

MIAMI-DADE COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

K #: 12-121 Blue Lakes Development

Date Opened: Aug. 10, 2012

Date Closed: Nov. 22, 2012

Name of investigator: Karl Ross

ALLEGATION:

On or about Aug. 10, 2012, COE Executive Director Joseph Centorino received a verbal complaint from County Comm. Javier Souto (hereinafter “Comm. Souto”) regarding possible unregistered lobbying by William Delgado, Barbara Gomez and executives of the Cayon Development Group in connection with a project in Commission District 10. Comm. Souto further alleged that County staff may have intentionally misled him regarding the decision to alter the venue of a Community Zoning Appeals Board (hereinafter “Council 10”) meeting to consider the project by Blue Lakes Development Corp.

BACKGROUND:

The allegations surround a proposed mixed-use development consisting of a retail center and elderly housing located on 37 acres of land fronting W. Flagler Street and lying west of 102nd Avenue in Unincorporated Miami-Dade County. An application for said project was approved by Council 10 at its July 24 hearing to consider zoning applications. The hearing was held at the Jorge Mas Canosa Youth Center in Sweetwater as opposed to the normal venue at

Ruben Dario Middle School. The hearing was relocated because the school was closed for the summer.

INVESTIGATION:

According to the zoning application, Blue Lake Development Corp. is a family-owned company led by Bruce Rapee, as president and director. The remainder of the ownership is comprised of members of the Rapee family, documents show.

A search of County records found that no lobbyists were registered in connection with the application by Blue Lakes Development Corp. A similar search found that none of the above-referenced individuals – William J. Delgado, Barbara Gomez, Mauricio Cayon, Roberto Cayon – were registered on behalf of the Blue Lakes project.

On Aug. 21, 2012, COE interviewed Comm. Souto at his office, and the notes from said interview are as follows: Comm. Souto advised he has concerns about possible misconduct relating to a proposed shopping mall and senior housing project in his district, proposed by Blue Lakes Development Corp. The project is located on 37 acres fronting Flagler Street and 102nd Avenue. He stated that his interest in the parcel of land dates back to when it was a trailer park and that he had hoped to have it converted to a regional park, but that no funds were available at the time it first went on the market.

Comm. Souto said the project is being supported by, among others, Sweetwater Mayor Manuel “Manny” Marono (Morono). He said Marono attended a Comprehensive Development Master Plan hearing in Tallahassee, along with Blue Lakes’ zoning attorney, Juan Mayol, and voiced support for the project. He said he believes the Citizens’ Bill of Rights was violated during the July 24th Council 10 hearing because the hearing was held at the Jorge Mas Canosa Youth Center in Sweetwater instead of at its usual location at the Ruben Dario Middle School on NW 97th Avenue, which is 2.8 miles away. Comm. Souto advised he and Mayor Marono have clashed lately over matters relating to the annexation of the Blue Lakes site and other properties in the area.

Comm. Souto said he believes project backers and Marono conspired to have the hearing held there so that likely opponents in the Fontainebleau area – part of Comm. Souto’s district – would not be able to attend. He said the hearing could have been held at Ruben Dario Park adjacent to the middle school since the school was closed for the summer. He said he met with several assistant county attorneys about the decision to relocate the hearing, and was told by ACA Dennis Kerbel that the meeting was held in Sweetwater because the community center at the park was too expensive.

Comm. Souto said the community center at the park is air conditioned and holds 200 people. He said that he checked with the parks department and learned that it would have been available free of charge. He said he discussed the matter with County Attorney Robert Cuevas and Abigail Price-Williams, his top assistant. He said they assured him they would look into the matter. He said he asked them: “Why did my attorney (Kerbel) lie to me?” He said he believes that staff has been complicit with developers and/or their attorneys to effectively change the venue in order to deprive Fontainebleau residents of their right to convenient access to public hearings.

With respect to the same project, Comm. Souto said he may have been improperly lobbied by William J. Delgado (formerly of the LBA), Barbara Gomez (a consultant), Mauricio Cayon and his father, Roberto Cayon, of Cayon Development Group. He said that on or about July 9-10, they visited him at his district office unannounced and proceeded to ask him whether he had any discretionary funds available for them to develop an elderly living facility at the Blue Lakes Development site. He said he felt it was improper for them to solicit the funding. “I said, ‘William, is this legal what you’re asking me?’”

