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**GOREN CHEROF
DOODY & EZROL P.A.**
ATTORNEYS AT LAW

GCDE ETHICS ADVISORY OPINION

To: Commissioner Michelle Gomez

From: Samuel S. Goren, City Attorney *SSG*
Jacob G. Horowitz, Assistant City Attorney *JGH*

Date: August 24, 2016

Re: City of Tamarac (“City”) / Code of Ethics – Advisory Opinion

I. ISSUE AND FACTS PRESENTED

You are an attorney licensed to practice law in the State of Florida, and you are the sole principal of Saunders, Curtis, Ginestra & Gore, P.A. (the “Law Firm”). The Law Firm serves as legal counsel for Habitat for Humanity of Broward, Inc. (“Habitat”), and its initial engagement to serve as counsel for Habitat pre-dates your election to the Tamarac City Commission.

Habitat has an application pending before the City of Pompano Beach to rezone approximate 9 acres of real property from RM-12 (Multiple-Family Residence) to RPUD (Residential Planned Unit Development) in order to build 77 zero-lot-line single-family homes (the “Application”). A team of professional consultants has been assembled by Habitat to work on the Application, and you have provided legal guidance as part of this process. The Application is now on an upcoming agenda for consideration by the Pompano Beach Planning & Zoning Board (“P&Z”). P&Z will make a recommendation to the Pompano Beach City Commission, who will be the final decision-making authority on the Application.

You have asked whether you may appear at a public meeting of P&Z to assist Habitat and address any legal issues that may arise during the presentation of the Application by Habitat’s consultants. You have indicated that you will not be communicating with P&Z board members

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outside of any comments made on-the-record at a duly noticed, public meeting, if at all. It is not your intention to speak publicly at the P&Z meeting unless asked a direct question of a legal nature by a board member.

Once P&Z has considered the Application and made a recommendation, the Application will then be presented to the City Commission for a final determination. You have also asked whether you may play a similar role before the City Commission as previously described in the context of P&Z. You would not be speaking to any Pompano Beach City Commissioners about the Application outside of any comments made on-the-record at a duly noticed, public meeting, if at all.

You have asked the City Attorney to provide you with an advisory opinion examining whether the Broward County Code of Ethics for Elected Officials (“Code of Ethics”) permits you to engage in the legal representation of Habitat as described herein.

II. ANSWER

Based on the facts and circumstances described, your legal representation of Habitat before the City of Pompano Beach Planning and Zoning Board and City Commission, if any, **would not** be considered lobbying, by definition, under the Code of Ethics. Therefore, the restriction on elected officials engaging in lobbying covered individuals **would not apply**, and your continued representation of Habitat, including appearing on-the-record at a duly noticed public meeting, would be **legally permitted** under the Code of Ethics.

III. ANALYSIS

The Code of Ethics expressly states that “Elected Officials **shall not lobby any covered individual**. Such lobbying is deemed to be in substantial conflict with the proper discharge of an Elected Official’s duties in the public interest.” *Sec. 1-19(c)(2)(a), Broward County Code of Ordinances*.

For purposes of this restriction on lobbying, the definition of “covered individual” includes “any member of a governing body of any municipality within Broward County ... [and] members of local governmental entities within Broward County, including taxing authorities, **quasi-judicial boards, appointed boards**, and commissions.” *Sec. 1-19(b)(2)(vii), Broward County Code of Ordinances*.

The definition of “lobbying,” in relevant part, “means a communication, by any means, from a lobbyist to a covered individual regarding any item that will foreseeably be decided by a final decision-making authority, which communication seeks to influence, convince, or persuade the covered individual to support or oppose the item.” This definition expressly **excludes** communications “made on-the-record at a duly noticed public meeting or hearing.” *Sec. 1-19(b)(7), Broward County Code of Ordinances*.

Based on the foregoing, the members of the Planning & Zoning Board **are covered individuals** for purposes of the Code of Ethics, and you, as an elected official, are **expressly prohibited**

from lobbying such individuals on behalf of Habitat. However, as noted, the definition of “lobby” **excludes** comments made on-the-record at duly noticed public hearing. Therefore, any public comments that you were to make on Habitat’s behalf at a P&Z meeting **would not** be considered lobbying and **would be legally permissible** under the Code of Ethics. In other words, you **are legally permitted** to attend the P&Z meeting as part of Habitat’s team presenting the Application, and you **are legally permitted** to respond publicly to any questions of a legal nature that you may be asked during such presentation. You **are not legally permitted** to communicate with P&Z board members outside of comments made on-the-record at a duly noticed public meeting where such communication would seek to influence the members to support Habitat’s Application.

Additionally, members of the Pompano Beach City Commission are also covered individuals, and the same analysis would apply if and when Habitat’s Application is pending before the City Commission for final consideration. Again, you **are legally permitted** to appear a duly noticed meeting of the City Commission and make comments on-the-record on behalf of the Application. You **are not legally permitted** to engage in other communication with members of the City Commission in an effort to influence such individuals to support the Application.

IV. CONCLUSION

Based on the foregoing, it is the opinion of the City Attorney’s Office that you **are legally permitted** to appear on behalf of Habitat and make comments on-the-record at a duly noticed public meeting of the Pompano Beach Planning and Zoning Board and/or the Pompano Beach City Commission. You **are not legally permitted** to otherwise lobby covered individuals such as P&Z members and members of the City Commission on Habitat’s behalf.

This advisory opinion is issued pursuant to Section 1-19(c)(8) of the Code of Ethics, and may be relied upon by the individual who made the request. This analysis is limited solely to the facts presented. Within fifteen (15) days of receiving this opinion, a copy must be sent in a searchable “pdf” format to ethicsadvisoryopinions@broward.org for inclusion in the searchable database of advisory opinions maintained by the County.

Please contact our office if there is any additional information that we can provide.