



**Miami-Dade Commission on Ethics & Public Trust**

**Investigative Report**

**Investigator:** Sylvia Batista, Karl Ross

<b>Case K14-003</b>	<b>Case Name:</b>	<b><u>Date Open:</u></b>	<b><u>Date Closed:</u></b>
<b>Complainant(s):</b>	<b>Subject(s):</b> Juan Pascual	January 17, 2014	May 19, 2015

Date: 5/15/2015

**Allegation(s):**

Several city of Miami parks employees contacted COE and complained that former Parks Director Juan Pascual had been engaging in a pattern of exploitation and conflictive behavior relating to a family run youth baseball business - the Miami Youth Baseball Association (MYBA). Tournaments and practices for the league are hosted at three city baseball venues. The employees alleged these facilities received preferential treatment in terms of staff and labor hours and a disproportionate share of resources. They claimed MYBA operates concession stands at one or more fields.

They further alleged Pascual's hand-picked successor, Rafael Gonzalez, has been perpetuating this situation and may have outside employment with MYBA, previously known as the Carlos Pascual Pony League, aka Pascual Baseball. Juan Pascual was found to have violated the county's ethics code on related matters in 2006.

**Relevant Ordinances:**

Miami-Dade County Code, Sec. 2-11.1(g), Exploitation of official position prohibited, stating in applicable part that no person ... "shall use or attempt to use his official position to secure special privileges or exemptions for himself or others ..."

Miami-Dade County Code, Sec. 2-11.1(l), Prohibited investments, stating in applicable part that no person ... "shall have personal investments in any enterprise, either himself or through a member of his immediate family, which will create a substantial conflict between his private interests and the public interest."

Miami-Dade County Code, Sec. 2-11.1(n), Actions prohibited when financial interests involved, stating in applicable part that no person ... "shall participate in any official action directly or indirectly affecting a business in which he or any member of his family has a financial interest."

Miami City Code Sec. 38-54, *Use of facilities generally*, and other applicable sections of the code relating to the use of baseball fields and the issuance of permits.

## **Investigation:**

### ***Interviews***

On Jan. 10, 2014, COE interviewed several current and former employees of the Miami parks department, all of whom complained about an alleged pattern of continued exploitation by outgoing Parks Director Juan Pascual. Pascual was the subject of an ethics investigation in 2005 and 2006 and was subsequently found to have violated the ethics code on multiple counts in connection with a youth baseball organization, known, at the time as the Carlos Pascual Pony League (the PONY league).

They advised that Pascual was retiring on January 31, 2014. They claimed that, in view of this, he had exploited his official position to ensure parks and baseball fields used by MYBA had the best available resources and, further, that other city baseball fields had been neglected in order to steer such resources – including staff and labor – to MYBA venues, as follows:

1. Grapeland Heights Park, which they called "Pascual Disney"
2. Fern Isle Park
3. Gerry Curtis Park (now closed for soil remediation)

They alleged baseball facilities at the three parks are used exclusively by the Pony League and that no other organizations or members of the public are granted access. All employees said they had been sent to work at these facilities, which they claim received special treatment. They said Pascual, through family, operated a concession stand at Grapeland Heights.

As an example of this, they said Grapeland Heights has two spare water pumps worth \$7,000 to ensure the fields are irrigated, while other parks, such as Roberto Clemente, have none. They also said a special lawnmower for Melreese Golf course is used to cut the fields at Grapeland Heights. They said the city has more than 60 baseball fields.

They stated that Pascual is still involved in MYBA through a step son, Alex Delgado, and that Delgado holds all city permits. They said Delgado is a Miami-Dade County firefighter.

They further stated Pascual promoted Rafael Gonzalez as superintendent of operations for the parks department and that, in turn, Gonzalez looks out for Pascual's interests. They said another applicant for the post – landscape architect Ted Baker, a senior parks employee – was more qualified but didn't get the post. (Note: Gonzalez has since been fired for taking unauthorized leave, and a subsequent parks director abruptly resigned in October.) The current Parks Director is former County employee Kevin Kirwin.

It was alleged that Gonzalez authorized over-time for himself and other city employees to work on these facilities. They alleged Pascual would change the schedule of city employees to work weekends in order to groom fields for MYBA play.

Jose Arias, an irrigation specialist and 16-year parks employee, said he has filed a complaint with the EEOC because of unfair treatment at the hands of Gonzalez. Another witness said he had been suspended after Gonzalez allegedly fabricated allegations about him drinking on the job. He said he was subsequently fired by Pascual, referencing a termination letter.

They advised that, on or about Dec. 16, 2013, they provided a letter of complaint to (now former) Miami City Manager Johnny Martinez and to City Commissioners. They claimed Martinez was close to Pascual and has not taken any action relating to their complaints. They alleged several parks employees including Gonzalez have part-time employment with MYBA. The others they mentioned were Marguerito Aguilas and Aveniso Nunez.

On March 6, 2014, COE investigators Batista and Ross visited baseball fields at the following Miami parks: Grapeland Heights and Fern Island – both reserved exclusively for MYBA play – and compared them to Williams Park and Dorsey parks in Overtown; Roberto Clemente Park in Allapattah; and M. Athalie Range Park in Little Haiti/ Liberty City. The difference in the quality of the facilities was striking, as the two facilities used by MYBA had Bermuda grass, new bleachers and fences, along with immaculately groomed infields and other amenities.

Access to the MYBA fields was restricted with padlocks at Grapeland Heights. By contrast, the other fields were in poor to average condition, lacked clay for playing surfaces, lacked bases or pitching mounds. These fields were open and accessible to the public and the bleachers were far smaller.

It was further observed that a single 3HP water pump serviced the fields at Roberto Clemente Park, in contrast to the 25 HP pump used at Grapeland Heights. City maintenance workers advised that Grapeland has two additional 25 HP pumps in storage as back-up units.

They further advised that special lawn mowers from the Melreese Golf Course are used to cut grass at Fern Island and Grapeland Heights, and to provide other lawn care services.

Lastly, it was noted that the baseball fields at Curtis Park – also used by MYBA – had been closed recently due to soil contamination. No inspection was made there.

