



**CASE
CLOSED**

Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case PI 15-033	Case Name: Vivian Casals-Munoz	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s):	Subject(s): Hialeah Councilwoman Vivian Casals-Munoz, developer Mauricio Cayon	Sept. 14, 2015	

Allegation(s):

It was alleged in a Nuevo Herald report on June 10 that Hialeah City Councilwoman Vivian Casals-Munoz “sold her vote to developers” seeking council approval to rezone a property from low-density residential to high-density residential.

Information not published in the report suggested that Casals-Munoz had lunch with one of the applicants for the zoning change – Mauricio Cayon, a minority partner in the venture – shortly before the council vote on June 9, and that she may have been improperly lobbied.

The inquiry will also examine whether Cayon and others lobbied on behalf of the project, and if so whether they were registered to do so in a timely manner.

Relevant Ordinances:

F.S. 838.016, titled *Unlawful compensation or reward for official behavior*.— states in Subsection (1), as follows: “It is unlawful for any person corruptly to give, offer, or promise to any public servant, or, if a public servant, corruptly to request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.”

The Miami-Dade County Code of Ethics and Conflict of Interest Ordinance holds, in applicable part [Sec. 2-11.1(s)], that: “All lobbyist shall register with the [city clerk] within three (3) business days of being retained as a lobbyist or before engaging in any lobbying activities ...”

It further describes a lobbyist as: "All persons, firms or corporations employed or retained by a principal who seeks to encourage the passage, defeat or modification of (an) ordinance, resolution, action or decision of the [city council]; any action, decision or recommendation of [city] personnel during the time period of the entire decision-making process ..."

Investigation:

Interviews

COE contacted David Custin by email on Sept. 28, and requested an interview to allow him to elaborate on the allegations reported in El Nuevo Herald concerning Casals-Munoz.

Mr. Custin replied on Oct. 5, stating in an email that he had "zero knowledge" of any bribes paid to Casals-Munoz. He suggested the newspaper article misquoted him, resulting from a literal translation of a criticism he voiced after the meeting. He said he told the report he felt Casals-Munoz and others had "sold out the community with her vote," but that he did not mean to imply or allege that he had knowledge of a literal bribe.

The email went on to state, as follows:

"To your point below, I have zero knowledge of any improper payments of any kind regarding the project in the subject line above. Furthermore, I have never heard of this taking place, except as was alluded to in the article you mention below. Councilwoman Casals-Muñoz disappointed me with her vote on that item, but it was a personal disappointment and my interview with the El Nuevo Herald reporter was my frustration venting out."

Vivian Casals-Munoz, councilwoman

City of Hialeah, FL

Jan. 15, 2016

Councilwoman Casals-Munoz, during an interview at the offices of COE, advised that she had some misgivings about the scale of the 10.1 Acres project. "I did not like the size of the project," she said. "I thought it was too large. Otherwise, I loved the project. It was just too many units."

Casals-Munoz said she received a group text message from political consultant David Custin, whose grandmother lives nearby the proposed development. "I told him I didn't agree with the project," she said, underscoring her concern about its size. She noted the requested land use change was later reduced from high-density to medium-density.

She said she had no other contact with Custin on the matter, and denied there was any validity to the allegations reported in El Nuevo Herald about alleged payoffs.

Casals-Munoz said developers did make a presentation to her at her council office prior to the

second vote in June, and offered to address any concerns she might have. She said that attorneys/ lobbyists Hugo Arza and Alejandro "Alex" Arias made the pitch and fielded questions, while project principles Martin Caparros and Mauricio Cayon were also in attendance, but didn't participate in the presentation. She said she exchanged pleasantries with the latter two men before and after the presentation, but that she did not feel she was being lobbied by them. She said that "obviously" the group was there to seek her vote.

"They showed me the project. They asked me if I liked it. I said, 'I think it's too large.'"

She said the meeting took place in late April or early May, and that she checked with City Clerk Marbelys Rubio-Fatjo prior to accepting the request for a meeting. She said she was advised that since the issue was not technically a zoning application but instead a land-use amendment, that there were no issues with potential *Jennings* violations.

Casals-Munoz advised that she did later have lunch with Cayon some time prior to the final vote on June 9, 2015. She said they met at Fresa Francesa, a new French restaurant in Hialeah. She described the meeting as a friendly encounter, and further claimed that the proposed rental project and her pending vote were never discussed. She said she has known Cayon for 25 years, and that she previously had business dealings with his father, Roberto Cayon. She said she owned "a little company" that did real estate closings for the elder Cayon.

"We did not speak about the project," she said. She further advised that she was not aware of any campaign contributions her campaign received from Cayon or his partners.

Alejandro "Alex" Arias, attorney/ lobbyist
Holland & Knight LLP
Phone: (305) 789-7446
Jan. 27, 2016

Mr. Arias stated that the aforementioned meeting with Councilwoman Casals-Munoz was made at his clients' request, and described it as a brief encounter lasting only a few minutes. He said he was there with Hugo Arza and "one of the developers' reps." He said he could not recall whether that was Cayon, Caparros or both of them, as the councilwoman recalled.

