

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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February 20, 2024

Myra Diaz Buttacavoli
Board Member,
Miami Beach Design Review Board
fmb1208@aol.com

Re: INQ 2024-32 [Quasi-Judicial Board Member Contracting with the City of Miami Beach,
Sec 2-11.1 (c)(3)]

Mrs. Buttacavoli,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust ("COE") and requesting our guidance regarding potential conflicts of interest and limitations in applying for and accepting a Private Property Adaptation Matching Grant from the City of Miami Beach, while also serving as a board member of the City of Miami Beach Design Review Board.

Facts:

You, Mrs. Myra Diaz Buttacavoli, are a board member for the City of Miami Beach Design Review Board. Pursuant to the City of Miami Beach, Florida Ordinances, Chapter 118, Article II, Division 3, section 118.71¹, the Miami Beach Design Review Board has the following powers and duties:

- (1) To promote excellence in urban design.
- (2) To review all applications requiring design review approval for all properties not located within a designated historic district or not designated as a historic site. For works of art in the art in public places program, the design review board shall serve as advisor to the city commission, and may impose binding criteria, as provided in chapter 82, article VII, "art in public places," division 4, "procedures." This authority shall include review and approval of design and location within public rights-of-way outside of locally designated historic districts of all wireless

¹ Based on the duties and powers of the City of Miami Beach Design Review Board as outlined in the City of Miami Beach Ordinance section 118.71, the Miami Beach Design Review Board is a quasi-judicial board. *See Also* City of Miami Beach Ordinance section 118.254.

communications facilities as defined in chapter 104, "telecommunications," article I, "communications rights-of-way" under the standards provided therein.

(3) To prepare and recommend adoption of design plans pertaining to neighborhood studies.

(4) To promote reduced crime and fear of crime through the use of crime prevention through environmental design guidelines and strategies, as approved by the city commission.

(5) *To hear and decide appeals of the planning director.*

(6) *To authorize, upon application, variances from the terms of [these] land development regulations, where authorized by subsection 118-351(a)², pursuant to the requirements in chapter 118, article VIII, of the land development regulations, as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of provisions of these land development regulations would result in unnecessary and undue hardship.*

(7) *The design review board shall serve as the city's floodplain management board in reviewing applications for properties within the board's jurisdiction, and shall have the authority to exercise all powers and perform all duties assigned to such board pursuant to section 54-31, et seq.; Resolution No. 93-20698; and in accordance with the procedures set forth therein as such ordinance and resolution may be amended from time to time. For the purposes of determining jurisdiction, the criteria in subsection 118-351(a) for a variance shall be utilized.*

(Emphasis Added).

You are also the co-owner of a single-family home located in the City of Miami Beach, Florida³ with your husband and son⁴. Said property is not in a designated historic district of Miami Beach, Florida and has not been designated as a historic site.⁵ You would like to apply for and accept funds from the Fight the Flood Private Property Adaptation ("PPA") Matching Grant administered by the City of Miami Beach's Environment & Sustainability Department. The PPA is a competitive grant for residential and commercial property owners in Miami Beach. The program seeks to assist Miami Beach residents and businesses to adapt to the effects of climate change, like storm surges

² Miami Beach, FL Ordinance Section 118.351 (a)(3) defines the variance jurisdiction of the Design Review Board as (a) Variance requests of the land development regulations for applications concerning properties within the jurisdiction of the design review board, except those variances listed in section 118-351(a)(1); (b) Variance requests of the floodplain management regulations permitted in chapter 54, division 5 of the City Code, concerning properties within the jurisdiction of the design review board; (c) Variance requests filed in conjunction with an application that requires approval from the design review board, except those variances listed in section 118-351(a)(1) or (2).

³ The requestor provided the full address of the property to which the Fight the Flood Private Property Adaptation Matching Grant will be applied to the undersigned for a comprehensive review. However, said address is not provided in this opinion pursuant to Florida Statutes Section 119.071 (4)(d)(2)(h).

⁴ The full names of the requestors husband and son was provided to the undersigned for a comprehensive review. However, said names are not provided in this opinion pursuant to Florida Statutes Section 119.071 (4)(d)(2)(h).

⁵ <https://www.miamibeachfl.gov/city-hall/city-clerk/boards-and-committees/historic-preservation-board/>. Last visited February 16, 2024.

and increased rainfall, along with rising groundwater and sea levels. Selected applicants may qualify to receive up to \$20,000 in funding to go towards a property risk assessment, in addition to the design and construction of resilient flood mitigation improvements. The improvements can include a variety of projects, such as floodproofing, home elevation, green infrastructure, and more.

According to Mr. Nick Kallergis, Assistant City Attorney for the City of Miami Beach, Florida, the Design Review Board does not oversee the PPA grant program. Moreover, Mr. Nick Kallergis indicates that the City's Land Development Regulations exempt certain types of improvements from board-level review, in which case those improvements can be approved administratively by City staff. However, it should be noted that Miami Beach Ordinance 118.71 gives the Design Review Board the authority to hear and decide appeals from decisions of the city Planning Director and the authority to approve variances from the land development regulations.

