



Miami-Dade Commission on Ethics & Public Trust
Investigative Report

Investigator: Nilda Olmo
Complainant: Ed Dion
Date Opened: August 8, 2019

Case No.: K19-34
Case Name: Ed Dion-Ottinot
Date Submitted: October, 20, 2020

Allegation(s):

On or about August 7, 2019, City of Sunny Isles Beach (SIB) City Attorney Ed Dion (Dion) contacted the Commission on Ethics (COE) regarding a potential violation of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance by former SIB City Attorney Hans Ottinot (Ottinot).

Possible violations by Ottinot stemmed from his participation/actions pertaining to a development project, "Infinity" (hereinafter "Infinity Project"), under consideration in SIB since early 2018.



Aerial of Infinity Project Zoomed Out



Aerial of Infinity Project Zoomed In

On December 20, 2018, the Infinity Project went before the Commission, and the Commission deferred action. Ottinot did not attend the meeting, but Assistant City Attorney Julia Grachova (Grachova) was present.

On January 4, 2019, Ottinot announced his retirement as Sunny Isles Beach City Attorney, effective February 7, 2019. That same day, RK Centers (RK) issued a Press Release announcing hiring Hans Ottinot, City Attorney of Sunny Isles Beach, as Vice President of Government Relations and Chief Legal Strategies. Raanan Katz and his son Daniel Katz are principals for RK, whose shopping center is adjacent to the Infinity project, and have been in opposition of the development from its inception.¹

¹ RK Centers is a privately held, family-owned real estate development company owning approximately 9,000,000 square feet of commercial space, with expertise in acquisition, development, and management operations of regional and community shopping centers in New England and South Florida. Raanan Katz is founder and Principal of RK Centers. Daniel Katz is Vice President.

The Employment Agreement between Ottinot and R.K./FL Management, Inc. was signed on January 3, 2019, with Ottinot submitting his resignation letter the following day (January 4th).

Ottinot continued participating on Infinity Project issues. On January 15, 2019, Ottinot along with Assistant City Attorney Grachova, met with Maggie Gordo, President of the Sands Pointe Ocean Beach Resort Condominium. Gordo is a very vocal resident in opposition of the Infinity Project. Following the meeting, Ottinot emailed City Manager Chris Russo and Planning Director Zoning Director Claudia Hasbun advising of the meeting with Gordo and mentioning her issues and strong concern regarding the density of the Infinity Project and the negative impact on the area. Like Gordo, RK has been constant in expressing the same concern.

Ottinot emails indicate that after meeting with Gordo, and upon discussing her issues and concerns about the project, he reviewed the density and square footage calculations in the Zoning Code in comparison with the Comprehensive Plan, and noted that the density and square footage calculations in the Town Center District (Infinity Project) were inconsistent with the density and square footage in the Comprehensive Plan. Ottinot attached to the email, a court order indicating that any development order issued by the City must be consistent with the Comprehensive Plan.

In response, Hasbun clarified that the documents reviewed/provided by him referred to older, outdated documents, noting that as City Attorney, Ottinot had access to and had referred, numerous times, to current Comprehensive Plan and Zoning documents. Hasbun indicated that the density of the project application was within the permissible limits of the City's Comprehensive Plan and Zoning Code.

As a result of the allegations brought forth by Dion, the COE initiated an investigation into a possible ethics code violation by Ottinot.

Relevant Law:

Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Sec. 2-11.1 (j) *Conflicting employment prohibited*. No person included in the terms defined in Subsections (b)(1) through (6) and (b)(13) shall accept other employment which would impair his or her independence of judgement in the performance of his or her public duties.

City of Sunny Isles Beach Code of Ordinance § 33-7 (b). *Disclosure of interest in conflict with official duties; undue influence*. No official, officer or employee of the City of Sunny Isles Beach shall, by his or her conduct, give reasonable basis for the impression that any person can unduly influence him or her improperly or enjoy his or her favor in the performance of his or her official duties or that he or she is affected by kinship, rank, position or influence of any party or person.

Background and Investigation/Interviews:

The City of Sunny Isles Beach was incorporated in 1997, adopting their first Comprehensive Plan October 5th, 2000, with approximately 12 amendments thereafter (the Town Center overlay was included).²

In 2004, an area called Town Center District, extending from 172nd Street South to Sunny Isles Beach Boulevard (on the West side of Collins Avenue) was created, and the zoning code for Town Center District was instituted. Town Center is a mixed-use business area that includes I.e., condominiums, chain/private retail services, office, and restaurants.

In 2007, there was an attempt to amend the Comprehensive Plan to include density and intensity in Town Center District, pursuant to State of Florida requirements. Although additional data and analysis was to be provided, instead of providing the data, SIB decided to remove the density and intensity limitations. The Comprehensive Plan amendment was approved, with the city receiving an "In Compliance" letter from the State of Florida of Comprehensive Planning

Since 2019, the City has been working on solving issues/discrepancies in this designated area, as inconsistencies between the zoning code and comprehensive plan for Town Center were discovered.