"We took the conceptualls we presented at the hearing" in April, Arias said, referring to the architectural drawings of the project. "No issues of significance were discussed." He said the developers' rep would have only answered questions about design elements, or technical questions that the attorneys might not be able to answer. He said he did not recall any concerns being raised about the scale of the project by Casals-Munoz. He said the group met with other city councilmembers and received overwhelmingly positive feedback from officials.

On Feb. 1, a message was left on Mr. Arias' voicemail requesting his assistance in scheduling an interview with Mauricio Cayon regarding Cayon's involvement in the application process and any possible lobbying by Mr. Cayon with respect to the land-use application. It was emphasized in the message that the interview would be of a voluntary nature.

Document/Audio/Video Review:

On Aug. 20, an article was retrieved from the *Miami Herald* website that was published in *El Nuevo Herald* and titled “Apartment project approved in Hialeah amid shouts of protest” (my translation). The article quotes political consultant David Custin, whose mother lives nearby the proposed rental housing project, as alleging Casals-Munoz “sold her vote to developers.” Casals-Munoz denied the allegation, as reported in the article.

On Aug. 20, COE made a public records request to the City of Hialeah Clerk’s Office to inquire whether Mauricio Cayon had registered to lobby on behalf of the project. The request came back negative, along with an explanation provided by the city clerk.

Clerk Rubio-Fatjo responded to the records request and offered a legal explanation as to why, in her opinion, no violations of the Miami-Dade County ethics code had occurred, indicating that, among other things, there was no violation of the *Jennings* ruling because the June 9 city council meeting was not a zoning meeting but a regular council meeting.

She further stated she didn’t believe that Mr. Cayon, as the principal, was required to register to lobby on behalf of the project. Her advice on this matter had not been solicited.

On Sept. 15, the Hialeah Clerk’s Office provided records relating to the project proposed for development at 3500 W. 9th Avenue by 10.1 Acres LLC and Les Chalet Investments LLC. The records included, among other things, a land-use change application, lobbyist registration forms for individuals who filed to represent the project, and City Council agendas.

The records showed that the city’s Planning and Zoning Board voted 4-2 to recommend the City Council deny the application during its April 22 public hearing. Councilwoman Casals-Munoz was not a member of the board, which acted only in an advisory capacity.

It should be noted Mauricio Cayon, while not registered to lobby on behalf of the project, was identified as a managing partner of the project’s 50-percent owner Les Chalet Investments, which is comprised of Cabrezio Limited Partnership and 84-A Holdings.

The documents also included a list of residents who signed petitions in opposition to the project, and included an email from Tania Garcia to Casals-Munoz stating she and other home owners were “appalled by your YES vote on this project” during the first reading of the ordinance to approve the project – technically a land-use amendment – on May 12.

On Nov. 4, a copy of Casals-Munoz’ campaign finance reports were requested from the Hialeah City Clerk’s Office, and they were subsequently obtained and reviewed. The reports showed a \$1,000 contribution from project lobbyist Juan Mayol on or about Sept. 9, 2015.

Conclusion(s):

Based on the foregoing, it does not appear probable cause exists to suspect Councilwoman Casals-Munoz acted inappropriately with respect to the land-use amendment.

Political consultant David Custin advised that he was misquoted in the June 10, 2015, Nuevo Herald report and that he never alleged and has no information to the effect that Casals-Munoz “sold her vote to developers.” He blames the error on a faulty translation.

With respect to any unregistered lobbying, the councilwoman denies that developer Mauricio Cayon or anybody other than attorneys Hugo Arza and Alejandro Arias lobbied her on behalf of the 10.1 Acres LLC rental project and its land-use amendment application.

The investigation found that Arza and Arias were both registered to lobby on behalf of the applicants, but that the applicants themselves were not registered.

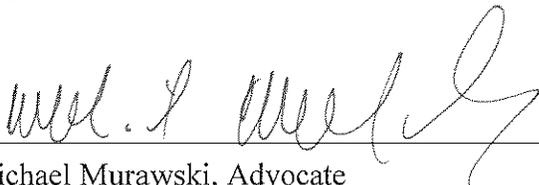
While the timing of Casals-Munoz’s lunch with one of the applications – Cayon – would certainly raise “appearance” issues, there is no evidence to prove that Cayon lobbied the councilwoman on that occasion, though again the appearance is troubling.

Accordingly, the case will be closed at this time without further action.

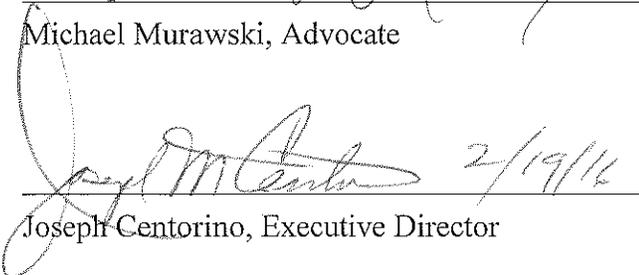


Karl Ross, COE Investigator

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