



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator:

Case PI16-049	Case Name: Huber	<u>Date Open: Nov. 28.</u> <u>2015</u>	<u>Date Closed:</u>
Complainant(s): COE/Fran Neuhut	Subject(s): Amy Huber	CASE CLOSED	

Date: 1/9/2017

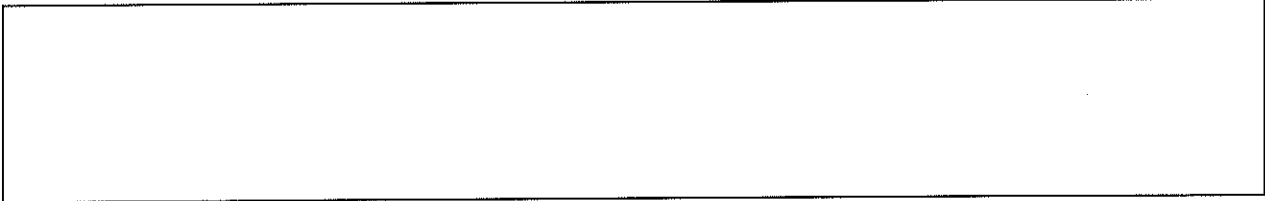
Allegation(s):

In correspondence copied to COE, Bay Harbor Islands resident Fran Neuhut (Neuhut) alleges that Shubin Ross attorney Amy Huber (Huber), who represents Church by the Sea, engaged in lobbying activity in the Town without having registered as a lobbyist.

Relevant Ordinances:

Allegation under consideration would be a violation of the Miami-Dade Conflict of Interest and Code of Ethics ordinance, Sec. 2.11-1 (s)(2): *All lobbyists shall register with the Clerk of the Board of County Commissioners within five (5) business days of being retained as a lobbyist or before engaging in any lobbying activity, whichever should come first. ...*

Sec. 2-11.1 of the same code applies all provisions of the ordinance to the municipalities of Miami-Dade County.



Investigation:

Interviews

Frank Simone (Simone), attorney for Bay Harbor Islands, December 30, 2016, by telephone.

Simone explained that Huber is the attorney for Church by the Sea, which to date has submitted a site plan to the Town's Planning and Zoning Board for its planned move to Kane Concourse. The matter has not yet come before the Town Council.

Simone said that Fran Neuhut has filed an appeal of the P&Z Board action on the claim that the Board failed to enforce a town rule that 100 percent of the building frontage on Kane Concourse be devoted to commercial establishments (the exception in the present case is a vestibule that allows access to parking and the second floor) and that there is no clear path around the building to parking in the rear. Simone said he believes both appeal points are unfounded.

Huber will be the attorney appearing before the Town Council when it hears Neuhut's appeal. As a procedural step, Huber also filed an appeal to preserve certain of her client's rights, though Simone said that appeal would almost certainly be dropped if Neuhut's appeal fails.

Simone pointed out that an attorney appearing for a client before the P&Z Board does not have to register as a lobbyist.

Though tangential to the case at hand, Simone explained the issue of the church's signage. He said the Town has had two old codes that have come into conflict. One prohibits churches on the first floor of buildings on Kane Concourse, the other prohibits businesses on the second floor or above from having exterior signage. However, the Town's attorneys felt it was necessary, following federal court ruling in U.S. v. Gilbert, to recommend a change in the Town Code to allow signage for churches so as not to violate the Federal Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA prohibits imposing any special zoning approval burdens for approval (such as a public hearing) on religious institutions that other businesses seeking to similarly locate do not have to face. The Town has not changed the part of the code requiring religious institutions to be located only on the second floor or higher.

[The Town also approved an ordinance change eliminating the requirement for religious institutions to undergo a public hearing prior to the granting of an approved use, again on grounds that this requirement violated RLUIPA.]

END SIMONE

Amy Huber, attorney for Shubin & Ross, by telephone, January 5, 2017

Huber stated that she represents Church by the Sea as it has sought to acquire property and relocate to Bay Harbor Islands.

During that process, Huber said she filed an appeal several months ago to the Town Council arguing that the town's ordinances regarding religious institutions were out of date, in particular that they did not conform to federal RLUIPA laws. Huber said that as a result, the town's attorneys opted to recommend ordinance changes to the Town Council that would bring at least part of the town code up to date. It was this ordinance update that came before the Town Council during its meetings in October and November attended by Huber.