Jon Seaman, contract administrator

Miami-Dade County Parks Department

August 20, 2014

In response to an e-mail from COE, Mr. Seaman advised that MYBA was awarded a contract to operate at the Brothers to the Rescue Park, a County-owned facility. He said that in response to his October 2013 e-mail to then City of Miami Parks Director Juan Pascual, he did receive the requested information about MYBA and its "legitimacy" as an organization. He said Pascual referred the matter to a subordinate -- "Laz" -- and that information was provided.

Mr. Seaman further advised Pascual represented MYBA at a presentation made to the County in connection with the County's RFP seeking an organization to operate at Brothers to the Rescue Park. He said that Pascual identified himself as an associate of MYBA, stating that he had a grandson who played in the league and that he served the league as a "volunteer." Mr. Seaman said Alex Delgado (Pascual's step-son) could not represent MYBA because he is a county firefighter and, pursuant to an ethics opinion he requested, could not represent the organization before a county agency. He said Ulpiano Puente, the individual who manages the day-to-day activities of MYBA, was in the hospital at the time of the RFP presentation, and that, because Delgado and Puente were indisposed, Pascual appeared on behalf of MYBA.

He said the proceedings were tape recorded, but that portions of the recordings may have been lost due to technical problems. He said he would review all available records.

During an Aug. 28, 2014, meeting at the county's parks department, Mr. Seaman provided COE with access to materials relating to MYBA's proposal to administer the Brothers to the Rescue baseball-only facility located at Coral Way and SW 72<sup>nd</sup> Avenue. The records showed Pascual represented MYBA at a December 2013 meeting in which MYBA and another proposer made oral presentations. He signed the sign-in log on behalf of MYBA and used the same e-mail address used by Delgado.

COE requested copies of the sign-in log for oral presentation and pre-bid meetings; MYBA's operating agreement with the county; copies of records provided by the City of Miami on behalf of MYBA; a copy of the proposal by MYBA, which included a pro-forma financial statement estimating annual revenues of \$265,000 at Brothers to the Rescue Park. Also requested was the COE opinion provided by Delgado.

Seaman stated that because Delgado was advised, in response to his request for an ethics opinion, not to interact directly with county staff, that Pascual -- described as a "volunteer" -- has served as the main source of contact between Miami-Dade parks and MYBA, and that he is involved in the day-to-day management of the program at Brothers to the Rescue Park. He said that Ulpiano Puente and Delgado are the other key employees. "I talk to him," Seaman said of his interaction with Pascual. "We talk about everything that has to do with the organization (MYBA)." He said the agreement took effect on May 1, 2014.

Seaman said that under the terms of the agreement, MYBA pays a per-participant fee of \$7 each for the current year and that the fee will increase \$1 per year for the next five years. He said the County further receives a 10 percent share of all proceeds from tournaments and concession sales. He said the County recently received a \$1,600 payment from MYBA for a



tournament.

Ted Baker, landscape architect

City of Miami Department of Parks and Recreation

August 16, 2014

Mr. Baker advised he did not like former Parks Director Pascual, regarding him as "smug" and "arrogant." He said Pascual, nonetheless, seemed to have a lot of political support and that he hired assistants and other key staff based on personal loyalty and not based on professional qualifications. Baker said he felt he was passed over for the superintendent of parks position in favor of Rafael Gonzalez because Gonzalez enjoyed the support of former director Pascual. He noted Gonzalez was terminated earlier this year after it was found he was "massaging" his time card and going home early. He said he was subsequently offered that position, but declined it because of salary considerations. He wanted a raise from \$64,000 to \$85,000, but was only offered a 10 percent increase, he said.

Gabrial Rojas, recreation coordinator Region 2 (was Region 4, incl. Grapeland, Fern Isle, Curtis et al.)

Miami Parks Department

Nov. 21, 2014

Mr. Rojas stated that many "youth-serving organizations" have their user fees waived, so long as they are a duly incorporated nonprofit corporation with 501(c) (3) status. (MYBA would seem to qualify.) He said only the parks director is authorized to waive such fees. He noted that some organizations use MYBA to hold tournaments at Grapeland Heights and that the city has no way to ensure they are eligible for fee waivers, and that they meet other requirements, such as having a valid insurance policy.

With respect to the reference to "Sabrina Martinez" in his Jan. 25, 2012, e-mail to the former parks director, Rojas stated that Martinez was the new facility manager at Grapeland Heights after Carlos Cabrera – a Pascual ally – was transferred to Robert King High Park at the direction of the superintendent of parks, Donald Lutton. Rojas stated that Cabrera was re-assigned to Grapeland several months later after Pascual became the new director, replacing Ernest Burkeen. Rojas stated that Alex Delgado – Pascual's step-son and president of MYBA – was unhappy with Martinez because she was going to cut back on field maintenance due to the loss of a full-time position for the facility. Rojas said Martinez called him in tears on one occasion after clashing with Delgado over the revised maintenance schedule.

Rojas stated that the Grapeland baseball facility had the field re-lined and re-dragged after EVERY GAME for MYBA league play, and that, due to the staff reduction; they were going to have the fields re-lined and re-dragged after EVERY OTHER GAME. (Note: This is every other game, not every other day.)

Rojas said none of the other 10 or so "academies" that lease fields from the city of Miami receive this level of service, and that MYBA receives such a high level because of its affiliation with Pascual. He said that Pascual contacted him and told him that if Martinez was the problem, she could be transferred and that if he were the problem, he could be sent back to the

Miami Rowing Club, where he was previously assigned. He said he interpreted this as a threat. "I felt he was trying to intimidate me," Rojas said. "He was telling me to back off."

Rojas offered another example of MYBA/ Delgado clashing with city parks employees over field usage. He said the city wanted to use one of the Grapeland fields for four hours on Saturdays for a girls' softball league, and that since it was to be a city-run league it had the right to bump MYBA from the field. He said Delgado was very unhappy about this situation.

Other examples of favoritism include having the lawn mowers from the Melreese golf course cut the grass at the Grapeland and Fern Isle baseball fields. This was not done at any other facilities. Rojas said that MYBA-permitted fields were the only ones to receive products such as Pro-Choice field conditioner, the same product used at Marlins Park to treat clay infields, and to have bags of Quick-Dry to put on the infield in order to resume play after a rain delay. He said that only MYBA fields used these products. He also stated that Bermuda Grass is used at the Grapeland and Fern Isle fields, not cheaper Bahia grass. Rojas noted that Carlos Cabrera remains the park manager at Grapeland, and that Eduardo Quintana, until recently, was the park manager at Fern Isle. He said Melissa Munoz is now the park manager there.

