



BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Lee Feldman, City Manager, City of Fort Lauderdale

From: John W. Scott, Inspector General 

Date: April 10, 2015

Subject: **OIG Closing Memorandum Re: *Allegation that the City of Fort Lauderdale Commission Unlawfully Extended a Zoning Board Member's Expired Term, Ref. OIG 14-018***

The Broward Office of the Inspector General (OIG) has concluded its inquiry into an allegation that, on or about May 2014, the City of Fort Lauderdale Commission violated §47-30.2 of the City of Fort Lauderdale, Florida, Unified Land Development Regulations (ULDR) by unlawfully extending a Planning and Zoning Board (Zoning Board) member's term past the time provided for therein.

The OIG inquiry found that the appointment of the Zoning Board member was surrounded by confusion and inconsistencies largely arising from process deficiencies, and the fact that the language currently featured in §47-30.2, ULDR is not clear about the treatment of appointments made after June 1. The OIG finds insufficient good cause to proceed to an investigation. Nonetheless, this memorandum contains recommendations designed to avoid similar results in future appointments.

Background

The City of Fort Lauderdale's Planning and Zoning Board consists of nine members whose terms are limited. See §47-30.2 (A)-(C), ULDR. Specifically, the section states:

B. The term of office of each member shall be three (3) years except for the filling of vacancies.

The term of office in each instance shall begin on June 1.

C. Vacancies on the board shall be filled for the balance of any unexpired term.

On June 17, 2008, Vice Mayor Charlotte Rodstrom recommended Catherine Maus be reappointed to the Zoning Board. This reappointment was memorialized by Resolution No. 08-134 which reflected that her term would expire three years later on "May 31, 2011, or until her successor has been appointed." Although Ms. Maus's term expired on May 31, 2011, no new

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appointment was made and she remained on the board until approximately February 2012, when she resigned.

On September 18, 2012, Vice Mayor Rodstrom recommended the appointment of Bradford Cohen to the Zoning Board. The OIG's review of the meeting revealed that the City Clerk announced Mr. Cohen's appointment as a "new appointment."¹ The appointment was memorialized by Resolution No. 12-181, which was not drafted at the time of the meeting and not presented in writing to the commissioners. When the resolution was ultimately drafted, the language did not reflect that Mr. Cohen was a new appointment to the Zoning Board. Instead, it read "Bradford Cohen was appointed effective September 18, 2012, *for an interim term expiring May 31, 2014*, or until his successor has been appointed" (emphasis added). A number of City documents and schedules also reflected that Mr. Cohen's term would expire in 2014.

On May 15, 2014, Commissioner Dean Trantalis notified the City Clerk that he intended to appoint Steve Glassman to the Zoning Board to replace Mr. Cohen's seat which, as reflected in all written records, was set to expire on May 31, 2014. Apparently having gotten notice that his seat was set to expire, Mr. Cohen emailed Mayor John P. "Jack" Seiler on May 19, 2014 objecting to the language in Resolution No. 12-181 that his term would expire on May 31, 2014 and arguing that he was entitled to a full three-year term.

The issue was discussed at length at the May 20, 2014 City Commission Conference Meeting. At this meeting, certain City officials took the position that, since Ms. Maus's term expired on May 31, 2011, and Mr. Cohen was not appointed until September 18, 2012, Mr. Cohen was not an interim appointment but a new three-year appointment. However, since the language of §47-30.2, ULDR specifically established that terms began on June 1st, Mr. Cohen would be entitled to a three year term from June 1, 2012. Commissioner Trantalis objected to this reading of §47-30.2, ULDR. There were no appointments made to the Zoning Board at the City Commission Regular Meeting which occurred later that day.

On May 30, 2014, City Attorney Cynthia Everett issued a legal opinion which identified that the 2012 vote of the Commission was for a "new appointment," rather than the "interim term" identified in the resolution.

Analysis

In evaluating the Fort Lauderdale commission's handling of this matter, the OIG reviewed relevant legal authority, including the City of Fort Lauderdale's code, attorney general opinions, and the basic tenets of statutory construction. The OIG also reviewed video of both conference and commission meetings for the dates of September 18, 2012, and May 20, 2014 and interviewed the City Clerk. The OIG determined that, as reflected in the written resolution, the appointment should reasonably have been treated as an interim appointment to fill the vacancy

¹ City Committee Conference Meeting (City of Fort Lauderdale, September 18, 2012) (available at http://fortlauderdale.granicus.com/MediaPlayer.php?view_id=2&clip_id=37).

created when Ms. Maus left the Board in February 2012.² By the express language of the ULDR, the vacancy should have been filled only for the balance of the existing term.

However, the circumstances here were complicated by the fact that the Commission in 2012 did not actually appoint Mr. Cohen as an interim appointment. Instead, they verbally voted that he be granted a *new* appointment. The OIG also notes that the ULDR's language is somewhat ambiguous in its treatment of appointments made after June 1st to fill an expiring term. Thus, the OIG cannot find that the Fort Lauderdale commission intentionally violated its code when it allowed Mr. Cohen to continue his service with the Zoning Board.

Conclusion

There is insufficient good cause to believe that the city commission engaged in misconduct by allowing Mr. Cohen to continue to serve on the Zoning Board. Accordingly, this matter is closed without further inquiry.

Notwithstanding the closure of this matter, the OIG recommends that the Fort Lauderdale commission endeavor to amend the language of §47-30.2, ULDR to clarify the applicable term limit for a board member appointed after June 1st.

Moreover, the OIG also notes that the confusion in this instance was exacerbated by the subsequent drafting of a resolution that was verbally voted upon by the commission without any safeguard to ensure consistency. Thus, the OIG recommends development of a form of secondary review for resolutions not presented in writing to the commission to ensure consistency with the verbal vote.

cc: Ms. Cynthia Everett, City Attorney

² The Attorney General has opined that a vacancy may not exist upon the expiration of a term, depending on the circumstances. Nonetheless, a vacancy was certainly created in February 2012 when Ms. Maus left the Board. AGO 2010-51