Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: PI 16-043	**Case Name:** Victoria Mendez, Miami City Attorney	**Date Open:** CASE	**Date Closed:**
Complainant(s):	**Subject(s)**: Victoria Mendez, Javier Vazquez, Gustavo De Ribeaux, Carlos Tosca	Sept. 9, 201 CLOSED Date:	3/15/17

Allegation(s):

On Sept. 9, 2016, Miami City Attorney Victoria Mendez contacted COE Executive Director Joseph Centorino and requested this agency review allegations against her contained in a Sept. 8, 2016, letter from City Commissioner Ken Russell with respect to a zoning matter. The property in question is located at the corner of Ingraham Highway and Battersea Road.

Russell's letter suggests Mendez exploited her official positions by intervening in an administrative matter on behalf of a friendly attorney and pressuring her legal staff to override a decision by city planners to potentially limit the subdivision of a property in Coconut Grove. Russell's letter contends that Mendez failed to provide requested emails in possible violation of the Truth in Government provision in the Citizens'Bill of Rights contained in the County Charter.

In making her request to COE, Ms. Mendez stated: "Allegations have been made that impugn the integrity of my office. Please see the attached letter with those allegations given at the City of Miami commission yesterday. It is my perspective that I have done nothing inappropriate and that once the investigation runs its course, I will be vindicated. The allegations or tactics appear to be part of a political agenda to undermine a previously issued opinion, which is amply supported by law and [could] avoid untold liability to the City. …"

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 …"

The Miami-Dade County Citizens Bill of Rights, subsection (A)(2), titled *Truth in Government*, states in applicable part that: "No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public."

Investigation:

Interviews

On Sept. 30, 2016, COE investigator Ross attended the Miami City Commission hearing regarding the proposed firing of City Attorney Mendez.

At the close of the hearing, Comm. Russell stated that Mendez's proposed termination was "about being left in the dark" and "not just a matter of [her] legal opinions."

When it became clear he did not have enough votes to oust Mendez, Comm. Russell expressed he did not "take back" what he had said, but added: "We will move on."

City commissioners stated that they preferred to wait for the findings of an independent agency such as COE before taking any action with respect to Mendez.

Investigator Ross asked Miami City Clerk Todd Hanlon for a copy of any support items filed along with the resolution to fire Mendez. He said he would provide these items.

The requested items were received on Oct. 5, 2016, and added to the file.

Amanda Quirke Hand, former Assistant City Attorney
Office of the City Attorney
City of Miami, FL
Nov. 29, 2016

By way of background, Ms. Quirke stated she is a graduate of the Florida State University School of Law. She said she worked in private practice for about 10 years with, among others, the law firm Tew, Cardenas prior to joining the City of Miami's City Attorney's Office in February 2014. She noted that her areas of primary expertise include planning and zoning and historic preservation issues.

Ms. Quirke said the matter at issue involved a tentative plat application or "t-plat," and that all such plats must go through the City of Miami Plat and Street Committee. She said the committee is comprised of officials from the planning and zoning departments, public safety agencies, public works, and the city manager's office. In particular, the committee required a "warrant" on the Battersea property.

She said a warrant is essentially an additional permit that allows for public input. She said that during her meeting with Battersea attorney Vazquez on Oct. 29, 2015, Vazquez was reiterating the arguments made in his Oct. 22, 2015, letter to City Attorney Mendez in which he contended no warrant should be required and asked that Mendez reconsider the staff's decision to impose such a requirement.

Ms. Quirke didn't offer an opinion when asked whether she felt she was being lobbied by Vazquez, but noted that all plat applications must obtain final approval from the City Commission.

Ms. Quirke said that she can see both sides of the legal issue as to whether a warrant should be required at the Battersea project. She said her understanding of what is considered a "building site" is based on the city's zoning code, as defined in Article 5.4 or 5.5. She said that under one interpretation of the code – the one she initially relied upon – the existence of a home or structure on the subject property made it, in her view, a building site, and that a warrant would be required under section NCD-3. "I think it could be interpreted both ways," she said. "Zoning made the interpretation it required a warrant."

Ms. Quirke stated she could not recall why she was absent on the date developers were seeking to meet with the Mendez. She said it would have been a short absence on her part and not any lengthy absence due to travel or health issues. She noted that, since the birth of her first child earlier that year, she was only working part-time (20 hours a week) and that Daniel Goldberg frequently served as her "back-up." She said she did not feel Mendez was shopping to find an attorney who would be more flexible.

Ms. Quirk stated she felt her initial position on the matter – that a warrant process was required for the final plat – was the "conservative approach," but also said she understood the developer's position, as articulated by Vazquez, and felt that it was equally a valid interpretation of the code. With respect to her colleague Assistant City Attorney Goldberg's subsequent reversal on the matter, she said: "I don't think he was necessarily caving in [to pressure from developers] … He was just looking at it both ways."

Ms. Quirke advised that, to her knowledge, the final plat application for the Battersea Woods project was denied by the Miami City Commission sometime after she left the city.

Ms. Quirke concluded the interview by saying she had a good working relationship with Mendez and held a high opinion of her professionally. She said nothing about Battersea changed her opinion of Mendez,

nor prompted her departure. "I think she's excellent," Quirke said. "She knows a lot about the city. She has institutional knowledge. She's very thoughtful. She's always trying to get to the right answer."

Ms. Quirke stated that it was within the realm of possibility that the developer could file a lawsuit against the city if staff refused to approve the t-plat application. "We get petitions of cert (certiorari) all the time if a big application is denied," she said. "They (developers) try to negotiate and work it out, but we get sued all the time when they can't." Quirke said that, at no time, did she feel like she was pressured to change her analysis, either by Mendez, her supervisor, or by the developers or Vazquez.

Ken Russell, City Commissioner
Eleazar Melendez, Chief of Staff
Leah Weston, Policy Director
Dec. 15, 2016

During an interview at Miami City Hall, Comm. Russell and his staff recounted their efforts to obtain information in response to constituent concern about the plat process for Battersea Woods LLC. Also present were his chief of staff, Eleazar Melendez, and Leah Weston, his policy director.

They advised that constituents in Coconut Grove began to voice concerns about the lack of a warrant requirement for the project in the beginning of April or May 2016. The commissioner noted that the issuance of a warrant allows for an appeals process, but said that no hearing is held unless an appeal is filed. He said that such warrants are unique to Coconut Grove under the city's zoning code.

They further advised that, during the staff briefing preceding a Planning and Zoning (P&Z) portion of the City Commission meeting (Sept. 8, 2016), they raised the issue with the City Manager Daniel Alfonso, who responded that it was the previous zoning administrator (Irene Hegedus) – and not the city attorney – who determined that no warrant was required for the Battersea plat application.

They said it was not until sometime later they became aware of the Nov. 20, 2015, email by Assistant City Attorney Goldberg stating that no warrant was required for the t-plat application. Once they became aware, Melendez said he filed a request for information with City Attorney Mendez.

