

Meyers, Robert (COE)

From: Meyers, Robert (COE)
Sent: Tuesday, October 05, 2004 10:06 AM
To: 'David M. Wolpin'
Subject: RE: Security District

David,

The Council member's interpretation of my opinion is accurate. If he has any other questions pertaining to this matter, do not hesitate to contact me.

Thanks,

Robert

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

From: David M. Wolpin [mailto:DWolpin@wsh-law.com]
Sent: Friday, October 01, 2004 1:58 PM
To: rmeyers@miamidade.gov
Subject: FW: Security District

Robert-- please review the Council member's request for confirmation of interpretation as set forth below. Thank you.

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

From: Howard J. Berlin [mailto:HBERLIN@kpkb.com]
Sent: Friday, October 01, 2004 1:58 PM
To: David M. Wolpin
Cc: Richard Jay Weiss
Subject: RE: Security District

yes. please do.

From: David M. Wolpin [mailto:DWolpin@wsh-law.com]
Sent: Friday, October 01, 2004 1:50 PM
To: Howard J. Berlin
Cc: Richard Jay Weiss
Subject: RE: Security District

One key may be that the subsequent matters are really simply implementing the use of funds made available via the equalization Resolution item at which abstention was practiced. May I submit your reading to Mr Meyers for confirmation of this?

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

From: Howard J. Berlin [mailto:HBERLIN@kpkb.com]
Sent: Friday, October 01, 2004 12:59 PM
To: David M. Wolpin
Cc: Richard Jay Weiss
Subject: RE: Security District

David;

thanks for the update. If I'm reading it correctly, Mr. Meyers is advising that it is ok for me or any other resident from within the security district who is elected to fill my seat on the council may participate in matters before the council that concern the spending of money relating to the security district. In a sense, aside from any personal conflict that one might have on a given matter, the council member from the security district can vote on all matters pertaining to the security district where the matter doesn't pertain to him or her personally or individually, but rather to all residents of the security district. If this is not correct, please advise. Otherwise, I will plan generally to participate in these matters on a going forward basis. thanks for the clarification.

HJB

From: David M. Wolpin [mailto:DWolpin@wsh-law.com]

Sent: Friday, October 01, 2004 12:36 PM
To: Howard J. Berlin
Cc: Richard Jay Weiss
Subject: FW: Security District

Howard- this should satisfactorily resolve your remaining concerns. Please call me if any question.
-----Original Message-----

From: Meyers, Robert (COE) [mailto:RMEYERS@miamidade.gov]
Sent: Friday, October 01, 2004 12:23 PM
To: David M. Wolpin
Subject: RE: Security District

David,

It's no bother to help clarify these matters of concern. I agree with you assessment that the Council member should be permitted to participate in and vote on items relating to the implement of the funds in the security area. As I see it, any benefit that might accrue to him personally by painting the guard house or changing security company will equally impact other homeowners who live in the area. We haven't adopt any thresholds per se that would trigger automatic conflicts; rather, we take the position that each case should be evaluated on its own merits. Obviously, we consider the size of class to benefit from the action and the amount (value) of the benefit when we examine these questions.

Hope this helps and please feel free to contact me if you have any further questions.

Thanks,

Robert

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

From: David M. Wolpin [mailto:DWolpin@wsh-law.com]
Sent: Wednesday, September 29, 2004 1:27 PM
To: Meyers, Robert (COE)
Subject: RE: Security District

Robert--sorry to bother you again on this.

