



CASE CLOSED
Date 2/8/18

Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Karl Ross

Case: PI17-043	Case Name: Harold Mathis code issue	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Merlin Brooks	Subject(s): El Portal Councilman Harold Mathis, et al.	Nov. 28, 2017	Feb. 8, 2018

Allegation(s):

Pursuant to a tip on the COE hotline, it was alleged that Village of El Portal Councilman Harold Mathis refused to fix a code violation resulting in the improper drainage of rain water run-off into the yard of an elderly neighbor, Ms. Merlin Brooks.

Ms. Brooks later contacted COE following an inquiry made on her behalf on the hotline, and further advised that Village officials seem reluctant to enforce the code against Councilman Mathis, whom she described as being “intoxicated with power.”

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 ...”

According to Chapter 4 of the 2017 Florida Building Code, for residential construction, Section 401.3, titled “Foundations,” states in applicable part as follows:

R401.3 Drainage.

Surface drainage shall be diverted to a storm sewer conveyance or other *approved* point of collection that does not create a hazard. *Lots* shall be graded to drain surface water away from foundation walls. The *grade* shall fall a minimum of 6 inches (152 mm) within the first 10 feet (3048 mm).

Exception: Where *lot lines*, walls, slopes or other physical barriers prohibit 6 inches (152 mm) of fall within 10 feet (3048 mm), drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within 10 feet (3048 mm) of the building foundation shall be sloped a minimum of 2 percent away from the building.

Investigation:

Interviews

Merlin Brooks, complainant
400 NE 90th Street, El Portal, FL
Phone: (786) 709-7953
Nov. 29, 2017

COE responded to the home of Ms. Brooks at the address shown above, and conducted an interview relating to the hotline allegation. She advised that she addressed her concerns at the Village Council meeting the previous night (11/28), and that Councilman Mathis and “his partner” stated that they would not abide by an agreement to re-direct the run-off.

Ms. Brooks provided photographs of two drainage tubes running from Councilman Mathis’s home, located at 420 NE 90th Street, showing that the outflow was directed to a cement walkway separating the two properties. She said that during an Oct. 23 meeting with the interim village manager and Councilman Mathis and “we thought it was resolved.” She said that Mathis had agreed to buy an “elbow” and ensure the run-off drained on his property.

Ms. Brooks said that, instead, Councilman Mathis purchased a green drainage device and another extension for a second gutter outfall directing the run-off onto the walkway, which would potentially spill over onto her property. “Instead he bought the green thing to make sure I got the water in my yard,” said Brooks, an 81-year-old widow.

She said that during that meeting she also asked Councilman Mathis to reimburse her for the \$80 she paid to have one of his trees trimmed. She said the tree was growing onto her property, and had to be cut back. She said that Mathis agreed to only pay \$40, and that she agreed to this so long as he would take responsibility for keeping it trimmed in the future. She noted that she was a widow on a fixed income living off Social Security.

Ms. Brooks said this is what happened during a heavy rainfall recently, and that she was so upset she used a stick to push the green tray toward the councilman’s property and away from

hers. She said that later that evening, "I heard swearing ... I heard, 'This is private property.'" She said that she then decided to call the police and file a report, but observed that the responding police officer did not take any notes and provide any narrative in the report.

Ms. Brooks said she also texted Mayor Claudia Cubillos about the situation and that Cubillos told her that she would look into the matter after returning from a trip to Tallahassee. She said she texted the mayor and asked for an inspector. She said the mayor never got back to her.

Ms. Brooks said she did later receive a visit from a code enforcement officer, Carlos Garcia, and that Mr. Garcia indicated that he did feel the Councilman's property was in violation of the City's residential building code. He was contacted on his cell number (786) 972-0389, and responded to the home of Ms. Brooks as he happened to be nearby at the time.

Mr. Garcia indicated that he would prefer to have the interview conducted in the presence of his supervisor, Interim Village Manager Christia Alou. He said that he has worked for the Village for the past 7 months through a private firm, CAP. He said that prior to that, he ran his own construction company for 24 years and worked as a plans reviewer in North Carolina.

