



**CASE  
CLOSED**

**Miami-Dade Commission on Ethics & Public Trust**  
**Report of Investigation**

Date: 11-7-19

**Investigators:** Sylvia Batista  
**Complainant:** Lina Sierra  
**Date Opened:** 06/19/19  
**Date Submitted:** 10/02/19

**Case No.** PI19-27  
**Subject/**  
**Case Name:** Orlando Borges,  
**City of South Miami, Planning Board**

**Background:**

On or about **06/06/18**, City of South Miami Planning and Zoning Board Member, Orlando Borges (Borges), met with COE Staff Attorney Martha Perez, (Perez), to request an opinion concerning a possible voting conflict in connection with a project presented by Fellowship Church (the Church). The project is scheduled to go back before the Planning and Zoning Board (the Planning Board") of which he is a member.

In his 06/06/18 request for opinion to the COE, Borges explained that his only connection to the Church is as a parishioner and former volunteer. Borges advised that he has had no input into the proposed plans and does not have a financial interest in the project being presented by the Church.

Based on Borges' assurance that he would be impartial and fair in his recommendation to the City Commission, Perez advised Borges that he could participate in the discussion and vote on the Church issue at the Planning Board meeting. (INQ18-133)

On or about **07/16/18**, City of South Miami Attorney, Thomas Pepe (Pepe), informed Perez that the Church had given Borges a power of attorney to file the Application for a hearing before the Planning Board concerning land use and/or zoning issues. Borges did not mention the fact that he had exercised that power on 10/11/17 upon filing an Application for a hearing before the Planning Board. The critical information was omitted by Borges when he initially requested the opinion from the COE on 06/06/18.

Based on the newly discovered facts, Perez provided a new opinion (INQ18-171) to Pepe on **07/16/18** wherein she advised that Borges is prohibited from making any presentation on behalf of the Church regarding matters which affect or otherwise impact the outcome of the Church's application filed by Borges on 10/11/17. The opinion further states that "it is recommended that any vote or participation by Borges on the subject-matter should be avoided given his special interest and close relationship with the Church as evidenced on the Application." Additionally, Borges is reminded that the County Code at Section 2-11.1(g) prohibits exploitation of one's official position with the city, its agencies, boards or department, in order to secure a special privilege or exemption for himself or others.

Upon receipt of the second opinion from the COE (INQ18-171), Borges wrote a letter to Perez declaring that he is not and has never been employed or financially compensated by the Church as related to this project. Borges assured Perez in his letter that at the time he executed the Application (10/11/17), he had been asked by the Church to do so on their behalf as they did not have a local signatory present and there was a deadline approaching. Borges stated in his letter that he signed the Application as a courtesy to the Church and received no compensation for doing so. Borges provided a copy of a letter from the Church confirming that he is not a director or officer of the Church and has no financial interest in the outcome of the application.

On or about 07/17/18, Borges again met with Perez and requested an opinion as to whether as a member of the Planning Board who signed off on the Church's Application, he is permitted to speak in front of the City Commission and give his opinion on the project.

In reply to Borges' request for opinion, Perez provided a third opinion (INQ18-177) where Borges is advised that as a representative/applicant of the Church he is prohibited under the South Miami Code of Ethics from appearing before the City Commission to express his support of the project which Borges represents in his capacity as the applicant. Perez added that by addressing the City Commission on the Planning Board's denial of the Application, Borges is representing the interests of the Church and not his own interest as a resident. Perez added that this is more apparent given his recusal from voting on the project at the 07/16/18 Planning Board meeting.

#### **Allegation:**

This inquiry was initiated by the COE upon receipt of information from a City of South Miami resident who alleged that Borges was present and participated in the discussion on the presentation held at the 06/11/19 Planning Board meeting. The presentation was made by a zoning expert hired by the City to look at ways to provide additional opportunities for middle range types of developments to occur by creating a new land use category in the comprehensive plan and a new zoning category. The new categories being discussed at the meeting would allow a townhouse or duplex category district more intense than the present category allows thereby favoring approval of the Church project. The resident expressed concern over Borges' relationship with the Church and the fact that he is a member of the Planning Board participating in a discussion on a presentation which recommends a change that could favorably impact the proposed Church project.

