

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

K #: 12-022

Date Opened: January 31, 2012

Date Closed: May 30, 2012

Name of Investigator: Manuel W. Diaz, Ken Rosario

Allegation:

Brad Dougherty (Dougherty) copied the COE with a letter that he sent to Miami-Dade County (MDC) Mayor Carlos Gimenez. In the letter, he alleges that members of the Miami-Dade Department of Sustainability, Planning and Economic Enhancement (SPEED) (formally MDC Planning and Zoning) may have misused their public positions as MDC employees in their dealings with politically connected lobbyists, developers and attorneys. Dougherty specifically names developers Chris Korge (Korge) and Ignacio Zulueta (Zulueta), and alleges that they may have secured special privileges from the MDC employees.

In the letter, he names MDC Interim Assistant Director of Zoning and Community Design, Eric Silva (Silva) and other unnamed MDC employees alleging they may have compromised their "ministerial" responsibilities in matters dealing with Zoning Hearing Application Z09-006 (Application).

Applicable Legislation:

Miami Dade County Conflict of Interest and Code of Ethics Ordinance Sec. 2-11.1

(g) Exploitation of official position prohibited.

No person included in the terms defined in Subsections (b) (1) through (6) and (b) (13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

Interviews:

Brad Dougherty, Complainant:

Dougherty was interviewed on February 9, 2012 at his residence. During the interview, Dougherty reviewed the content of the letter. (Copy in file) He summarized that he believed that developers Korge and Zulueta received favored treatment from the MD P&Z from the initial acceptance of the application early 2009 throughout the evaluation process and, most recently, with the final approval recommendation by Silva.

Dougherty further explained that P&Z employees violated ministerial duties in accepting a defective application and allowing the application to proceed through the various stages of approval. Dougherty advised that the initial application submitted in 2009 was defective and that the application should have been rejected after it was evaluated by P&Z. Instead, the application was accepted by both P&Z and the MDC Attorney's Office. It was only after the errors were identified at public hearing that the application was returned to the applicant's attorney Jeff Bercow (Bercow), Bercow, Radell & Fernandez P. A. (200 S. Biscayne Boulevard, Suite 850, Miami, Florida 33131) for corrections.

Dougherty advised that he and other neighbors had filed protests with MDC P&Z. In addition, they attended four (4) MD zoning meetings to testify against the approval of

the application. He explained that the Board of County Commissioners (BCC) initially agreed to defer to address inconsistencies in the application before eventually approving the application on January 26, 2012.

Dougherty was clear that he has no proof that developers Korge and Zulueta had received any favored treatment from any member of MDC staff. Neither did he have any proof that any MDC employees, including Silva, violated the County Code in approving the application. He reiterated that his concern was in the approval process and that the defective application was able to make it through the numerous levels of the bureaucracy and eventually to the BCC with a recommendation for approval by staff and the director.

Eric Silva, Director of Planning and Zoning:

Silva was interviewed in the P&Z conference room. He advised that he had received a copy of the letter from Dougherty addressed to Mayor Gimenez and the BCC. Silva advised that he was recently appointed Director and that he was familiar with the application.

According to Silva, all the changes requested in the zoning application with the exception of one parcel complied with previous plans for the development of the area. Silva acknowledged that there were errors in the zoning application initially submitted to the BCC for approval. But, he explained that the application was rewritten by the attorneys for the developer, and the application approved by the BCC during a zoning meeting. Silva advised that the changes requested by the applicant in previous years were approved by previous directors. After reviewing the changes he saw nothing in them which would preclude him from approving the application and sending the application to the BCC for approval.

Silva provided a copy of the note book that he had used during the most recent BCC meeting. The book contained his notes taken on the application as well as other zoning documents. (The book has been made part of the investigative file.)

Marc LeFerrier, Former MDC Planning and Zoning Director:

LeFerrier was interviewed via telephone. He advised that the application had been filed prior to his appointment as director. When the application was brought to his attention, he reviewed it and felt that it was not compatible with the neighborhood. He negotiated with the developer to reduce the density and improve the central core of the development. LeFerrier advised that he was successful in this and his success resulted in plan changes by the developer. Unfortunately, his employment with MD ended before he could affect additional changes which he felt would improve the development's compatibility.

He described Silva as a very capable director, who had a good background. He felt that Silva was correct in signing off on the final application.

LeFerrier described developer Korge as a powerful bundler for campaign contributions. He advised that the developer, to his knowledge never applied any political pressure to assure the passage of the application by the BCC. LaFerrier advised that he never received any political pressure from staff, including Mayor Alvarez and Mayor Gimenez to approve the application.

Public Records:

Summary of the BCC meeting February 4, 2010

After a presentation of the zoning application by Bercow, Dougherty, along with several other residents, expressed their objections to the application. Bercow was permitted a rebuttal. After the close of the public hearing, MDC Commissioner Katie Sorenson (Sorenson) proceeded to ask questions of Marc LeFerrier (LeFerrier), former director of MDCP&Z concerning the application. Sorenson expressed some concern in apparent errors in the application and a lack of communication between the developer and the community. After discussion, Sorenson motioned to continue the application indefinitely. After further discussion, consideration of the application was deferred until March 4, 2010.

Summary of the March 4, 2012 BCC meeting

During the meeting, Bercow advised that the developer had met with the community and requested a deferral of the application until the developer could affect changes in the application. Bercow added that the application would have to be re-submitted to the MDC Developmental Impact Committee Executive Committee (DIC) because of the changes. Dougherty testified that the application contained numerous inconsistencies. LeFerrier testified confirming that the review of the application discovered numerous inconsistencies and the application had to be re-evaluated by staff, causing the delay. After questioning by Sorenson, Bercow acknowledged errors in the application.

Summary of March 6, 2010 BCC meeting

LeFerrier requested a deferral. Bercow and the County Attorney's Office agreed because the application with all the changes would have to be refiled. Witnesses present wanted the BCC to hear the application and Sorenson moved for a deferral. The deferral was approved by the BCC.

Summary of the January 26, 2012 BCC meeting

After a review and a discussion of the application, the BCC approved the application.

CONCLUSION:

No evidence of exploitation of official position was found, accordingly, this matter is closed without further action.