

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, July 24, 2018 9:56 AM
To: Sanchez, Rodzandra (COE)
Subject: Orlando Borges, Board Member, South Miami Planning Board, Appearance before City Commission (m)(2), 8A-1 SMC, INQ 18-177

INQ 18-177 Borges

From: Perez, Martha D. (COE)
Sent: Monday, July 23, 2018 8:20 AM
To: orlando borges <oborges111@gmail.com>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Pepe, Thomas F. <TPepe@southmiamifl.gov>
Subject: RE: Orlando Borges, Board Member, South Miami Planning Board, Appearance before City Commission (m)(2), 8A-1 SMC, INQ 18-177

Dear Lt. Borges,

As a follow up on the subject matter addressed in INQ 18-133 and INQ 18-177, you are inquiring whether you may appear before the South Miami Commission to speak as a South Miami resident and express your opinion concerning the Fellowship Church project.

Background

I am incorporating the facts and circumstances laid out in both of the aforementioned INQs with the following additional information: On 7/16/2018, the South Miami Planning Board met at a public meeting to consider the Fellowship Church Application for Public Hearing to Amend the Comprehensive Land Use Map (Project). In accordance with INQ 18-171 and upon speaking with City Attorney Pepe, you recused yourself from participation and vote on the Application *you* submitted on behalf of Fellowship Church. Subsequently, while expressing your agreement with the previously issued opinions from this office pertaining to this matter, you submitted a letter in order to “confirm and clarify that [you] have not nor...ever been an employee, lobbyist or financially compensated by the Church as part of this project.” You further indicated that you signed the Application which was submitted to your board because the Church “did not have a local signatory present and there was a time sensitive application deadline approaching.” Although your letter claims that this “clarification” should change your ability to vote on this item, you indicated that you agreed with INQ 18-171.

Analysis

It is noted that you are a parishioner of the Church. It is also noted that you are not employed by the Church nor have you any ownership interest in the Church or financial interest in the project at issue. Notwithstanding, there are ethical implications regarding your advocacy for the Project and your representation to the board and the City Commission as the Applicant on behalf of the Church in the request for change in the City’s Comprehensive Plan (Fellowship Church is considering the sale of 2.6 acres of church property to build townhomes) . Your affiliation to the Church as a parishioner does not invalidate your status as Applicant on this Project.

Section 8A-1(l) (2) of the South Miami Code of Ethics prohibits an advisory board member from appearing **before the city commission or the agency the member serves**, either directly or indirectly, and make a presentation on behalf of a third person with respect to any matter, including a ruling, decision, opinion or benefit sought by the third person.

Whereas Section 2-11.1(m)(2) of the County Ethics Code prohibits a board member from appearing before his or her own board to make representations (lobby) on behalf of a third party, the South Miami Code of Ethics is more stringent, extending this prohibition to appearances before other boards such as the city commission.

Although as a resident of the City of South Miami you may exercise your constitutional right to self-representation, in this instance, by addressing the City Commission on your own board's denial of the Application *you* submitted on behalf of the Church, you are representing the interests of a third party-the Church- and not your own interests as a citizen. This is more apparent given your recusal to vote on this matter on July 16th before the Planning Board.

The fact that you are not an officer, employee or registered lobbyist of the Church does not nullify your status as a representative/applicant of the Church in the Project. Consequently, you are prohibited under Section 8A-1(l)(2) of the South Miami Code of Ethics from appearing before the City Commission to communicate your support on the Fellowship Church Application for the Project that *you* represent as the Applicant.

This opinion is based on the facts as presented. If any of these facts are not accurate or change, please contact us.

Sincerely,

Martha D. Perez

Staff Attorney

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

19 West Flagler St. Suite 820

Miami, FL 33130

(305)350-0656

PEREZMD@miamidade.gov

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From: orlando borges [<mailto:oborges111@gmail.com>]

Sent: Tuesday, July 17, 2018 9:30 PM

To: Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>

Subject: Re: Orlando Borges, Board Member, South Miami Planning Board, Voting Conflict, 2-11.1(v), INQ 18-133

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reportspam@miamidade.gov **Enterprise Security Office**

Good evening Ms. Perez,

It was a pleasure seeing you again this afternoon in your office. As per our conversation I am putting my question in writing. I am a retired Lieutenant for Miami Dade Fire Rescue and a resident of the city of South Miami for the past 28 years. I was recently appointed to the Planning and Zoning Board of the city of South Miami.