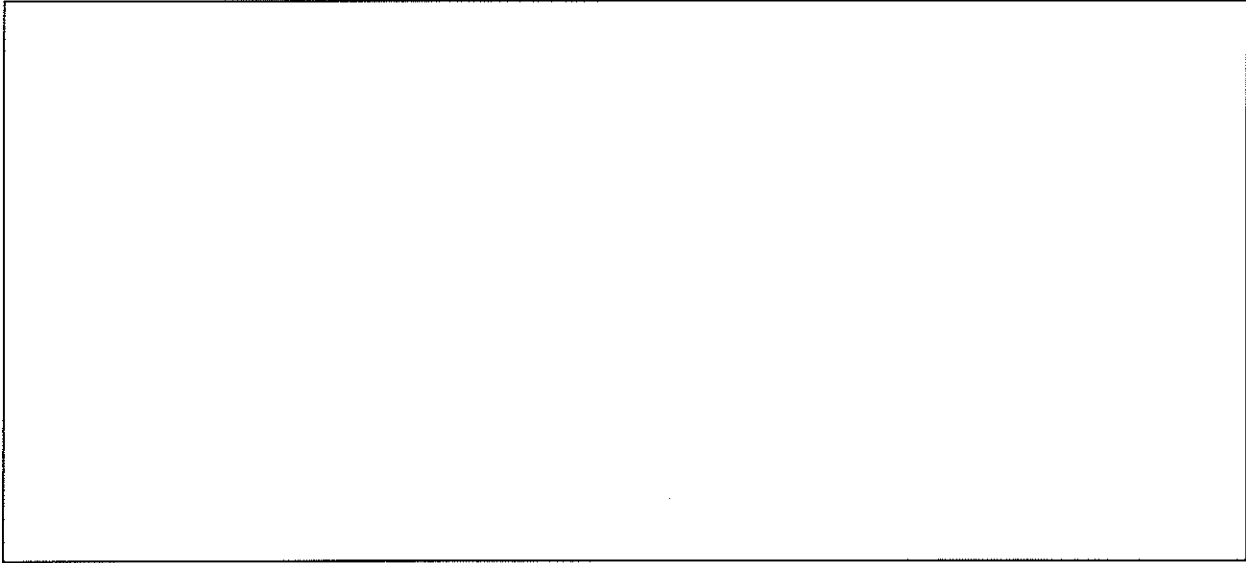
Huber stated that while her firm welcomes the changes the town is making to its ordinances, it still does not believe the changes go far enough... specifically, that it objects to the second-floor restriction for religious institutions.

In any case, Huber said she never had conversations with any town council member, or made any presentation to the Town Council as a whole, arguing for or advocating passage of the ordinance, saying the matter was spurred entirely by the town's attorneys. She said her conversations were limited to legal discussions with the Town's lawyers

"I'm not going to ask them to approve something I don't agree with," Huber said, even though she isn't opposed to the changes they have proposed.

Of Neuhut's charges, Huber said, "This is just one more retaliation taken against me and the church." She said Neuhut "stood up and made slanderous allegations" against her during the Town Council meeting, yelling from the audience, and "insinuating that my mere presence in the room was lobbying." Huber added that Neuhut claimed that she was being unfairly treated because any attorney Neuhut hired to oppose the church would have to register as a lobbyist while Huber wasn't required to register.

END HUBER



Document/Audio/Video Review:

- Correspondence from Fran Neuhut in response to the investigator's invitation to present her perspective on the issue. Presented herein in its entirety:

"Dear Mr. Steinback (Investigator),

Please be aware that Ms. Huber was also at (DRC) Meetings presenting the "Church by the Sea" site plan @ 1000 Kane Concourse alongside the Town Planner & Town Manager who allegedly suggested to council changing specific (BHI) Ordinances to benefit this particular "Religious Institution."

"At that time, Ms. Huber stated "she was "not a Lobbyist" (at the pulpit of (2) particular Town Council Meetings/ 1st & 2nd. readings), before deciding to finally "register" (12-05-2016) and present herself as a "lobbyist" for "Church by the Sea" at the (01-09-2017) Public Hearing/6:00pm?

Thank you for looking into this matter, and will send the information requested ASAP.

Very truly yours,
Frances Neuhut"

- Transcription (taken by the investigator) of Huber's two appearances before the Bay Harbor Islands Town Council.

October 17, 2016

Stanley Tate, one of the town's early pioneers, testified at the 10-17 meeting that the town deliberately sought to prevent religious institutions from locating on the town's one main commercial thoroughfare, Kane Concourse, because that was the town's most valuable tax base, and church members will "know where their church is" regardless of where it is located. He argued against the precedent of accommodating Church by the Sea.

After Tate spoke, Mayor Leonard said, "Next? That's it for public comment." A voice from the audience (off camera) is heard getting Leonard's attention. Then he added, "Oh, Amy. Miss Huber." He gave a quick hand gesture of acknowledgment that visually suggested it was her turn to speak. [My observation of the tape: I don't interpret what happened as the Council "calling" Huber to the podium. I interpret it more as, somewhere along the way, it was understood that Huber would speak, and that Leonard momentarily forgot this. Presumably, his course change came when Huber herself got his attention and signaled that she wanted to speak.]

