



Miami-Dade Commission on Ethics & Public Trust

Report of Preliminary Inquiry

Investigator: Larry Lebowitz

Case No: PI 15-001	Case Name: Gavi Investments, Inc.	Date Open:	CASE CLOSED
Complainant(s): Amaya Lafuente	Subject(s): Simon Ferro, Gavi Investments, Inc.	1/6/15	Date: <u>2/5/15</u>

Allegation(s):

Complainant unhappy with result of zoning variance and special exception that was recommended for approval by County staff and Community Council 10. Based, in part, on uncorroborated off-the-record statements made to her by developer's land-use lobbyist, Complainant believes the outcome was pre-ordained in the developer's favor.

Applicable Law:

Sec. 2-11.1, (g) *Exploitation of official position prohibited*. No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others..."

Investigation:

Interviews

Amaya Lafuente. This investigator communicated several times via email with Amaya Lafuente (Lafuente) between Jan. 6 and Jan. 20, 2015. While she speaks some English, Lafuente is much more comfortable communicating in Spanish, so I enlisted Investigator Sylvia Batista to assist as a translator for a telephone interview on Jan. 22, 2015.

Lafuente lives on the south side of the 8800 block of Southwest 16th Street, a few homes away from the 1.35-acre tract located on the north side of the street, between 89th Court and 90th Avenue controlled by developer Gabriel Canales of Gavi Investments, Inc. (Gavi)

Gavi, represented by land-use attorney Simon Ferro (Ferror), applied for a zoning special exception to re-subdivide an existing 3-lot plat into 6 residential lots. All six lots would feature frontages smaller than the 75-foot minimums required in an RU-1 zone. To remedy this issue, Gavi agreed to purchase four SURs [Severable Use Rights credits] on the private market, which would reduce the required front footage on those four lots to 60 feet, and then seeking a variance to allow a minimum frontage of 56.43 feet on the other two lots and a minimum lot area of 7,388 square feet (where the code requires a 75 x 100 foot lot). Because of its location in the Coral Park area of Westchester, the Gavi application (#14-10-CZ10-4/14-056) was assigned to Community Council 10.

The original public hearing was advertised for Oct. 30, 2014. Lafuente was among 92 opponents who submitted a petition for the record. After hearing some of the neighbors' complaints, two of the council members suggested a postponement and urged the developer to meet with the residents to address their concerns. The vote was continued – so they wouldn't have to re-advertise – until the November meeting.

Lafuente claims that the developer's representative, Ferro, made a disparaging remark to her and her husband, Domingo Hernandez, as they were leaving the Community Council meeting on the evening of Oct. 30. Lafuente claims Ferro indicated to her that the neighbors' complaints are futile, that the outcome is pre-ordained for the developer and that the neighbors are "wasting [their] time" in continuing to show up for public hearings on this issue. [SEE FERRO RESPONSES BELOW]

Lafuente and approximately eight-to-10 other opponents met with Canales, Ferro and others at the Gavi offices on Nov. 6. Lafuente says the developer and his representatives refused to acknowledge the neighbors' issues with traffic, access, densities, undersized lots and septic tanks on three of the lots. [SEE FERRO RESPONSES BELOW]

The November Community Council 10 hearing was postponed to Dec. 11 due to a lack of quorum. The Dec. 11 meeting ran long and late, so the item was continued a third time, to a special meeting set for Dec. 18.

The Community Council voted 3-1 in favor of the special exception and variances that Gavi requested. Technically, the decision is still pending. The county publicly posted the special exception and variance approvals, with conditions, on Jan. 8; this means opponents have until Feb. 8 to file an appeal with the state Circuit Court. Lafuente is aware that she has the right to appeal to the courts, but has chosen not to do so.

Lafuente is also aware that local neighborhood zoning disputes such as these are sometimes addressed by the local district commissioner's office. Lafuente said that one of the opposing neighbors – she did not provide a name – complained to Commissioner Javier Souto's office and that an unnamed aide told her unnamed friend that the Commissioner wasn't going to get involved in the fight. [This investigator made no effort to try to corroborate this second-hand account]

Lafuente says she doesn't understand how, in a representative democracy, the Community Council, the county staff and the county government as a whole can ignore the wishes of 100

voting citizens in favor of a single developer. She believes the entire matter is unethical and corrupt. But she is also resigned to having lost, and at this point, she said, they might as well let the developer build a 27-story tower on the property.

Nathan Kogon (Assistant Director, Development Services, RER), Eric Silva (Development Coordinator, RER) & Nicholas Nitti (Zoning Evaluation Supervisor, RER) --- were jointly interviewed by phone on Jan. 14, primarily to ascertain where to locate public records for the file and any responses they may have made to LaFuentes specific email complaints.

