



MIAMI-DADE COUNTY
COMMISSION ON ETHICS & PUBLIC TRUST

In re: Paul Novack et al
_____ /

Complaint No. 05-04

PUBLIC REPORT AND ORDER DISMISSING COMPLAINT

Barbara McLaughlin ["Complainant"] filed the above-mentioned complaint against Stephen Cypen, Town Attorney, Surfside, Nancy Fernandez, former Town Clerk of Surfside, Paul Novack, former Mayor of Surfside, Eduardo Rodriguez, former Town Manager of Surfside and Tim Will, Mayor of Surfside ["Respondents"]. The complaint alleged a violation of The Citizens' Bill of Rights ["CBR"], under the Home Rule Charter.

Complainant stated that in February of 2004, a Citizen Petition was submitted to Respondents requesting a public hearing before the Town Commission. The request was made to discuss sections of the Surfside Code pertaining to the beach and animals. The complaint alleged that the Respondents failed to acknowledge receipt of the petition seeking a public hearing.

Under the CBR, Section 5, "*The Right to be Heard*" provides,

So far as the orderly conduct of public business permits, any interested person has the right to appear before the commission or any municipal council or any county or municipal agency, board, or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the governmental entity involved. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that

the public may know approximately when a matter will be heard. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits for the presentation of a matter.

The Ethics Commission dismissed the complaint for a lack of legal sufficiency. Since about 2001, the COE has declined to proceed with complaints based on CBR violations because the Ethics Commission's Enabling Ordinance does not provide the enforcement authority to impose penalties under this ordinance. [See, C# 04-47]. The Complainant was advised that she may file said complaint in Circuit Court if she so chooses.

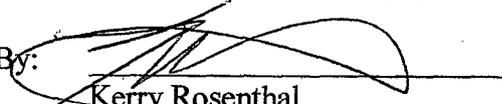
However, in RQO 02-125, the Ethics Commission opined that although Section 5 of the CBR requires that all citizens have a right to be heard, the right is not absolute. A municipality could reasonably enact rules that limit the time, place and manner for such discussion. The municipality, nonetheless, must provide a reasonable opportunity for a citizen to address its Council.

Therefore it is:

ORDERED AND ADJUDGED THAT the Complaint is DISMISSED.

DONE AND ORDERED by the Miami-Dade County Commission on Ethics and Public Trust in public session on February 22, 2005.

MIAMI-DADE COUNTY COMMISSION
ON ETHICS AND PUBLIC TRUST

By: 

Kerry Rosenthal
Chairperson

Cc: Stephen Cypen
Nancy Fernandez
Paul Novack
Eduardo Rodriguez
Mayor Tim Will