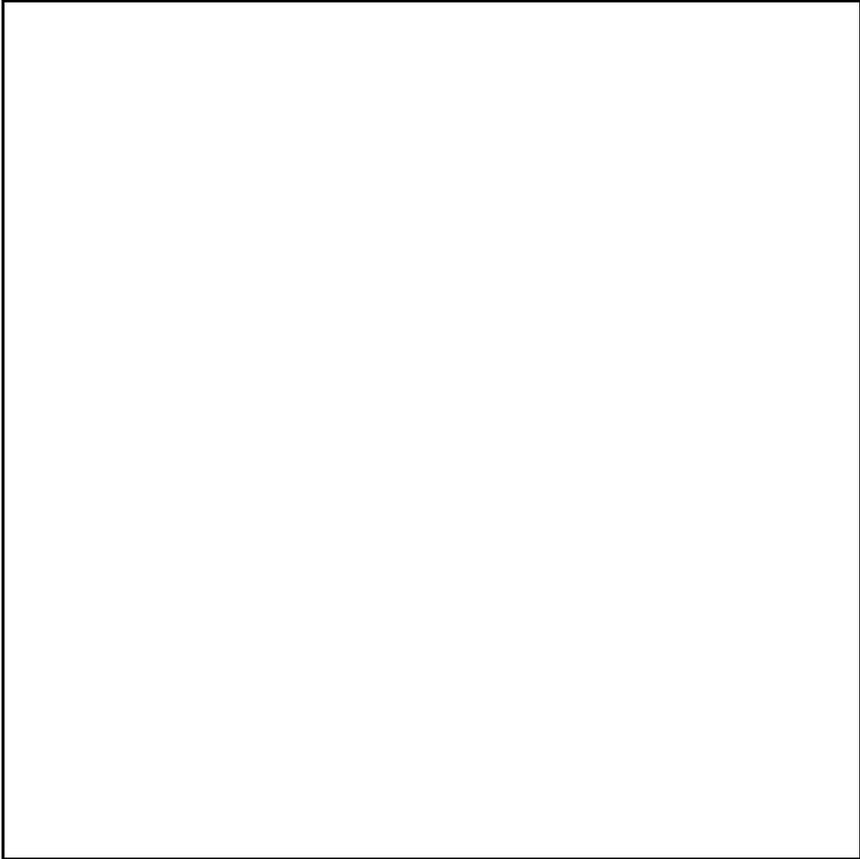
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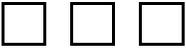
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Robert Meyers



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Robert Meyers



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