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²The Comprehensive Plan is the City's blueprint for existing and future development. The Plan's goals, objectives and policies reflect the City's vision for its future and how it will meet the needs of existing and future residents, visitors, and businesses. The City's original Comprehensive Plan provided the foundation for the dramatic growth and redevelopment that has occurred since incorporation. Moving forward, the Plan has been amended to reflect the redevelopment that has occurred, along with a current vision for moving forward. (City of SIB Website)

The Comprehensive Plan is comprised of Future Land Use; Transportation Element; Housing Element; Recreational and Open Space; Capital Improvement Element; Intergovernmental Coordination Element; Coastal Management Element; Infrastructure Element; Community Design Element; Conservation Element; Public School Facilities Element. (SIB Planning & Zoning)

(Following is SIB's Town Center District History Timeline:)

Town Center District History

Throughout the last year, the City of Sunny Isles Beach has been working to solve a discrepancy in the Town Center District. This timeline breaks down the history of the Town Center District and how the City has been addressing the issue.

2000.

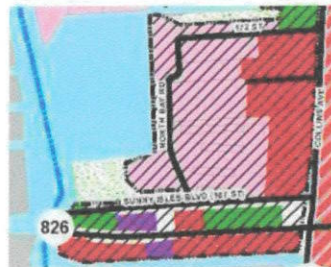
The City of Sunny Isles Beach's Comprehensive Plan was adopted in 2000. A city's comprehensive plan is the blueprint for existing and future development. The plan's goals, objectives and policies reflect the city's vision for its future and how it will meet the needs of existing and future residents, visitors and businesses. Sunny Isles Beach's comprehensive plan has been amended 13 times throughout the last 19 years to reflect the redevelopment that has occurred, along with a current vision for moving forward. [View the current Comprehensive Plan.](#)

2002.

In 2002, the Land Development Regulations, or Zoning Code, was created.

2004.

In 2004, the current Town Center Zoning District was created. The Town Center District spanned from 172 Street south to the south side of Sunny Isles Boulevard, spanning east to Collins Avenue and west to the Intracoastal Waterway. The base floor area ratio (F.A.R.) was 2.50 and the base density was 60 dwelling units for all property within the boundaries of Town Center. In addition, F.A.R and density bonuses were available, depending upon the location of the property. Transfer Development Rights were also permitted in order to increase F.A.R and density.



Town Center District in 2004



Future Land Use Map 2016-2030

2005.

In 2005, the city completed its first Evaluation and Appraisal Report (EAR) to identify all necessary topics to be amended in the Comprehensive Plan. One of the topics was to provide for limitation on floor area ratio, especially in the Town Center District.



2007.

In 2007, the Town Center District language was redefined by a proposed intensity and density limitation as part of a first reading of the ordinance for the amendment of the Comprehensive Plan. Under the State of Florida requirements, additional data and analysis was to be provided. Rather than provide the required data and analysis, the City chose to remove the density and intensity limitations during the second reading of the ordinance. The Comprehensive Plan amendment was approved, and the city received an "In Compliance" notice from the State of Florida Office of Comprehensive Planning. However, the City did not amend the Zoning Code to conform to the Comprehensive Plan.

2011.

In 2011, a new Florida State Statute strengthened the requirements for density and intensity to be included in cities' comprehensive plans. However, the City did not amend the comprehensive plan to include intensity and density in the Town Center District. The City submitted four Comprehensive Plan E.A.R.s to the state from 2011 to 2016, all of which received "In Compliance" notices from the State of Florida Office of Comprehensive Planning.

Site Plan Approvals from 2004-2018.

During this time, 13 site plan approvals occurred in six buildings: 400 Sunny Isles Beach Marina, Parque Towers and Office Tower, Chabad Lubavitch Russian of South Florida Inc, St. Tropez on the Bay, One Netanya Centre, and Jerry's Famous Deli (Epicure Site).

2019.

In early 2019, the City discovered the inconsistency between the City's Comprehensive Plan and Land Development Regulations (Zoning Code) in the Town Center District.

July 2019.

After the discrepancy between the comprehensive plan and the zoning code was discovered, the City proposed an amendment to the comprehensive plan at the July Regular Commission Meeting. The text-based amendment permitted density in a range from 60 to 85 units per acre and floor area ratio in a range from 2.5 to 3.5.

Proposed Text Based Amendment

When parcels are located within the Town Center Planned Development District Designation as depicted on the Future Land Use Map, additional density is permitted in a range from 60 to 85 units per acre and Floor Area Ratio in a range from 2.5 to 3.5. Town Center Land Development Regulations shall implement this District Designation.

Additional density and FAR intensity bonuses may be permitted within the Town Center for developments that comply with bonus program requirements.

August 2019.

The city held a Special City Commission Meeting on August 28, 2019 to propose a moratorium and zoning in progress resolution in the Town Center District, which stopped the consideration of any new projects. The moratorium and zoning in progress passed on first reading in a 4-1 vote.

September 2019.

At the September Regular Commission Meeting, the City Commission voted 4-1 to enact the moratorium and zoning in progress in the Town Center District.

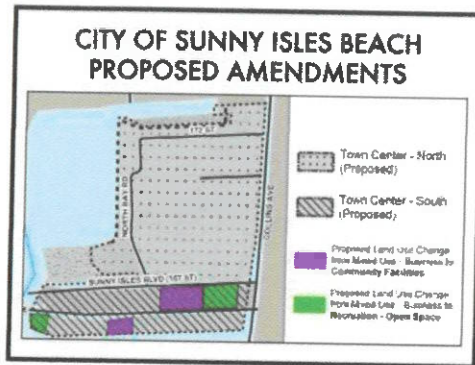




October 2019.