The security program equalization process was successfully completed and the Village budget was successfully adopted, both in compliance with your advice. However, now the Council member is asking whether, in the future, he may vote on matters that implement the authorized uses of funds in the security area, such as, for example only, painting of the guard house or any change to the security service company. It seems to me that it might be argued that he is not profited or enhanced by such items, so long as those items do not save him money or cost him more money as a specially assessed property owner by reducing or increasing the necessary funds (as budgeted) which are raised by special assessments for the security area. On the other hand, the better the security program functions, the higher the home values. His question is not, in any way, driven by a desire to reap a personal benefit, but rather by his belief that he owes a duty of representation not only to all citizens of the Village but especially to those in the area for which he meets the geographic residency qualification of office. The difficulty stems from the circumstance that while the State ethics code has a special gain and size of class test, county code section 2-11.1 (d) does not. In the meantime, I have advised him to continue to refrain from any involvement on these matters. He would be happy to meet with you if you feel it would assist in discussing or resolving his remaining questions. Thank you for your continued assistance.

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

From: Meyers, Robert (COE) [mailto:RMEYERS@miamidade.gov]
Sent: Tuesday, September 07, 2004 4:51 PM
To: David M. Wolpin
Subject: RE: Security District

David,

I did indeed make it safely through the storm and I hope you did as well. As far as your question is concerned, I conferred with Christina Prkic and we agree that Councilman Berlin has the right to participate in the budget hearings and vote on the budget at the first and second reading. I concur with your assessment that Councilman Berlin ought to refrain from commenting about matters pertaining to the Security Program, but as a duly-elected official of his municipality he should

actively participate in general budget discussions and vote on the budget when the question is called. We do not believe it is necessary to treat the Security Program as a separate budget item for purposes of the action to be taken at the first and second budget hearings. I agree that the most prudent course of action for him to take on September 21, 2004 (the annual special assessment equalization hearing) is to absent himself from the proceedings.

Finally, please advise Councilman Berlin that the non-participation element of the voting conflicts section of the Code applies throughout the entire decision-making process -- not simply at the hearing or public meeting. Therefore, he should have not discussion with staff about the Security Program leading up to the budget hearing or after a final vote has been taken.

If you have any questions concerning the above, please do not hesitate to contact me at your convenience.

Robert

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

From: David M. Wolpin [mailto:DWolpin@wsh-law.com]

Sent: Tuesday, September 07, 2004 10:55 AM

To: rmeyers@miamidade.gov

Cc: Richard Jay Weiss

Subject: FW: Security District

Robert- I hope you are doing well and made it safely through the storm. Pursuant to Sec. 2-11.1 (d) of the County Ethics Code, must Bal Harbour Councilman Howard Berlin, who resides within the special assessment area (the "Security Program ") abstain from voting and leave room at first budget hearing on September 9, 2004, under circumstance in which funds provided for the Security (guard - gate) Program are only a small item (\$284,000 compared to the \$15.7 million dollar Village Budget) and as explained by the Village Manager are included within the Village Budget documents as back up informational material but **not** as part of the specifically listed Fund categories listed by the budget ordinance. It is my opinion that while we will advise him to abstain from participating and leave the council room when the annual special assessment equalization hearing is held on September 21, 2004, he should be able to participate and vote on the budget at first and second reading, so long as he avoids commenting on the Security Program expenditures. The Security Program finances as prepared by the Village Manager maintains the current level of expenditures. These expenditures are described in the attached document. Additional background information is provided in my letter of December 3, 2002 to the Village Council which was previously furnished to the your staff when Village resident Babak Raheb had questioned the validity of the 2002 special assessment equalization resolution by questioning then Mayor Berlin's voting on the special assessment equalization resolution. All Security Program expenditures are funded by special assessments on the more than 200 parcels located within the special assessment area served by the Security Program. Alternatively, if you find it to be necessary, the information on the Security Program may be discussed as a separate informational sub- item, while Mr. Berlin is absent from the room, and the record would reflect that his vote on the budget item does not pertain to the Security Program matter. Kindly advise me before 2:00pm on this Thursday, if possible, since the budget hearing is at 5:15 pm. Thanks again for your assistance.

(-----Original Message-----

From: Alfred Treppeda [mailto:manager@balharbourflorida.com]

Sent: Wednesday, September 01, 2004 4:51 PM

To: David M. Wolpin

Subject: Security District

Revised Version