Mr. Melendez provided a copy of the email request regarding the Battersea project, dated July 25, 2016, addressed to Mendez and copied to Goldberg, which reads as follows:

"Madam city attorney:

"In anticipation of hearing this item on Friday, we will be meeting with the owner of the property. Can you please provide us with the email exchange between your office, the planning department and the property owner's attorney that have to do with whether a warrant was required or not in this re-plat?

"I'd like to have that read beforehand.
"Thank you,

"Eleazar David Melendez
Chief of Staff
Office of Commissioners Ken Russell"

Comm. Russell and his staff indicated that City Attorney Mendez delegated the request to her assistant, Goldberg. They said Goldberg provided about 12 emails in response – all of them dated on or posterior to the Nov. 20, 2015, email he wrote issuing a legal opinion that no warrant was required. They noted that none of the emails suggested Mendez was involved in any way in arriving at the decision, nor that Goldberg's opinion reversed an earlier opinion by then Assistant City Attorney Quirk.

Comm. Russell said he felt that Melendez's email request was clear in that it sought copies of all emails between the City Attorney's Office, the Planning Department, and developers regarding the Battersea project – not just the emails exchanged after the date of Goldberg's final opinion.

"To leave out all the emails leading up to that opinion – and the evolution of that opinion – was just deceptive," Comm. Russell said. He noted he and his staff initially felt that Goldberg was the one withholding information, stating that they went to meet with Mendez to share their concerns.

Comm. Russell said they "begged" Mendez "to get to the bottom of this" – with respect to the emails – and thought she would hold Goldberg accountable. They said that at no point during this meeting or subsequent meetings did Mendez disclose that she had a role in shaping the opinion.

Comm. Russell said City Attorney Mendez kept telling him, "You just don't like the opinion." Melendez said that some "very tense" meetings ensued and that, as a result of Ms. Mendez's alleged or perceived stonewalling they decided to put in a request with the city's IT department for assistance.

Comm. Russell and his staff said they received 45 to 50 emails in response to the first of two requests made through IT, including many of the emails dated prior to Nov. 20, 2015, and showing that Mendez had a hand in reversing the opinion about the need for a warrant. Comm. Russell stated that the emails were "very material, very responsive to the (records) request and," in his view, "very withheld."

Comm. Russell said he did not include among the formal exhibits in his complaint, emails of a personal nature between Mendez and Vazquez, such as lunch invitations or plans to spend time boating.

Melendez stated that the first search by the IT department – dated Sept. 2, 2016 – was for emails between city officials and lobbyists and representatives acting on behalf of the developer, including Vazquez and others. He said a second such request – dated Sept. 7, 2016 – was broadened to include internal emails among the City Attorney's Office with the search word "Battersea" in the subject.

Asked if he felt that Vazquez had lobbied city officials on this matter, Comm. Russell replied: "Yes. Oh yes, 100 percent. He was getting paid by a client to change the position of the city." He added that the issue – the plat application was "guaranteed to come before the City Commission" for a vote. His assistant, Leah Weston, further noted that Vazquez had "a lot of interaction, not just with the city attorney's office, but with planning and zoning staff."

With respect to whether the City Attorney's actions might represent a possible violation under the Truth in Government provision of the Citizen's Bill of Rights, Comm. Russell added that he felt that the provision should apply to the request his chief of staff made to City Attorney Mendez, noting: "I was certainly representing the public (when his office made the request) … We started this investigation on behalf of the public," adding that residents in his district were the ones who first raised concerns.

Comm. Russell added that he felt that his public records request was clear and unambiguous and that Mendez not only failed to produce key emails, but also failed to disclose her involvement at any point during several subsequent meetings and phone conversations. "She never gave us the back story."

Comm. Russell said that after reviewing the emails obtained through the IT office, he did not go back to Mendez to seek further clarification. He said he decided, instead, to put the matter before the commission. He noted that on the morning of the Sept. 8, 2016, City Commission meeting, he did meet with Mendez as a courtesy to inform her of his decision to seek her termination by commission action.

Stated Russell: "When I analyzed the emails, I really felt I had to take it before the commission … I got tired of trying to pull teeth from her … It wasn't just the written request (for information) and what was given (in return). It was all the meetings and the months and months of withholding information."

He said Mendez was defensive and accused him of plotting against the City Attorney's Office on behalf of several well-known critics, individuals such as Grant Stern who have sued the city. He said Mendez told him, "You've always had it out for me all along." He said that Mendez then orchestrated public outcry through the Cuban American Bar Association (CABA) and Miami Police union leader Javier Ortiz, who referred to Comm. Russell as the "puppeteer of a shadow government."

Comm. Russell also said City Attorney Mendez told him during a phone conversation that he didn't have the votes to get her terminated, further souring their working relationship.

On Dec. 23, 2016, this investigator spoke with Policy Director Weston regarding a 263-page document detailing text messages between Comm. Russell and her staff. Weston advised that members of CABA made some "very aggressive" public records requests once Comm. Russell had gone public with his concerns about City Attorney Mendez and that the document in question was a result of that.

Daniel Goldberg, Assistant City Attorney
Miami City Attorney's Office
Dec. 28, 2016

Mr. Goldberg provided a sworn statement at the office of his attorney, Jay Solowsky, located at 201 S. Biscayne Blvd., Suite 915. Also in attendance was Ethics Advocate Mike Murawski.

Mr. Goldberg advised that he graduated from the University of Miami Law School in 2011 and was placed at the City of Miami, working initially for former Comm. Mark Sarnoff and later transferring to the City Attorney's Office in 2014, where he has been employed ever since.

Mr. Goldberg said he mainly handles land use and zoning matters, and reports to Assistant City Attorney Rafael Suarez, Deputy City Attorney Barnaby Min, and City Attorney Mendez. He said he became

involved in the Battersea Woods t-plat application controversy on or about the fall of 2015. He said he initially met with Assistant City Attorney Quirke, his colleague who had been handling the issue, and that he initially agreed with her assessment that a warrant was required for the property in question.

Goldberg was shown his Oct. 30, 2015, email identified as "Attachment H," in which he memorialized his conversation with Ms. Quirke and expressed his view at the time that a warrant was required. He told investigators that he later concluded this was "an erroneous conclusion" and that he changed his mind after hearing arguments from the developer's attorneys. "This was an erroneous conclusion of law and I don't like the fact that I wrote it," he said. "I wrote it because it fell into a platting exception."

Mr. Goldberg said that when he was asked to review the matter he did not receive any guidance from City Attorney Mendez. "None. She didn't give me any guidance to which way this went. She just told me to get involved with this." He further stated that he was not influenced by any remarks she made on emails he may have been copied on with respect to her views regarding the warrant issue.

Mr. Goldberg said Mendez was present during a subsequent meeting at her office on or about Nov. 4, 2015, with the developer's attorneys, Vazquez and Paul S. Figg. He said they "argued the NCD-3 … [that] that portion (of the code) didn't apply to this situation … They presented their argument."