At the October Regular Commission Meeting, city staff presented an amendment to the Comprehensive Plan, which subdivides the Town Center District into Town Center North and Town Center South. The proposed Town Center North will extend from the westbound lanes of Sunny Isles Boulevard north

to 172 Street and Town Center South will encompass the blocks south of Sunny Isles Boulevard. The amendment defines the density and intensity for only the Town Center South to align with the interpretation relied on for the last 12 years. The proposed base density for the Town Center South is 75 dwelling units per acre, and the base Floor Area Ratio intensity is 3.50, with additional bonuses and Transfer Development Rights to increase density and FAR available.



The amendment also changes the designation of four land parcels in the Town Center South. Bella Vista Bay Park and Gateway Park would change from mixed-use business to recreation and open space, meaning all future uses of that land must be for recreation and open spaces purposes. Miami-Dade County Water and Sewer Facility and the Gateway Park parking garage changed from mixed-use business to community facility, meaning all future uses of that land must be for community facility purposes. None of those four parcels have any development rights.

The ordinances passed on first reading in a 4-1 vote, and the city transmitted the amendments to the State of Florida for review.

December 2019.

The proposed Comprehensive Plan amendment package was transmitted to the State Department of Economic Opportunities (DEO) and other review agencies. The City of Sunny Isles Beach received no objections or recommendations from the DEO. However, they did provide two (2) minor comments which are not mandatory and cannot form the basis of a challenge. Pursuant to the comments, the word "Overlay" was added after Town Center South and Town Center North. The Florida Department of Transportation-District Six (FDOT-D6) and South Florida Water Management District provided comments of a more general nature unrelated to this application. The South Florida Regional Planning Council (SF-RPC) stated there are no regional impacts from this application while no other agencies provided comments.

The City Commission adopted the Comprehensive Plan amendments at the December 20, 2019 Regular Commission Meeting. The adopted ordinances were transmitted to DDC. Then, 31 days after DDC notifies the City that the adopted amendment package is complete, the amendments will be found in compliance, if not challenged.

Moving Forward.

In the coming months, the City is holding public engagement activities to listen to what our community envisions for the future of the Town Center North Overlay. Based on feedback from residents and business owners, city staff will propose modifications to the Comprehensive Plan and/or Land Development Regulations between April and June 2020. The next step will be to finalize and adopt the proposed changes in September 2020, which by then the moratorium will expire.

SIB has experienced increasing change in the developmental makeup throughout the years with a distinct difference between the east (beachfront) and the west side. The east side with very large, towering high rises, hotels, and luxury condominiums versus the west side consisting of restaurants, schools, shopping centers and low to medium-rise buildings, divided by Collins Avenue.

On or about February 2018, a real estate Group, Global Property Investors (GPI) was seeking a Site Plan Approval from the SIB Planning and Zoning Department for a 15-story mixed-use development project called "Infinity." The project is located at 16700 and 16750 Collins Avenue with approximately 2 acres consisting of 120 residential condominium units, 220 hotel units, retail, and restaurant space with an enclosed 5 stories parking garage. In addition, GPI was seeking approval for a public pedestrian bridge that would connect the west side of Collins Avenue to the east side.

When the Infinity Project was submitted for approval, inconsistencies between the Comprehensive Plan and the Land Development Regulations (Zoning Code) for the Town Center District were brought to light. The Infinity Project did not comply with the City's Comprehensive Plan. After the discrepancy was discovered, the City proposed to amend the Comprehensive Plan to align with the Zoning Code.

There appears to be great concern and controversy surrounding the Infinity Project by developers and residents alike, strongly voicing their opinions and opposition to the Project.

As a result of issues stemming from Ottinot's actions after having announced his retirement and prior to departing from the City, Lynn Dannheisser (Dannheisser) was retained by SIB as a special transition counsel to review and determine possible City of SIB and/or County Ethics Code violations by Ottinot.³

Dannheiser retained Joseph Centorino, former Executive Director of Miami-Dade Commission on Ethics & Public Trust, to review documents relating to Ottinot, RK and the Infinity Project.⁴

Extensive documentation pertaining to the Infinity Project that included i.e., email correspondence, review of relevant provisions of the city of SIB and Miami-Dade County Ethics Code, and City records dating back over a decade, were reviewed by COE staff, and the following interviews conducted:

³Lynn Dannheisser is a former City Attorney in several cities, including Sunny Isles Beach and a former executive director of the Sunny Isles Beach Foundation. Dannheisser is a municipal attorney and consultant, skilled in the areas of community bridgebuilding, creative placemaking, land use & zoning law, land development, and government, mixed-use....

⁴ Documents reviewed by Centorino included 'city records and materials concerning the Infinity project, emails and other correspondence between and among Mr. Ottinot, City of Sunny Isles officials, and other interested parties involving the Infinity project and other municipal matters.' Copy of the Memorandum dated July 11, 2019 from Centorino to Dannheiser is attached as part of the exhibits.

Julia Grachova, former SIB Assistant City Attorney

This investigator contacted Julia Grachova for an interview regarding the above-mentioned allegations. The interview was conducted by this investigator and COE Advocate Michael Murawski.

