

**OFFICE OF THE INDEPENDENT ADVOCATE  
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST**



**REPORT OF INVESTIGATION**

#K11-044

Date Opened: 03/18/11

Date Closed: 05/27/11

Investigator: Sylvia Batista

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The COE received information regarding possible violations involving various North Bay Village Commission meetings. The COE requested and reviewed copies of the video taped meetings of 11/1/10, 2/22/11, 3/8/11, and 3/22/11. The following are summaries of each meeting and respective allegations:

**11/1/10 Special Commission Meeting (Second Reading)–**

This special set meeting was on NBV's petition to rezone a portion of the Bayshore Yacht & Tennis Club, 7904 West Drive (Lot 6, Tract C, Harbor Island), from high density multiple-family residential to general commercial. The owner of the property has been trying to obtain the rezoning of his property for several years.

The meeting began with a warning from City Attorney, Daniel Abbott, to the commission advising that the notice requirements in connection with the specially set meeting had not been met. Furthermore, City Attorney Abbot advised that for this reason any decision made at the meeting could be easily challenged in a court of law. Commissioner Trujillo complained about proceeding with the meeting and accused Mayor Alfonso of trying to push the item through as a way of



paying back the property owner for a loan. Mr. Trujillo remained in the meeting, but stated that he would not participate in the vote.

At the conclusion of the meeting, Mayor Alfonso asked the property owner whether he could live with not doing anything with the property until the zoning map is changed, which would not be more than 90 days, or no later than 2/28/11. The owner indicated that he could wait the 90 days, or until 2/28/11. Mayor Alfonso, Vice-Mayor Kane and Commissioner Rodriguez voted to approve the zoning change conditioned upon the prospective zoning map change.

Upon request, the COE was provided with a copy of Florida Statutes Section 166.041 which imposes a thirty (30) day notice requirement in connection with municipally-initiated zoning changes. NBV gave a ten (10) day notice for this meeting. Subsequently, it was determined that to date, the zoning change has not taken effect and that residents of the building in question, who have taken the owner to court on previous issues, were monitoring the situation.

“Sunshine law” violations are not within the jurisdiction of the Ethics Commission.

#### **2/22/11 – Commission meeting –**

This meeting was reviewed for allegations made by a NBV resident.. The resident alleged that at this meeting he witnessed another NBV resident named Donna Vesky being intimidated by the Mayor, and being prohibited from speaking during the public comments portion of this meeting.

The COE investigator reviewed the videotape of this meeting and saw Donna Vesky speak to the Mayor and commissioners, but did not identify any intimidation by the Mayor.

### **3/8/11 – Commission Meeting –**

Another NBV resident contacted the COE in reference to this meeting. It was alleged that she was prohibited from speaking by Mayor Esquijarosa during the “Good & Welfare” portion of the meeting. Complainant advised that she made comments regarding the summer camp planned for the City, and later during the break she attempted to speak to the Mayor who told her that she would not speak with her. Complainant said that she finally was permitted to make her comments expressing her dissatisfaction with the City’s summer camp program being open to children who do not reside in NBV, however she still felt that her right to speak was violated by the Mayor.

This investigator reviewed the tape of the meeting which revealed that Complainant was advised by the Mayor that if she made her comments during the Good & Welfare portion of the meeting, she would not be able to speak on the subject again when the item comes up. Complainant chose to make her comments during the Good & Welfare portion of the meeting. Before doing so, she was reminded by the Mayor that she would not be able to speak on the subject when the item comes up later in the meeting. Complainant handed the Mayor a copy of the NBV code regarding oral communications which states that residents can speak on any City issue during the Good & Welfare portion of the meeting. However, the code does not address the question of whether the resident can speak on the same issue again if it comes up as an agenda item, accordingly, no further action will be taken by the COE on this matter.



### **3/22/11 – Special Commission meeting –**

The COE was informed by a NBV resident of an allegedly improperly noticed meeting. According to the resident, the meeting was about a public boardwalk that the City wants to install in front of the building where she lives, which is on the water. The resident further explained that the meeting was poorly attended, but that if posted properly many other residents would have been present. Resident would like the opinion of the COE.

The COE reviewed the NBV Code, Chapter 30 (the “Code”), and noted that regular commission meetings are held on the second and fourth Tuesday of each month. The meeting in question was referred to as a Special City Commission Meeting, but was held on 3/22/11, which falls on the fourth Tuesday of March. The code requires that the City Manager publish, or appropriately deliver notice of each regular meeting of the commission at least four (4) days in advance of such a meeting. The Code does not set forth the notice requirement for special meetings. For this reason, a special commission meeting held on a day designated by the City to hold its regular commission meetings would be subject to the same four-day notice requirement as a regular meeting. The COE reviewed City records and found that a four day notice of the subject meeting was provided by the City Manager as required by the Code.

### **Conclusion:**

The COE did not identify any violation of the North Bay Village Code or the Conflict of Interest and Code of Ethics Ordinance. For this reason, these matters are closed.