Additionally, Michael Belush, a Planning and Design Officer for the City of Miami Beach Planning Department and the staffer for the City of Miami Beach Design Review Board advised that after examining Mrs. Buttacavoli's proposed plans for the PPA grant funds, it is his opinion that the review of the proposed changes to Mrs. Buttacavoli's home would not fall under the City of Miami Beach Design Review Board jurisdiction as there are no design waivers. Rather, Mrs. Buttacavoli will be making an application to the City of Miami Beach Board of Adjustment for setback and lot coverage variances.

Issue:

Whether a conflict of interest exists that would prohibit Mrs. Myra Diaz Buttacavoli, from applying for and accepting a Private Property Adaptation Matching Grant from the City of Miami Beach, due to Mrs. Buttacavoli's service as a board member of the Miami Beach Design Review Board.

Analysis:

Sections 2-11.1(c) and (d) of the County Ethics Code addresses limitations and prohibitions on board members doing business with the County. Specifically, Section 2-11.1(c)(3) provides that a board member may enter into a contract with the City of Miami Beach individually or through a firm, corporation, partnership or business entity in which the board member or his immediate family has a controlling financial interest, as long as the board member does not contract with a City department or agency which is subject to being regulated, overseen, managed, engaged in policy-setting or quasi-judicial authority of the member's board agency. *See* RQO 09-22, INQ 19-78.

Similar to this matter, in INQ 19-78, a member of the Naranja CRA and the Miami Dade County Value Adjustment Board contracted with the County, through his for-profit corporation, for grant

funds to develop a food hall within the Naranja CRA area. Since the Naranja CRA did not oversee, regulate, administer, manage, set policy, or make quasi-judicial decisions regarding the project or the grant, COE staff found that there was no conflict of interest in the contract with the County to develop the food hall as long as limitations found in the County Ethics Code were followed.

Also, in INQ 2023-131, a Sub Area 143 member for the Miami Dade County Community Council Board for District 14, who also served as trustee for a living trust that owned several properties, did not have a conflict of interest in contracting with the West Perrine Community Redevelopment Agency to receive its Commercial Rehabilitation Program grant for said properties. Similar to the Miami Beach Design Review Board in this matter, the Community Councils make zoning and land use decisions as well as recommendations to the County Commission on capital, programming, and operational priorities for municipal services. Additionally, the West Perrine Community Redevelopment Agency and the sub area 143 of the Community Council Board for District 14 do not conduct any business together nor do they have any interaction in their individual operations and capacities.

Opinion:

Based on the facts presented here and discussed above, no conflict of interest arises from Mrs. Myra Diaz Buttacavoli application for and acceptance of the Private Property Adaptation Matching Grant from the City of Miami Beach, due to Mrs. Buttacavoli's service as a board member of the Miami Beach Design Review Board.

However, Mrs. Buttacavoli must adhere to the limitations provided below to avoid potential conflicts of interest:

- Section 2-11.1(m)(2) **prohibits a board member from appearing before the board in which he or she serves**, *either directly or through an associate*, and making a presentation on behalf of a third party. *See* RQO 07-39; INQ 17-254. This means you must not lobby or try to influence your board for your benefit. *See* INQ 13-224. The Ethics Commission has interpreted these prohibited appearances to include signing proposals or submitting documents or correspondence on behalf of the third party. *See* INQ 09-33; INQ 11-178. Additionally, this Ethics Code section prohibits a board member from receiving compensation, *directly or indirectly or in any form*, for any services rendered to the third party seeking a benefit from his or her Board. *See* RQO 07-12; INQ 15-229; INQ 19-12.
- Section 2-11.1(v) 3 prohibits a board member from voting on any matter where the member will be directly affected by the vote and has a prohibited relationship (i.e., officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor) with any corporation, firm, entity or person appearing before the member's board or committee. *See* RQO 07-39; INQ 17-69.

- Section 2-11.1(n) prohibits a board member from participating in any official action, as a member of the Board, directly or indirectly, affecting a business in which you or a member of your immediate family has a financial interest. *See* INQ 19-78.
- Section 2-11.1(g) prohibits a board member from using his or her official position to secure special benefits, privileges or exemptions for herself or others. In other words, while a board member may share his or her knowledge and expertise in related matters, said board member may not use his or her service on the board to proffer or promote the use or sale of the board member's company or products. *See* INQ 21-121.

We appreciate your consulting with the Commission in order to avoid a possible prohibited conflict of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Based on directives from state law, other conflicts may apply. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

The Commission on Ethics does not submit this memorandum on your behalf. Please submit this opinion to the City of Miami Beach Environment and Sustainability Department for inclusion in your submission file.

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 Commission on Ethics 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.

CC: All COE Legal Staff
Nick Kallergis, Deputy City of Miami Beach Attorney