Documents revealed that on January 15, 2019, Grachova was present during a meeting with Maggie Gordo and Ottinot at their SIB office. Not recalling the exact date, Grachova mentioned being introduced to Gordo prior to the meeting. She did not recall who initiated the meeting.

Due to a previous commitment, Grachova mentioned remaining at the meeting for minutes, stating the substance of the conversation revolved around a traffic related issue brought forth by Gordo. She did not memorialize the meeting and did not know what transpired after her departure. Grachova had no previous or subsequent meetings with Gordo.

Grachova stated she was not involved with the Infinity Project. A review of the documents, including emails, revealed that Grachova, as Assistant City Attorney, worked closely with Ottinot, and was familiar and involved with the Infinity Project.⁵

When questioned as to additional attorneys, aside from Ottinot and herself, involved with the Project, she mentioned that Latoya Brown, a Law Clerk at the time was also part of the Legal Department. Grachova indicated that after passing the Bar (prior to Ottinot's departure), Brown was appointed Deputy City Attorney and she was later Interim City Attorney.

Grachova stated she is no longer with the City of Sunny Isles since the Commission decided to outsource the Legal Department. Grachova is currently with the Miami Downtown Development Authority.

Hans Ottinot

Ottinot, accompanied by his attorney Markenzy Lapointe responded to COE's office on November 5, 2019. Present during the Interview was investigator Olmo and COE Advocate Michael Murawski.

Ottinot related his involvement with several government entities dating back two decades in addition to volunteering his time to several committees. He indicated he served as Chair of both the 11th Circuit Judicial Nominating Commission and the Florida Bar Committee.

Referring to his commitment and dedication to Sunny Isles Beach for 19 years, having served as City Attorney for the last 14 years, Ottinot expressed the importance of ethics and transparency, indicating always having the City's best interest in mind.

⁵ Documents noting Grachova's involvement with the Infinity project are attached as part of the exhibits.

Ottinot indicated that his 50th birthday was the turning point that led him to retire, aside from his desire to spend more time with his family. As a result of a scheduled family cruise, Ottinot mentioned he was unable to attend the December 2018 Commission meeting.

Ottinot said that on January 4, 2019, he announced his retirement as SIB City Attorney, effective February 7, 2019.⁶ That same day, RK issued a press release announcing Ottinot as RK's Vice President of Governmental Relations and Chief Legal Strategies.⁷

As to potential ethics violations and allegations against him, he stated always being above board, making sure rules and regulations were followed, even contacting the COE for guidance and clarification on lobbying, "to make sure I followed the law" and the Two-Year post-employment restrictions, to which he indicated the COE issued an opinion.⁸ Ottinot indicated his inquiries were memorialized through email exchanges with the COE's Executive Director, José Arrojo.⁹

As a result of his retirement, Ottinot indicated being approached with employment offers, not recalling exact dates. He ultimately decided to pursue endeavors in the private sector, accepting employment with Raanan Katz from RK as Vice-President of Government Relations and Chief Legal Strategies, stating the written Employment Agreement with RK was signed January 3rd or 4th, 2019.

As City Attorney for almost two decades, Ottinot mentioned his availability to SIB residents by meeting with them, providing answers to legal questions, even providing legal opinions.

Ottinot was asked about the standards/development review process under the City's Development Review Procedures when seeking approval for the proposed Project. He briefly explained the process that starts with the application for approval of the development permit (Planning and Zoning), with required accompanying documentation.¹⁰ A Pre-Application conference with City Staff and the Zoning Director is scheduled for the purpose of reviewing the proposed development, thereafter with the application submittal (checklist review of documents) and review. Upon review by the Planning and Zoning Director, the initial report (recommendation) is provided to the City Manager and City Attorney. Subsequently, after public notifications, the City Commission Zoning Hearing is scheduled.

As to the January 15 meeting with Gordo, approximately two weeks after his resignation and announced hiring by RK, he indicated he was meeting with a concerned citizen, and as a result of their conversation (per Gordo's request for assistance) he reviewed the density and square

⁶ Ottinot's retirement letter addressed to the Commission, dated January 4, 2019 is attached as part of the exhibits.

⁷ RK's Press Release (letter) dated January 4, 2019 is attached as part of the exhibits.

⁸ INQ 19-37 issued on April 2, 2019 by Staff Attorney Martha Perez is attached as part of the exhibits.

⁹ Emails exchange from Ottinot to Arrojo are attached as part of exhibits.

¹⁰ Copy of the City of SIB Planning and Zoning Department Public Hearing Application packet is attached as part of the exhibits.

footage calculations in the Zoning Code, compared them with the Comprehensive plan, and at that point, it appeared that the density and square footage calculations in Town Center were inconsistent with the permitted density and square footage for the project (Infinity) in the Comprehensive plan. The Mayor was unable to attend. Therefore, he met with Gordo and Assistant City Attorney Julia Grachova, at their SIB office.

Ottinot indicated Gordo was condemning the actions taken by the City regarding the Infinity Project, indicating her two issues dealt with the bridge and the intensity of the project for the location, and with the City not following the law. Gordo, strongly opposing the bridge, cited major issues with vehicular and human traffic mentioning the negative impact to the beach and residents, eminent domain and the financial risk to the SIB. Ottinot recalled Gordo has been an opponent of the Project, always very vocal, emailing everyone regarding her objections and concerns. He did not recall if he responded to Gordo's emails prior to the January meeting.

