



CASE CLOSED
Date 3/25/2019

Miami-Dade Commission on Ethics & Public Trust
Report of Inquiry

Investigators: Sylvia Batista

Case:	Case Name:	<u>Date Opened:</u>	<u>Date Closed</u>
PI18-022	Village of Palmetto Bay Vice Mayor John Dubois.		
Complainant(s): N/A	Subject(s): Failed to recuse himself from voting on issue while having a conflict of interest.	04/30/18	3/20/19

Allegation(s):

An anonymous source sent a letter to the COE informing that Village of Palmetto Bay Vice Mayor John Dubois (Dubois) had participated in the discussion and vote on an application for the development of a mixed-used building called The Sandpiper. The Sandpiper is located at 9701 Wayne Street (the "Application") and sits diagonally from two properties owned by DuBois.

Source advised that Dubois participated in the Village of Palmetto Bay zoning hearings of 05/15/17 and 06/19/17 failing to disclose that he is an affected property owner who owns property adjacent to the proposed development. Dubois' properties are located at 9726 E. Indigo Street, presently operating as a commercial office building, and 9730 E. Indigo Street, a vacant lot (the Indigo Street properties).

Due to the fact that Dubois did not request an Ethics Opinion from the COE or from the State Ethics Commission prior to participating in the discussion and vote on the application, the question of whether he had a conflict of interest requiring his recusal was never addressed.

The COE initiated an investigation to determine whether DuBois had a voting conflict and should have abstained from participating in the discussion on the Application and voting on it.

Relevant Laws:

Section 2-11.1(d), Conflict of Interest and Code of Ethics Ordinance; and Section 112.3143, Florida Statutes.

Investigation:

Meetings Reviewed:

05/15/17 – Village of Palmetto Bay Zoning Hearing –

The application requesting Site Plan and design considerations for a mixed-use development was introduced by applicant, 9700 East Indigo Street, LLC. Dubois, the Mayor and councilmembers participated in the discussion on the item (Item 1). Dubois directed several questions to the Village’s Planning and Zoning Director and Simon Ferro, Esq., the attorney representing the applicant.

Prior to voting, Mayor Flinn asked whether the applicant may be reached to consider the conditions submitted by Council. Councilmember Singer made a motion to recess the item while Mr. Ferro attempted to reach his client.

After disposing of two additional items, Item 1 was reconvened. Due to Mr. Ferro’s unsuccessful attempts at reaching his client, Dubois made a motion to continue the item to the 07/19/17 Zoning Hearing. All members voted in favor of the motion.

07/19/17 – Village of Palmetto Bay Zoning Hearing –

The application was introduced, and Dubois and all councilmembers participated in discussion. Dubois made a motion to approve the application subject to certain conditions which were accepted by Mr. Ferro. The conditions were as follows:

- Parking shall comply with the basic Downtown Urban Village (DUV) code requirements with no design considerations, and no building permit.
- Setback increased from 6 inches to 3 feet.
- Signing off parking legend by both the planner and architect.

Dubois’ motion to approve the application with the conditions was seconded by Councilmember Cunningham. The motion passed 5-0.

Interviews:

06/26/18 – Dexter Lehtinen, Village Attorney –

Dexter Lehtinen (“Lehtinen”) agreed to meet with the Advocate and this investigator regarding

a request for advisory opinion submitted by Dubois to the COE on the Shores at Palmetto Bay development (“The Shores”), and to discuss the possibility that Dubois has a conflict of interest and should have abstained from voting on the Application for the Sandpiper development.

Lehtinen said that the Sandpiper is a project that would increase the value of Dubois’ properties which lie in direct contact with the Sandpiper property line. Lehtinen said that because of the proximity of the properties, Dubois is uniquely affected by the Sandpiper. Because the Sandpiper is a multi-use building, it would add to the value of Dubois’ commercial properties. Dubois’ Indigo Street properties are adjacent to the Sandpiper therefore the impact is inevitable.

Lehtinen said that Dubois wanted the Sandpiper to be built. The Sandpiper property would make it possible for him to demolish his commercial property and upgrade it pursuant to the zoning code. The Sandpiper development makes it easier for Dubois to get the new zoning to apply to his properties.

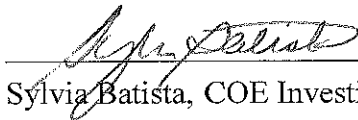
07/11/18 – Maria Pineda, Planning & Zoning Director and Edward Silva, Village Manager –

Maria Pineda, the new Planning and Zoning Director, met with investigators and the Advocate from the COE on the impact that the Sandpiper development will have on the Downtown Urban Village (DUV). The area where the Sandpiper and the Indigo Street Properties are located was rezoned to DUV in December of 2015. Approving the Sandpiper development did not change the zoning in any way. Anything that is built within the DUV will inevitably be zoned DUV. Another project, The Atlantico, which is almost finished, and The Shores, which will soon come before the Village Council for site approval, are two developments in the DUV zone. The DUV zone allows a maximum of 5,671 residential units. Ever since the approvals of several multi-use developments, the Village has approximately 4,000 units that can still be developed.

Edward Silva (Silva), the Village Manager said that the Sandpiper project would impact all of the properties in the DUV area in the same manner by bringing more livability to the area. The Sandpiper would not uniquely impact the Indigo Street Properties.

Conclusion:

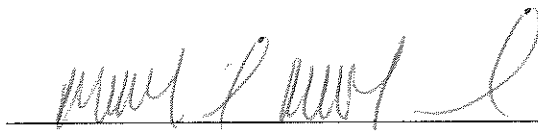
After discussion with the Ethics Advocate, it was determined that this matter would be closed with no further action. The mere fact that Dubois' property is in close proximity to the Sandpiper property does not create an automatic conflict. The area where Dubois' property and the Sandpiper property are located was rezoned in 2015. Approving the Sandpiper does not uniquely affect Dubois' property.



Sylvia Batista, COE Investigator

Date: 3/25/19

Approved by:



Michael Murawski, Advocate

Date: 3/19/19



Jose Arrojo, Executive Director

Date: 3/19/19