Following the meeting, Goldberg said he went back and read what he referred to as "the Figg opinion" several times, and stated that he eventually he changed his mind as to the applicability of the portion of the code in question regarding Neighborhood Conservation Districts (NCDs). He said City Attorney Mendez did not offer guidance or try to influence him in any way after the meeting.

"I read the 'Figg opinion' a couple of times… It took me a little time to understand it. I felt that it was a legally sound opinion … I look at liability as well. … When the code is not well-written, and there is a cogent opinion (to the contrary), I have to consider it … I found their argument more legally correct."

Mr. Goldberg stated he did not think the NCD-3 portion of the zoning code was consistent with Miami 21, the new zoning code adopted in 2010. He said this portion – regarding Neighborhood Conservation Districts for places like Coconut Grove – was vague and had been "ported over" from the old zoning code. He said he did not feel the Battersea property was subject to this portion of the code since the portion of the land where the house had been built was un-platted land at the time.

Again, he indicated that at no time did he feel pressured to change or alter his opinion.

With respect to the request by Comm. Russell's staff for emails, Mr. Goldberg advised that Mendez delegated this task to him, telling him: "Get them what they want." He said his search for relevant emails consisted of opening his Outlook program and entering key words such as "Battersea." He said he did not recall what other key words, if any, he used to conduct the search. He said he saved whatever emails were responsive to his search and forwarded them as attachments to Comm. Russell's chief of staff, Eleazar Melendez. He said he did not share his research findings with City Attorney Mendez.

Mr. Goldberg said he did not intentionally withhold any of the requested items and that he did not review them to see if anything might have been embarrassing or problematic for the City Attorney. He said there would be no point in doing this since any potentially embarrassing emails would remain on the server.

Asked to explain the discrepancy between his search results and those of the city's IT Department, he suggested that any emails between the City Attorney's Office and Battersea developers that pre-dated his involvement in the issue in late October, would likely not be found in the search results. "I'm not on here," he said, indicating the emails that predated the time he was first assigned by Mendez to review the Battersea issue. "So if I wasn't here, then I wouldn't have it on my computer."

Asked to explain emails such as Attachment H, his Oct. 30, 2015, email to City Attorney Mendez stating he agreed with Quirke that a warrant was required (initially), and why that email was not included among his search results (based on the emails provided to COE by Comm. Russell's office), Mr. Goldberg said it was possible that either his search didn't produce the email or that he made an inadvertent error and, as a result, may have failed to "drag and drop" the email file and attach it to the response email. (Note: It was later established that Comm. Russell's office had already obtained a copy of this email.)

"I didn't withhold anything," Goldberg said, adding that any omissions he made were inadvertent. He said he couldn't recall whether he copied Mendez on his response items, but said he believes that he probably did. He said that he did not discuss the matter further with her until it became a subject of political controversy in early September and she told him that Comm. Russell "wanted her job."

Mr. Goldberg, acting on the advice of his attorney, declined to say whether he felt City Attorney Mendez had acted diligently in her response to Comm. Russell's request for relevant emails. He said that she did not ask him to withhold any of the items in question and that she did not try to pressure him. He further stated that he was not aware of any personal relationship Ms. Mendez may have with Vazquez.

Victoria Mendez, City Attorney
Office of the City Attorney
City of Miami, FL
Feb. 15, 2017

Ms. Mendez appeared for a voluntary statement at the offices of COE on the above date; she was accompanied by her attorney, Mark Herron. She responded to questions regarding her involvement in the Battersea Woods LLC zoning and re-plat application process – the subject of this inquiry.

Asked about her professional and academic background, Ms. Mendez said she attended the University of Miami as an undergraduate, as well as for her post-graduate and legal studies. She said she earned a degree from UM in public administration, then attended UM Law where she earned her legal degree. She said she worked for the Miami-Dade County State Attorney's Office from 2000 to 2004, serving as a prosecutor in the criminal and juvenile justice divisions, including serious felonies.

Ms. Mendez said she joined the Miami City Attorney's Office on in March 2004, serving variously as a supervisor in the Land Use and Zoning division and said that she also handled code enforcement issues, as well as transactions on behalf of the office. She said she later becoming a deputy city attorney, serving in that capacity until she became City Attorney in September 2013. She said she is active in professional organizations such as CABA and the Dade County Bar Association.

With respect to any prior relationship with Battersea attorney Vazquez, she advised her dealings with him have been "purely professional." She said she does not know him from school or through any professional

organizations. She said she once asked him to serve as a speaker at a luncheon about transportation-related topics since he serves on the MDX board. She said she has never socialized with him and does not recall any email invitation from him to go boating, as claimed by a Comm. Russell staffer.

Mendez further stated: "He's a very nice attorney, well-regarded … We have a purely professional relationship. I don't know the name of his children or his wife."

Ms. Mendez advised the issue before the city was the t-plat application for Battersea Woods, and that members of the Street and Plat Committee, at their Sept. 3, 2015, meeting imposed a number of conditions – including complying with a warrant process, as mandated by Section 3.6 of the Miami 21 zoning code. She said all the relevant departments have representatives on this committee. She said the application, once it cleared committee, would go before the City Commission for a "Final Plat."

Ms. Mendez said that this was scheduled to happen and did happen on Sept. 8, 2015, the same day Comm. Russell called for her firing, and that, partially because of this and partially because of citizen opposition, the City Commission voted 5-0 to deny the Battersea Woods t-plat application.

She noted that under a tentative plat application, the developer can begin construction on a project but assumes all liability should the application be denied, as was the case in this instance. She said that Battersea has since filed an appeal consisting of a Writ of Certiorari that would require the City to approve the final plat and allow construction. She said that, in the case of the Battersea project, the developer had already started construction on two of the five planned residences.

Ms. Mendez said the case has not been adjudicated yet, and that no arguments have been heard in Appellate Court. She said the case is still in the early stages and briefs are yet to be filed.

Ms. Mendez was asked whether it was appropriate for her office to get involved in a zoning matter absent a direct request for the zoning administrator, as contended by Comm. Russell, citing Sec. 7.1.1.1 of the City Charter. She stated that, as a practical reality, her office gets involved whenever "there's a difference of opinion between developers and staff" and "someone calls the law department." She said that, whenever there is a specific legal question regarding the interpretation of the zoning code, her office would normally receive a written request from the zoning administrator – presently Devon Cejas.

Ms. Mendez advised she and Goldberg met with Vazquez and Figg, along with the Battersea principals – Carlos Tosca and Gustavo De Ribeaux. She said she did not feel as if she were being lobbied, though she acknowledged this was a matter of interpretation. "I don't see it as lobbying … I see it as an exchange of information between an opposing counsel and myself … for me to figure out what's right on a particular issue and any liability that could arise (as a result of staff's position)."

