



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Robert Steinback

Case PI16-026	Case Name: Marquez v. Perez	<u>Date Open: June 14, 2016</u>	<u>Date Closed:</u>
Complainant(s): Martin L. Marquez	Subject(s): Manuel Perez-Vichot	CASE CLOSED	
		Date:	7/12/16

Allegation(s):

Complainant Martin L. Marquez (Marquez), a member of the Miami Springs Planning and Zoning Board and the City's Board of Adjustment, alleges that Manuel Perez-Vichot (Perez), the Chairman of each of those boards, violated ethics laws by failing to leave the chamber after Perez recused himself from a vote on an item involving a project in which Perez has a personal interest.

Relevant Ordinances:

Complainant alleges Perez violated Sec. 2-11.1 (v) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance: Voting Conflicts: Members of advisory and Quasi-Judicial Boards: *No person [covered by this section] shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves...*

Also relevant to this case is Florida Statute 112.3143 (3)(a), which states in relevant part, "No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows

would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes."

The statute continues at (4): No appointed public officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer, without first disclosing the nature of his or her interest in the matter.

The statute continues at (4) (b and c): (b) In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.

(c) For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

Investigation:

Interviews

June 15, 2016 – spoke with **Martin Marquez** re: his inquiry. Referring to Perez, Marquez said “he’s been there 20 years.” Marquez called the P&Z Board and Board of Adjustments “a social club.”

The evening in question, Marquez stated that “the variances expired” (Seiden clarifies this later as being a hotel development project in which Perez is involved). Marquez asks rhetorically, what is the legal hardship?

Marquez said that he was new to the board (actually both boards, which have the same membership), and was the lone vote June 6 against renewing the variance approval. For both boards, Chairman Perez recused himself from voting due to having an interest in the outcome, but Marquez said Perez simply walked out and joined the audience. “He was told to leave,” Marquez said, presumably meaning that City Attorney Seiden told him to leave, but that he then chose to sit in the audience.

Marquez offered as background a 2014 charter amendment that says that the city cannot dispose of any part of the golf course property without a city referendum.

Marquez said that his call to COE was only an “inquiry” and not a formal complaint.

June 17, 2016 – spoke with Miami Springs City Attorney **Jan Seiden**.

Seiden described Marquez as “the number one gadfly in the city.” He described Perez as a local architect and long-time chair of the P and Z and Adjustment boards. Seiden said that Perez diligently recuses himself from any matter that involves a project in which he has an interest.

Seiden said Marquez recently joined both boards.

Seiden said Perez first did work on the hotel development project at issue two years ago, and that Perez had recused himself. With the changes, the project cleared both boards. But it did not move ahead promptly (permits were not drawn within a year as required). An extension was granted, but then that expired as well, and the project had to be re-approved from scratch.

The petitioner told the Board that nothing with the project had changed from the prior approval. Perez left the dais on June 6, and the hotel project’s site plan approved 4-1 (Marquez cast the only vote in opposition; the five-member board has an alternate, who presumably voted.). In second meeting, Perez apparently voted only on the minutes of the prior meeting, but otherwise remained recused from the dais.

In his own defense of Marquez’ charges, Seiden said, “I don’t look into the audience,” meaning he did not notice that Perez had taken a seat there. “He [Marquez] is sitting with a view of the entire room. [Yet] not until the day after the meeting he writes a scathing letter”

attacking Seiden for allowing Perez to remain in the room.

“I never knew he was in the chamber. Nobody made me the hall monitor. All Marquez had to do was raise his hand and say, ‘Perez is back in the chamber.’ No one mentioned anything.”

Seiden said that he customarily advised recused board members to leave the room. “I was never certain that this applied to boards, but I still said it.” Seiden said that in a conversation with COE Executive Director Joseph Centorino (Centorino), paragraph (v) of the Ethics Code says only that covered individuals (appointed board members) must not vote, not that they must leave the dais or the room.

Seiden said that the “sliver of land” issue brought up by Marquez is unrelated to the hotel variance matter. Seiden explained that many years ago, the City of Miami actually owned the golf course land. A property adjacent to the course apparently had a parking lot, but part of the lot included part of the course’s land. To resolve the issue, the City of Miami arranged a lease of that sliver of land to the adjacent property owner, Dr. Charles James.

Later, Miami Springs bought the golf course for \$3 million. Seiden said Miami Springs didn’t learn about the contested strip of land until after the sale. It tried to eject James from the land, which led to “bad blood” and an ongoing conflict. After James died, his daughter took over, and the issue continued. Seiden said Perez eventually bought the clinic property, and sought to buy the strip from the city, but since any sale of city property must be approved by referendum, the \$150,000 purchase by Perez went to the ballot – and lost. So the city arranged a lease with Perez, but that expired in March. It was supposed to be renewed March 6 but apparently still is an open issue.