On the afternoon of the 15th, Ottinot emailed Russo and Hasbun, updating them on his meeting with Gordo. He said that because of his conversation with Gordo, he subsequently reviewed the density and square footage calculation in the Zoning Code in comparison with the Comprehensive Plan, noting inconsistencies. "It appeared," he said, that the density and square footage calculations in the Town Center Zoning District are inconsistent with the permitted density and square footage for the property in question [referring to the Infinity project].

He mentioned the following examples of inconsistencies:

- Town Center Zoning allows (provides) that the project is permitted 60 units per acres, the Land Use Element in the Comprehensive Plan provides for 50 permitted units per acres.
- Based on The Land Use Element in the Comprehensive Plan, the developer can only build 101 units, he is seeking 121, and the maximum amount of square footage being approximately 176,00, contrary to the approximately 330,000 which is what the developer is requesting.

He stated that the development standards of the Town Center Zoning Code must be consistent with the Land Use Element of the Comprehensive Plan, in accordance with the law and the Future Land Element.¹¹

In 2007, Ottinot said, there was an attempt to amend the Comprehensive Plan (Town Center District) that would match up with the Zoning Code. The State indicated there was not enough data and analysis provided for said amendment. Therefore, the City removed the density and intensity limitations. The Comprehensive Plan amendment was approved, with the City [SIB]

¹¹ The City of SIB Comprehensive Plan 2030. Future Land Use Element: The policies in the Future Land Use Element describe where, how and under what circumstances growth should occur within the 15-year timeframe of this Comprehensive Plan. The Future Land Use Plan for Sunny Isles Beach is not a zoning map. The Future Land Use Plan is conceptual and is created to serve as a guide for future detailed land use decisions made in the context of implementing various components of the plan. Future Land Uses are based on the Goals, Objectives and Policies adopted by the City Commission through this Plan.(City of SIB)

receiving an "In Compliance" notice from the State. The City did not amend the Zoning Code to conform to the Comprehensive Plan. Ottinot referred to it as "anomaly."

When questioned as to his position and/or previous recommendation regarding the Project, he indicated, "I don't approve or disapprove, I don't take a position," also stating that as City Attorney, he is not in a position to interpret the applicable Zoning and Comprehensive Plan provision.

Ottinot reiterated that as City Attorney he followed the rules and regulations, while remaining transparent, always acting with the City's best interest.

Claudia Hasbun, Planning & Zoning Director, SIB

Claudia Hasbun voluntarily agreed to meet with this Investigator and COE Advocate Michael Murawski regarding the above-mentioned allegation.

A member of the Florida/American Planning Associations and a Certified Business Tax Official from Florida Association of Tax Officials, Hasbun was hired by the City of SIB approximately 15 years ago. With initial construction work experience, her relationship with the City started as a Code and Licensing Permit Clerk in 2005, later becoming Administrative Coordinator for Code and Licensing in 2012, advancing to the City Planner position, ultimately promoted to her current position as Planning and Zoning Director.

Hasbun indicated that as Planning and Zoning Director, she worked very closely with Ottinot not only on a professional but also on a personal level, having the opportunity of meeting and spending time with his family. Having mutual respect, while disagreeing at times, she indicated they had a common history with the City dating back 15 years.

Pursuant to SIB Code or Ordinance § 265-11. - Procedures of General Applicability, a Development Review Process must be followed by applicants seeking approval on a proposed development, with the City Attorney and City Manager playing an integral role, very much involved.

Subsequent to the initial application for the approval of a development permit, with the applicant having met all the requirements, a Pre-Application conference with the City Staff, consisting of the Planning & Zoning Director and Planning consultants is scheduled. This conference is held prior to filing a formal application (Public Hearing Application Package) for the development approval. The purpose of this conference is to review the proposed development.

The Director (Hasbun) reviews the application to insure it is complete and ascertain its accuracy, then it is sent to the City Attorney (Ottinot) and City Manager. Then, she submits the application to the City Manager, City Attorney, Planning Consultants, Building Official, landscape architect, traffic engineers, and any other review agency.

A report with any corrections and/or comment is provided to the Director and in turn forwarded to the applicant for review. At that point, the applicant will decide whether to revise and resubmit the

plans in order to comply with the agency's comments and recommendations or choose not to respond. Ottinot was involved and participated during the staff report, providing feedback, amendments/edits.

Upon that determination, the Director submits the recommendation to the City Manager and City Attorney for review. Subsequently, after advising the Director, a public hearing is scheduled.

On or about February 2018, Planning & Zoning received a submittal for a new site plan approval application for a proposed project known as "Infinity." Documents including a Letter of Intent and attachments pertaining to the proposed project by Clifford A. Shulman (Shulman), from the law firm of Weiss Serota Helfman Cole & Bierman (Weiss Serota), on behalf of GPI Sunny Isles, LLC., was submitted to the Planning & Zoning Department Director Hasbun (Ottinot was copied).¹²

Questioned as to Ottinot's involvement with the Infinity Project, Hasbun said that from its inception and throughout 2018 (as City Attorney) Ottinot was very much involved with the project as well as all City related issues, adding, "Ottinot was always very hands on." Furthermore indicating, "Ottinot was always kept abreast by email, telephonic, in person or by attending meetings reviewing and/or discussing the project."