As far as concession stands are concerned, Rojas said that MYBA runs the concession stand at Grapeland and Tony Taylor runs the stand at Fern Isle. He said they are required to pay only \$100 per month, and that no revenue-sharing agreement exists at these facilities, unlike other city-owned facilities. He said that at the Miami Rowing Club, for instance, the concessionaire paid the city 18 percent of all revenues.

Rojas stated MYBA hosts major tournaments about five times per year, but that its league play takes place on a year-round basis. He said that the Latino Americano league organized by Ulpiano Puente also uses the fields, but said he was not aware of the extent of any affiliation with MYBA. He said that Puente and Delgado have had a falling out, and that Puente might be cooperative. He said it is his impression that Pascual continued to be very actively involved with MYBA even after he transferred control to Delgado.

Donald Lutton, superintendent  
Miami Department of Parks and Recreation  
Dec. 11, 2014

In an interview at COE, Mr. Lutton advised he has served as the city of Miami's parks superintendent since 2008 and in such capacity oversees all parks and facilities with programs run by the city or outside organizations, MYBA among them. He stated that upon commencing his city service, he was immediately struck by the fact that a single outside organization – MYBA – had exclusive use of the city's prized baseball facility at Grapeland Heights Park. He said he subsequently learned that MYBA was connected to Juan Pascual, an assistant director and later director of the city's Parks and Recreation Department. "I found it peculiar that a new four-field baseball complex would be operated by an outside entity," he said.

Lutton said no other entity or any city residents are allowed to rent or use the baseball fields at

Grapeland – even if MYBA doesn't have any activities scheduled at the fields. He said staff is instructed by the complex manager to keep the fields locked and in pristine condition until MYBA makes use of the fields. He said that Alex Delgado – Pascual's step-son – has keys to the fields at Grapeland Heights, and that no other baseball academy or organization has comparable access. He said MYBA is also allowed to use city equipment such as utility carts (scooters) and line machines. In essence, he said the city parks staff operates under the impression that Grapeland was "MYBA's facility, not the city's (facility)."

With respect to city permits, Mr. Lutton said that all organizations renting city facilities are required to pay a rental fee and staff fee, and that a schedule exists establishing the correct fees. He said that this is roughly \$40 per hour for the use of a baseball field and \$60 a day for a concession stand rental. He said that these fees are routinely waived to the benefit of MYBA and a handful of other groups, including the Optimists football league. He suggested that this is done to benefit several of the larger, more politically connected organizations. He said smaller, less connected organizations providing a host of activities from swimming to soccer do not have their fees waived and are required to pay the city for usage. He further suggested that the term "youth-serving organization" was coined by Pascual to justify waiving fees to MYBA.

Mr. Lutton said a number of city staffers overseeing the permits office have told him they were being asked or pressured to approve permits for MYBA with fee waivers at the direction of Pascual. He said Billy Starks used to oversee permits, and was later replaced by, among others, Wesley Carroll and Lazaro Garcia – adding that both Carroll and Garcia have complained to him about being directed by Pascual to waive fees for MYBA in violation of the city's policies. He said he advised them to still fill in the fees on the permit application, and leave a record of the improper fee waivers. He said there is no official policy exempting "youth-serving organizations." He said Lazaro Diaz once told him he knew the fee waiver was wrong, but stated "I had to sign it," because Pascual told him to sign the application.

Mr. Lutton stated there are roughly 100 parks run by the city of Miami and that about 25 of these have baseball fields that can be rented out for use. He said that facilities used by MYBA are far and away the best maintained, and, in the case of Grapeland Heights, has a full-time dedicated facility manager – Carlos Cabrera – as well as three to four part-time staff, whose duties are restricted to maintaining the fields used exclusively by MYBA. He said the cost to the city at Grapeland alone for staff is about \$250,000 a year. He said this preferential treatment extends to products used on the baseball fields at Grapeland and, to a lesser extent, Fern Isle and Gerry Curtis Parks – such as products for the infield dirt, fertilizers for the grass, higher quality sod (Bermuda grass instead of Bahia), and more frequent mowing. He noted that the city's golf course uses its mowers to cut the grass at Grapeland Heights. He said that Carlos Cabrera, the manager of the Grapeland Heights facility, has made requisitions for baseballs, bats, gloves and other equipment – even though the city is not operating a baseball league at that facility. He said he refused to sign the requisition, but believes that Cabrera was instructed to have it signed by the city's finance office, thereby circumventing his authority. He said he suspects the equipment was used by MYBA, and could represent yet another taxpayer subsidy to the organization. He said it was "abundantly clear" to him and other members of his staff that MYBA is getting preferential treatment, calling it "disgusting."

Mr. Lutton further noted that the concession stand at Grapeland was run by MYBA and had not

been competitively bid, as was the case with the concession stand at Fern Isle. He said that he had reviewed MYBA's filing with the IRS and that, given the amount of its revenues (over \$350,000 a year); he felt it should be required to provide financial statements to the city and share its proceeds. He said that under the city code, only the city manager can waive fees, though these duties are routinely delegated.

Mr. Lutton also advised that, in many instances, he believes the city is losing out on permitting and other opportunities to collect fees because MYBA will host tournaments under its permit and charge outside organizations – from outside of the city of Miami – and charge those organizations without forwarding or sharing the proceeds with the city. He said some tournaments host teams from as far away as Puerto Rico and Mexico. He said MYBA further allows outside vendors to sell goods and equipment at tournaments, without sharing any of the presumed proceeds with the city. He said “vendors are lined up all over the park” during major tournaments hosted by MYBA.

Mr. Lutton further stated he has received complaints from employees that Pascual has, in some instances, directed them to contact other groups with valid city permits and instructed them to not use the fields at Fern Isle, for instance, if MYBA has tournaments and requires exclusive use of the fields on those dates. He said that Zhaoming Guan, the park manager at Fern Isle, has been directed by Pascual to do this, but that other city employees have also been told by Pascual to do the same thing.