After Leonard greeted her with "Good evening," Huber speaks.

"Good evening. I'm sorry, I wasn't intending to speak, but I just thought it was important to kind of frame the issue for a minute. Amy Huber, with the law firm of Shubin and Bass. Here on behalf this evening by the, for the Church by the Sea, is the owner of 1000 Kane Concourse. The Church by the Sea is the owner of 1000 Kane Concourse. They're happy to be a property owner in Bay Harbor Islands. Under your code the only place a religious institution may be is within your business district. They're not permitted in any other zoning district. Currently your code only allows religions institutions to be located on the second floor or above. I would not say that the church is consenting to this, however, our application complies with this provision of the code. Your code further states that if you are a religious institution, you must be on the second floor or above, then your sign ordinance says that if you're on the second floor or above, you can't have a sign. Your town attorney has reviewed this, he's very familiar with the law, and has advised all of you that violates federal law, and that's why we're here this evening. So we applaud you and commend you for moving this ordinance forward, to amend your code so that it complies with federal law. Thank you."

November 14, 2016

Fran Neuhut spoke on the item of the second reading of a proposed ordinance change dropping the requirement for churches to be subject to a quasi-judicial public hearing before approval. She said that the change forced lawyers to register as lobbyists, which they wouldn't have to do for a quasi-judicial hearing. Neuhut referenced the presence of a lobbyist, presumably Huber, in the audience, noting that she didn't put her name down to speak, insinuating that this was because of Huber's need to register as a lobbyist.

After Neuhut concluded her comments, Mayor joked that Huber was only in the audience "to watch the show," and presumably, not as a lobbyist. Then Leonard invited Huber to the public podium to speak.

Kelly Reid asked, "Does anybody want to clarify this, that there was no lobbyist here..."

Off-camera, either the city manager or attorney said, "It was just an inaccurate, untrue statement."

Neuhut, off camera and off-mic, said something that sounded like, "Who is she? She is a lawyer. She is a lobbyist-lawyer," and continued on, prompting Leonard to appeal to Neuhut not to speak out of order.

Then Huber, off-camera, appears to begin to address the county code regarding the matter. One of the council women (either Reid or Tricoche) asks Huber to come up. Leonard tells her, "You have to come up here," to the public podium, then says, "Good evening, Mrs. Huber."

"Good evening everyone. This has been very eventful [sic], it's a good thing the children have gone home." Asked for her name, the tape drops her name, but picks up as she identifies her law firm, "Shubin and Bass, 46 Southwest First St., Miami FL. I am required, obligated by law to register as a lobbyist under the Miami-Dade County Ethics department. I do not consider myself a lobbyist. I am a lawyer. However, other people wrote regulations that require me to register as a lobbyist. I have not lobbied any of you nor have I spoken to any of you on either of these two ordinances, just so the record is very clear."

Leonard: Thank you Mrs. Huber.

- Bay Harbor Islands ordinance changes, amending section 17-20 (o) of the Town Code (allowing religious institutions to have exterior signs); and section 23-5 (8.1) of the Town Code (eliminating the requirement for a public hearing for churches).

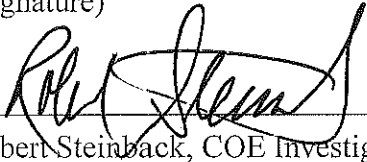
(Description of item reviewed including date)
Summary of findings

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Summary of findings

Conclusion(s):

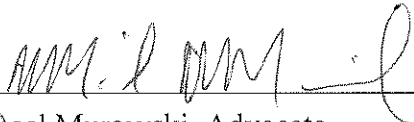
After discussion with the Ethics Commission Advocate it was determined that this matter would be closed with no further action. A review of the two incidents of which Ms. Neuhut complains fail to reveal any instance in which Ms. Huber is engaged in lobbying activities, thus, she was not required to register as a lobbyist prior to making the statements she made.

(Signature)

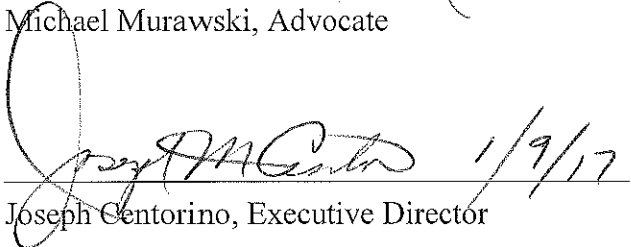


Robert Steinback, COE Investigator

Approved by:



Michael Murawski, Advocate



Joseph Centorino, Executive Director