Mr. Garcia indicated that he felt the situation with the run-off was a possible violation of Section 10.1.4 of the Residential Code, and that storm water must be drained on one's own property. He said that he regularly issues notices of violations – or CCINs – and that, typically, a property owner will be given five days to respond without incurring fines. He said that he had been told that Mayor Claudia Cubillos had recently met with Interim Manager Alou (11/27). He said he didn't want to discuss the matter further without Alou being present.

COE inspected the draining outfalls in question and took photographs. COE also observed that Councilman Mathis's property was overgrown in the backyard and that a number of containers, and debris and campaign signs, among other items, had been left in the yard.

Ms. Brooks further indicated the green run-off device was just a few feet from a ventilation opening beneath her home leading to the foundation, and noted that she was concerned about possible water damage to her property resulting from the drainage issue.

Lastly, she stated that she was uncomfortable with cameras outside the Councilman's home that she felt invaded her privacy and voiced concerns about excess lighting as well.

On Nov. 29, 2017, a message was left for Interim Manager Alou requesting a meeting.

On Nov. 29, 2017, COE contacted Mayor Cubillos on her cell phone, (305) 778-4199, to inquire about the status of any attempts to resolve the issue. Mayor Cubillos expressed that she was aware of attempts by Interim Manager Alou to "mediate" a settlement, but that based on the remarks made at last night's meeting it was clear that no settlement had been reached. She said she was not present at the mediation and referred further questions to Ms. Alou.

Christia Alou, Interim Village Manager

Village of El Portal, FL

Phone: (305) 795-7880

Nov. 30, 2017

On Nov. 30, Interim Village Manager Christia Alou responded to COE requests for a phone interview regarding a dispute between an elderly resident and Councilman Harold Mathis, her neighbor, over an alleged improper stormwater discharge.

Ms. Alou affirmed that she did attempt to mediate the dispute between Merlin Brooks and Councilman Mathis, who lives on the 400 block of NE 90th Street. She said that the Councilman agreed to re-direct the discharge from his home.

Ms. Alou said she was disappointed that the Councilman did not keep his word, but said that she did not believe the issue of the discharge of stormwater runoff from the Councilman's roof rose to the level of an actual code violation.

Ms. Alou was advised that COE spoke to the Village's code officer, Carlos Garcia, yesterday and that Garcia indicated that he felt there was a potential violation of Sec. 10.1.4 of the code or the portion relating to drainage discharges. He said he was unsure about the exact section, but advised that a property owner cannot discharge water on a neighboring property.

Ms. Alou was advised by COE that Garcia expressed reluctance to state his official position unless he was authorized by her to do so, and COE agreed to request a formal interview with Mr. Garcia to that effect. Ms. Alou said she would ask Garcia to research the matter and to provide any section of the code he felt might be applicable.

Ms. Alou stated it was her understanding that the code was vague and not directly applicable, but she agreed to allow Garcia to research the matter and respond to COE.

She was further advised that COE was considering launching a formal inquiry if the matter could not be resolved amicably. She stated she had already tried to mediate a settlement, and did not feel that there was anything further that she could do and pledged to assist with any formal inquiry into the matter.

On or about December 14, COE received a phone call from Ms. Alou advising that she had recently spoken to Councilman Mathis and that he had agreed to abide by his previous agreement with respect to the water spouts and drainage issue with Ms. Brooks.

Ms. Brooks was contacted by COE on Jan. 3, 2018, and Ms. Brooks stated that Councilman Mathis still had not rectified the situation with respect to the drainage spout.

Meeting at Village Hall with Village Manager Alou and Carlos Garcia
500 NE 87th Street, El Portal, FL
Dec. 13, 2017

Ms. Alou confirmed that she had met with the parties in the dispute on Oct. 23, and reiterated that she was under the impression that the matter had been settled at that time. She said Councilman Mathis agreed to pay for half the cost of trimming the tree and agreed to re-direct the water from his drainage spout back toward his own property. She expressed that, in her view, he doesn't have "clean hands" since he subsequently refused to comply.

Ms. Alou asked Code Officer Garcia whether he felt there was any section of the Village's code or any other code that might be applicable to the situation at hand.