I am a parishioner at Fellowship Church located in the city of South Miami and the church has a project that is going to a commission hearing for final approval or denial. I am a member of the city Planning and Zoning Board and signed an application in late 2017 for the church to the city, but have not been involved in the project due to my mothers' terminal medical condition for several month now.

Given the circumstance I ask the following question: can I speak in front of the commission as a resident of South Miami and give my personal opinion on the project?

As I stated in our conversation I have never been an employee, I've never been a lobbyist, and I have no financial gains directly or indirectly in this project.

Thank you very much for your time and cooperation.

Respectfully,
Lieutenant Orlando Borges

On Wed, Jun 6, 2018 at 12:19 PM, Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov> wrote:

Dear Lt. Borges,

It was a pleasure meeting you. You inquire whether you have a prohibited conflict of interest participating and/or voting on an issue which is coming before the City of South Miami Planning & Zoning Board (Planning Board) of which you are a member.

Background

o You are a member of the Planning Board. The Board is comprised of seven (7) members whose duties consist of: investigating and recommending to the City Commission changes in the boundaries of the various use districts, zoning regulations, use of land and type of construction, locations and use of all structures on any valid application submitted to it; reviewing and making recommendations on all applications for a change in zoning district boundaries, provisions of the LDC Code, determination and continuance of nonconforming uses and applications for special uses/ variances. The South Miami Commission receives recommendations and is guided by the Planning Board.

You are also a member (parishioner) of Fellowship Church located in the city. The Church will be appearing before the P&Z Bd. regarding a project. You have no interest, financial or otherwise, in the matter. You would like to know if you may participate and vote on the project being presented to the Planning Board by the Church.

Analysis

Section 2-11.1(v) of the County Conflict of Interest and Code of Ethics Ordinance, prohibits a board member from voting on matters presented to an advisory or quasi-judicial board on which the board member sits if the board member would be directly affected by the action of the board he serves and he has any of the following relationships with the third party (ie., the Fellowship Church): (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor or creditor."

Additionally, Section 20-6.1(B)(f) of the City of South Miami Land Development Code states that, "any member of the [Planning] board who has a special financial interest, direct or indirect, in any matter shall make that interest known and abstain from participation therein in any manner." County and city ordinances refer to "financial interest" in terms of ownership. See Section 2-11.1(b)(8), County Ethics Code; Section 8A-1, South Miami Ethics Code.

You do not have any of the prohibited relationships referenced herein with the Church; you are a parishioner; you have no special financial interest in the Church or in the matter being presented to the Planning Board; and, as you have indicated, you would not be affected in any way by the board's action. Consequently, you may participate and vote on the Fellowship Church issue. See RQO 06-52

I must point out that, in those instances where a city board is a quasi-judicial board, Section 286.012, Fla. Stats., provides, in part, 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 a matter if the abstention is to assure a fair proceeding free from potential bias or prejudice." In this instance, you have indicated that you would be impartial and your recommendation would be for the "betterment of my city."

This opinion is based on the facts as presented. If any of these facts change, please contact us.

Sincerely,

Martha D. Perez

Staff Attorney

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

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From: oborges111 [mailto:oborges111@gmail.com]
Sent: Monday, June 04, 2018 12:33 PM
To: Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>
Subject: City of South Miami Planning and Zoning Board

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**

Good afternoon Ms. Perez it was a pleasure meeting you this morning in your office, as per our conversation I am putting my question in writing.

I am a retired Lieutenant for Miami Dade fire rescue and I am a resident of the city of South Miami for 28 years. I was recently appointed to the Planning and Zoning Board of the city

I am in parishioner at fellowship church located in the city of South Miami the church has a project that is going back to the Planning and Zoning Board that I am a member of.

The present plan that is going in front of this board I have had no input or have seen the new plans due to my mother's grave illness I have been out of the process of helping the church as a volunteer for approximately over 2 months.

As I stated in our conversation I have never been an employee I've never been a lobbyist and I have no Financial gains directly or indirectly in this project.

I feel very strongly I can be impartial and fair and make a recommendation for the betterment of my city.

I would like your opinion that given the facts I would like to make sure I have no conflict of issue.

Thank you very much for your time and cooperation.

Respectfully

Lieutenant Orlando Borges

