

ITEM #43

**ADDITIONAL MATERIAL
10:00 A.M. REGULAR MEETING
AUGUST 25, 2015**

**SUBMITTED AT THE REQUEST OF
COUNTY ADMINISTRATION**

**KATZ BARRON
SQUITERO FAUST**

FORT LAUDERDALE
100 N.E. THIRD AVENUE
SUITE 280
FT. LAUDERDALE FL 33301-1176

954-522-3636
954-522-5119 FAX

www.katzbarron.com

FAX COVER SHEET

DATE: August 24, 2015
SEND TO: Bertha Henry, County Administrator
FAX NO.: (954) 357-7360
FROM: Matthew D. Katz, Esq.
RE: Nomination of Citizen Member to the Board of the South Florida Regional Transportation Authority

TOTAL PAGES, INCLUDING THIS COVER SHEET: 9

IF THERE ARE ANY PROBLEMS IN RECEIVING, PLEASE CALL

This facsimile contains PRIVILEGED and CONFIDENTIAL information only for the use of the addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify the sender above by telephone (collect call if necessary) and return the original to us at the above address via the U.S. Mail. Thank you.

KATZ | BARRON
SQUITERO | FAUST

FORT LAUDERDALE
100 N.E. THIRD AVENUE
SUITE 280
FT. LAUDERDALE, FL 33301-1176

954-522-3636
954-522-5119 FAX

www.katzbarron.com

August 24, 2015

Via Facsimile ((954) 357-7641) and E-mail (jacoffey@broward.org)

Office of the County Attorney
115 South Andrews Avenue
Suite 423
Ft. Lauderdale, FL 33301
Attn: Joni Armstrong Coffey, County Attorney

Via Facsimile ((954) 357-7360) and E-mail (bhenry@broward.org)

Office of the County Administrator
115 South Andrews Avenue, Room 409
Ft. Lauderdale, FL 33301
Attn: Bertha Henry, County Administrator

**Re: Nomination of Citizen Member to the Board of the South Florida Regional
Transportation Authority**

Dear Ms. Coffey and Ms. Henry:

This firm represents James Cummings in connection with the concerns that your office has been previously made aware of regarding the failure of Broward County (the "County") to follow the "At-Large Board Rotation Procedures" established and adopted by the Broward County Commission (the "Commission") on May 15, 2001, as amended (the "Procedures").

We understand the County believes Mr. Cummings most recent term as the citizen member of the Board of South Florida Regional Transportation Authority ("SFRTA") under Florida Statute §343.53(2)(b) expired on August 30, 2015 due to Mr. Cummings' nomination for such term being approved on August 30, 2011 (see enclosed email from Eddy Labrador, Director Office of Intergovernmental Affairs and Professional Standards dated August 19, 2015); please note Mr. Cummings late nomination for reappointment by former Commissioner Jacobs resulted in such approval being August 30, 2011. Mr. Cummings desires to be considered for reappointment as the citizen member of the Board of the SFRTA, and as detailed below, we respectfully disagree and believe it is clear Mr. Cummings' term expired on July 30, 2015. The consequence of the different expiration dates materially and adversely affected the Procedures of the Commission to

Office of the County Attorney and Office of the County Administrator
August 24, 2015
Page 2

the detriment of Mr. Cummings and his desire to be considered for reappointment as the citizen member of the Board of the SFRTA.

As you may be aware, Mr. Cummings has served on the Board of the SFRTA for the past eighteen (18) years, including in the capacity as Chairman and Vice Chairman. Mr. Cummings was a member of the Board of the Tri-County Rail Authority prior to its redesignation as the SFRTA in 2003. Following such redesignation, Mr. Cummings continued as the County's citizen member of the Board of the SFRTA and was reappointed by the Commission in 2007 and 2011.

In connection with such redesignation, the term of Mr. Cummings' appointment to the Board of the SFRTA began on July 30, 2003. Specifically, §343.53(3)(b) of the Florida Statutes effective at such time provided: "*The terms of the board members currently serving on the authority that is being succeeded by this act shall expire July 30, 2003, at which time the terms of the members appointed pursuant to subsection (2) shall commence.*" Following Mr. Cummings' first appointment following such redesignation, the expiration date of such term was July 30, 2007 and following Mr. Cummings' reappointment the expiration date of such term was July 30, 2011.

