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Harmony CDD General Counsel Report
September 2020 Board of Supervisors Meeting

- I. Brownie’s Plumbing and Septic, LLC (“Brownie’s”), Repair Agreement (Included in Agenda Packet)
 - a. In July 2020, Harmony CDD held an emergency meeting concerning a land depression where it was approved for Brownie’s to investigate the land depression. After hydro-excavation, the determined cause of the land depression was a failed pipe underground.
 - b. At the August 2020 meeting, the Board approved an agreement with Brownie’s to repair the land depression.
 - c. We are seeking direction as to contractual performance by the sub-contractor:
 - i. Section VIII – This Agreement shall commence upon execution by both Parties hereto and shall continue until the duties of the Contractor set forth above are performed to the satisfaction of the District.
 - ii. Section XIV – The performance of services may be terminated in whole or in part by the District Manager in accordance with this provision and may be revised by the Board.
 - iii. Section XIX – The Contractor shall be and remain liable to the District in accordance with law for all damages to the District caused by the Contractor’s performance, or lack of performance, of any of the services furnished, or agreed upon, pursuant to this Agreement.

- II. Infringement of the CDD’s Irrigation System
 - a. Irrigation Overview Memo (Included in Agenda Packet)
 - i. July 2019 – the Board voted to cease maintaining private property with public funds where there was no ascertainable public benefit. The Board negotiated in good faith with Harmony Retail, LLC (“Harmony Retail”) to ascertain a public benefit to no avail.
 - ii. Nov. 2019 – the Board sent a letter to Harmony Retail giving 60 days’ notice that the CDD would no longer maintain Harmony Retail’s lands.
 - iii. Apr. 2020 – Harmony Retail attempts to tamper with the CDD’s irrigation system and calls law enforcement when District field staff takes action to modify the sprinkler boxes in carrying out 2.a.i. above.
 1. The Police Report notes there is no destroyed property or any evidence that the irrigation systems belongs to Harmony Retail.
 - iv. May 2020 – Harmony Retail sues Chairman Berube for trespass and conversion based upon the actions taken by field staff described above.

- v. Aug. 2020 – The CDD’s irrigation system boxes padlocked thus preventing the District from maintaining its infrastructure.
- b. Legal Memorandum re District Officer Legal Representation (Included in Agenda Packet)
 - i. Section 111.07 of the Florida Statutes, provides expressly that a CDD, "is authorized to provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers... arising out of and in the scope of his or her employment or function."
 - ii. A CDD employee or supervisor, is entitled to representation at the public expense in a lawsuit arising from (1) performance of official duties (2) while serving a public purpose.
 - iii. In *Nuzum v. Valdes*, the court determined that Section 111.07, F.S., recognizes the common law principle that a public officer should be allowed representation at the public’s expense when the lawsuit arises out of an employee or officer’s performance of official duties. 407 So.2d 277, 278 (Fla. 3d DCA 1981).
 - iv. The mere allegation that a public officer willfully violated the civil rights of others or otherwise acted with malice is not sufficient to disqualify the government from providing or paying for legal representation of its officer. Rather, there must be an actual finding, from a court of competent jurisdiction or the government entity itself, that the officer willfully violated the rights of others or otherwise acted with malice to create such a disqualification from representation.
 - v. On May 27, 2020, the Board made its *Nuzum* determination finding that the lawsuit arose out of actions taken by the District in order to serve a public purpose. As a result, the District is representing Chairman Berube at the public’s expense as authorized by Florida Statute and the Supreme Court.
- c. September 2020 Letter to Harmony Retail Counsel (included in agenda packet)
 - i. The District sent a letter to Harmony Retail detailing its right to maintain the irrigation systems and includes the following documentation:
 - 1. A Grant from the South Florida Water Management District to fund the installation of the CDD's Irrigation System.
 - 2. Ingress / Egress Utility easements to the benefit of the CDD.
 - 3. A Blanket Drainage Easement to the CDD which expressly includes systems, facilities, and infrastructure (which the District Engineer has stated includes the irrigation system).
 - 4. To date, no contrary documentation has been provided by Plaintiff’s counsel.
- d. Ethics Complaints 20-068, 20-106, 20-107
 - i. Tying into the ongoing case over the District’s Irrigation System, three ethics cases were filed against Chairman Berube, all of which have been dismissed.
 - ii. The first complaint alleged that Chairman Berube misused his public position when Field Staff modified the District's irrigation boxes to prevent tampering.

Consistent with the District's *Nuzum* determination that these actions were done carrying out a public purpose, the Ethics Commission dismissed the complaint (Attached Order 20-068)

iii. The two ethics complaints, 20-106 and 20-107, alleged that Chairman Berube should not have voted on the *Nuzum* determination made by the District determining that the official actions taken by Field Staff were public in nature.