Ms. Mendez stated she felt she acted in an impartial manner and had no interest in the outcome of Battersea's t-plat application or any legal decision. "As the City a\Attorney, I don't care how [any ruling or opinion] goes so long as it's correct, it's legal and it minimizes liability for the City."

On the other hand, Ms. Mendez opined that if Vazquez and his clients were making similar arguments to City staff, seeking to have them alter their position on the warrant requirement, then "it's definitely lobbying of staff on these issues." Mendez said she assumed that if Vazquez or other representatives of the Battersea were to lobby, she assumed they would follow their own applicable codes of conduct.

Asked about the Oct. 24, 2015, email she wrote to Assistant City Attorney Quirke instructing her to "figure out" the Battersea issues, Mendez said she was not telling Quirke to accommodate the developers, stating she was merely asking her to "figure out what he's talking about in his (Oct. 22, 2015) letter … figure out what staff is talking about … figure out what's going on … figure out where we are."

Ms. Mendez said she believes she probably did speak to Vazquez prior to assigning the Battersea application question to Quirke, but said she doesn't recall any follow-up conversation with him (as he had requested in a prior email). She stated that, "I can't handle everything in my office," and has to delegate.

Ms. Mendez said that, with respect to the initial conversation with Vazquez, "He was like, 'Let me give you some background." She noted that developers were aware of one or two other properties in the area that were not required to undergo a warrant process, prompting developers to raise fairness claims. "He basically told me he was going to send me this letter, so I did speak to him briefly."

Ms. Mendez stated she was in no way "shopping" for a different or more favorable opinion when she re-assigned the issue to Goldberg. She said Quirke was pregnant and had been working part-time, and stated that Goldberg routinely filled in for Quirke if she were not available. She said Goldberg "dabbled" in zoning matters, and had been handling platting issues. Ms. Mendez said she assigned the issue to Goldberg only because Quirke was not available, and furthermore rejected the contention that she was seeking to get a reversal of Quirke's initial opinion siding with staff that a warrant was required. "That does not happen in my office. There is no shopping. It was based on her part-time schedule."

Ms. Mendez said she did not offer Goldberg any guidance following their meeting with the Battersea attorneys and principals. She said Goldberg may have briefed her about his Nov. 20, 2015, email stating no warrant was required. She said she did not review his opinion or instruct him to take a position one way or the other. "He did his own research without my input. If we talked about it, it was very briefly."

Ms. Mendez said she had no recollection of ever telling Comm. Russell or a member of his staff that she felt that Goldberg's Nov. 20, 2015, opinion was in any way "flawed" – as the Commissioner stated in his complaint. She was asked to review his complaint letter and said she was not familiar with the email cited as the basis for this claim – an email from her dated Sept. 7, 2016, according to his letter.

Asked whether she felt her response to Comm. Russell's request for emails was thorough and made in good faith, she asserted that it was. She noted the request was made at 8:05 p.m. on Monday July 25, and that this left only two working days prior to the July 28 City Commission meeting. She stated she was busy meeting with elected officials to brief them on the agenda, and didn't have much time to reply, noting Comm. Russell's staff wanted the emails prior to a meeting that Friday with developers.

Mendez showed a copy of her phone records indicating she had a 17-minute conversation with Eleazar Melendez, Comm. Russell's Chief of Staff, the following day at 5:33 p.m. She said that during that conversation she explained to Melendez that it would not be possible for her to do a comprehensive search on such short notice, and suggested they use the IT department for such a request. She asked him to identify the main items they were hoping to get prior to the meeting. She said that Melendez told her they wanted a copy of the Figg letter, and any interpretations from her office regarding the warrant issue. She said she went through her emails and found a copy of the email from Figg and supplied that to Melendez, and said Melendez thanked her for supplying the item. She said she asked Goldberg to supply a copy of any items containing his interpretation of the code with respect to the warrant issue.

Regarding her 17-minute conversation with Melendez, she said, "The scope of the request (from Comm. Russell's office) was narrowed … I got them what I thought was responsive to their request … I told them that if they wanted everything (responsive to the initial email request), you should do that as an IT request because I can't do that in the turnaround time you wanted."

Ms. Mendez stressed that she was the one who suggested Comm. Russell's office enlist the IT department to do a more exhaustive request and contended that there was no intent on her part to hide anything. She said that neither she nor Goldberg had access to the complete universe of responsive emails. She said she thought she had, acting in good faith, supplied the items needed for the meeting. She stressed that there was no intent to stonewall the commissioner or his staff, nor to conceal her earlier involvement in the process and communication with attorney Vazquez and others acting on behalf of the applicants.

Based on Mendez's recounting of events, a timeline was created with respect to the public records request from Comm. Russell's office, as follows:

- July 25, 2016, at 8:02 p.m. … Initial records request made to Mendez and Goldberg requesting "email exchanges between your office, the planning department and the property owner's attorney that have to do with whether a warrant was required or not in this replat?" Melendez stated he wanted the items prior to a meeting later that week with Battersea's attorney.

- July 26, 2016, at 10:25 a.m. … Text message was sent from Mr. Melendez to City Attorney Mendez asking to "touch base" on Battersea and another item "when you can."

- July 26, 2016, at 5:33 p.m. … Phone records indicate a 17-minute phone conversation between Mr. Melendez and City Attorney Mendez took place during which Mendez says she advised Mr. Melendez that because it was a meeting week and she was busy briefing elected officials she would not have time to conduct an exhaustive review of emails regarding Battersea and suggested he ask the IT department to assist. She said she told Melendez she would attempt to get him any specific items he wanted prior to Comm. Russell's meeting with the Battersea attorney, and stated Melendez agreed to narrow the scope of his original request to focus mainly on emails from attorney Figg containing legal arguments opposing a warrant process.

- July 26, 2016, at 6:31 p.m. … Emails provided by Comm. Russell's office show that ACA Goldberg responded less than one hour after the phone conversation and sent an email to Mr. Melendez containing numerous email attachments he felt were responsive.

- July 26, 2016, at 8:52 p.m. … Email sent from Melendez to ACA Goldberg requesting the first email from attorney Figg "in full" and with "an important attachment" – presumably the legal opinion found in the Oct. 22, 2015, letter to Ms. Mendez signed by Vazquez.

- July 27, 2016, at 10:22 a.m. … Email sent from ACA Goldberg to Melendez the following morning stating: "Attached is the only e-mail I have from Mr. Figg" … and offering to print and scan the email if Melendez is unable to open the attachment.

Comm. Ken Russell
City of Miami, FL
Feb. 16, 2016

In a follow up interview at COE offices, Comm. Russell stated that at no point did his Chief of Staff, Eleazar Melendez, tell him that City Attorney Mendez suggested his office approach the IT department and have them retrieve the emails relevant to the July 25 records request.

Comm. Russell said his understanding was that whatever items Melendez obtained from ACA Goldberg represented the entirety of the City Attorney's Office's response. He said Eleazar reviewed those items and suspected they were incomplete. He said he felt Eleazar "acted on his own initiative," when he went to IT to request assistance with the matter.