He said that, as a result of this widespread pattern of exploitation, that Grapeland Heights is yielded very little, if any, revenue to the city of Miami, because all the benefits are accruing to MYBA. He said many park employees and facility manager were intimidated by Pascual and went along with these practices because they were in fear of losing their jobs – i.e., Carlos Cabrera (Grapeland), Eddie Quintana (Fern Isle). He said Quintana has complained to him about Pascual ordering him to have the fields lined at Fern Isle for MYBA-sponsored tournaments on behalf of organizations that were not permitted to use the fields and that should have been paying the city for rental, staff time and permits. He said that Seymour Placide, acting supervisor of parks operations, may have access to information breaking down revenues and expenses per baseball facility in order to run a comparison with MYBA permitted facilities.

Lazaro Garcia, Events Specialist  
Miami Department of Parks and Recreation  
January 7, 2015

During an interview at COE offices, Mr. Garcia advised that he worked as a part-time employee with the city's parks department for six years beginning in 2005. He said that because of issues relating to health insurance he went on temporary full-time status beginning in October 2012 and remained in this capacity until March 2014, when he became a permanent full-time employee of the department.

Garcia said that because of his somewhat tenuous position with the department – as a temporary employee – he was reluctant to challenge Juan Pascual over matters relating to the issuance of permits. He said he could recall at least two occasions – one in December 2012, another in January 2014 – in which Mr. Pascual directed him to expedite the issuance of



permits to all baseball academies – though he did not single out MYBA. He said Pascual was careful to “speak in the plural” when directing staff with respect to its treatment of MYBA and the other so-called “academies” that used the city’s baseball fields. He said that Pascual’s tone of voice made it clear that he was being ordered to expedite said permits. He noted that many of the academies – though not necessarily MYAB – were frequently behind in their paperwork.

Garcia said that MYBA, far and away, enjoyed the use of the best-kept and most desirable baseball facilities, namely Grapeland Park and Fern Isle Park. He said, for years, MYBA enjoyed a virtual “monopoly” at Grapeland, though more recently a handful of other programs have been allowed to use the fields prior to 5 p.m. on weekdays when MYBA’s permit goes into effect. He said that in the past he asked his supervisor, Wesley Carroll, about this practice and was told, “Things have always been done this way.” He said he recalled getting phone calls from groups wanted to rent fields at Grapeland soon after he started with the department, but was instructed to tell them the fields were not available.

With respect to facility rental fees, Garcia provided a fee schedule he created in March 2014 and that was based on the most recent memo from the City Manager setting such fees. He said that for a lighted field, such as the ones used by MYBA, the rental fee is \$40 for the first two hours and \$25 per hour for each hour after that. He estimated that rental fees in excess of \$500,000 are waived annually for MYBA, but said that all other youth-serving nonprofits are similarly granted fee waivers for facility rentals.

Garcia said that, with respect to staff fees, these fees were imposed only sporadically on MYBA, and were most often waived. If imposed, these fees would have totaled between \$100,000 and \$200,000 per year, he estimated. He said that on one occasion he was directed by Pascual to waive all such fees for youth-serving organizations, including the baseball academies, on the basis of a similar fee waiver being issued for Optimist Club football games. He said this conversation took place in early 2013 after a decision was made not to charge staff fees for Optimist Club football games. He said staff fees are supposed to be charged. He said the present rate for recreation aides is \$16.69 an hour and, for maintenance workers, \$18.93 an hour.

Garcia suggested interviewing Wesley Carroll, his former supervisor, noting that Carroll and Pascual had clashed on occasion. He also suggested talking to the park managers at Grapeland and Fern Isle – Carlos Cabrera, who still works at Grapeland, and Eduardo Quintana, who is no longer at Fern Isle, but remains with the parks department. He stated that a number of other organizations were allowed to use Grapeland under MYBA’s insurance policy – and permits – but that only the International Academy was not located in the city of Miami, though he said he thought they were based in Miami-Dade County.

Seymour Placide, acting supervisor of operations  
Jan. 20, 2015

Mr. Placide, a 26-year parks employee, said he was unable to provide revenue and expense totals for the operation of Grapeland and Fern Isle parks. He suggested contacting the budget office.



Wesley Carroll, recreation coordinator (Region IV)

Miami Department of Parks and Recreation

Jan. 20, 2105

Mr. Carroll advised that he was in charge of issuing permits for the parks department for two and a half years starting in about 2010. He said that during this time, only MYBA had permits to use the baseball complex at Grapeland Heights Park. He called the complex a "hot spot," noting that there were occasional disputes involving MYBA and members of the city's parks staff over scheduling, maintenance, and permitting issues. He said he was involved in many of the meetings to resolve those disputes, and that MYBA was usually represented by Ulpiano Puente and/or Alex Delgado. He said Grapeland's complex manager, Carlos Cabrera, was usually in attendance as well. He said Pascual would not often participate in those meetings, but would usually ask him for a briefing afterwards and would offer guidance and direction, as well.

With respect to MYBA's seemingly exclusive access to the fields, Carroll said he "inherited" this situation and that MYBA's preferential treatment was "the status quo." He said he thought this raised issues about "fairness," but that he was sometimes unable to implement policies in a "consistent and across the board" manner. He cited, as an example, his difficulties in implementing the city's policy with respect to outside vendors. He said he would sometimes conduct spot checks at Grapeland during MYBA tournaments and would find vendors selling baseball equipment. He said that he wanted to enforce the city's policy of requiring permits from all vendors, and said that if he were to follow the correct procedures he would have been required to call the police to remove them. He said Pascual, however, would try to persuade him not to take adverse action, claiming the vendors didn't need a permit because MYBA had a permit for its concession operations and that this was sufficient. (It should be noted that under the city's rules for the parks department, permits awarded to an outside organization are "non-transferable" to any other entity.

Mr. Carroll said Pascual would frequently instruct him not to charge fees to MYBA and the other baseball academies, invoking the issuance of fee waivers to Optimist Club football teams. Carroll said he felt the fee waivers were not appropriate for MYBA because it did not serve an "underprivileged" sector of the community and charged a fee to its participants for league and tournament play. "The conversation would go like, 'We're not charging the optimists, so why are we charging MYBA?'"