Current with the City's Comprehensive Plan and Zoning Ordinances, Ottinot had full access of all documents inclusive of amendments and updates, which he referred to in numerous occasions.

A Zoning Public Hearing was scheduled for December 20, 2018 to consider Zoning Applications for the Infinity Site Plan Approval. The hearing was noticed accordingly on the SIB website, at the actual project parcel, published in MiamiHerald.com, December 9, 2018 and a notice sent to residents within a 300 ft radius.¹³

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¹² Clifford S. Schulman's Letter of Intent/attachments dated February 2, 2018 to Hasbun; Memorandum dated February 2, 2018 from Hasbun to Christopher Russo (SIB City Manager) regarding Infinity Site Plan Approval submitted by Shulman (Ottinot copied), and email dated February 5, 2018, from Jennifer Lu-Chong (Planning and Zoning Technician) to Christopher Russo (Hasbun, Ottinot copied) regarding PZ2018-02 New Application-Infinity Site Plan Approval for 16700 & 16750 Collins Ave., with attached Architectural Plans/ Memorandum are attached as part of exhibits. Clifford Schulman, from Weiss Serota Helfman Cole & Bierman, represent GPI Sunny Isles, LLC-Infinity Project

¹³ Attached as exhibits, is a list of individuals within 300 ft radius of the project, that were notified of the December 20, 2019 Zoning hearing.



Zoning Hearing Notification at the Actual Project Parcel



Aerial View-Zoning Hearing notification
(Affected parties w/in 300 ft radius)

Hasbun recalled Ottinot's January 15, 2019 follow-up email after his meeting with Gordo and Grachova, indicating that as a result of said meeting, he reviewed, for the first time, relevant Zoning Ordinances pertaining to the Project which he found to be inconsistent with the Comprehensive Plan, stating that it appeared the density and square footage calculations in Town Center Zoning District were inconsistent with the permitted density and square footage of the project [Infinity] in the Comprehensive Plan.¹⁴

Ottinot's email to Russo and Hasbun mentions the inconsistencies and states, "Simply put, based on the Land Use Element in the Comprehensive Plan the Developer can only build 101 units, not 121 units and the maximum amount of square footage is 176,534, not 33,875 which the Developer is seeking."

Hasbun responded to Ottinot, clarifying that his review and interpretation were incorrect, as he was utilizing an older document, not reviewing the most current Comprehensive Plan and Zoning documents.

On February 20, 2019, a five-page letter with attachments from Courtney Callahan Crush (Crush), representing RK Centers, was sent to the Commission, Grachova and Hasbun, also copying several affected parties.¹⁵ Crush mentioned RK's objections noting the negative impact to RK shopping center and neighboring properties, noting the same inconsistencies and limitations (i.e., Town Center Zoning Code provides the Project is permitted 60 units per acre, and the Land Use Element in the Comprehensive plan providing for 50 units per acre, Zoning Code providing the floor area ratio (FAR) for project is 2.5, but the Land Use Element in the Comprehensive Plan provides for a FAR of 2.0, based on the location) mentioned by Ottinot on the January 15th, 2019 email.

Crush noted, "Simply put, the Infinity Project's allowable maximum density is 101 residential units, not 120 units as requested in its site plan. Furthermore, the maximum allowed FAR is 176,852 square feet (43,560 x 2.03 acres x 2.0), not 330,875 square feet as requested in its site plan."

Several documents reviewed during this investigation appear to show that Ottinot's interpretation of the Code on January 15, 2019 was inconsistent with his interpretation of applicable provisions. As SIB City Attorney for 15 years, Ottinot had signed off on projects, site plan approvals and Resolutions, aware of the discrepancies between the Comprehensive Plan and Zoning Map (land use).

¹⁴ Copy of Email with attachments dated January 15, 2019 from Ottinot to Hasbun and response is attached as part of the exhibits.

¹⁵ Crush's letter dated February 20, 2019 with attachment (City of SIB 2007 Comprehensive Plan Evaluation and Appraisal Report-Based Amendments, May 2007 Transmittal Draft, prepared for the City by Bell David Planning Group) is attached as part of the exhibits.

Over a dozen resolutions were reviewed by COE staff showing Ottinot approved and signed off on legal sufficiency, interpreting the applicable provisions were within the permissible units, meaning that the applicable city development restrictions allowed the same density and intensity limitations that the city was applying to the Infinity Project. It was not until January 15, 2019, with secured employment with RK, that Ottinot noted or questioned density restrictions, supporting RK's objection and interest.

Following are two of numerous SIB Resolutions pertaining to Zoning applications reviewed by COE staff:

○ **RESOLUTION NO. 05-Z-95**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, ("CITY") APPROVING THE ZONING APPLICATION SUBMITTED BY ST. TROPEZ II, LLC (THE "APPLICANT"), (Z2005-04) FOR MODIFICATION OF PREVIOUSLY APPROVED PLANS AND A VARIANCE OF SETBACK, ON THE PROPERTY LOCATED AT 150-260 SUNNY ISLES BOULEVARD, SUBJECT TO CERTAIN CONDITION; AND PROVIDING FOR AN EFFECTIVE DATE.

Passed and adopted September 22nd, 2005 by a unanimous vote, with Ottinot approving as to form and legal sufficiency.

