

Frigo, Victoria (COE)

From: Frigo, Victoria (COE)
Sent: Thursday, December 20, 2012 1:13 PM
To: 'Sarah Johnston'
Cc: gmhauke@gmail.com; Linda Miller; Centorino, Joseph (COE)
Subject: Architect and Design Review Board/P&Z (INQ 12-227)

Ms. Johnston,

If Jorge Gutierrez serves as a member of the Surfside Planning and Zoning Board (P&Z Board), the Miami-Dade County Code at Sec. 2-11.1 (m)(2) prohibits him from appearing, either directly or through an associate, and making a presentation on behalf of a third party before the P&Z Board. Under the same section of the County Code, Mr. Gutierrez is also prohibited from receiving compensation, directly or indirectly or in any form, for services rendered to a third party who has applied for or is seeking some benefit from the P&Z Board.

Additionally, Sec. 2-11.1 (v) of the County Code prohibits Mr. Gutierrez from voting on matters before the P&A Board if he would be directly affected by the vote and if he has one of the following relationships with any person or entity appearing before the P&Z Board—officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor.

We understand that the Town of Surfside intends to merge the Design Review Board (DRB) with the P&Z Board. Mr. Gutierrez, who is currently the only licensed architect serving on the DRB, is to be appointed as an ex officio member to the P&Z Board in order to meet the requirement that one P&Z Board member be a licensed architect.

To clarify Mr. Gutierrez's title as an "ex officio" member of the P&Z Board, "ex officio" denotes only how Mr. Gutierrez would become a member of the board, *i.e.*, by virtue of his current position as a licensed architect on the DRB. "Ex officio" does not signify that his participatory rights on the P&Z Board are limited. An ex officio member of the P&Z Board is afforded the same rights as all other P&Z Board members, including the rights to fully participate, debate, make formal motions, and vote. (See Robert's Rules of Order at <http://www.rulesonline.com/rror-09.htm#51>, visited on 12/20/12.)

Please be advised that an earlier ethics opinion given to Mr. Gutierrez (INQ 10-200) does not apply to his new position on the P&A Board. In 2010, Mr. Gutierrez fell under an exception in Sec. 2-11.1 (m)(2) of the Miami-Dade Code, which allowed a DRB member to make presentations to the DRB on behalf of his private architectural clients as long as the sole function of the DRB was to pass on the aesthetics of plans submitted. Because the P&Z Board serves many other functions beyond aesthetic review, Mr. Gutierrez, as a member of the P&Z Board, no longer falls within the exception at Sec. 2-11.1 (m)(2).

Finally, we note that under Sec. 2-231 of the Town of Surfside Code, Mr. Gutierrez is prohibited as a P&Z Board member from appearing before the Town Commission, either directly or through an associate, and make a presentation on behalf of a third person. He is further prohibited from receiving any compensation or gift, directly or indirectly, for services rendered to a third party that has applied for or is seeking some benefit from the Town Commission.

Thank you for bringing this question to our attention. If I can be of additional assistance, please feel free to contact me.

Sincerely,

VICTORIA FRIGO, STAFF ATTORNEY

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

From: Sarah Johnston [<mailto:sjohnston@townofsurfsidefl.gov>]

Sent: Wednesday, December 19, 2012 12:51 PM

To: Frigo, Victoria (COE)

Cc: gmhauke@gmail.com; Linda Miller

Subject: Inquiry - architect and Design Review Board/P&Z

Ms. Frigo,

Jorge Gutierrez is currently the only architect serving on the Town's Design Review Board ("DRB"), in 2010 the Commission on Ethics opined that Mr. Gutierrez may represent private clients in front of the DRB so long as he recused himself from voting or any discussion on those items. At the January 2013 Town Commission Meeting the Town Commission will vote on the second reading of a Planning and Zoning ordinance which will dissolve the DRB and merge the functions into the Planning and Zoning Board. If there is a majority vote approving the ordinance, Mr. Gutierrez will be considered an ex officio member of the Planning and Zoning Board where his comments plans will carry equal weight as the voting members. Pursuant to our earlier conversation please see the attached memo, previously issued COE opinion, and applicable legislation.

Sarah L. Johnston, Esq.

786-380-2554

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