1. The Ethics Commission dismissed each complaint for legal insufficiency, after review of the complaint, *Harmony Retail, LLC, v. Berube*, No. 2020CA001337OC, and the Ethics Complaint 20-068. The Commission found that "the lawsuit concerns actions the [Chairman] took in his official capacity." (Attached Orders 20-106, 20-107).

iv. To date, there have been no findings by either the District, District Staff, Osceola County Sheriff, or the Ethics Commission that any actions relating to the CDD's irrigation system were improper, unlawful or unethical. To the contrary, all evidence and findings of the commission and law enforcement are consistent with this Board's determination that the actions taken by field staff were official in nature, conducted in order to carry out a lawful public purpose so that the District might lawfully carry out its duty to maintain its irrigation systems and facilities.

4. Section 112.313(6), Florida Statutes, is implicated by allegations in the complaint.

Section 112.313(6) states:

MISUSE OF PUBLIC POSITION.--No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.

Pursuant to Section 112.312(9), Florida Statutes, "corruptly" is defined as

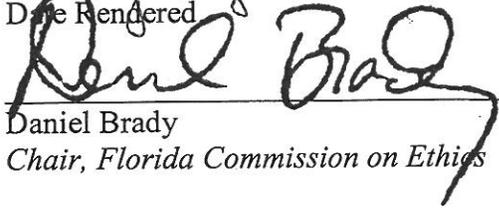
. . . done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.

Section 112.313(6) prohibits public officials and employees from corruptly using or attempting to use their official positions or property or resources within their trust, and it prohibits them from corruptly performing their official duties, in order to secure a special privilege, benefit, or exemption for themselves or another.

5. The complaint fails to indicate possible violation of Section 112.313(6). To indicate possible violation of the statute, a complaint must allege, in a factual, substantive, nonconclusory manner, that a respondent corruptly used or attempted to use his public position or resources within his public trust, or that he corruptly performed her official duties, in order to specially benefit himself or another. In this instance, the complaint does not allege in a factual, substantive, nonconclusory manner that Respondent or another received a benefit, exemption, or privilege from directing an employee of the CDD to damage a sprinkler on a property neighboring the CDD.

Accordingly, this complaint is hereby dismissed for failure to constitute a legally sufficient complaint with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session
on Friday, July 24, 2020.

July 29, 2020
Date Rendered

Daniel Brady
Chair, Florida Commission on Ethics

DB/sjz

cc: Mr. Timothy R. Qualls, Attorney for Respondent
Mr. Steve Fusilier, Complainant

DATE FILED

SEP 16 2020

COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re STEVEN BERUBE,

Respondent.

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Complaint No. 20-106

PUBLIC REPORT AND ORDER DISMISSING COMPLAINT

On Friday, September 11, 2020, the Commission on Ethics met in executive session and considered this complaint for legal sufficiency pursuant to Commission Rule 34-5.002, F.A.C. The Commission's review was limited to questions of jurisdiction of the Commission and of the adequacy of the details of the complaint to allege a violation of the Code of Ethics for Public Officers and Employees. No factual investigation preceded the review, and therefore the Commission's conclusions do not reflect on the accuracy of the allegations of the complaint.

The Commission voted to dismiss the complaint for lack of legal sufficiency, based on the following analysis:

1. This complaint was filed by Marylin Ash-Mower of Harmony, Florida.
2. The Respondent, Steven Berube, allegedly serves as Chairman of the Harmony CDD Board.
3. The complaint alleges that the Respondent voted on a matter that inured to his special private gain or loss when he voted to approve funds for the defense of a lawsuit in which he was, in his personal capacity, a defendant.

4. Section 112.3143(3)(a), Florida Statutes, is implicated by allegations in the complaint. Section 112.3143(3)(a) states:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Section 112.3143(3)(a) prohibits local public officers from, among other things, voting on a matter that will inure to his or her special private gain or loss.

5. The complaint fails to indicate a possible violation of Section 112.3143(3)(a). To indicate a possible violation of the statute, a complaint must allege, in a factual, substantive, nonconclusory manner, that a respondent voted on a matter that would inure to his or her special private gain or loss.

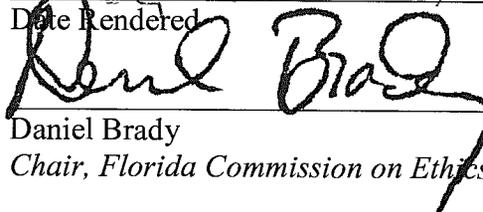
6. Rule 34-5.002(1), F.A.C., allows the Commission to obtain and review public records that may provide additional information about the complaint. In this case, a review of the civil complaint filed against the Respondent, which was referenced, but not included, in the complaint (Complaint and Demand for Jury Trial, Harmony Retail, LLC, v. Berube, No. 2020CA001337OC, (May 14, 2020)), and the ethics complaint previously filed against the Respondent (In re Steven Berube, Commission on Ethics Complaint No. 20-68 (*Dismissed*)),

demonstrate that the lawsuit concerns actions the Respondent allegedly took in his official capacity.