#### **Relevant Laws:**

##### **Sec. 2-11.1. Conflict of Interest and Code of Ethics Ordinance**

*Section 2-11.1(m)(2) Prohibition on appearances before County [or Municipal] Boards by certain individuals on behalf of third parties.*

No person included in the terms defined in subsections (b)(2), (3) and (4) [autonomous personnel, quasi-judicial personnel, and advisory personnel] shall appear before the County board or agency on which he or she serves, either directly or through an associate, and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the



third person. Nor shall such person receive compensation, directly or indirectly or in any form, for services rendered to a third party, who has applied for or is seeking some benefit from the County board or agency on which such person serves, in connection with the particular benefit by the third party. Nor shall such person appear in any court or before any administrative tribunal as counsel or legal advisor to a third party who seeks legal relief from the County board or agency on which such person serves through the suit in question. However, this section shall not prohibit an architect serving without compensation on the Miami-Dade County Board of Energy Regulation or on any architectural Board, whose sole function is to pass on the aesthetics of plans submitted, from submitting plans on behalf of a client so long as such member makes known his or her representation of the applicant and disqualifies himself or herself from speaking or voting or otherwise participating on such application.

Section 2-11.1(g), *Exploitation of official position prohibited.*

Exploitation of official position prohibited. No person included in the terms defined in subsection (b)(1) through (6) and (b)(13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

Section 8A-1(1)(2), **City of South Miami Code of Ethics –**

Prohibits an advisory board member from appearing before the city commission or the agency the member serves, either directly or indirectly, and make a presentation on behalf of a third person with respect to any matter, including a ruling, decision, opinion or benefit south by the third person.

## **Investigation:**

### **06/11/19 – City of South Miami Planning & Zoning Board meeting reviewed:**

The Planning and Zoning Board meeting held on 06/11/19 was for the purpose of discussing an amendment to the City's Comprehensive Plan Future Land Use Element by adding a land use category which would give more flexibility for townhouse-type development.

In order to avoid impacting land currently designated as Townhouse Residential in the Future Land Use Map, the consultant, Sylvia Vargas of Calvin, Giordano & Associates, recommended introducing a new housing category. The amendment being proposed and recommended at the meeting by the consultant was to add Mixed Residential-Moderate Density (MRMD) as a land use category in the City's Comprehensive Plan. This category is intended to provide more flexibility in the development of residential projects that include two-family (duplex) and/or townhouse-type structures. The Fellowship Church Application stands to be positively impacted by the passage of the amendment adding the MRMD category.

At the 40:00-minute mark of the meeting, Borges asks the consultant to answer the questions posed by the residents who had come to speak on the item. One of the residents was Lina Sierra. The residents' concern was the Fellowship Church project and the traffic that it will bring to the area. The Fellowship Church

issue was discussed for several minutes with Borges participating in the discussion.

At the conclusion of the 06/11/19 meeting, a vote approving the minutes of the 05/14/19 Planning & Zoning Board meeting was taken. Borges said that he could not vote because he had recused himself—"I wasn't here."

### **Research Review:**

**Fellowship Church, Inc.** is a foreign not-for-profit corporation filed on 07/13/2006 in the State of Florida. Its principal address is listed as 6767 Sunset Drive, South Miami, FL.

Other addresses noted for Fellowship Church are its mailing address of 2450 Highway 121 North, Grapevine, Texas 76051 which is listed on the Application for Comprehensive Plan Amendment and Public Hearing Before Local Planning Agency (LPA) and City Commission (the Application) filed on 03/15/17. The 03/15/17 Application was signed by Dennis Brewer, Jr., who is listed in the corporate records as the Secretary of Fellowship Church.

The Application for Public Hearing before Planning Board & City Commission filed on 10/11/17 was signed by Borges. Borges, as the applicant, checked off his relationship to the project as its "Owner."

An Application for Public Hearing before the Planning Board and City Commission was filed on 10/23/18. The Application was signed by the location Pastor, Chris King. King, as the Applicant, checked off his relationship to the project as its "Owner."

A review of the Miami-Dade Property Appraiser property information reflects that the property located at 6781 Sunset Drive, South Miami is owned by Fellowship Church.

