

## REPORT OF INVESTIGATION

K #: 10-088 J. Milton/ Colony Apartments

Date Opened: June 30, 2010

Date Closed: Sept. 22, 2010

Name of investigator: Karl Ross  
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### **Allegation:**

On or about June 29, COE opened an investigation into the circumstances surrounding the approval of the J. Milton Dadeland LLC zoning application (Colony Apartments) by the Kendall Community Council (CZAB 12) on June 22. The applicant, developer **Jose Milton**, sought to renovate a multi-story apartment building at 9355 SW 77<sup>th</sup> Ave. No variance for the structure was required; however, the project was opposed by members of nearby homeowners associations and others who felt the proposed eight-story structure would violate the spirit – if not the letter – of planning workshops for the area known as the East Kendall Charrette. Many observers of the June 22 community council meeting raised concerns about the manner in which the application was approved, following a re-vote that occurred when many in attendance thought the item had been deferred to a subsequent council meeting. These included one of the council members, **Peggy Brodeur**, who left the meeting due to illness after the application had apparently deadlocked at a 3-3 vote. Following a brief discussion and a failed proposal to adopt a modified version of the project, the council was allowed to cast a second vote on the original application, which approved 3-2 in Ms. Brodeur's absence. Brodeur has since retained counsel and has filed a law suit against the County for allegedly violating her rights. The investigation attempts to examine whether any undue influence was exercised by the applicant and/ or his representatives. The application was supported by Councilman **Jorge Luis Garciga**, Councilwoman **Angela Vazquez** and Vice

Chairman **Alberto Santana**. Voting in opposition were Brodeur (1<sup>st</sup> vote only), **Jose Valdez** and Chairman **Elliott Zack**.

**Investigation:**

To initiate the investigation, COE obtained and listened to the complete audio portion of the J. Milton application hearing at the June 22, 2010, CZAB 12 council meeting and reviewed copies of the agenda item in question. COE subsequently obtained a copy of the complete transcript of the item from Miami-Dade Court Reporters and reviewed key portions of the transcript, which detailed the deliberations leading to the approval of the application. COE also requested information about other interested individuals, who had made similar public records requests concerning the June 22 meeting. COE conducted interviews with several of these individuals and others, as detailed below.

On July 29, 2010, COE made an e-mail inquiry to County Attorney **Robert Cuevas** regarding the decision by Assistant County Attorney **Craig Coller** to allow CZAB 12 to re-visit and subsequently approve the application. Mr. Cuevas replied the following day, stating in an e-mail:

“Craig Coller of our office was at the meeting and gave the Council advice on the record. The only opinion I have given on the matter is contained in the attached response to Ms. White. Bob Cuevas”

Cuevas attached a copy of the July 13 letter from Ms. **Holly White**, president of the East Kendall Homeowners Organization, in which Cuevas advises that after asking his staff to listen to tapes of the item and review the actions of ACA Coller it is the opinion of his office that Coller was “correct” in allowing the council to re-vote the application.

On July 30, COE contacted Councilwoman Brodeur, a long-time member of CZAB 12 and the council member involved in the litigation against the County.

Ms. Brodeur said she was “very hurt” by the remarks of Councilman Jorge Luis Garciga following her departure from the June 22 meeting and that she has not been sleeping well since that time. She said that she has retained John Shubin as an attorney to challenge the decision to allow the original motion to be recalled for a re-vote after she left. She said Mr. Shubin intends to file a lawsuit next week and has told her he believes they have a strong case. She said that Garciga is an architect and that Vice Chairman Santana works in real estate. She said she took exception to J. Milton attorney Miguel Diaz de la Portilla attempting to force the CZAB 12 chairman, Zack, to recuse himself because of an alleged conflict. Brodeur said she would agree to a meeting with COE and Shubin. She said DPZ has a copy of the transcripts.