The County believes that because Mr. Cummings' nomination for his second reappointment term was approved on August 30, 2011, the expiration date of such term is August 30, 2015. As of July 30, 2011, the expiration date of Mr. Cummings' first reappointment term, there was a vacancy for the County's citizen member of the Board of the SFRTA. This vacancy was subsequently remedied following Mr. Cummings reappointment on August 30, 2011. §343.53(4) of the Florida Statutes provides that in the event of any vacancy any appointment to the Board of the SFRTA is only for the "balance of the unexpired term." As §343.53(3)(b) of the Florida Statutes effective at such time set the terms to commence on July 30, 2003, the term of membership to the Board is four (4) years pursuant to §343.53(3) of the Florida Statutes and §343.53(4) of the Florida Statutes requires appointments only for the "balance of the unexpired term" in the event of any vacancy, it is clear the term of Mr. Cummings' reappointment in 2011 expired on July 30, 2015.

It is important to also note the County's website for the SFRTA tracks the language from §343.53(3)(b) of the Florida Statutes before the amendments thereto in 2012 and also includes the same language from §343.53(4) of the Florida Statutes. In addition, on this same website page it references that the County's website was updated on January 21, 2015. We also understand that the term of the citizen members of the Board of the SFRTA for the Counties of Miami-Dade and Palm Beach expired on July 31, 2015 and the term for the reappointments thereunder will continue until July 31, 2019. It seems clear beyond peradventure that Mr. Cummings' term expired on July 30, 2015.

Accordingly, we believe the County erroneously determined the expiration date of Mr. Cummings most recent reappointment term as a member of the Board of SFRTA to expire on or about August 31, 2015 as opposed to the date established by law as July 30, 2015. This error resulted in the term expiration of the County's citizen member of the Board of the SFRTA not being properly, timely or lawfully placed on the "list of vacancies or term expirations" compiled

Office of the County Attorney and Office of the County Administrator
August 24, 2015
Page 3

by County staff and provided to the appropriate Commissioner on the "rotation list" in compliance with the Procedures.

Due to the County's failure to follow the law and the Procedures, we respectfully request that the County withdraw the motion to nominate Beth Talabisco to the Board of the SFRTA currently on the agenda for the Commission's regular meeting scheduled for August 25, 2015. In addition, it only seems fair and equitable the appointment of the citizen member of the Board of the SFRTA immediately be added to the current "list of vacancies or term expirations" recently given to Commissioner Ryan who is next in the rotation (per the enclosed email from Eddy Labrador, Director Office of Intergovernmental Affairs and Professional Standards dated August 19, 2015) after Commissioner Ritter and in accordance with the Procedures to be concluded in a timely manner before the Commission's next regularly scheduled meeting September 1, 2015.

To the extent, the County does not withdraw such motion as requested, Mr. Cummings reserves all rights and remedies in connection with the County's failure to follow the law and the Procedures.

Please contact me if you have any questions.

Sincerely,



Matthew D. Katz

Enclosures (4)

cc: James Cummings

Subject:

FW: Request for Information/TIME IS OF THE ESSENCE

Attachments:

Available SR 07-31-15.pdf; Available MK 07-10-15.pdf; 2015 At-Large Rotation Order.pdf

Importance:

High

On Aug 19, 2015, at 10:47 AM, Labrador, Edward <ELABRADOR@broward.org> wrote:

Dear Mr. Cummings,

Per your email request this morning (9:39 AM) to Daphnee Sainvil of my Office, attached are the following documents:

- At-Large Availability List – Vice Mayor Kiar
- At-Large Availability List – Commissioner Ritter
- 2015 At-Large Rotation Order

Pursuant to Section 343.53(3), Florida Statutes, members of the governing board of the South Florida Regional Transportation Authority (SFRTA) are appointed to serve a term of 4 years. You were nominated by Commissioner Kristin Jacobs (Agenda Item #50) and appointed by the County Commission on August 30, 2011. Accordingly, your term ends on August 30, 2015.

In addition, you claim to have provide a resume and letter of interest to three (3) commissioners. Our Office was not provided copies of the resume and/or letter of interest and therefore we have no such records.

This satisfies your Public Records Request.

Sincerely,

Eddy Labrador, Esq., B.C.S.

Director, Office of Intergovernmental Affairs

and Professional Standards

Governmental Center, Room 426

115 S. Andrews Avenue

Fort Lauderdale, FL 33301

(954) 357-7575 - Office

(954) 357-6573 - E-fax

(954) 826-1155 - Cell

elabrador@broward.org

<image001.png>

Follow Broward County Governmental Affairs on Twitter @BrowardSLI

-----Original Message-----

From: James A. Cummings [<mailto:hunterjimcummings@icloud.com>]

Sent: Wednesday, August 19, 2015 9:39 AM
To: Sainvil, Daphnee
Cc: Henry, Bertha; Charles CAULKINS
Subject: Request for Information/TIME IS OF THE ESSENCE

Dear Ms. Sainvil: It is my understanding that you are the individual who is the person charged with handling the appointment list for the Broward County Commission. I am making a request for the vacancy list that contains all new vacancies and/or term ending positions that was given to Commissioner Stacy Ritter during the month of August (or in July if the list was given to her then). I would also like to have a copy of the list that was given to Commissioner Kair who was in the previous rotation.