○ **RESOLUTION NO. 06-Z-106**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH FLORIDA, ("CITY") APPROVING THE ZONING APPLICATION SUBMITTED BY JERRY'S FAMOUS DELI, INC., (THE "APPLICANT"), (Z2006-06), THE SITE PLAN APPROVAL, PURSUANT TO SECTION 254-18 OF THE LDR'S TO PERMIT THE DEVELOPMENT OF FIFTEEN STORY CONDOMINIUM TOWERS WITH A TOTAL OF 243-RESIDENTIAL UNITS, AND FOR THE TRANSFER OF DEVELOPMENT RIGHTS("TDR'S) IN THE AMOUNT OF 101,640 SURE FEET OF FLOOR AREA AND 56 DWELLING UNITS OF FLOORR AREA, PURSUANT TO SECTION 265-23 OF THE SICTY'S LAND DE VELOPMENT REGULATIONS (LDR'S) ON THE PROPERTY LOCATED AT 17150-17190 COLLINS AVENUE, SUBJECT TO CO NDITIONS; AND PROVIDING FOR AN E FFECTIVE DATE.

Passed and adopted December 14th, 2006 by a unanimous vote, with Ottinot approving as to form and legal sufficiency.

Ottinot indicated being familiar with City of Sunny Isles Beach Code of Ordinance § 33-7 (b). *Disclosure of interest in conflict with official duties; undue influence.* No official, officer or employee of the City of Sunny Isles Beach shall, by his or her conduct, give reasonable basis for the impression that any person can unduly influence him or her improperly or enjoy his or her favor in the performance of his or her official duties or that he or she is affected by kinship, rank, position or influence of any party or person.

In addition, Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Sec 2-11.1(j) *Conflicting employment prohibited*. No person included in the terms defined in Subsections (b)(1) through (6) and (b)(13) shall accept other employment which would impair his or her independence of judgement in the performance of his or her public duties.

Hasbun was concerned about the January meeting, because of Ottinot's close personal relationship to Katz, his imminent employment with RK, and Ottinot's position regarding the Project. She mentioned that as the meeting was not official, other city staff familiar with the Project could have met with Gordo, particularly because at the time, Ottinot had submitted his resignation, RK had announced Ottinot as their Chief Legal Strategist, and Gordo, like RK, are two of the most vocal opponents of the project.

Hasbun stated that Ottinot, as City Attorney, was always present when the Project went before the Commission, relying on current Comprehensive and Zoning documents in order to interpret the Code, particularly due to the ongoing issues and inconsistencies involving the Infinity Project.

Hasbun stated Ottinot had plenary authority, and his position on January 15, 2019, contrary to his previous position, was questionable and totally unexpected.

She mentioned a June 2005 Evaluation Appraisal Report (EAR) where the Comprehensive Plan was updated since its adoption in 2000. The process of updating involved participation from the City of SIB Commission and Local Planning Agency, along with the City Professional Staff that included Russo, Ottinot and Calvin, Giordano & Associates, Inc., an Engineering Surveyor and Planning firm.¹⁶

In 2007, the City continued with the EAR, and a review of the SIB 2007 Comprehensive Plan Ear Based Amendments Evaluation Appraisal Draft Report by Bell David Planning Group showed Ottinot's continued involvement with email exchanges between Ottinot and the Bell David Planning regarding the amendments. The draft show written notes, edits, and revisions by Ottinot.¹⁷

In 2016, the EAR was revised and updated a second time. A document provided by Ottinot on or about January 2016 regarding the Comprehensive Plan Evaluation and Appraisal Report process showing Ottinot's comments was reviewed by COE staff.¹⁸

¹⁶ The June 2005 City of Sunny Isles Beach Florida Draft Evaluation and Appraisal Report is attached as part of the exhibits.

¹⁷ Copy of the SIB 2007 Comprehensive Plan Ear Based Amendments Evaluation Appraisal Report-Draft is attached as part of the exhibits.

¹⁸ The draft document noting Ottinot's comments is attached as part of the exhibits.

As part of the documents provided, an email (with attachment of the revised report for the Infinity Project) dated December 12, 2018, from Ottinot to Jennifer Lu-Chong (City Planner), Hasbun, show revisions by Ottinot.¹⁹

Throughout the ongoing process, from the Infinity's Project commencement in 2018, Hansbun indicated Ottinot was very much involved, always hands up updated and advised on everything concerning the Project. Therefore, the January email was not only surprising but an unexpected change of position.

Magaly "Maggie" Gordo- Resident and President of the Sands Pointe Ocean Beach Resort Condominium Association.

Pursuant to a subpoena, Magaly "Maggie" Gordo (Gordo) provided a sworn statement on January 22, 2020. She was accompanied by Gregg Grossman (Grossman), representing her and the Sands Pointe Ocean Beach Resort Condominium Association (Florida Not for Profit Corporation).²⁰

The interview was conducted at Grossman's office located at 1646 South Bayshore Drive, Coconut Grove, Florida. Present during the interview was Investigator Olmo and COE Advocate Michael Murawski.

Gordo was questioned regarding her meeting with Ottinot and the Infinity Project. She indicated first being notified when the developer, Phillip Aginsky (Aginsky) reached out to the Management's office on May 2, 2018, wishing to speak to members of the Board advising the City was going to build a building in addition to a bridge that would affect her building. A follow-up meeting was set with Aginsky. Gordo indicated there was never any mention of the Infinity Project; nothing discussed or brought up during Commission meetings; learning about the Project through Aginsky. She mentioned she did not have anything against Aginsky or the building, but not in the proposed location.