On Aug. 6, 2010, COE contacted attorney **John Shubin**, who, acting on behalf of Councilwoman Brodeur, advised as follows:

Mr. Shubin said he intends to file a motion against the county seeking to overturn the CZAB 12 re-vote approving the J. Milton application. He said the county does not use Robert’s Rules of Order regarding “parliamentary procedure,” but rather a less common rule book, Mason’s Rules of Legislative Process (a.k.a Mason’s Manual”), which was written by Thomas Jefferson. He said that regardless of whether a council member from the opposing side requested a re-vote, in his opinion the re-vote would not be valid since the assistant county attorney, Craig Collier, had already stated that if the initial vote tied that the matter would be deferred to the following meeting. He said he felt that perhaps Collier had been “bullied” into allowing the re-vote, which in the absence of his client, Peggy Brodeur, allowed the application to be approved 3-2. He noted that Brodeur is elderly and was “sick as a dog,” and he said he felt it was “classless” for Garciga to subsequently make disparaging remarks about her. He said he does not have any reason to believe Garciga was being unduly influenced by the applicant, but noted he and Brodeur have clashed and that there may be some animosity between them. He said he would provide a copy of the motion to rescind the approval once he files it with the court. He also noted that members of the County Attorneys Office were very defensive about Collier’s decision, “circling the wagons,” he said. He said that Collier is bright and a good attorney but that he believes he ruled in error.

COE obtained a copy of the law suit that was subsequently filed against the county on Aug. 9, 2010, by Mr. Shubin (Case No. 10-43234 CA 04). The complaint seeks to void the council’s vote and alleges a violation of state Sunshine Laws, sections 286.011 through 286.012 and in Article I, Section 24 of the Florida Constitution.

On Aug. 31, 2010, COE interviewed **Nicholas Nitti**, zoning evaluation supervisor for the Miami-Dade Department of Planning & Zoning (DPZ).

Mr. Nitti advised that the application in question was filed March 3, 2010, and the hearing was held June 22, 2010, less than four months later. He said this was “pretty quick” compared to most applications, especially ones of similar size and complexity. He attributed this to “aggressive” follow-up by Mr. Milton, directly, and through his attorney, Miguel Diaz De La Portilla. He said Milton made many calls personally to departmental employees conducting the

reviews for individual trades. He said Milton's reputation is one of being very forceful – “my way or no way” – and as making it a habit to run to the director or county manager if not satisfied with the response of departmental staff. He advised that ACM Munoz was involved in the review process and that he was the ACM overseeing DPZ. He said that since that time, Suzy Torriente has assumed those responsibilities. He said he did not attend the June 22 CZAB 12 hearing, but that a co-worker, Tony Atala, was there and that he was aware of concerns that have been raised about the decision to allow a “re-motion” and subsequent re-vote on the application.

On Sept. 1, 2010, COE interviewed **Tony Atala**, zoning services plans processor analyst for DPZ.

Mr. Atala advised that he attended the hearing on the night of June 22, and observed the events leading to the re-vote of the application in question. He said that, as he recalled it, the county attorney had asked the zoning clerk for a date to re-schedule the item when Councilman Garciga requested a re-vote. He said the other DPZ employee in attendance was clerk Earl Jones, who can be reached at (305) 375-4149. Atala said he was aware that the developer was seeking to “expedite” the application through the plans review, citing his interest in keeping his employees working. He said he did not know of anything improper on the part of the applicant, noting that staff recommended approval of the application and deemed that it was compatible with surrounding development based on the height of nearby buildings.

On Sept. 8, 2010, COE interviewed **Earl Jones**, legal administrator II for DPZ.

Mr. Jones said he attended the June 22 council meeting and observed the events that led to the re-vote and approval of the J. Milton application, which he called “something I’d never seen before.” As he recalled, the council was discussing whether to defer the item to the July or September council meeting when Ms. Brodeur indicated she was not feeling well and wanted to excuse herself. He said he recalled Councilwoman Angela Vazquez advising her against leaving until the item was finished. He said that after Brodeur left, Councilman Santana proposed voting to approve a scaled-down version of the item, with one less floor. That vote failed, which led Councilman Garciga to ask the assistant county attorney if the original application could be put to a vote and ACA Collier advised that the matter could be subject to a re-vote, which resulted in the application’s subsequent approval. Mr. Jones, who works as a clerk at other community councils, observed that, “When Mr. Milton has an application there’s always a lot of protesters there.” He said he did not know the reason for this frequent opposition. He said he was not aware of any undue pressure exerted throughout the department prior to the meeting, nor did he observe any unusual communication between representatives of the applicant and council members.