Comm. Russell stated further that if Eleazar were to dispute City Attorney Mendez's statement that she was the one who suggested Comm. Russell's office enlist IT, he would side with his Chief of S taff. "If it turns out to be a 'he said, she said,' I know who I'd believe."

Comm. Russell questioned why City Attorney Mendez didn't mention that she had suggested using the IT department when he confronted her on the day he publicly requested her firing. "The morning of the meeting, when I met with her and showed her the emails we received (from Goldberg) an the ones we received from IT … she never said she was the one who suggested we go to IT (in the first place) … She said it was an oversight on her part … an innocent mistake."

Comm. Russell stated that, in prior meetings and subsequent conversations with Mendez, he felt that she was being less-than-forthcoming about the matter. However, he said that he never confronted her about the apparent lack of emails from ACA Goldberg obtained in late July.

"There was never a 'There's got to be more emails' talk," Comm. Russell said. He added that after the request had been made to IT and the remainder of the emails were discovered by his staff, he did not confront Mendez about the apparent discrepancy between the two "email dumps."

With respect to the text messages from Melendez and some of the "aggressive language" about forcing City Attorney Mendez's resignation, Comm. Russell said that his Chief of Staff is his chief political strategist and that such talk would not be uncommon. "He's always been very rough around the edges with respect to decorum and using the right terms," Russell said, before adding: "This is the culmination of many months of frustration."

Comm. Russell reiterated his belief that Battersea attorney Vazquez was lobbying City Attorney Mendez, her staff and others as part of his efforts to oppose the imposition of a warrant requirement. "If he never got involved, the warrant requirement would have remained. This never changed until Javier Vazquez got involved at 'the Vickie level.' … There was lobbying going on all over the place. When he's applying pressure for [staff] to change its opinion, that's lobbying to me. It's offensive to suggest otherwise."

Eleazar Melendez, Chief of Staff
Miami City Commissioner Ken Russell
Feb. 16, 2017

Mr. Melendez said he did not recall having a phone conversation with City Attorney Mendez in July of 2016, stating he spoke to her office regularly and could not recall any specifics. He reviewed a record showing two calls shortly after 5:30 PM on July 26 and did not dispute that the calls took place. He said he could not recall any of the specifics of the 17-minute conversation, though a text message from him to Mendez earlier that day references the Battersea issue.

When told of Mendez's claim that, during that conversation, she suggested he go to the IT department to conduct a search for relevant emails, Eleazaer responded: "No, absolutely not … The IT office's search is something I did later, specifically on the suspicion that I wasn't getting everything" from ACA Goldberg following the July 25 email request for emails relating to the warrant issue. He said he had no recollection of any such suggestion from Ms. Mendez and further rejected the idea that they had agreed to narrow the scope of her office's response to just those items relating to the Figg legal analysis.

Mr. Melendez stated he became aware of Goldberg's email removing the warrant requirement through a conversation with Battersea representatives. He said he did not request that specific email because a copy had already been provided to him. He said he was seeking any correspondence with developers that may have presented a legal analysis that served as the basis for Goldberg's reversal of staff's opinion. That is why, he said, he was looking for the Figg letter, though he didn't know it by name at that time.

Mr. Melendez insisted that had Mendez suggested to him that they request the emails through IT, then that is what he would have done. He said he would have done so promptly in an effort to retrieve the emails prior to the pending meeting with developers, rather than waiting until after the meeting – by which time his "Spidey senses" were telling him that the response items from ACA Goldberg were incomplete. He said City Attorney Mendez, in his view, was never forthcoming about the prior opinion by staff regarding the warrant. He said there were several "tense conversations" with her about the final opinion and how it was arrived at, including one in his office where Planning Director Francisco Garcia was present. He said that on that occasion, Comm. Russell was on the phone with Mendez and that he was raising his voice, which is something that was uncharacteristic for him.

Nonetheless, according to Mr. Melendez, he never followed up with ACA Goldberg to share his concerns or suspicions about the missing emails, and, further, he did not confront City Attorney Mendez about them either following the two separate "dumps" they received through IT.

Mr. Melendez further stated that the harshly worded text message regarding Mendez's proposed firing was likely authentic and reflected the political strategizing taking place at that time.

Jacqueline Ellis, Acting Chief of Land Development
City of Miami Planning and Zoning Department
March 1, 2017

Ms. Ellis responded to the offices of COE for an interview regarding the handling of the Battersea Woods LLC t-plat application. She advised that she was a Planner II at all times relevant to this inquiry, and that she has worked in a similar capacity elsewhere, most recently for the City of Pasadena, Calif.

She said her duties with the Miami Planning and Zoning department (P&Z) included attending meetings of the City's Plat and Street Committee, and that she believes she was likely the P&Z staff member who added the requirement (condition No. 25) to the Battersea Woods t-plat that a warrant process be followed in order to comply with Section 3.6.6.1 of the City's zoning code regarding Neighborhood Conservation District (NCD) overlays. She said this requirement had not been consistently applied in the past, but that she and other members of the planning staff were striving for more consistency in this respect.

Ms. Ellis said that the previous review of the developer's t-plat did not include the warrant requirement. She said t-plats are typically valid for 18 months and must be re-submitted to the Plat and Street Committee if the conditions have not been met prior to the expiration of the previous review. The Battersea Woods property sought to subdivide an irregularly shaped parcel into five lots.

Ms. Ellis said she recalled discussing the 2015 t-plat with Pamela Stanton, the zoning plans processor, and that they agreed the Battersea Woods project would need to adhere to the warrant process. This process would require the City and developer to notify abutting property owners and registered property owners associations (POAs) about the t-plat, thereby providing them the opportunity to review the plans to subdivide the property in question into as many as five parcels and to register any opposition or concerns with P&Z staff. "I didn't think they could do that many lots," Ellis said. "We all agreed."

Ms. Ellis further recalled that Stanton's position was that the property could only be subdivided to the next smallest size from its present size of just under 44,000 square feet. This is reflected in a staff memo, dated Oct. 2, 2015, about the warrant requirement that Stanton prepared stating that, in her opinion, the property could only be subdivided into parcels of 20,000 square feet as "single family oversized lots." This designation represents the next step down from the property's existing zoning.

Ms. Ellis did allow that, "The problem is the NCD is not written very well … It's not always crystal clear." She said that, for instance, once you have a house built on a building site and the house is removed, a question arises as to whether the property should still be considered a building site. She contended this question was addressed by language stating all sites predating Sept. 24, 2005, shall not be "diminished" in size except by warrant and subject to the design review criteria.

This criteria – found in Article 4, Table 12, of the building code – allows staff to look at surrounding development to see if the proposed subdivision and development is consistent with the existing character of the neighborhood. She said she felt that because the developer's proposed lot sizes were "so close" to the 10,000 square foot minimum allowable under the code, she and Stanton "decided to look at the characteristics of other lots in the vicinity." She said that the code allows for some "flexibility."