Carroll said Pascual would also contend that full-time city employees could be required to work overtime on nights and weekends to benefit MYBA because he would tell them that they were "job-basis" employees and therefore not entitled to any overtime pay under these circumstances. He also said Pascual provided a list of "youth-serving organizations," and this was used as the criteria for waiving fees. (A copy of a list of such organizations was issued by Pascual on or about January 10, 2014 – shortly before he left – as evidenced by a review of Pascual's e-mails to city staff during his tenure as parks director and acting director. MYBA appeared on the list three times for Fiscal Year 2013 as it related to three city parks.)

Daniel Newhoff, principal staff analyst

Jan. 27, 2015

Mr. Newhoff advised that he could fairly easily obtain both the revenue and expenditure information for Grapeland Park's baseball facility since it is considered its own "cost-center," an accounting term used in managerial accounting. He said that it would be more difficult for Fern Isle Park since the expenditures are lumped in with the operations for other city parks. He said the revenues could be readily obtained. As a result, COE requested all information for Grapeland but only revenues for Fern Isle Park.

Eduardo Quintana, park manager Jerry Curtis Park

Miami Department of Parks and Recreation

February 5, 2015

Mr. Quintana said he was park manager at Fern Isle Park from May 2008 through September 2014. He said that during that time, permits were issued to three baseball academies – Tony Taylor, GRC, and MYBA. He said MYBA used the fields mainly between 5 p.m. and 10 p.m. on weekdays, and from about 9 a.m. to 7 p.m. on Saturdays. He said that the three leagues worked out scheduling among themselves, and that he did not recall there ever being any conflict related to scheduling. He said primarily interacted with Alex Delgado at MYBA and, to a lesser extent, with Ulpiano Puente. He said he did not receive any undue interference from Juan Pascual with respect to the park's baseball operations. He said Pascual would oversee purchase orders and other aspects of the park's operations, but did not at any time feel Pascual was micro-managing. He said he was not required to work additional hours or weekends to accommodate MYBA. He said he would assign his part time staff to work weekends. He said field conditions were much better at Fern Isle and Grapeland than other city baseball fields, but he said this was likely due to the fact they were recently renovated. He said Fern Isle re-opened following renovations shortly before he was transferred there in 2008. He said the fields were never locked and remained open to the public during the days and at times when there was no league play. He said that none of the academies operating there had keys to the park or to the field.

Carlos Cabrera, manager of Grapeland Baseball Complex

Miami Department of Parks and Recreation

February 3, 2015

Mr. Cabrera stated that he has known Juan Pascual since the 1980s when he worked part-time for the Carlos Pascual Pony League. He said he had a falling out with the family over payment issues, and that he dealt primarily with Pascual's father, Carlos Pascual Sr. He said that after he went to work for the city's parks department he was assigned to the park at Robert King High School on the 7000 block of Flagler Street. He said he continued to have some issues with Pascual, who was the agency's director of operations at the time because he said Pascual would continually check up on him to see if he was at Robert King High. At the time, he was a part-time city employee and had additional employment with the Baltimore Orioles at their spring baseball facility. He said this "tension" was eventually eased after he was assigned to manage facilities at Grapeland in 1997 and Carlos Pascual Sr. expressed satisfaction with his work. Cabrera stated that MYBA has held permits to operate at Grapeland since the time renovations

were completed in about 2007, and that no other organization has had comparable access to use the baseball complex. He said the permits allowed MYBA to use the facilities between 5 p.m. and 10 p.m. on weekdays, and from 8 a.m. to 10 p.m. on weekends. He said that a club called the "Phantoms" had a permit to use the fields on Sundays for a short time back in 2007, perhaps for six months. Since then, he said the only other permits were awarded to Brito High School – for fielding practice only and use of the batting cages. He said this happened in the past year, since the team was forced to leave Douglas Park due to contamination issues. He said a girls' softball league had also been allowed to use the Grapeland fields.

Cabrera agreed with the assessment that MYBA has had preferential use of the complex since Grapeland re-opened. "No doubt about it, that they (MYBA) have total control of it. I can't say otherwise," he said.

Cabrera said he could not state why this was the case since he was not involved in the issuance of permits. He did say the fields are left unlocked, but that staff is vigilant about who is allowed on the fields. He said that MYBA does have keys to the padlocks on the complex. He said his primary contact for MYBA is Ulpiano Puente, and that Alex Delgado is the "commissioner" of MYBA league play. He said he has dealt with Delgado on occasion to address scheduling and other issues, but that Puente is his primary liaison. He said he sees Pascual from time to time at the complex, but advised he has had no interaction with Pascual to discuss issues affecting the operation of the Grapeland complex. He said he is aware that many staff members are under the impression Pascual exerted his influence over the facility when he was serving as a city parks employee.

Cabrera said he initially clashed with Puente, who acted "like he owned the place," saying Puente failed to follow rules with respect to maintenance and other issues, such as driving a vehicle on the park grounds. He said relations are much better now, and that the relationship with MYBA is largely harmonious. He said his office receives a schedule from MYBA prior to tournament play, and that MYBA has three league seasons – Winter/ Spring, Summer, and Fall. He said fields are dragged and, when possible, re-lined between all MYBA games. He said that he presently has three part-time employees to assist him with this, and that combined they are allotted 76 hours of staff time. He said this was as little as 54 hours at one point, but that staffing levels have been restored to prior levels. He also noted that he was transferred back to Robert King Park back in the summer of 2011, but was returned to Grapeland by the end of the summer. He said he was not happy about the transfer, but said he is not aware of any involvement by Pascual in arranging his return to Grapeland. He said Sabrina Martinez was acting as manager of the complex during his absence.

Cabrera denied having attempted to order baseball, bats, gloves or other baseball equipment for use at Grapeland. He said Grapeland is supplied with materials to prep the fields such as Pro Choice, Quick Dry and chalk for the lining of the fields. He said other facilities sometimes ask him for extra bags of these compounds for use at Fern Isle, Curtis and Peacock parks. He said the materials were ordered specifically for Grapeland and that the former stock person for the city – Frank Garcia – advised him against sharing these resources with the managers at other parks. He said he is unaware of any special treatment Grapeland is afforded, but said he believes his fields are the envy of the city because he keeps them in such good shape. With respect to any issues with outside vendors, he said that on one occasion he was told not to allow vendors to set up at Grapeland during an MYBA tournament. He said this impasse was

resolved when Bobby Starke, the former special events coordinator, told him the vendors could operate under the permit issued to MYBA for its concession stand. He said he was unaware of any subsequent policies requiring these vendors to obtain permits and make any payments to the city.