Research regarding Borges' property ownership records reflect that Borges owns the following properties:

1. 130 N.W. 40<sup>th</sup> Avenue, Miami, FL 33126 (tenant occupied);
2. 5721 SW 53<sup>rd</sup> Terrace, Miami, FL 33155  
(Borges is associated with utilities and has his voter registration at this address);
3. 9525 SW 95<sup>th</sup> Ct., Miami, FL 33176 (tenant occupied);
4. 1055 West 2<sup>nd</sup> Avenue, Hialeah, FL 33010 (Apts. 5, 6, 7 & 8 are tenant occupied);
5. 927 SW 18<sup>th</sup> Avenue, Miami, FL 33135 (tenant occupied); and

Borges is listed as being associated with the following property:

- 17130 SW 137<sup>th</sup> Avenue, Miami, FL 33177; the property is owned by Open Bible Baptist Church, Inc.



Board meeting came about when they were updating the comprehensive plan in early 2018. Through that effort, the Mayor talked regarding a change to the Townhouse use category.

Robert Collins, AICP, Principal Planner of the Planning Department of Calvin, Giordano & Associates, Inc. determined that such change should be assessed in a separate analysis to maintain a standard when making these changes. In 2018 it became evident that the Townhouse and Duplex categories needed to be changed. Tompkins thinks that the idea to do the study originated with the Mayor.

Tompkins explained that in the Spring of 2018, she and Collins were trying to see how they could create greater density in the City. The contract for the study was signed in 2018. The City's zoning provided only for six (6) townhomes per acre. In between May and August 2018, the idea for the study was approved. The recommendation made in the study has not been approved as of now. If the study is approved, the changes to the zoning categories would immediately be approved.

Tompkins said that the June meeting was a working session. The Commission directed staff of changes to the MAP amendment process. The two properties looked at in the study were the CRA property and the Church property.

Tompkins said that the Planning Board recommended denial of the Church project, but the first reading was approved by the Commission. Tompkins said that she is not sure of the date of the second reading. When denied by the Planning Board on 11/14/17, they received enough votes for the item to go to first reading.

Tompkins said that she does not recall the reasons stated for doing the study, but it wasn't a secret that it was being done. Should the City Commission decide to change the map as recommended in the study, it could benefit the Church project. Approval of the recommendation creates an opportunity for the Church project to be approved.

Borges has been involved in the Church project prior to being appointed to the Planning Board by Commissioner Welsh. Tompkins said that Borges discussed the project with her before filing the application and before he became a Planning Board member. Borges, the Church project architect (Peter Blitstein) and attorney Jorge L. Navarro, Esq., have talked to Tompkins regarding the process of the application. Tompkins said that she is not sure if Borges has development ties.

### **Conclusion:**

After discussion with the Ethics Advocate, he concluded that Borges's involvement with the Comprehensive Plan Future Land Use Element (CPFLUD) presentation on June 11, 2019, while denoting an appearance of impropriety, does not rise to a violation of the Conflict of Interest and Code of Ethics Ordinance (Ordinance) or Section 8A-1(l)(2) of the South Miami Code.

In his request for INQ 18-133, Borges neglected to inform the Ethics Commission (COE) of crucial information i.e. that he had signed as Applicant (and Owner) of the Church's application submitted to the

**08/22/19 – Orlando Borges, member of the City of South Miami Planning Board –**

Borges appeared at the COE along with Thomas F. Pepe, Attorney for the City of South Miami. Borges was advised that he would be asked questions in connection with his participation at the Planning Board meeting held on 06/11/19.

The 06/11/19 Planning Board meeting was entirely devoted to a presentation made by Silvia Vargas of the firm of Calvin, Giordano & Associates. The purpose of the presentation was to consider a new category in the comprehensive plan and a new zoning category that would allow a townhouse or duplex category more intense than the City's RT9s, but not as intense as the next step up, which is RN20-RN18s.

The City was interested in reviewing the impact of the recommended changes and proceeded to commission the study. Neither Borges nor Pepe knew whose idea it was to commission the study. Borges acknowledged that he had attended and participated in the discussion of the study at the 06/11/19 meeting, but he had no knowledge that the Church project would be discussed as one of the properties included in the analysis.<sup>1</sup>

Borges said that he has not received any compensation for his involvement in the Church project, nor will he receive any financial gain from the Church project once approved. Borges said that he has not been involved in the proposed project at the Church property. Borges states that the only reason he signed the application on behalf of the Church on 10/11/17 was because there was a pending deadline and they needed someone locally who could sign on their behalf. Borges' only connection to the Church is as a parishioner. When asked, Borges would not explain the reason he was chosen as the signor for the Planning Zoning application amongst 2,000 Fellowship Church parishioners.