In addition, please provide me with the list of rotation in the order of Commissioners that is used in the "At Large Rotation Procedures". I would also like to know the exact end term date for the South Florida Regional Transportation Authority position that I currently hold and if in fact your office received the resumes and interest statement I submitted to 3 commissioners.

In requesting these four items (vacancy lists, rotation order, end term date for SFRTA position and receipt of resume), I am anticipating that you will comply with the public records act and provide this in a timely manner as Commissioner Ritter is submitting a nomination for the August 25 agenda. Per the public records act, as you know, this request must be acknowledged promptly and responded to in good faith. Please transmit this information to me by email (hunterjim@bellsouth.net) as time is of the essence. Sincerely, James A. Cummings

Under Florida law, most e-mail messages to or from Broward County employees or officials are public records, available to any person upon request, absent an exemption. Therefore, any e-mail message to or from the County, inclusive of e-mail addresses contained therein, may be subject to public disclosure.

AT- LARGE ROTATION ORDER
(The rotation order does not correspond to Commission district number)

ROTATION ORDER	COMMISSIONER
1	Lois Wexler
2	Dale V.C. Holness
3	Martin Kiar
4	Stacy Ritter
5	Tim Ryan
6	Barbara Sharief
7	Mark D. Bogen
8	Chip LaMarca
9	Beam Furr

AVAILABLE AT-LARGE BOARD ROTATION APPOINTMENTS
 For Commissioner Kiar July 10, 2015

Please select one board position listed below within 15 days (July 25, 2015).

- After you select the board, please notify me so the list can be updated and sent to the next Commissioner on the rotation.
- You then have an additional 15 days (August 9, 2015) to prepare the agenda item, have it reviewed by the Office of the County Attorney, and place on the Commission meeting agenda.
- The agenda item is a "Motion to Nominate (name of individual) for appointment or reappointment to (name of board)."
- You may select only one of the available at-large rotation positions listed below.

BOARD	POSITION (CURRENT MEMBER or VACANCY)	CATEGORY	DATE ADDED
Climate Change Task Force	VACANT	Universities/academic institutions (category optional/not required)	04-29-15
Florida Atlantic Research and Development Authority	Parks, Robert (term expires 08-16-15)	Registered voter; financial disclosure	07-10-15
Unsafe Structures Board	McSweeney, Robert (term expires 04-03-15)	Registered engineer	02-06-15

In addition to one of the available at-large rotation positions listed above, you may nominate one or more individuals to the positions listed on the attached "At-Large Positions Available to All Commissioners."

- These positions have been available to each Commissioner on the at-large rotation and remain unfilled.
- Many of these positions are filled by members currently serving whose terms have expired.
 (members in these positions continue to serve until they are reappointed or a successor is appointed)
 There are some resumes on file for your consideration and will be provided upon request.

Should you have questions, please contact Daphnee Sainvil at 954-357-5934 or boards@broward.org.

AVAILABLE AT-LARGE BOARD ROTATION APPOINTMENTS
For Commissioner Ritter July 31, 2015

Please select one board position listed below within 15 days (August 15, 2015).

- After you select the board, please notify me so the list can be updated and sent to the next Commissioner on the rotation.
- You then have an additional 15 days (August 30, 2015) to prepare the agenda item, have it reviewed by the Office of the County Attorney, and place on the Commission meeting agenda.
- **The agenda item is a "Motion to Nominate (name of individual) for appointment or reappointment to (name of board)."**
- You may select only one of the available at-large rotation positions listed below.

BOARD	POSITION (CURRENT MEMBER or VACANCY)	CATEGORY	DATE ADDED
Climate Change Task Force	VACANT	Universities/academic institutions (category optional/not required)	04-29-15
Florida Atlantic Research and Development Authority	Parks, Robert (term expires 08-16-15)	Registered voter; financial disclosure	07-10-15
South Florida Regional Transportation Authority	James A. Cummings (term expires 08-30-15)	Broward County Representative	07-31-15
Unsafe Structures Board	McSweeney, Robert (term expires 04-03-15)	Registered engineer	02-06-15

In addition to one of the available at-large rotation positions listed above, you may nominate one or more individuals to the positions listed on the attached "At-Large Positions Available to All Commissioners."

- These positions have been available to each Commissioner on the at-large rotation and remain unfilled.
- Many of these positions are filled by members currently serving whose terms have expired.
 (members in these positions continue to serve until they are reappointed or a successor is appointed)
 There are some resumes on file for your consideration and will be provided upon request.

Should you have questions, please contact Daphnee Sainvil at 954-357-5934 or boards@broward.org.