Ms. Ellis said she recalls that she and Ms. Stanton met with zoning attorney/ lobbyist Javier Vazquez and his clients prior to the meeting referenced in his Oct. 20, 2015, email to her and Zoning Administrator

Devin Cejas, referencing a meeting that same day between himself, his clients, Ellis and Cejas.

Ms. Ellis said she set up the latter meeting, and that, to the best of her recollection, Vazquez was again accompanied by his clients, Carlos Tosca and Gus De Ribeaux and that both men participated in the meeting. She recalled De Ribeaux telling her that he was there as the property owner, but making a point of telling her that he was also an attorney and could act in that capacity.

Ms. Ellis noted that, based on her past dealings with Vazquez, the attorney "has a tendency to get easily agitated" and "can be a difficult person." She said she did not recall Vazquez getting out of line at the Oct. 20, 2015, meeting, but said that neither Vazquez nor his clients were happy about the decision to impose a warrant requirement on the project in the most recent t-plat review (September 2015).

Ms. Ellis said it was made clear to her that they wanted the warrant requirement to be lifted. She said that, "In that sense, they were lobbying … They didn't think they should go through the warrant process at that time. They wanted us to go back to the previous t-plat application with no requirement for a warrant."

Ms. Ellis said she felt very strongly that it was improper for the developer, through Vazquez, to seek the intervention of the City Attorney's office because they disagreed with a staff position. She said that it is the job of the City's Zoning Administrator (Devin Cejas) to interpret the zoning code. She said that, if staff wanted a legal opinion, they could request one as a Legal Services Request or LSR. "Our legal department works for us, as I understand it," she said.

Ms. Ellis said she did not believe it was common for developers to invoke the City Attorney's office for assistance. She said another zoning attorney, Ben Fernandez, tries to do this from time to time, but noted that she is able to "tell him to go through me" and that he eventually follows her advice. She said that the Battersea Woods t-plat application was the first and only time that a t-plat has been appealed to the City Attorney's office since she has been working for the City. She said she had handled between 50 and 100 such application during the period she served as a Planner II and handled t-plats.

Ms. Ellis stated that once the matter had been elevated to the City Attorney's office, she and Stanton met with assistant city attorneys Amanda Quirk and later Dan Goldberg. She said she thought that the city attorneys were in agreement with staff and was surprised to learn that they had overruled staff. She said she finds it demoralizing for staff when this happens without keeping staff apprised. "I don't like to get pancaked," Ellis said. "If you're going to change a position that should be discussed with staff."

Ms. Ellis said she recalled a flurry of emails going out from Vazquez following their meeting. "He kept emailing to try to lobby his point of view … We thought they were still going through the warrant process. My understanding is it's the Planning and Zoning Department and the Zoning Administrator who can make that decision" to change the t-plat requirements. "We were staying in our lane, and legal may have swerved into our lane." She said staff finds such instances demoralizing.

Ms. Ellis stated she has worked for a number of other municipal planning agencies, and said the City of Miami has a less formalized process than other places where she has worked. She suggested this could be because the agency is understaffed, relative to the amount of development taking place, and that record-keeping is not up to the standards she has encountered elsewhere, and that policies and procedures are lacking. "In a perfect world things like this would not happen," she said.

Ms. Ellis added staff is presently revising the NCD portion of the code so that it will be less ambiguous about the warrant requirement. "The NCD is poorly written," she said. "We're working on an update that will offer the types of protections that people in the community are looking for."

Devin Cejas, Zoning Administrator
Department of Planning and Zoning
City of Miami, FL
March 6, 2017

Mr. Cejas reported to COE offices for a voluntary interview to discuss his recollection of the handling of the Battersea Woods LLC t-plat application. He stated that he had just taken over as zoning administrator at the time the warrant issue became contested. He said he recalled attending a meeting with members of staff and representatives of the applicant, including attorney Javier Vazquez. "I remember it was Javier because he was the one doing most of the talking." He said he could not recall the identity of the other two individuals, but stated: "They were being adamant that this was un-platted land …:

Mr. Cejas said he was not familiar with the application prior to the Oct. 20, 2015, meeting, but that the claim that the land was un-platted "seemed to be new information." He added, "It drew a red flag where I needed to step back and analyze further because it was sort of an anomaly. It's very rare in Miami that we deal with land that is un-platted." He advised the owners to proceed with the warrant process, as staff had directed, but at the same time told them he would study the matter and get back to them.

Mr. Cejas said it did not occur to him that he was being lobbied during the Oct. 20 meeting, but noted that "it's their job to go against us." He said he frequently deals with developers and their attorneys expressing differences of opinion with respect to the zoning code, but that he does not regard this as lobbying. "Many times, I get mugged in the hallway," he said, adding it's usually owners asking about their applications – whether their applications were approved or when a decision could be expected.

Mr. Cejas advised that the point of the Oct. 20 meeting was to dispute staff's position that a warrant was required before further subdividing the Battersea Woods property at 4384 Ingraham Highway. He allowed that any such decision regarding a t-plat application would come before the City Commission.

Mr. Cejas said he is the final decision-maker when it comes to interpreting the City's zoning code. He said he taught landscape architecture and urban planning at FIU before joining the City of Miami P&Z staff in 2014, starting as a plans processor before becoming the zoning manager, then zoning administrator. He said he never made a Legal Services Request to the City Attorney's Office to request assistance.

Mr. Cejas said he did not recall Assistant City Attorney Goldberg's email on Nov. 20, 2015, to Vazquez advising him that no warrant was required for the property. He said he may have met with Goldberg, but that that he had not reached a determination until the following month. He said Goldberg's opinion was only an opinion and that, as far as he was concerned, it was not a final determination.

He said that he didn't reach his decision that no warrant was required until after he had done some research with Enrique Pousada of the Public Works Department in the city's archives. He provided a copy of the Battersea Woods plan, and noted that at the time the original structure was built on or about 1910,

the entire property was un-platted. He said that after the creation of the City of Coral Gables a small fringe of land along the southern border of the property was deeded back to the property owner. He said that only this portion – roughly 3,000 square feet (out of more than 43,000 square feet) – was platted, and that because the structure was on un-platted land at the time it was built, no warrant was required.

Mr. Cejas stressed that he made the determination on his own and never discussed the matter with the City Attorney, though he may have had several meetings with ACA Goldberg. He said he was never pressured by City Attorney Mendez or anybody else on her staff to remove the warrant requirement, which he did "100 percent on his own" and without interference. At the same time, according to Cejas, he was not consulted by the City Attorney's office about its decision to issue the opinion that no warrant was required for the project.

Javier L. Vazquez, attorney for Battersea Woods LLC
Law firm of Berger Singerman LLP
March 13, 2017

Mr. Vazquez appeared for a voluntary interview at COE offices relating to the Battersea Woods t-plat application. He said that he was "re-engaged" by his client(s) shortly after the City's planning staff imposed the warrant requirement on the project during its Sept. 3, 2015 Plat and Street Committee meeting, later memorialized in a letter dated Sept. 11, 2015.

