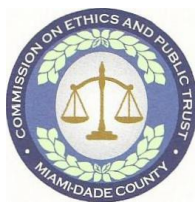


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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April 20, 2021

Via Email only to expedite delivery:
anthony.defillipo@citynmb.com

Mayor Anthony F. DeFillipo
City of North Miami Beach
17011 Northeast 19th Avenue, 4th Floor
North Miami Beach, Florida 33162

Re: Ethics Inquiry Request, INQ 2021-68, Mayor Anthony DeFillipo, Voting Conflict,
Section 2-11.1 (d) of the County Ethics Code

Dear Mayor DeFillipo:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and seeking guidance regarding the application of the County Ethics Code to your consideration and vote, while sitting in a quasi-judicial capacity as a voting member of the North Miami Beach City Commission, on Resolution No. R2021-39, Skygarden Site Plan ("Resolution"), as further described below.

Facts:

As specifically described in the published agenda and attachments for the April 20, 2021 meeting of the North Miami Beach Commission, the Resolution regards the application by 163 ST Executive Center, LLC, requesting four (4) non-use variances and site plan approval in order to construct a mixed-use development project. The project consists of one (1) nineteen-story tower with a total height of 224'-0" and approximately 448,653.34 square feet of gross floor area. In total, the project will provide 341 residential units, 12,635 square feet of retail space, and 405 parking spaces.

You advise that you were engaged in your private employment as a real estate broker in the sale of the parcel that is at issue in the Resolution. In that transaction, you represented the seller who paid your broker's fee on behalf of the buyer. The buyer is the current applicant seeking the non-use variances and site approval plan in the Resolution.

Issue:

Whether Mayor DeFillipo, who served as the broker in the sale of real property to a current applicant for zoning variances on the parcel, has a prohibited voting conflict that would preclude his consideration and vote, sitting in his quasi-judicial capacity, on the applicant's non-use variance and site plan approval.

Discussion:

As regards your consideration and vote on the Resolution, your actions are governed by Section 2-11.1 of the Code of Miami-Dade County ("Ethics Code"). Specifically, as Mayor you are a covered person pursuant to Section 2-11.1 (b) (1) of the Ethics Code that applies to members of County and municipal elected legislative bodies.

Because you are a covered party under the Ethics Code, then Section 2-11.1 (d) of the Code likewise applies to you. The second part of Section 2-11.1 (d) of the Ethics Code provides that an elected official shall not:

(b)(1) ... vote on or participate in any way in any matter presented to the Board of County Commissioners [City Commission] if said person has any of the following relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the Board of County Commissioners: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary; or (ii) stockholder, bondholder, debtor, or creditor, if in any instance the transaction or matter would affect the person defined in subsection (b)(1) in a manner distinct from the manner in which it would affect the public generally. Any person included in the term defined in subsection (b)(1) who has any of the above relationships *or* who would or might, directly or indirectly, profit or be enhanced by the action of the Board of County Commissioners shall absent himself or herself from the Commission meeting during the discussion of the subject item and shall not vote on or participate in any way in said matter. (Emphasis added)

Section 2-11.1(d) is stricter than the State Ethics Code in providing for a voting conflict where the official "would or might, directly or indirectly, profit or be enhanced by the action..." as opposed to the State standard contained in Section 112.3134 (3) (a), Florida Statutes, (3)(a) that limits the county or municipal public officer from voting upon any measure "which would inure to his or her special private gain or loss."

Based on the facts provided, you do not currently have any of the enumerated relationships in subsection (d) of the Ethics Code with any persons or entities which would or might be directly or indirectly affected by the consideration or vote on the Resolution.

Nevertheless, in INQ 13-148 and RQO 12-03, the Ethics Commission considered somewhat related scenarios involving local elected officials that had prior business relationships with developers that were going to be affected by votes of a city commission. While opining that the elected officials did not have *per se* voting conflicts pursuant to Section 2-11.1 (d) of the Ethics Code prohibiting their consideration and vote on matters that would affect the developers, the Ethics Commission advised that:

The County's Conflict of Interest and Code of Ethics provides a minimum standard of conduct for public officials. It does not directly address "appearance of impropriety" issues that should guide the actions of all public servants, nor does it address the subjective mindset of a public official who, for reasons outside of the Code, does not feel capable of being fair or objective in a particular matter, due to personal considerations or recent financial arrangements. Any public official under such circumstances must use his or her own judgment in determining the proper course of action when conducting public business.

Moreover, while the Ethics Commission does not have the authority to interpret or enforce state statutes, we are cognizant of Section 286.012, Florida Statutes, relating to voting requirements at meetings of governmental bodies. While that section provides that a member may not abstain from voting unless there is, or appears to be, a possible conflict of interest under the state ethics code, it does also provide as follows regarding quasi-judicial matters:

If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

Conclusion:

Applying the rationale underlying the Ethics Commission's conclusions in the opinions cited above, you would not have a *per se* voting conflict pursuant to Section 2-11.1 (d) of the Ethics Code that would prohibit your consideration and vote on Resolution No. R2021-39, Skygarden Site Plan, regarding the application by 163 ST Executive Center, LLC, requesting four (4) non-use variances and site plan approval.

However, in abundance of caution, you are strongly urged to abstain from voting on the Resolution inasmuch as you were the broker in the sale of the parcel to the buyer of subject parcel who is the current variance applicant.

We hope that this opinion is of assistance and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,



Jose J. Arrojo
Executive Director

cc: Regine Monestime, Esq., Assistant City Attorney
All Commission on Ethics Attorneys

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.