



To: Commissioner Lago

From: Miriam Soler Ramos, City Attorney *MSR*

RE: Legal Opinion Regarding Venera Project Vote

Date: February 9, 2018

Commissioner Vince Lago is employed by BDI Construction Company (“BDI”), a general contracting, design-build and construction management company specializing in educational buildings with approximately 30 employees. In 2014, BDI entered into a contract with The Grove Shops, LLC (“Grove”) for construction of the project. Subsequently, Grove removed BDI as the contractor and sold the project. In July 2016, counsel for BDI sent a demand letter to Grove for \$77,307.89 claiming that, pursuant to the contract, BDI is owed one percent of the construction estimate for the preconstruction phase. Another demand letter was sent to Grove on October 23, 2017 for the same amount. Subsequently, the parties entered into settlement negotiations and ultimately agreed to resolve the dispute with Grove entering into an installment plan to repay BDI an agreed-upon amount.

According to information available on the State of Florida Division of Corporations website, Grove’s registered agent is Anibal Duarte-Viera (“Duarte-Viera”) and the manager is “The Grove Shops Holdings, LLC” which also has Duarte-Viera as registered agent. The managers listed for “The Grove Shops Holdings, LLC” are Fausto E. Callava, A & I Pardo Holdings, Ltd. and Duarte-Viera Enterprises, LP, with Duarte-Viera Enterprises, LP owning 33 percent¹. For these reasons, the demand letters previously-described were addressed to Duarte-Viera.

On October 11, 2017, the City’s Planning and Zoning Board considered an application for a Comprehensive Plan Map Amendment, Zoning Code Map Amendment and Mixed-Use Site Plan for a project called “Venera” at 1500 Venera Avenue and 1515 San Remo Avenue. The applicants on the Venera project are “Sunset Place Luxury Holdings, LLC” and “Shoma San Remo, LLC.” Both list Frank Silvia as the registered agent and Masoud Shojaee as the manager. Duarte-Viera is a 15 percent owner in both.²

The Planning & Zoning Board voted 5-0 in favor of recommending approval of all three items. Given this, the application will be presented to the City Commission at an upcoming meeting. This opinion addresses whether Commissioner Lago has a voting conflict due to the

fact that Duarte-Viera, who has a 15 percent minority ownership in Venera, currently owes money to BDI.

Applicable Law and Analysis:

The Miami-Dade Ethics Ordinance speaks to voting conflicts in the second paragraph of Sec. 2-11.1(d) which states in pertinent part:

No [Commissioner] shall vote on or participate in any way in any matter presented to the [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 [City Commission]: (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 Commissioner] in a manner distinct from the manner in which it would affect the public generally. Any [City Commissioner] who has any of the above relationships or who would or might directly or indirectly profit or be enhanced by the action of the [City 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.

Commissioner Lago does not have a voting conflict under this section as he does not have one of the enumerated relationships with Duarte-Viera. Any debtor-creditor relationship that exists is between BDI and Grove. Commissioner Lago is simply an employee of BDI and Duarte-Viera is a minority owner of Grove. Duarte-Viera owns only 15 percent of the entities seeking approval from the City Commission. Even assuming that Commissioner Lago had one of the enumerated relationships with Duarte-Viera, Commissioner Lago would not be affected differently than the public-at-large by the ultimate approval or disapproval of the Venera items and Commissioner Lago would not directly or indirectly profit or be enhanced by the actions of the Commission on these items.

Furthermore, there is no connection whatsoever between the debt allegedly owed to BDI by Grove and the current items before the City Commission. Additionally, Commissioner Lago has represented that he has no personal interest of any kind in the outcome of the zoning items.

The corresponding state law provision (Sec. 112.3143) relating to voting conflict states, in pertinent part, as follows:

No...municipal...officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

A “special private gain or loss” means an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal, in which case, at least the following factors must be considered when determining whether a special private gain or loss exists:

1. The size of the class affected by the vote.
2. The nature of the interests involved.
3. The degree to which the interests of all members of the class are affected by the vote.
4. The degree to which the officer, his or her relative, business associate, or principal receive a greater benefit or harm when compared to other members of the class.

Commissioner Lago does not have a voting conflict under Sec. 112.3143 either, as the Venera applications pending before the City Commission would not inure to Commissioner Lago’s special private gain or loss or the special private gain or loss of BDI, the principal by which he is employed.

Irrespective of whether an actual voting conflict exists, elected officials should always consider whether a vote on a particular matter creates an appearance issue. In fact, the Miami-Dade Ethics Commission has frequently stated that appearance of impropriety issues should guide the actions of public servants and should be a consideration when determining whether he/she should participate in the action. (See INQ 16-41, INQ 13-61, INQ 13-12, INQ 11-178, INQ 09-113 and RQO 12-15). While State Law is not settled in this area, the Florida Ethics Commission has contemplated scenarios where an elected official would recuse from a matter to avoid an appearance of impropriety. (See CEO 05-8: “Section 112.3143(3), Florida Statutes, is not at issue, as the county commissioner intends to recuse himself from all votes involving either the parent company or its subsidiary to avoid the appearance of impropriety.”)

Aside from the voting conflict rules discussed above, in accordance with Sec. 286.012, F.S., when the City Commission sits in a quasi-judicial capacity, any member of the Commission “may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.” Commissioner Lago has represented that the financial dispute between Grove and BDI has not created a bias or prejudiced him in favor of or against the Venera items.

In conclusion, Commissioner Lago does not have a legal voting conflict under the applicable Miami-Dade County Ethics Code provision or under the applicable State law provision. Commissioner Lago has the discretion, however, to recuse if he feels that voting on these items creates an appearance of impropriety or determines that he is biased or prejudiced on the issues.

This opinion is issued pursuant to Sections 2-252(e)(1) and (8) of the City Code and Section 2-300 of the City’s Ethics Code authorizing the City Attorney’s Office to issue opinions and interpretations on behalf of the City.

February 2018

**CITY OF CORAL GABLES
CITY ATTORNEY'S OFFICE**

OPINION REGARDING VENERA PROJECT VOTE

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¹ Ownership percentage was provided by counsel for Venera.

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relationships with any of the persons or entities which would be or might be directly or indirectly affected by any action of the [City Commission]: (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 Commissioner] in a manner distinct from the manner in which it would affect the public generally. Any [City Commissioner] who has any of the above relationships or who would or might directly or indirectly profit or be enhanced by the action of the [City 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.

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3. The degree to which the interests of all members of the class are affected by the vote.

4. The degree to which the officer, his or her relative, business associate, or principal receive a greater benefit or harm when compared to other members of the class.

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