Cabrera did state that, to his knowledge, two part-time parks employees – Jose Martinez and Paul Garcia – did occasionally assist MYBA on days when the fields needed extra prep work because of heavy rains. He said MYBA would pay the part-timers on these occasions, and that this happened several times that he was aware of. He said he did not believe the employees needed outside employment authorization since they were working part-time. He said he was never offered any employment by MYBA after he became assigned to work at Grapeland.

Sabrina Martinez, park manager at Jose Marti Park  
Miami Department of Parks and Recreation  
February 12, 2015

Ms. Martinez advised she worked at Grapeland Heights Park from 2007 until 2013, first at the baseball complex alongside Carlos Cabrera, and later in the recreation center. She said that during the summer of 2009, for a period of about two months, she managed both areas. During that time, Cabrera had been re-assigned to the park at Robert King High School. She said that she also organized and coached a girls softball league at Grapeland, and that the league used one of the larger fields at Grapeland two nights a week, and during league play, on Saturdays, from about 2008 until she left in 2013.

She said that on occasions she would have to run teams participating in the MYBA league off the field, but added that there were generally few conflicts. The only such incident she could recall happened in about 2009 when, due to rainfall, Alex Delgado asked her to move her practice to another field because MYBA had league play or a tournament. "Alex asked me to move practice. He got a little upset," she recalled. She said that she refused to move – since city programs have priority over outside permit holders – and that about 10 to 15 minutes later she received a phone call from Pascual, who asked her again if she would move the girls softball practice to another field. She said she told him her kids were already on the field, but stated that it began to rain again and since the practice was about to be called due to weather it became a non-issue. Other than that, she stated she could not recall any times Pascual intervened on behalf of MYBA. She said that she did not feel Pascual's manner in that instance was threatening or intimidating. She said Pascual would stop by the park from time to time to discuss routine maintenance matters, but she did not feel he was doing anything unusual to provide preferential treatment to MYBA.

Keylin Rodriguez, GRC Baseball  
Feb. 23, 2015

Mr. Rodriguez advised that his academy has been operating at Fern Isle Park for 20 years. He said that, until recently, his program held permits for four days per week, Wednesday through Saturday. But he said that, this year, he lost two days and was only given Wednesday and Thursday. He said he was allowed to use the fields on Tuesday after he complained about the situation. He said the days he lost are being given to MYBA. He said that, in the past, there



were few problems with MYBA and that the academies managed to co-exist. He said he thinks it is "unfair" that MYBA is being given extra days now, especially since it is the only academy operating at the Grapeland baseball complex. He said that, with respect to Juan Pascual, he could not recall any problems or conflicts during his tenure.

Juan Pascual, subject of investigation

March 17, 2015

Mr. Pascual appeared at COE offices for a voluntary statement, along with attorney Jon Herkowitz. Investigators Batista and Ross were present, as well as Ethics Advocate Mike Murawski. At the onset, Pascual was informed the inquiry was initiated as a result of conflict of interest allegations brought forth by several groundskeepers from the city's Department of Parks and Recreation.

Asked about a potential conflict with MYBA, Pascual claimed he does not know who the principals or corporate officers are for MYBA. He did say he was aware his stepson, Alex Delgado, and Ulpiano Puente are involved with MYBA. He said Puente was not involved with the Pony League.

Pascual said that Puente, before getting involved with MYBA, ran the Latino Americano Academy. He said that, to his knowledge, Puente started MYBA and later approached Delgado. He said Delgado was a coach for the Pony League, but was not involved with the South Florida Travel Baseball League. He said he did not recall whether Delgado was an officer with the travel league. (He was.)

Pascual said his youngest son, Nikolas Pascual, sometimes umpires games for MYBA. He further advised Carlos Pascual is the name of his late father and also his brother. He said that, as far as he knows, his brother does not work for MYBA. He said Janet Delgado is his stepson's wife. He said Alex Pascual is a nephew. As far as who works with MYBA, he said he is only aware of Delgado and Nikolas.

Before his retirement, Pascual said he had no involvement with MYBA. Since then, he has been involved with MYBA because of his grandchildren, and has helped with programs at Brothers to the Rescue Park. He said he also helped with painting and other renovations at Brothers to the Rescue Park.

Pascual said that he was reimbursed for work that he did for MYBA at Brothers to the Rescue Park. Delgado is a County employee and got an ethics opinion from COE advising him he could not be involved in matters involving a request for proposal at Brothers to the Rescue Park, so he did not participate in the county's selection process. Pascual said he paid for repairs at Brothers to the Rescue.

Pascual said he was with the City of Miami for 28 and 1/2 years. He said he worked for NET and other offices, but was with parks during his last 10 or 12 years. He said he held the posts of superintendent of recreation, assistant director, deputy director, and in 2012 he became acting director. He became the permanent director in August of 2012. He said he retired from the city in January of 2014.



While he was Director, he said had responsibility for all matters in the Parks department, including permits issued. He said the City Code provides the guidelines on the fees to charge organizations. He said that, in his view, MYBA did not get preferential treatment from the department. He claimed that when he was director, there was a fee waiver for "youth serving organizations" and that the director would recommend to the city manager which organizations were eligible for a waiver. The City Manager at the time was Johnny Martinez, and the Assistant Manager was Daniel Alfonso. He said fee waivers were given to all organizations that met the requirements, not just MYBA or the baseball academies. He said the waivers were mainly for rental fees, and also staff time for lining and preparing the fields.

Pascual was shown a list of youth serving organizations attached to an e-mail he sent in January 2104, shortly before his retirement. Pascual said the parks department's Special Events office prepared the list. Pascual said an organization is considered a not-for-profit if they have filed as such with the state of Florida. He went on to say that when city parks were improved with County bond money, the city had to change its criteria and not make a distinction between city and county residents using the park.

Pascual maintained that, in his opinion, MYBA was treated no differently than any other non-profit program using city parks. He said the Overtown Optimists Club got a specially designed field to meet its needs, and received more part-time staff hours than MYBA did at Grapeland. He further noted that the Liberty City Optimist Club had a facility built for them at Charles Hadley Park as did the Little Haiti Optimists at Little Haiti Park. He said the city "partners" with such programs and they get some privileges.