7. Therefore, the complaint does not contain factual, nonconclusory allegations that the Respondent voted on a matter that inured to his special private gain or loss. Any inference in the complaint that the Respondent inured a special private gain or loss is conclusory. While material assertions of fact are taken as true in an analysis of legal sufficiency, conclusions or unwarranted deductions of fact are not a sufficiently specific basis for investigation. For these reasons, the allegations in the complaint do not form a sufficient basis to initiate an investigation under Section 112.3143(3)(a).

Accordingly, this complaint is hereby dismissed for failure to constitute a legally sufficient complaint with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on Friday, September 11, 2020.

September 16, 2020
Date Rendered

Daniel Brady
Chair, Florida Commission on Ethics

DB/sjz

cc: Mr. Steven Berube, Respondent
Ms. Marilyn Ash-Mower, Complainant

DATE FILED

SEP 16 2020

COMMISSION ON ETHICS

BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re STEVEN BERUBE,

Respondent.

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Complaint No. 20-107

PUBLIC REPORT AND ORDER DISMISSING COMPLAINT

On Friday, September 11, 2020, the Commission on Ethics met in executive session and considered this complaint for legal sufficiency pursuant to Commission Rule 34-5.002, F.A.C. The Commission's review was limited to questions of jurisdiction of the Commission and of the adequacy of the details of the complaint to allege a violation of the Code of Ethics for Public Officers and Employees. No factual investigation preceded the review, and therefore the Commission's conclusions do not reflect on the accuracy of the allegations of the complaint.

The Commission voted to dismiss the complaint for lack of legal sufficiency, based on the following analysis:

1. This complaint was filed by Nancy Snyder of Harmony, Florida.
2. The Respondent, Steven Berube, allegedly serves as Chairman of the Harmony CDD Board.
3. The complaint alleges that the Respondent voted on a matter that inured to his special private gain or loss when he voted to approve funds for the defense of a lawsuit in which he was, in his personal capacity, a defendant.

4. Section 112.3143(3)(a), Florida Statutes, is implicated by allegations in the complaint. Section 112.3143(3)(a) states:

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Section 112.3143(3)(a) prohibits local public officers from, among other things, voting on a matter that will inure to his or her special private gain or loss.

5. The complaint fails to indicate a possible violation of Section 112.3143(3)(a). To indicate a possible violation of the statute, a complaint must allege, in a factual, substantive, nonconclusory manner, that a respondent voted on a matter that would inure to his or her special private gain or loss.

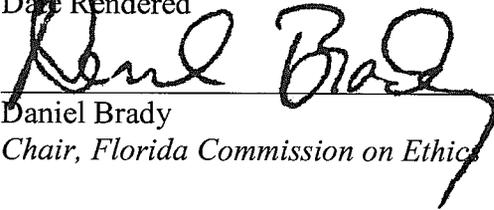
6. Rule 34-5.002(1), F.A.C., allows the Commission to obtain and review public records that may provide additional information about the complaint. In this case, a review of the civil complaint filed against the Respondent, which was referenced, but not included, in the complaint (Complaint and Demand for Jury Trial, Harmony Retail, LLC, v. Berube, No. 2020CA001337OC, (May 14, 2020)), and the ethics complaint previously filed against the Respondent (In re Steven Berube, Commission on Ethics Complaint No. 20-68 (*Dismissed*)),

demonstrate that the lawsuit concerns actions the Respondent allegedly took in his official capacity.

7. Therefore, the complaint does not contain factual, nonconclusory allegations that the Respondent voted on a matter that inured to his special private gain or loss. Any inference in the complaint that the Respondent inured a special private gain or loss is conclusory. While material assertions of fact are taken as true in an analysis of legal sufficiency, conclusions or unwarranted deductions of fact are not a sufficiently specific basis for investigation. For these reasons, the allegations in the complaint do not form a sufficient basis to initiate an investigation under Section 112.3143(3)(a).

Accordingly, this complaint is hereby dismissed for failure to constitute a legally sufficient complaint with the issuance of this public report.

ORDERED by the State of Florida Commission on Ethics meeting in executive session on Friday, September 11, 2020.

September 16, 2020
Date Rendered

Daniel Brady
Chair, Florida Commission on Ethics

DB/sjz

cc: Mr. Steven Berube, Respondent
Mr. Nancy Snyder, Complainant