Comm. Souto said that they did not mention the project by name, but that he understood that they were referring to Blue Lakes and that they are somehow affiliated with the developer. “They were asking me point-blank how much money did I have [sic] in the GOB account,”

Souto said. He said they neglected to mention to him that the matter was coming before the zoning council a couple of weeks later.

On Sept. 19, 2012, COE interviewed County Attorney Cuevas (Cuevas) and First Assistant County Price-Williams (Price-Williams) regarding the concerns raised by Comm. Souto. Cuevas advised that staff informed Comm. Souto that the precedent for past summers – when the regular meeting site at Ruben Dario Middle School was not available due to summer recess– was to move the council meetings to the Mas Canosa Center in Sweetwater. Cuevas said he did not feel that this created any legal issues, even though the alternate meeting site was not inside the boundaries of Council 10.

Cuevas said staff provided Comm. Souto with agenda packets from previous summers showing him this was the usual alternate site. He said Comm. Souto also raised the allegation with him that he felt an assistant county attorney (Kerbel) had lied to him, but defended his subordinate, stating Kerbel had discussed this issue with somebody on the zoning staff and that this individual told him the parks department would charge the County for the activity room at the Ruben Dario Park. “I think a misunderstanding is all it was,” Cuevas said. “Certainly, I don’t think anybody on my staff would lie to a commissioner. I think they were repeating what they heard from staff.”

Cuevas said he and Price-Williams went to Ruben Dario Park with Comm. Souto and inspected the activity room. He said that the Council 10 meetings are generally well attended and stated he was concerned about space, as well. Cuevas said he would ask who Kerbel spoke to and provide this information to COE. Price-Williams called back later in the day and left a message advising that Assistant County Attorneys Kerbel and Craig Collier (lead zoning attorney) spoke to staff members Felix Acosta (Acosta) and Franklin Gutierrez (Gutierrez) at the county’s Planning and Zoning office regarding the decision to relocate the Council 10 meeting to Sweetwater. She said her office relied on information provided by Acosta and Gutierrez for this purpose.

On Sept. 20, 2012, COE interviewed Acosta, a Department of Planning and Zoning clerk with the Miami-Dade County Department of Regulatory and Economic Resources. Acosta advised that he is the employee responsible for securing locations for the Council 10 meetings, and that his office prepares the agendas and delivers them to board members. He said that a few years back, when the Ruben Dario Middle School was not available due to summer recess, that he looked at a variety of other places, including a nearby county park and that, at that time, he was advised that the department would be charged for use of an activity room at that park – Women’s Park on Flagler Street and 103rd Avenue, not Ruben Dario Park.

Acosta said that the agency began using the Mas Canosa Youth Center at that time, and has continued to use it for council meetings. He advised that he did visit the Ruben Dario Park this past year and inspected the activity room, but said there was an exhibit in the room and noted that it would have been “dangerous” to try to move the exhibit items. He said there were also concerns about its capacity. He said that nobody tried to influence him to move the meeting in question to Sweetwater.

On Sept. 20, 2012, COE interviewed Gutierrez, agenda supervisor for the Department of Planning and Zoning. Gutierrez recalled that when the need first arose to relocate the Council 10 summer meetings, that his staff investigated a number of County-run sites including the Coral Way Library on NW 97th Avenue and Women’s Park on Flagler Street and NW 103rd Avenue. He said that at that time (a few years ago), his staff was advised that the County’s parks department would have to charge a substantial fee for the use of that facility (at Women’s Park). He said that this policy may no longer be in effect. He said that a member of the Council 10 zoning board told staff about the Mas Canosa Center, but he could not recall who. He said that the department has used the Mas Canosa Center for the past two or three years because it is free and because it is large enough to accommodate the Council 10 meetings.

On Nov. 20, 2012, COE interviewed Delgado, a long-time County lobbyist and business executive in connection with the July meeting with Comm. Souto. Delgado stated he met with Comm. Souto at the request of long-time friend, Roberto Cayon, of Cayon Development Group.