"I'm not here to dispute anything," Mr. Vazquez stated, describing his initial failure to register to lobby on behalf of Battersea Woods as "an oversight by my office." He said that normally he would register for any issue coming before the City regardless of whether he felt it involved formal lobbying or not. He said that he had discussed the issue with City Attorney Mendez, and stated that she was initially very firm in defense of staff's position, but told him that he could submit a legal brief arguing the matter.

Mr. Vazquez said that his associate, Paul Figg, did prepare such a letter and it would seem that, based on that memo, the City's legal department reversed its position in favor of requiring a warrant. He said he acknowledges that he should have registered as a lobbyist prior to meeting with Mendez and staff. He said he registered on Sept. 8, 2016, when it came to his attention that he was not registered, noting that he was unprepared for the level of controversy surrounding the issue at the commission meeting that day.

"The bottom line is my secretary dropped the ball on this … we just screwed up." He said his secretary believed he had registered previously to represent Battersea Woods LLC. He said that, had she flagged the mistake, she would have registered not only himself but also his clients – Battersea principals Gustavo Deribeaux and Carlos Tosca. He noted that his clients tried to resolve the issue themselves by meeting with staff prior to bringing him in to assist with contesting the warrant requirement.

Mr. Vazquez stated he could not recall ever inviting City Attorney Mendez to go boating with him. He said he does own a boat he keeps at his home in Key Largo, but that he has never taken the City Attorney or her family out on his boat. He said that, similarly, he has never socialized with the City Attorney, though he considers her "a friend." He said he knows her primarily from legal circles, and noted they served on a transportation panel together on one occasion, and that they also belong to CABA.

Mr. Vazquez said he felt that Ms. Mendez had been very strict with respect to the warrant issue, and that she was initially supportive of staff but re-evaluated her office's position based on new information provided by his associate, Paul Figg, as outlined in the letter to her office dated Oct. 22, 2015.

Mr. Vazquez further provided copies of lobbyist registration reports showing that he registered on behalf of numerous other clients with issues pending before the City of Miami dating back to 2012.

Document/Audio/Video Review:

COE obtained a copy of Comm. Russell's letter dated Sept. 16, 2016, to his colleagues on the Miami City Commission in which he highlights the findings of his internal review of Ms. Mendez's conduct with respect to his request for information on the Battersea Woods zoning matter, and advocates for her termination as Miami City Attorney.

Among the allegationsstated in his letter, Comm. Russell alleged that Ms. Mendez withheld numerous material emails that he believes should have been provided in response to his request for records from her with respect to the reversal of a 2015 zoning department decision.

Comm. Russell alleged that Ms. Mendez withheld more than three dozen pertinent emails, and as a result "withheld information that showed her direct and overwhelming involvement in the matter." He further alleged that Ms. Mendez exploited her position by re-assigning the matter to another attorney in her office when the original attorney supported the staff's position that a special approval known as a "warrant" would be required to re-plat a property in Coconut Grove where developers were seeking to build five single-family homes. The process for obtaining a warrant requires a public hearing.

In his letter, Comm. Russell cited an Oct. 24, 2015, email from Mendez to the original Assistant City Attorney assigned to review the matter, Amanda Quirke, asking her to call the applicant's attorney, Javier Vazquez, stating: "Can you call Javier in This [sic] and see how we can figure out." Quirke replied in an Oct. 29, email to Mendez, advising she spoke with Vazquez and reviewed the issue "at length" with the city's Planning and Zoning department "to see if we could get to the same interpretation [as developers], but we could not." She ended the email by saying that, in her opinion, a warrant was needed to complete the process.

The following day, Ms. Mendez sent an email to Quirke and Vazquez, but the email was addressed to Vazquez, as follows: "Javier, We are having a hard time on this. Let's talk next week." Comm. Russell noted Mendez called for a meeting with developers and that, when she learned Quirke would not be available on the proposed date, she re-assigned the issue to another Assistant City Attorney, Daniel Goldberg, then instructed him "to come up to speed with alternatives." Her email to her administrative assistant dated Oct. 30, 2015, stated: "Have Goldberg come up to speed with alternatives and we can still meet without Amanda. Thx."

Later that afternoon, Goldberg, who was copied on the email, replied to Ms. Mendez, and

advised: "Amanda (Quirke) and I have discussed this extensively and I agree with her assessment. They are trying to get out of the [warrant] requirement …"

Comm. Russell points out that, following a subsequent meeting with Mendez and developers, Goldberg issued what Comm. Russell termed "a factually incorrect opinion that nonetheless reversed the recommendation on the matter issued by his colleague Amanda Quirke, his own previous analysis, the interpretation of the zoning administrator and the analysis performed by the planning staff." Vazquez then used this new legal opinion from Goldberg to attempt to persuade the City's top zoning official, Devin Cejas, to remove the warrant requirement.

Comm. Russell stated that Ms. Mendez further overstepped her authority by approaching the City's Public Works Department and advising that no warrant was required for the project and that she did so without obtaining the consent of the City's Planning and Zoning officials. The Commissioner alleged that it was not appropriate for Mendez, as City Attorney, "to intervene in order to interpret the zoning code, unless specifically asked by the zoning administrator" who, he contends, is the person in charge with interpreting and enforcing the building code.

Comm. Russell claimed in his letter that Ms. Mendez later admitted that the legal opinion from Mr. Goldberg reversing the earlier unfavorable opinion to developers was "flawed."

A copy of the letter from Comm. Russell was added to the file.

On Nov. 2, 2016, COE reviewed records obtained from the City Clerk's office that were provided by Comm. Russell – a 49-page document with emails and other records described as attachments A through R. These emails formed the basis of Comm. Russell's allegations.

COE also reviewed the emails, which were labeled as attachments A through R.

The email exhibits did indicate that a number of meetings took place between representatives of Battersea Woods LLC and City of Miami staff, including the following:

- Oct. 6, 2015, meeting between Gus De Ribeaux and Carlos Sosa and Pamela Stanton, the City's Zoning Plans Processor.
- Oct. 20, 2015, meeting between Battersea Woods attorney Javier Vazquez and City employees Jacqueline Ellis, a Planner II, and Devin Cejas, the Acting Zoning Administrator.
- A Jan. 4, 2016, email from Vazquez to City Attorney Mendez references a meeting in Mendez's office in which Vazquez's client "carlos" [sic] attended "to discuss his Battersea situation." The email string identifies the client as Carlos Tosca, managing member of PalmCorp Development Group.

It should be noted that in an Oct. 20, 2015, email from Vazquez, he informs Ellis and Cejas that he would like to discuss the warrant issue with the City's legal department.