From the planning and zoning staff perspective, this was a fairly small and typical application. The issues were straightforward and unremarkable. The staff analysis speaks for itself.

Nathan Kogon (Kogon) and Eric Silva (Silva) both noted that Lafuente struggled to communicate with them in English and that they feared that some of their nuanced explanations of how the county planning, zoning and Community Council processes are intended to work may have been lost in translation.

As a mitigating factor, they also noted that the staff analysis shows a prior owner unsuccessfully attempted to rezone and re-plot the same property for a four-unit development a few years ago. County staff rejected that application, they said, because the developer wanted to build four driveway curb-cuts that would have slowed traffic and created additional traffic hazards on heavily travelled Southwest 16th Street.

The Gavi plan, which was ultimately recommended for approval with conditions by Kogon and Silva's staffs, calls for six units on undersized lots, but ingress and egress would occur on Southwest 89th Avenue and 90th Way. They also noted that the lot sizes and permitted residential uses aren't out of character for the surrounding Westchester area.

Kogon, Silva and Nicholas Nitti (Nitta) all responded to various email complaints submitted to the County by LaFuentes. All of those emails were forwarded to this investigator for inclusion in the file.

Simon Ferro, shareholder at Gunster law firm, Miami, is a 30-year veteran land-use attorney. A former US diplomat, Ferro denied making any hostile or inflammatory comments to Lafuente or the other opponents that would have indicated that the rezoning decisions were pre-ordained or fixed in any fashion.

Like the county staffers, Ferro described the application for a variance and special exception as fairly small and routine.

Ferro said that his client acted above-board and that many of the opponents were unfamiliar

with the inner workings of local government and zoning processes. Many of these people, he said, were pre-disposed to see corruption when they didn't like the staff analysis findings and recommendations, or the ultimately favorable vote by the Community Council.

Ferro noted that most of the opponents – including Lafuente -- left the Nov. 6 meeting at the developer's office when the developer refused to agree to the opponents' request to reduce the application from six lots to four. Two of the opponents who own homes directly adjacent to the Gavi tract, however, remained behind and the developer ultimately agreed to a handful of conditions regarding future construction (lot setbacks, total building square footages, building one-story homes even though the code would permit two-story units) on the six-lot property.

Document/Audio/Video Review

Email correspondence between complainant Lafuente and COE Investigator Lebowitz

Document/Audio/Video Review

Zoning and comprehensive plan review files.

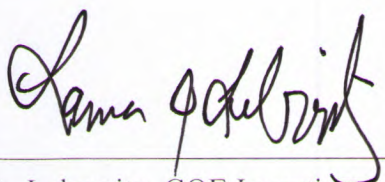
Document/Audio/Video Review:

Handful of emails sent by Miami-Dade County planning, comprehensive plan reviewers and other staffers in response to email complaints sent by LaFuentes.

Conclusion(s):

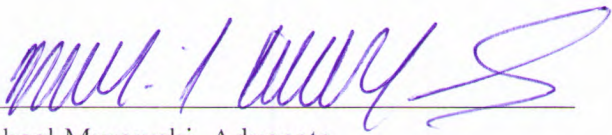
While Lafuente believes that this zoning and special exception approval has been an unethical, corrupt process, there is nothing here that merits further investigation under the Miami-Dade County ethics code or Florida criminal statutes. If she wants to fight this further, she could be encouraged to file a Circuit Court appeal or raise these issues with her local district commissioner.

Recommending that this matter be closed for lack of jurisdiction or an actionable offense.

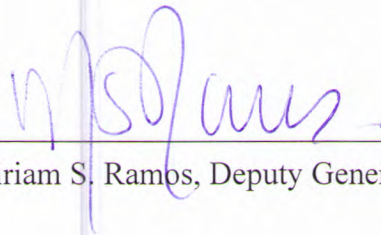


L. Lebowitz, COE Investigator

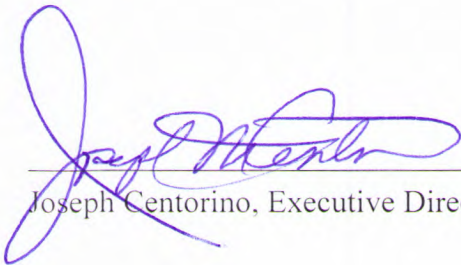
Approved by:

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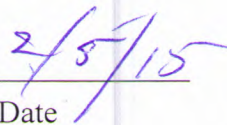
Michael Murawski, Advocate

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Miriam S. Ramos, Deputy General Counsel

A handwritten signature in blue ink, appearing to read "Joseph Centorino", written over a horizontal line.

Joseph Centorino, Executive Director

A handwritten date in blue ink, "2/5/15", written over a horizontal line.

Date