

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Monday, October 04, 2010 1:13 PM
To: 'DWolpin@wsh-law.com'
Subject: INQ 10-166 re Jud Kurlancheek

Mr. Wolpin,

This is in response to your query regarding Jud Kurlancheek, the Director of the Building, Zoning, and Planning Department in the Village of Key Biscayne.

Based on the facts presented, we find that the County Ethics Code does not prevent Mr. Kurlancheek from taking official actions regarding improvements to the Key Biscayne Presbyterian Church parking lots, one of which borders the Villa Harbour Condominiums. You stated that Mr. Kurlancheek owns and resides in one of the 17 Villa Harbour Condominiums and serves without compensation on the Condominium's Board of Directors.

We understand that improvements to the Church parking lot that abuts the Villa Harbour property will include installing new landscaping, rearranging parking spaces, repairing damage caused by pine trees, and possibly removing pine trees. Making improvements to the parking lot will require that building permits be issued, but the removal of pine trees will not.

As Building, Zoning, and Planning Department Director, Mr. Kurlancheek is responsible for ensuring that the entire Presbyterian Church project is consistent with the Village's Zoning and Land Development Regulations and Master Plan.

Section 2-11.1 (n) of the County Code prohibits a municipal employee from taking any official action, directly or indirectly, if an entity in which he has a financial interest would be affected. Since improvements to the Presbyterian Church parking lots would have no effect, or a *de minimis* effect, on the value of Mr. Kurlancheek's condominium, he is not prohibited from engaging in planning and zoning activities related to the Presbyterian Church project in his official capacity as Department Director.

Of course, Mr. Kurlancheek's personal efforts to obtain bids to remove the pine trees from Church property and to make a donation to the Church for this purpose are within his rights as a private citizen. However, he is reminded that all citizens are guaranteed fair and equitable treatment by their government under the Miami-Dade County Citizen's Bill of Rights. Therefore, Mr. Kurlancheek's official actions as Building, Zoning, and Planning Department Director must be carried out impartially.

Please feel free to contact me if I can be of further assistance.

Sincerely,

Victoria Frigo, Staff Attorney
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From: David M. Wolpin [mailto:DWolpin@wsh-law.com]
Sent: Monday, September 27, 2010 10:47 AM
To: Meyers, Robert (COE)
Cc: David M. Wolpin
Subject: FW: REQUEST FOR LEGAL OPINION REGARDING ANY POTENTIAL CONFLICT OF INTEREST

Hi Robert- first, please accept my best wishes for a Happy and Healthy New Year.

Please provide your staff guidance on the matter set forth below.

It is my view that Mr. Kurlancheek, as Director of the Village of Key Biscayne Building, Zoning , and Planning Department does not have any conflict of interest under the Miami - Dade County Ethics Code(Sec. 2-11.1, et. seq.) . However, I would appreciate your insight and guidance, once you have had an opportunity to digest the attached and below materials.

Mr. Kurlancheek owns one of 17 units that is situated in the rectangular shaped Villaharbour Condo building. All condo units front on the condo parking lot (which adjoins the west parking lot of the church) and run clear to the rear of the condo property. Mr. Kurlancheek's unit is in the center of the condo building. The units have a view of the Church's west parking lot.

Mr. Kurlancheek serves on the Board of his condo, without compensation. He would have no financial benefit as a result of the Village's potential decision to improve the west parking lot of the Church as part of a proposed transaction by which the Village would obtain permission from the Church to convert the east parking lot of the Church into a Village public park and playing field via a potential church – Village lease transaction. However, it may be that a certain resident of the Condo will seek to attack Mr. Kurlancheek's ability to perform his public duties in connection with the Village – Church transaction and may attempt to allege a "conflict of interest", for the reason that said resident , for his own reasons, may oppose any transaction which involves nuisance Pine Tree removal in the area.

Please advise as to your view of this matter, and as to whether any further information is needed.

Thank you.



David M. Wolpin, Esq.

Member

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From: Jud Kurlancheek [mailto:jkurlancheek@keybiscayne.fl.gov]
Sent: Friday, September 24, 2010 4:31 PM
To: David M. Wolpin
Cc: Chip Iglesias
Subject: REQUEST FOR LEGAL OPION REGARDING CONFLICT OF INTEREST

Hi David, attached per your request earlier in the week is a pic of the Presbyterian Church property and Villaharbour. Since your issuance of your last legal opinion where you determined I did not have a conflict of interest based on the facts that were known at the time regarding my ownership of a unit and my status as member of the Villaharbour Condominium Board of Directors, I have learned of additional information regarding the Presbyterian Church project with the Village.

Late last Friday, I attended a meeting with other Village Officials and representatives from the church. For the first time, I learned this project not only consists of converting the east church parking lot into public park; but, the church is requesting that the Village construct improvements on the west parking lot which immediately abuts Villaharbour. These improvements on the west parking lot include landscaping, re-arrangement of the

parking spaces, repairs to the damaged parking lot caused by the Pine Trees on their property, and potential removal of the Pine Trees. My role is to support the Village Manager in the negotiations and he is the lead on this project. The Village Manager makes the final determination on any agreement with the church.

As BZP Director, I through staff, am required to make sure the entire project is consistent with the Zoning and Land Development Regulations and the Master Plan. Pine Trees are on a list of trees (Zoning and Land Development Regulations) that are prohibited from being planted and we encourage applicants for building permits to remove them. The improvements to the church parking lot require a building permit.

As a member of the Villaharbour Condominium Board, I am in direct discussions with the Board, other unit owners, and contractors to remove the Pine Trees on the Villaharbour property which immediately abuts the church.

As a unit owner in Villaharbour, I have obtained bids to remove the Pine Trees on the Church property. I have had several discussions with Pastor Moran and with at least one deacon regarding this subject which is actively being considered by the church. If the church agrees to the removal of the Pine Trees, I have discussed with Pastor Moran that I would make a donation to the church for this purpose. No agreement has been achieved to date between me and the church. We are in the discussion stage only.

The Villaharbour Condominium Board has had no discussions with the church regarding the removal of the Pine Trees on their property and will not assist in their removal.

The removal of the Pine Trees do not require the issuance of a building permit.

The removal of the Pine Trees on the Villaharbour property has become a very emotional issue for unit owners. I am sure there are unit owners who oppose their removal on our side as well as on the church side. There are two board members who are opposed to their removal and three who are in favor. I am also aware of many Villaharbour unit owners who want them removed on our side and would be in favor of their removal on the church side. We have scheduled a vote on this issue at our Board meeting set for Oct 23. Should the unit owners vote to keep the Pine Trees, I still intend to make a donation to the church should they permit them to be removed.

Jud Kurlancheek, AICP, Director
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