Pascual further stated that, with respect to vendor permits, it was the policy of then Parks Director Ernest Burkeen's that vendors could set up stands at Grapeland because MYBA held the concession permit. He said he did not discuss the subject with Burkeen on the subject and did not try to influence his decision. He said he recalls having numerous conversations with Carroll about vendor permits at youth football games, but none that he could recall involving vendors set up to sell baseball-related items at Grapeland.

Pascual said he recalled receiving the e-mail titled "fields of conflict" in the subject box from Gabriel Rojas to director Burkeen regarding his alleged conflict with MYBA. He said he did not respond to the allegations because he felt he had a potential conflict. With respect to the allegation about MYBA pulling permits for third parties such as the World Baseball Foundation, Pascual said he only became aware of this practice after he was no longer parks director. He said he learned about it because he was overseeing MYBA's operations at Brothers to the Rescue after he retired. He said he did not feel it was unusual for a "host" organization to pull a permit for another party – despite the city's express policy to the contrary.

Pascual acknowledged that Sabrina Martinez was in charge of the girls' softball league. He said he could not recall a dispute between MYBA and Martinez regarding make-up games. He said he doesn't recall being called by Delgado to intervene or calling Martinez to ask her to let MYBA use the fields.

With respect to the use of the Melreese Golf Course lawn mowers, Pascual said he found this

necessary because the mowers are used to cut Bermuda grass. He said they are also used at a football field in Liberty City, as well as at MYBA venues such as Grapeland and Fern Isle parks. Pascual expressed that how well Grapeland is maintained is a tribute to MYBA and its staff. He said he didn't get involved in day-to-day staffing or maintenance issues at Grapeland, and that his role was just to budget a number of staff hours.

Alejandro "Alex" Delgado  
League Commissioner for MYBA  
March 17, 2015

Mr. Delgado arrived at COE offices on the above date in response to an interview request, but on the advice of his attorney – Jon Herskowitz – declined to be interviewed, citing he would not be willing to provide information that could be used against his stepfather. Herskowitz requested a copy of questions COE was going to ask Delgado be supplied in writing. He said Delgado would review the questions, and answer them if he felt he could do so without compromising his relationship with Pascual.

Ernest Burkeen Jr., director  
Department of Parks and Recreation  
Baltimore, MD  
March 31, 2015

A phone message requesting an interview was left with Mr. Burkeen's office, and an e-mail requesting same was also sent to the e-mail provided for him on the city's website. A second phone message requesting an interview was left with Mr. Burkeen's office on April 6. He has not responded to these requests.

#### ***Document/Audio/Video Review:***

On various days in June and July, investigators Ross and Batista reviewed bank account record for the Miami Youth Baseball Association with Citibank and located payments to Delgado and other presumed relatives of Juan Pascual – including Carlos, Alex and Nick Pascual.

COE reviewed a memo dated March 17, 2015, and issued by the Miami City Attorney's Office regarding any established criteria for fee waivers states at city parks facilities. The memo states that: "... the City Code does not contain criteria authorizing the waiver of park fees or charges. Without such specific language, any waiver is prohibited without further City Commission action ..." The memo further states there is no provision in the code authorizing the city manager or director of the parks and recreation department to waive fees. COE further queried parks superintendent, Donald Lutton, about the existence of any policy regarding the waiver of fees for "youth serving organizations" – as Pascual has maintained – and he said that

he researched the matter in the past when it came up and found no evidence to support this.

Corporate records were examined for MYBA and other related entities, along with IRS Form 990 filings required for not-for-profit corporations. The records show Alejandro "Alex" Delgado is the registered agent and president of MYBA and that Nikolas Pascual is a director. Nikolas is Juan Pascual's son and lives at the family home at 9372 SW 21<sup>st</sup> Street. (Note: MYBA was created on or about Jan. 31, 2007.) The IRS Form 990s on file showed that Alex Delgado received a salary of \$28,400 in 2010, but no reported salary in 2011 and 2012.

A review of subpoena return items from Citibank for the MYBA operating account show that Delgado and several other members of Pascual's family worked for MYBA. These include Nikolas "Nick" Pascual – Pascual's youngest son – and Carlos Pascual and Alex Pascual. The payments to the latter three ranged from small amounts to no more than \$1,000 – usually for services such as umpiring games, but in the case of Nick Pascual for some administrative tasks. The largest recurring payments were made to Delgado, however, sometimes as much as \$4,000 per month for administrative fees, though the payments seemed to be sporadic.

The MYBA account records also showed that a number of local baseball academies – many of them located outside of Miami proper – were paying thousands of dollars to participate in MYBA tournaments and league play. Among those was the International Baseball Academy, a d.b.a., for Roland M. and Esther Hernandez, which paid MYBA as much as \$15,050 in September 2012 to have its teams participate in the Fall League. On several other occasions, the International Baseball Academy made payments as high as \$7,000 to MYBA. A number of other academies paid MYBA in excess of \$5,000 for league play and tournaments, including the Muller Baseball Academy, located in Unincorporated Miami-Dade County; Keys Rats Baseball Academy, located in Key Biscayne; and MPI (Miami Pro Instruction).

One payment is a payment in the amount of \$29,895 in August 2012 from WBF World Baseball Foundation Corp., located in Miramar, FL. The memo line on the check states the payment is for tournament "umpires," suggesting WBF may have been organizing a tournament under the auspices of MYBA. (Note: It was later discovered that MYBA did pull permits for WBF and that WBF compensated MYBA.)

A review of Alexander Delgado's personal account records with Bank of America reflected a pattern of cash deposits totaling several thousand dollars most months from sources that were not readily identifiable by the records. The deposits and/or counter credits, sometimes exceeding \$10,000 a month, could be accounted for by income from MYBA – though a review of MYBA's checking account suggests a more modest monthly stipend to Delgado. The investigation did find Delgado has requested and was approved for outside employment with MYBA. However, the amounts disclosed on his financial disclosure forms -- \$40,000 in 2012

and \$24,000 in 2014 – appear to be significantly less than the amount of cash deposits. No financial disclosure form was submitted for calendar year 2011, the investigation found. However Delgado did subsequently file the 2011 disclosure.