COE examined Appendix A of the Miami 21 building code (Coconut Grove Neighborhood Conservation District) as it relates to the Battersea Woods property in Section 3.6(g)(1), *Lots and building sites*, which advises as follows: "Wherever an existing single-family residence or lawful accessory building(s) or structure(s) is located on one or more platted lots or portions thereof, such lots shall thereafter constitute only one building site and no permit shall be issued for the construction of more than one single-family residence except by Warrant."

On Sept. 24, City Attorney Mendez sent a document to COE Executive Director Centorino, which she described as "A memo from staff agreeing with my office's decision. Thank you." The attached document consisted of a an Inter-office Memo from Zoning Administrator Devin Cejas to Comm. Russell in which he concludes no warrant is required and that the property in question (located at 4384 Ingraham Highway) could be platted as five parcels. The opinion states that since the property had not previously been platted, no warrant was needed.

The memo from Cejas states that: "Since the property is not a building site, as defined by this section of the NCD-3, and because this land is not platted a plat is required for development, but not the special permit "Warrant" to allow for the diminishing or subdivision of land."

On March 13, 2017, COE reviewed emails exchanged between City Attorney Mendez and Javier Vazquez that were obtained from Comm. Russell's office. They included a number of exchanges that appeared friendly and light-hearted.

Despite the tone, the substance of the emails was mainly professional, and there was no evidence of personal invitations made by Vazquez to the City Attorney for either recreational boating or meals – with the exception of a Nov. 6, 2015, panel discussion/ luncheon on transportation issues that City Attorney Mendez helped organize for the local Bar.

Examples of such emails included the following:

- Jan. 23, 2015, email from City Attorney Mendez to Vazquez, states: "Never a pain. When you have a moment, and if you are not boating, call me tomorrow."
- March 11, 2015, email from Vaquez to City Attorney Mendez, states: "Pending since Oct, 2014 [sic] … Can you help me please. Thanks flaca."
- May 26, 2015, email from Vazquez to City Attorney Mendez and Miami-Dade Transit Director Alice Bravo … "Girls, que hago?" as it related to a project at Museum Park.
- August 14, 2015, email from City Attorney Mendez to Vazquez invites Vazquez to participate on a transportation panel for an event Mendez is organizing. Vazquez accepted, saying: "Absolutely yes .. Honored to do so."

Note: There were subsequent emails leading up to the Nov. 6, 2015, event sponsored by the Dade County Bar Association in which Vazquez, Bravo and other panelists were asked what menu items they preferred for lunch, leading to more light-hearted quips from Vazquez about

ordering "vaca frita." There was no evidence, however, of any personal invitations for meals, just the luncheon sponsored by the Dade County Bar regarding transportation issues.

Conclusion(s):

Based on the above findings, it does not appear City Attorney Mendez violated the Miami-Dade County Ethics Code as it relates to Exploitation of Official Position.

While developers were undoubtedly seeking to reverse a staff position they felt was unfair and did not like, no evidence was found that Ms. Mendez unduly influenced her subordinates to remove the warrant requirement imposed by City planning and zoning staff. Neither of the ACAs handling the matter reported feeling pressured, and former ACA Quirke further stated she worked part-time and Goldberg was her back-up. It should be noted Ms. Quirke no longer works for the City and would presumably be able to speak without fear of retaliation.

City staff – among them individuals such as Ms. Ellis, who initially favored imposing the warrant requirement – acknowledge that relevant portions of the Miami 21 zoning code are unclear, poorly written and allow for multiple interpretations. Officials further acknowledged that the warrant requirement has not been consistently enforced in Coconut Grove, thereby exposing the City to potential legal claims should plat applications be denied.

The fact that the Battersea Woods developers are appealing the City Commission's decision to reject the final plat application at the Sept. 8, 2016, meeting lends credence to City Attorney Mendez's position that she was seeking to limit the City's liability in the matter.

What's more, the investigation failed to substantiate claims that Mendez and Battersea's legal counsel and main lobbyist, Vazquez, have anything more than a cordial professional relationship, based on the tone of email exchanges between the two. While both consider the other to be a "friend," a review of their emails did not yield evidence of any reportable gifts, whether in the form of boating excursions, meals, or other gratuities.

As it relates to Comm. Russell's allegation and belief that City Attorney Mendez intentionally withheld information in possible violation of the Citizens' Bill of Rights, the findings do not support the filing of a formal complaint by this agency.

Clearly, the emails provided to Comm. Russell's office in July 2016 were not the result of a comprehensive and carefully conducted search of relevant items. But given the short amount of notice and the timing of the request during a Commission meeting week, it would not seem reasonable to expect a completely thorough response to this public records request.

The available evidence shows that City Attorney Mendez and her subordinates did attempt to respond to Comm. Russell's request in a timely fashion, and that a limited number of items were promptly turned over to Chief of Staff Melendez. Phone records, moreover, show that Mr. Melendez and the City Attorney did have a 17-minute conversation at that time.

While Melendez said he could not recall what was discussed, a text message he sent the city attorney on or about that same date references the Battersea project. It is City Attorney Mendez's contention that she discussed the records request with Mr. Melendez during this conversation and that Melendez agreed to limit the scope of the records request.

Ms. Mendez further contends that she encouraged Melendez to have Comm. Russell's office make a formal request through the city's IT department to retrieve all relevant items. If true, this would account for her office's apparent shortcoming in producing all email exchanges relating to the Battersea t-plat application and the controversy over the warrant. What's more, to expect an exhaustive search and production of all relevant emails by the City Attorney's office would seem unreasonable under the circumstances noted above.

Whereas Mr. Melendez disputes the city attorney's assertion he agreed to narrow the scope of his request or that she was the one who first suggested Comm. Russell's office enlist the assistance of IT, it should be noted that Mr. Melendez initially told investigators he had no recollection of the conversation in question lasting 17 minutes on July 26, 2016.
Mr. Melendez implied that IT requests for emails are made all the time but could offer no explanation as to why he didn't just make the IT request initially instead of seeking the emails from City Attorney Mendez.

Given the somewhat extreme language used by Mr. Melendez in text messages he sent to Comm. Russell advising him as to Ms. Mendez's proposed firing – with references to "beating her up in the press" or forcing her to "resign in disgrace" – it does not seem that Mr. Melendez could serve as an unbiased witness should his testimony be required in this matter.

While Comm. Russell is clearly convinced Ms. Mendez "stonewalled" his office and failed to disclose her involvement in the removal of the warrant requirement, the investigation did not support such a finding. At the heart of the matter is an issue of attorney-client confidence, and while Comm. Russell feels this trust may have been irrevocably violated, that issue is not a matter for this agency to decide. Lastly, we note that the City Attorney and City staff should be more vigilant in policing unregistered lobbying. The City's code imposes severe lobbyist requirements; given these strict standards, it is not unreasonable that the City's legal staff be diligent in policing them.

3/16/17

Karl Ross, COE Investigator

Approved by:

Michael Murawski, Advocate

3/15/17

Joseph Centorino, Executive Director