On Sept. 8, 2010, COE interviewed Councilwoman **Angela Vazquez**.

Ms. Vazquez said that Councilwoman Brodeur was sitting to her immediate right and did recall telling her she should stay until the end of the meeting after Brodeur indicated she wasn’t feeling well and wanted to leave. She did say that she doesn’t know why Councilman Garciga was so “animated” during the meeting, saying he is an architect or student of architecture but that she does not know why he was so determined to see the application approved. She said she was not aware of any improper contact or dealings with the applicant. She said she was never approached

by the applicant or any representative and that she was not aware of any improper conduct concerning other council members. "I don't know of anything anybody did that was inappropriate. Nobody contacted me." She said she felt it was regrettable staff was unable to approve the proposed reduction of the building from eight to seven stories without having to defer the item to a future meeting, saying this would have resulted in a compromise and less controversy.

COE also pursued other investigative leads to attempt to determine whether the applicant was attempting to improperly influence members of the council.

COE reviewed copies of financial disclosure statements for councilmen Alberto Santana and Jorge Luis Garciga, both of whom supported the J. Milton application. It was learned that Santana works in the financial services sector and Garciga is an architect with MGE Architects. A review of the Website for J. Milton & Associates and for MGE Architects failed to turn up any common projects or business interests. J. Milton is devoted primarily to the development of mixed use, residential and commercial projects, while MGE is devoted primarily to the design of medical facilities. Garciga works there as a junior architect/ intern. No common interests were readily discernable between the applicant and Councilman Santana. COE also reviewed copies of campaign finance reports for former CZAB Councilwoman **Carla Ascencio Savola**. Ms. Ascencio Savola resigned from her council position in order to run for the state Legislature. She did allow the applicant to use her resignation in an attempt to persuade Council 12 Chairman Elliott Zack to recuse himself from the deliberations on the grounds that he had an alleged conflict. (A member of one of the homeowners associations in opposition to the application had served as his campaign treasurer.) Mr. Zack refused to do so. The COE review did find that **Rex Barker**, an executive and director for J. Milton Associates, donated \$300 to Ms. Ascencio Salvola's campaign on July 15, 2010. The review of her donations did not show any contributions from developer Jose Milton.

COE also developed several investigative leads concerning possible undue pressure applied by the applicant within DPZ, and extending to the County Manager's Office and the possible involvement of ACM **Alex Munoz**. One source even suggested, though admittedly without evidence, that Munoz may have been somehow "compensated" by

the applicant. COE conducted a review of Mr. Munoz's annual financial disclosure statements and gift disclosures and did not find any ties to the applicant. COE made a request for any internal e-mails or correspondences from Mr. Munoz concerning the application in question and was advised by DPZ Director **Marc LaFerrier** that no such correspondences could be found. He provided additional information in a telephone interview with COE on Sept. 15, 2010, as follows:

Mr. LaFerrier advised he was aware the application in question was a "contentious project," and was one of the largest applications submitted to DPZ in the past year. He said that it was processed "quickly" because the applicant, his architect and attorney were "very attentive" to the comments of DPZ staff and responded to comments of plans reviewers in a timely fashion. He said "there is always pressure" in his department, but added "there was no contact from anyone on the 29<sup>th</sup> floor," including ACM Alex Munoz. He said he may have briefed Munoz about the project but Munoz never contacted him. He said that no variance was required and because the application was consistent with existing zoning requirements, there were no major problems or sticking points that resulted in delays. He said he would speak to members of his staff to inquire as to whether any undue influence was perceived or exerted during the process. Mr. LaFerrier acknowledged the circumstances surrounding the approval of the application were unusual. He said that, in his experience, applications that result in tie votes are normally deferred to a subsequent meeting. But he added this is a legal matter and does not involve his staff.

**Conclusion:**

Given the absence of any tangible evidence of impropriety on behalf of the applicant or his staff it is recommended that the investigation be closed at this time. Any legal issues concerning the decision to allow the CZAB 12 to re-vote and subsequently approve the J. Milton application are a matter that will rightfully be determined by 11<sup>th</sup> Judicial Circuit for Miami-Dade County. The investigation, moreover, failed to corroborate any of the allegations concerning possible wrongdoing by staff or elected officials.