Mr. Garcia replied that: "In my professional opinion, you can't divert water into someone else's property." He stated that this was potentially a violation of Chapter 4 of the Florida Building Code, Sec. 401.3, and that the Councilman could alleviate this problem by installing an "elbow" and turning it to the side so that the discharge would remain on his property.

Mr. Garcia said he attempted to bring this matter to the Councilman's attention the previous week, but that no one answered the door even though both cars were present in the driveway.

Mr. Garcia said that instead of installing an "elbow," Councilman Mathis installed a "spout pan," which only served to facilitate the flow of water onto Ms. Brook's property. He advised that the distance between the two properties is minimal, a result of a zero lot line.

Ms. Alou directed Garcia to address the matter with Councilman Mathis, and stated that if he still refused to comply with the aforementioned section of the code, that Garcia would be directed to issue a citation against the Councilman's property. As requested, the Village Manager stated she would apprise COE of any further developments.

On Jan. 19, 2018, COE returned to Village Hall and attempted to speak to Code Officer Garcia about the issue in question and was referred to interim Manager Alou. Ms. Alou advised that it had come to her attention that Ms. Brooks and Councilman Mathis had another spat, and that it was unlikely the councilman would abide by the previous agreement. She said the only recourse would be for the Village to take enforcement action against Mathis, but noted that the Village would also likely need to take action against Ms. Brooks for a separate but related violation. She advised that this would likely happen sometime the following week.

On Feb. 7, 2018, at the request of Ms. Brooks, COE returned to her property and photographed the modifications to the councilman's property, which Ms. Brooks agreed, though not entirely to her liking, was nonetheless an improvement over the previous situation.

Ms. Brooks stated that Village Manager Alou had visited her property the day before after she complained about yard debris and other materials piling up next to a shed. She said that the manager indicated the Village would be taking enforcement action to address this.

Document/Audio/Video Review:


The applicable portion of the Florida Building Code was retrieved from the following link:
[https://codes.iccsafe.org/public/document/FRC2017/chapter-4-foundations ...](https://codes.iccsafe.org/public/document/FRC2017/chapter-4-foundations...)

COE received an email from Village Manager Alou dated Feb. 2, 2017, in response to a COE query about the status of any enforcement action against the properties in question. Ms. Alou recounted the Village's efforts to mediate this dispute between neighbors in a voluntary manner. She advised that after this failed, Code Officer Garcia went to the Mathis property on Jan. 25, 2018, and issued a verbal warning, giving the owner five days to remedy the problem or face a code violation. She said a similar warning was given to Ms. Brooks, who had herself retaliated by extending a rain gutter from her roof so that it would discharge water onto the councilman's property. Ms. Alou noted that Officer Garcia returned to the properties on Jan. 31, 2018, to conduct an inspection and found that both violations had been cured.

Photographs were taken of the property in question on November 29, 2017, and again on Feb. 7, 2018. The photos reflect that the drainage pan was removed, and an extension of the rain gutter from Councilman Mathis's property was redirected along the sidewalk bordering the two properties, thereby reducing the potential flow of water toward the adjacent property.

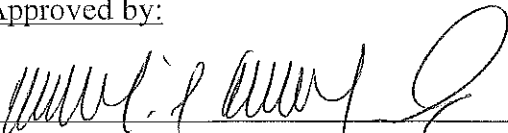
Conclusion(s):

Given that the Village Manager, in her email dated Feb. 2, 2018, advised that the issue at controversy had been resolved "to the Village of El Portal's satisfaction," and that both Councilman Mathis and Ms. Brooks addressed their apparent code violations, it would appear that this preliminary inquiry should be closed without further action by this agency.

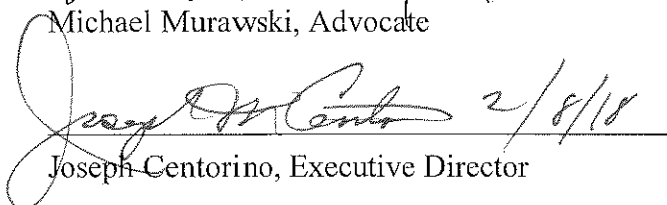
 2/9/18

Karl Ross, COE Investigator

Approved by:



Michael Murawski, Advocate

 2/8/18

Joseph Centorino, Executive Director