He said Mr. Cayon advised him that his son, Mauricio, was considering buying a property and had been told by the seller that Miami-Dade County GOB funds were available to develop the property. Delgado said it was necessary to verify this claim because the sale price would be contingent on the availability of County funding. Delgado said he called Comm. Souto's office and spoke to his aide, Bernardo Escobar, and that he arranged a meeting. He said the Cayons attended the meeting along with Gomez, who he assumed was an employee. "The only thing I asked the commissioner was, 'Were the funds available?'"

Delgado said an aide to Comm. Souto's told him a couple of weeks later no funds were available, that they had been allocated elsewhere. "I never lobbied for the project. I never got paid. The only thing I did, I did for a friend and to find out if money was available." He said that the meeting was strictly for "informational purposes."

On Nov. 21, 2012, COE interviewed Mauricio Cayon (M. Canyon), a principal for Cayon Development and the prospective buyer of the site at the Blue Lakes project. M. Cayon advised that he requested a meeting with Comm. Souto through Delgado after making an offer to purchase the property in question. He said he was told by Bob Shapiro, the seller's representative, that as much as \$2.5 million in County bond money was available to develop the property – so long as it was used to construct elderly housing. He said that, as part of his "inspection period," he tried to verify whether the funding was, in fact, available. He said he was aware of similar deals in which County funds had been allocated to major residential developers such as the Related Group and the Carlisle Development Group as part of private-public joint ventures.

M. Cayon said he met with Comm. Souto along with Delgado and Gomez, who he said is considered an expert in funding and grant applications, in an effort to ascertain whether any Miami-Dade County funding was still available. He said the meeting took an hour and a half, but that he did not get an answer from Comm. Souto at that time, stating: "I went to get information. I hardly got information." He said he later learned through Delgado that no County funding was available. He said he later "dropped the deal."

CONCLUSION:

With respect to the concerns raised about improper lobbying, it would appear that the purpose of the meeting at Comm. Souto's district office was to ascertain whether funding was available to develop elderly housing at the property in question. The inquiry was made as part of the due-diligence process and would seem like a reasonable inquiry to make under the circumstances since the value of the land was at issue. The accounts provided by those involved were similar except in that Comm. Souto felt that the visitors to his office were soliciting funds from him while Delgado and others felt they were merely requesting information about the availability of County funding.

Delgado, former executive director for the Latin Builders Association, noted that he has been a registered lobbyist for many years and has interacted with Comm. Souto on numerous occasions regarding the LBA and other clients. He was emphatic in that he was only trying to help the son of a friend gather information about a property he was considering purchasing. He said he was not retained as a lobbyist and was not paid as such and that, furthermore, the nature of the meeting was not to persuade Comm. Souto to support the zoning application for Blue Lake or to solicit funding. Based on this interpretation, the actions of Delgado and others would not seem to contravene Section 2.11.1(s) of the Miami-Dade Ethics Code as it relates to lobbying.

With respect to the alleged violation of the Citizens' Bill of Rights, subsections (a)(1) or (a)(5), concerning *convenient access* and the *right to be heard*, it is the opinion of the Miami-Dade County Attorney's Office that no such violation occurred – even though the July 24 zoning hearing was held outside the boundaries of Comm. Souto's commission district. County Attorney Cuevas and other staff interviewed concurred that the purpose of relocating the hearing was to ensure that the hearing was held at a venue that could accommodate all residents interested in attending. They noted that a precedent had been set in previous years for holding the hearing at the Mas Canosa Center.

It would also appear plausible that any discrepancy regarding whether the parks department would charge a fee for holding the hearing at a County facility could be explained as a misunderstanding. Planning and zoning staff advised that several years ago they inquired about holding the hearing at Women's Park and stated that they were advised that the County would charge a fee for holding the hearing there.

It is the position of County Attorney Cuevas that members of his staff relayed this information – regarding any usage fee – to Comm. Souto in good faith and under the assumption, based on their conversations with planning and zoning staff, it applied to Ruben Dario Park, as well as to the nearby Women's Park. Cuevas stated that any miscommunication was inadvertent and was not the result of any undue influence by members of his staff or external pressure from applicants. In the absence of any substantive evidence of wrongdoing, this investigation should be closed.

###