And while MYBA did issue occasional checks to Delgado in amounts of up to \$4,000 per month, there were many months in which no MYBA checks could be found for Delgado, and the amounts of cash deposits were often far in excess of the typical MYBA pay check. For example, cash deposits of \$6,700 were reflected in August 2012. In August of the following year, a cash deposit of \$5,500 was made into Delgado's personal account. In October 2013, cash deposits exceeding \$16,000 were recorded in the same account. In February of 2014, cash deposits totaling about \$8,500 were shown; nearly \$10,000 in May of that same year.

The review of personal account records for Delgado and his wife did not yield evidence of any payments to the primary subject of the investigation, his stepfather Juan Pascual. Nor did the review of MYBA's financial records reflect any payments to Pascual – until June of 2014, by which time Pascual had retired from his post at the Miami parks department and had begun to serve as the primary manager of MYBA's program at Brothers to the Rescue Park.

On Jan. 28, 2015, COE received a copy of a spreadsheet prepared by Lazaro Garcia showing that, for Grapeland Park, MYBA paid a total of \$6,215 in fees from 2011 through 2014, while receiving a total of \$495,890 in in-kind services from the City of Miami's Department of Parks and Recreation, mainly in the form of waived facility fees and staff fees.

### **Conclusion(s):**

The investigation found anecdotal evidence Pascual may have engaged in exploitive behavior, a few examples include i.e., allegedly calling Sabrina Martinez to ask her to move the girls' league softball practice or pressuring Wesley Carroll not to enforce the city's vendor policy – are already beyond the three-year period required for enforcement. A more recent example would seem to involve Pascual's advocacy for waiving staff fees for MYBA on at least two occasions (December 2012, January 2014), as described by Lazaro Garcia in his interview. While this action clearly benefited MYBA and saved the organization a significant amount of money, it could be argued that this policy also benefited a larger class of entities – i.e., all baseball academies – not just MYBA.

With respect to Sec. 2-11.1(l), *Prohibited investments*, and Sec. 2.11.1(n), *Actions prohibited when financial interests involved*, it is doubtful these provisions might apply to Pascual.

What's known is that MYBA is a registered not-for-profit corporation and 501(c) (3), and that two of his children are officers in, but not owners of, said corporation. MYBA does employ, at least on a part-time basis, numerous members of Pascual's family, including his two sons. His stepson Alex is MYBA's primary executive and highest-paid employee, though he cannot be considered an owner *per se*. Moreover, the relationship between the City and MYBA (or any of the other baseball academies for that matter) does not constitute "contractual" agreements. They are not vendors in the sense that they provide a good or service to the City in exchange for payment. Overall, there is insufficient, direct and reliable evidence to proceed with any ethics complaint against Pascual.

There may be a number of potential violations of Miami City Code relating to the usage of



parks and recreational facilities, most notably Sec. 38-54, *Use of facilities generally*, which states in applicable part that "all facilities [are] to be used on a first come, first serve basis" and that "no group or organization be permitted to monopolize any area or facilities to the exclusion of all others." The fact that the Grapeland complex is named after the subject's father and founder of the precursor entity to MYBA may suggest to staff and other affected parties that the Grapeland complex belongs to the Pascual family, not to all residents.

Other potential violations of Miami City Code might include Sec. 38-65, *Peddling, vending and merchandising*, with respect to the enforcement of vendor permits and concessions, and Sec. 38-73, *Permits*, and the related Sec. 38-75, ... *Rules and conditions*, which states in subsection (2) that permits issued by the parks department are "nontransferable," suggesting that MYBA would not be allowed to obtain permits for WBF or any unrelated third-party. None of these City Code violations fall under the jurisdiction of the Ethics Commission however.

The fact that MYBA charged WBF a fee or "tournament hosting contribution" for the use of fields permitted in the name of MYBA also raises questions as to whether MYBA is receiving an improper benefit and depriving the parks department of a potential source of revenue.

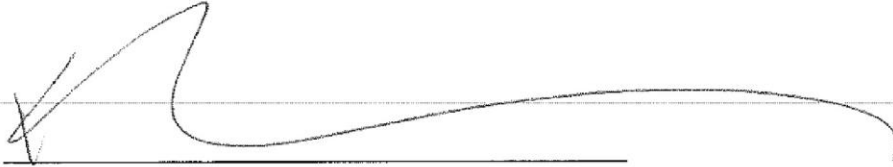
In conclusion, it would appear that the subject took measures to distance himself from direct involvement in issues affecting MYBA, since being penalized by an ethics complaint in 2006, but it would also appear parks staff was nonetheless mindful of his presence and very much aware of his relationship to MYBA. However, it is clear that even after the conflicting relationship between Pascual/MYBA and the City was brought to the attention of the City administration in 2006; little if anything was changed or done to change the status quo, in fact, Pascual was promoted to Parks Director.

There is also little question that actions taken by Pascual regarding the enforcement or failure to enforce provisions of the City Code relating to fee waivers and vendor permits had an economic impact MYBA worth thousands of dollars.

The findings contained in this report will be shared with the administration of the Miami Department of Parks and Recreation and the City's Auditor General for follow-up action, including consideration of the following recommendations relating to the usage of city parks:

- The city should institute partnership agreements with a revenue-sharing clause for all entities with annual revenues in excess of \$100,000.
- The city should adopt a competitive process for permits awarded for primary or exclusive use of city facilities such as the Grapeland baseball complex.
- The city should adopt a competitive process for all major concession stands in order to maximize its share of sales revenues.
- The city should establish a clear and consistent policy for the waiver of any facility rental and staff fees at parks and recreational venues.
- The city should require an annual audit of non-profit organizations required to file IRS 990 statements to ensure transparency.



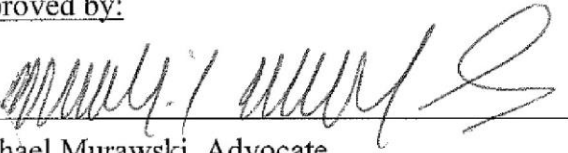


Karl Ross, COE Investigator



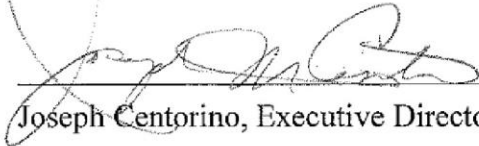
Silvia Batista, COE Investigator

Approved by:



Michael Murawski, Advocate

5/19/2015



Joseph Centorino, Executive Director

5/20/15