June 17, 2016 – Spoke with **Manuel Perez-Vichot**, chairman of the Miami Springs P&Z Board and Board of Adjustments.

Perez stated that at the June 6 meeting, an item came up on each board’s agenda regarding a hotel development plan in which he has an interest. (Variances for the Board of Adjustment, site plan approval for the Planning and Zoning Board). The requests were the same as two years earlier, but those changes had expired after the developer failed to pull the necessary permits in time. Perez said he abstained, left the dais and went to sit in the back of the room. Perez said that Marquez knew that he, Perez, was still in the room; in fact, Perez said he sat next to Marquez’ wife. But Marquez made no objection during either meeting that night.

Perez said that he filed State Ethics Form 8B as required to declare his conflict. That state form does not prohibit the person with the conflict from being in the room or even participating in the discussion of the item, as long as the conflict is disclosed and he does not vote.

Perez said that the hotel project is located at DeSoto Drive and Northwest 36th St. This is unrelated to another issue regarding the “strip of land” of the golf course which Perez offered to buy from the city, but which was defeated at referendum. However, Perez believes Marquez’ animus toward him dates back at least to the time of that issue.

July 6, 2016 – Statement of COE Executive Director **Joseph Centorino** of his conversation with Seiden:

“I told Seiden that while the requirement that a conflicted member leave the chamber is explicit in Section 2-11.1(d), which applies to elected municipal Commissions or Councils, the requirement is not made explicit in Section 2-11.1(v), applicable to local advisory or quasi-judicial board members. However, since subsection (v) does not even require disclosure, which is generally required under State Law, we have usually read the requirements of subsection (d) into subsection (v), and have advised such appointed board members that they should leave the room. However, since it is not explicitly in the ordinance, I would regard the ‘leave the room’ requirement as essentially unenforceable by the COE against appointed members. This is one of the ‘defects’ in the ethics ordinance that we expect to change when the Code is revised.”

Document/Audio/Video Review:

From Florida Ethics Commission website:

- Blank copy of Form 8B – Memorandum of Voting Conflict for County, Municipal and Other Local Public Officers. Under the instructions for “Appointed Officers,” the form states, “Although you must abstain from voting in the situation described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.”

From the City of Miami Springs:

- Agendas for the June 6 Board of Adjustment meeting, the item in question being item 4(b), case No. 5-V-16, and for the June 6 Planning and Zoning Board meeting, the item in question being item 4 (a), case No. 5-ZP-16.
- Form 8B as filled out by Manuel Perez-Vichot on June 8, 2016, for the two city Advisory Board meetings on June 6, 2016. On it, Perez states that his conflict is being a principal of Southeast Design Associates Inc., the architect for the hotel being developed by Domingo Ansereo.
- Prior Form 8B filled out by Manuel Perez-Vichot on Nov. 3, 2014, for the Board of Adjustments. Perez states that his conflict is being a principal of Southeast Design Associates Inc., the architect for the hotel being developed by AQ Group LLC, whose principal is Domingo Ansereo.
- Prior Form 8B filled out by Manuel Perez-Vichot on Sept. 25, 2015, for the Board of Adjustments. Perez states that his conflict that his daughter is the applicant for one variance on the agenda; that his client was the applicant for a different variance, and that his client is the applicant for a variance extension for yet another item on the agenda.
- Purchase order and Agenda Memorandum regarding the Westward Dr. Bike Path

Project, for which Perez's company, Southeast Design Associates Inc., performed the survey and civil engineering work, billing the city \$13,200. The civil engineering work, worth \$5,400, was a change order approved by the City Council.

(Description of item reviewed including date)
Summary of findings

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Summary of findings

Conclusion(s):

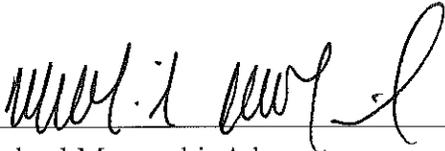
After discussion with the Ethics Commission Advocate it was determined that no violation of the Code of Ethics was identified and no further action would be taken in this matter.

(Signature)

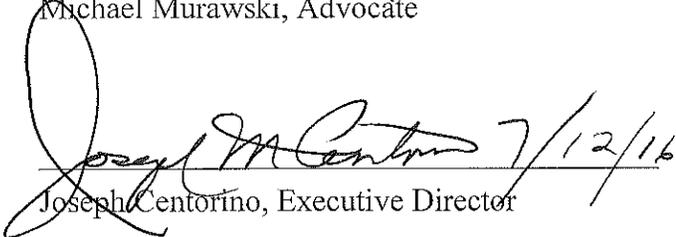


Robert Steinback, COE Investigator

Approved by:



Michael Murawski, Advocate



Joseph Centorino, Executive Director