Borges submitted a letter dated 08/13/19 from Dennis Brewer, Jr., CFO/General Counsel of Fellowship Church into the record. In his letter, Mr. Brewer explained that Borges signed the Church's application because it needed to be filed by a certain date and time. According to Mr. Brewer, no one has an ownership interest in the Church, including Borges. A revision of the application was required which Pastor Chris King signed on behalf of the Church on 10/23/18.

**08/26/19 – Jane Tompkins, Planning & Zoning Director –**

Jane Tompkins (Tompkins) appeared at the COE to provide information on the subject matter. Tompkins stated that Borges became a member of the Planning Board on 03/20/18. Borges was not a member of the Planning Board when he signed the application for a public hearing before the Planning Board and City Commission on 10/11/17.

Tompkins explained that the idea to do the study that was presented and discussed at the 06/11/19 Planning

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<sup>1</sup> Discussion about the Fellowship Church property began 25 minutes into the meeting. Borges, who was present, continued to participate in the meeting discussion even after acknowledging that he could not speak on the Fellowship Church topic because of his previous recusal. Borges participated in the meeting discussion throughout the meeting including the discussions with two residents during the public comments. The meeting lasted a total of 72 minutes. No official vote was taken at the meeting.



Planning & Zoning Department (P&ZD) in October 2017. The omission of such a critical fact resulted in an opinion favorable to Borges, allowing him to vote and participate on the Church's application/project being considered by his own Planning & Zoning Board (P&ZB).

Subsequently in July 2018, COE provided Borges with INQ 18-171 which, considering the previously undisclosed fact that Borges signed the Church's application, concluded that any participation or vote on matters related to the Church, including "requests for changes to the Comprehensive Plan Future Land Use map and zoning," would trigger a voting conflict under Section 2-11.1(v) of the Ordinance. In addition, any presentations on behalf of the Church, i.e., addressing the Item, "which will ultimately impact the Application," would be a violation of Section 2-11.1(m) of the Ordinance. Borges was also put on notice that Section 2-11.1(g) of the Ordinance prohibited exploitation of one's official position, in order to secure a special privilege or exemption for himself or others.

Shortly thereafter, Borges was given a third COE opinion (INQ 18-177), wherein he was advised that he could not appear before the South Miami Commission to speak as a South Miami resident concerning the Church project pursuant to Section 8A-1(l)(2) of the Code of South Miami.

Eleven months later, at a P&ZB meeting on June 11, 2019, the Board's agenda consisted on an item for discussion, to wit: a zoning expert hired by the City presented a Study (which appears to have been requested by the Mayor) on the amendment to the CPFLUD, allowing more flexibility in the development of townhouse structures in designated areas in the City- a Study which favorably impacts the Church's zoning application.

Borges was present during the presentation of the Study. Although he remains a parishioner, Borges is no longer the Church's applicant for the zoning change (a subsequent, superseding Church application was submitted in 2018 signed by the Church pastor). About halfway through the presentation/ discussion, the expert mentioned that the CRA and Church properties had been considered in the Study. Borges asked a few questions, understanding that the presentation was on the agenda for discussion, not for a vote.

Section 2-11.1(v) of the Ordinance was not triggered by Borges participation because Borges does not have a "prohibited relationship."

Section 2-11.1(m) of the Ordinance prohibits Borges from appearing before the P&ZB he serves and making a presentation on behalf of the Church; or, receiving compensation, directly or indirectly, for services rendered to the Church a party seeking a benefit from the P&ZB. The facts do not indicate that Borges made a presentation on behalf of the Church. Also, there is no evidence that Borges has been compensated by the Church for any actions taken by the Church in the application process.

Borges, is reminded that, given his past and present relationship and affiliation with a P&Z applicant and the role he serves as a member of the P&ZB, he must measure his actions carefully so that he is not perceived by the public as exploiting his official position on the Board to bestow a benefit to the Church.

  
Sylvia Batista, COE Investigator

Date: 11/07/19

Approved by:



Michael Murawski, Advocate

Date: 11/7/19



Jose Arrojo, Executive Director

Date: 11/5/2019