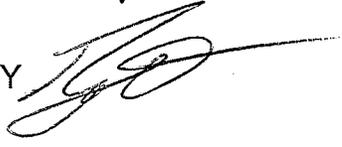


COUNCIL ITEM ~~7D~~
DATE 8/15/11

COUNCIL ITEM 7E
DATE 8/22/11

MEMORANDUM

TO: JERRY A. BENTROTT, CITY MANAGER 
CITY COUNCIL

FROM: ROGER G. ORR, CITY ATTORNEY 

DATE: AUGUST 10, 2011

SUBJECT: RATIFICATION OF APPOINTMENT TO THE PLANING AND ZONING BOARD

Planning and Zoning Board Bill Blazak has been serving on both the St. Lucie County Planning and Zoning Board and City of Port St. Lucie Planning and Zoning Board. The question was raised as to whether or not he was eligible to serve on both boards at the same time.

Article 2 Section 5 of the Florida Constitution provides in part that no person shall hold at the same time more than one office under the Government of the State and the Counties and municipalities therein. The question reviewed was whether or not the position of member of a Planning and Zoning Board constitutes a "office" as anticipated by the State Constitution. There are several Attorney General's opinions that have looked at this in other jurisdictions and the conclusion is that because Planning and Zoning Boards may have final decision making authorities such as an approval of variances, the position of a planning board member constitutes "office" as anticipated by the State Constitution dual office holding provision.

The Constitution does not provide any sanctions for violations. However the Courts have concluded that when one takes a second "office", triggering the dual office provision, the "officer" is deemed to have resigned from his earlier accepted position. In this instance, Mr. Bill Blazak accepted membership on the St. Lucie County Planning and Zoning Board after having been appointed to the City of Port St. Lucie's Planning and Zoning Board. That being so, he would have been deemed to have resigned and vacated his position with the Port St. Lucie Board upon his acceptance of appointment to the County Board. However, Florida case law recognizes that in such a situation a member continues to serve as a "de facto" member until his position has been challenged or he has been removed from office. This obviously has not happened in Mr. Blazak's case.

RECEIVED

AUG 10 2011

City Manager's Office

Mr. Blazak has informed us that he is resigning from the County's position therefore he is eligible to continue to serve on the Port St. Lucie's Planning and Zoning Board. In an abundance of caution I recommend that the City Council by approval of this memorandum ratify Mr. Blazak's appointment to the City of Port St. Lucie's Planning and Zoning Board thus removing the argument that he forfeited his position by acceptance of his appointment to the St. Lucie County Planning and Zoning Board.

I recommend this item be set on the City Council's next consent agenda for consideration.

If you have any questions or need any additional information, please contact me at x.5255.

RGO/bb

Attach.

c: Pam E. Booker Hakim, Senior Assistant City Attorney
Daniel Holbrook, Planning and Zoning Director
Karen Phillips, City Clerk

Karen Phillips

From: Karen Phillips
Sent: Tuesday, August 09, 2011 3:36 PM
To: 'Bill Blazak'
Cc: Roger Orr
Subject: RE: City of PSI Planning and Zoning Board

Please accept this e-mail as an acknowledgement of your decision to remain on the City of Port St. Lucie's Planning and Zoning Board.

Karen A. Phillips, CMC
City Clerk
City of Port St. Lucie
(772) 344-4370
(772) 344-4094 Fax

From: Bill Blazak [mailto:bblazak@ct-eng.com]
Sent: Tuesday, August 09, 2011 3:13 PM
To: Karen Phillips
Cc: Daniel McIntyre
Subject: City of PSI Planning and Zoning Board

Karen,
Following our recent discussion regarding "dual offices", I will stay as a Planning and Zoning Board member for the City of PSL and resign from my Planning and Zoning Board position at St. Lucie County. I will copy you on the correspondence to SLC regarding my resignation.



William Blazak

Senior Project Manager
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