

OFFICE OF THE INDEPENDENT ADVOCATE  
REPORT OF INVESTIGATION

K #: K06-143

Date Opened: December 15, 2006      Date Closed: April 4, 2007

Name of investigator: Breno Penichet

**Allegation:** A Possible Conflict of Interest by a Public official, Vice Mayor of the Town of Surfside, Howard Weinberg.

**This Investigation is predicated upon information received in the form of an Anonymous letter. Alleging that Surfside Vice Mayor Howard Weinberg Voted on a matter before the Surfside commission after he had publicly admitted that he had a conflict of interest due to the fact, that the Attorneys representing the developer seeking to obtain variances worked for the same Law firm that was suing Weinberg and his family. Mr. Weinberg voted after he announced that the Lawsuit had been dropped.**

- On September 26 2006, an agenda item came before the Town of Surfside Commission for two variance requests for a property located at 9501 Collins Avenue, Surfside. The Attorney representing the developer and variance applicant worked for the Law Firm of Greenberg Traurig.
- ~~Howard Weinberg~~, Vice Mayor, specifically stated that he had a conflict of interest with the applicants' Attorney and the variance issue. Weinberg felt that since the law firm representing the applicants was suing him and his family he would not be able to be fair and impartial and walked out.

- After Several presentations and discussions, there was no vote or decision on the variance the mayor deferred the item until the following meeting of 10/10/06. According to the letter, The mayor knew that four votes would be needed to approve the variances, one commission member was opposed to the variances, and the vice mayor had a conflict of interest, so there were only three possible favorable votes left on the Commission

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- On 10/10/06, the same matter came back before the commission. Mr. Weinberg Excused himself again from that portion of the meeting stating his previous conflict of interest.

- There was a vote of the commission and the variance requests were denied by a vote of 3-1 with Mr. Weinberg not voting.

- At the 11/7/06 commission meeting, there was an agenda item "Reconsideration of the variance for the 9501 Collins Ave. project. The Attorneys for the developers

Again appeared before the commission asking that the same two variances be Reconsidered, the Items were to be re introduced with new language and with some compromises that would suit all parties. Mr. Weinberg stated that he no longer had a conflict because the conflict stemming from the lawsuit had been resolved and that he would be voting on the variance matters after all.

- Mr. Weinberg consulted with the town attorney and was advised he (Weinberg) could vote on the matter.
- COE Investigators reviewed the tapes of the Commission meetings mentioned in the letter and found that Vice Mayor Weinberg acted properly by leaving the chambers when the votes on the Items in questions were being

discussed. It was also noted that some of the information described on the letter was inaccurate as to what was said and the context of the conversation.

- COE Investigators also attended the December 12, 2006 Surfside Commission meeting at which time item 6.A.1. **Rehearing of Variance Request for 9501 Collins Avenue** was discussed and it was agreed that the City Manager and the Attorney's for both parties get together in executive session and negotiate a reasonable compromise, if they could not then to bring it back in front of the commission for an open hearing and final vote.
- COE Investigators reviewed the court file of civil case involving Mr. Weinberg and his Family. Case # 04-00352CA24 EAM LLC. VS. JML Investment Group LLC. Civil suit over a rental property located 2200 NW 2 Ave. Miami, FL. Court action had no connection with City of Surfside other than the fact that the Attorney representing the other party was with the same firm as the Attorney representing the owners of the 9501 Collins Ave, Property. The suit was filed prior to Mr. Weinberg being elected to public office.
- COE Investigators interviewed Vice Mayor Weinberg concerning the above matter. Mr. Weinberg advised that the Law Suit is still pending, but the Law Firm representing the other party is no longer the same, so he (Weinberg) feels he could be impartial and now has no conflicts. Mr. Weinberg advised that he disclosed the conflict to the City Attorney as soon as he became aware the Item was going to be coming before him, in fact he provided us with copies of E-Mails that were sent to Mr. Robert Myers Executive director COE asking for his opinion on the matter. Mr. Weinberg advised he decided after consulting with all the parties to disclose the conflict and not vote on the matter until the conflict was resolved or the matter passed without his vote.

\* **All documents have been made part of this file.**

**CONCLUSION:**

This Investigation shows that Vice Mayor Weinberg after seeking advice from the City Attorney as well as from the Ethics Commission via the Executive Director executed his right to abstain from voting on an Item set before the City Commission.