Gordo stated she immediately contacted the Mayor (George "Bud" Scholl) expressing her disappointment after hearing from Aginsky that the City was building a bridge and they [The Association] needed to make a deal with him. Per Gordo, Aginsky mentioned the City's intent to take away their entrance through eminent domain, adding, that Aginsky he did not want any part of the bridge, but the City wanted the bridge and they [City] would not let him do the building without the bridge.

Gordo said that when she questioned the Mayor regarding her conversation with Aginsky, she was told it was a misunderstanding and nothing would happen, advising he [Mayor] would set up a meeting with the City Manager and Zoning Director. For the sake of transparency, she requested Newport participate in the meeting, as the bridge had only two landings, South Pointe or Newport

¹⁹ Copy of Ottinot's December 12, 2018 email with attachments [PZ2018-02 Staff Report Draft (clean) and Staff Report Draft (markup)] is attached as part of the exhibits.

²⁰ Gordo is President of the Association. Florida Department of State- Division of Corporation Filing information enclosed as part of the exhibits.

Hotel, but the City suggested only meeting with the Association.²¹ Gordo met with the Mayor twice, but did not recall the dates.

A meeting at South Pointe was scheduled in early May. In attendance were several unit owners, two Board members, the City Manager Russo and Planning and Zoning Director Hasbun.

As to the substance of the meeting and topic of discussed, Gordo hesitated stating, "in the meeting, they lied," indicating there was nothing to be concerned about; that the City had no interest in eminent domain, stating Aginsky was trying to put together a deal and misrepresented the City's position;

and that he was advised on several occasions about that site approval requirements, since said bridge could only have two landing destinations, Newport, or South Pointe.

Gordo mentioned that although Russo and Hansbun were very assertive, assuring the bridge could not be built without their approval, she remained skeptical, based on her previous history with the City.

Subsequent to that meeting, Gordo indicated learning from an undisclosed source that the Mayor had indicated that the "City" had been working with the developer for 18 months on the deal, advising the developer to purchase more land for a bigger building.

Gordo stated her concern was two-fold: initially the bridge, since they were unaware of the Infinity Project, as Aginsky only mentioned the bridge; the vehicular and human traffic congestion, the difficulty going in and out of their building, and the overdevelopment throughout the years on the east side of Collins Avenue. She indicated the City was acting contrary to what elected officials had been telling residents regarding the west side remaining the same, as their plan is to become another "Manhattan", with building on both sides, "a concrete jungle."

In the summer of 2018 (not recalling the exact date) Gordo met with the Mayor, Russo and Hansbun and expressed her concern regarding the bridge and other issues. She mentioned the magnitude of the development, Newport's easement issues, the pier, construction length time, issues with evacuation routes during hurricanes, and the bottle neck affect and excessive traffic as you enter SIB. Upon listening to her concerns, Gordo stated the Mayor said the City would look into it, adding that the developer did not have money to do the project, anticipating nothing happening until mid-2019, stating, "I do agree that we have been amiss in this situation with not letting you know."

Gordo, realizing the Mayor, City Manager and Zoning Director had lied, when her husband learned about a December 20, 2018 Zoning hearing to approve the Infinity project, including the bridge, 10 days prior to the meeting. Immediately contacting the Newport, she learned they had not been contacted/notified regarding the December meeting, adding that because of the holidays, everyone is out, and no-one would be ready.

Gordo expressed her frustration after learning about the conceptual bridge having no landing, no final design, and realizing the bridge could only land on Newport or South Pointe, or a combination

²¹ The Newport Beachside Hotel & Resort is located at 16701 Collins Avenue, Sunny Isles Beach, FL., adjacent to the Sands Pointe Condominiums.

thereof. She remembered the Mayor's apology, and his assurance they would be kept abreast regarding the Project, "I was livid, livid, that they would lie to us to that extent," calling it "so corrupt, I couldn't believe it." Subsequently, she initiated her efforts by contacting and getting unit owners involved, sending email blast, petitions, and retaining Grossman to address to the Commission.

During that process, she indicated Katz, unbeknown to her, was also a strong opponent of the development. Gordo stated that Katz, like Newport had the means to hire people, "to look into this atrocity."

Grossman indicated Katz hired experts and studies were conducted with the results published to "SIB and everyone else." At that point, she said they realized the extent of the problem with the Project, the traffic nightmare, and the bridge situation with the undisclosed landing.

Gordo indicated being present at the December 20, 2019 meeting with statements and a signed petition of approximately 290-unit owners, all in opposition of the project.²²

She stated the City did not want anyone to know about the December meeting. Per Gordo, the Mayor, Zoning Director and City Manager did not anticipate the outpour of residents in opposition of the Project, further indicating she failed to understand how the City was able to get away with so much, without informing residents.

Per Gordo, the Zoning Director was "representing to the Commissioners to vote for this project," even though the conceptual bridge remained an issue. Furthermore, the Zoning Notice referenced a statute specifying everything in the site approval had to have a final design and location, contrary to the conceptual bridge being presented.

Gordo mentioned the residents were not the only ones kept in the dark regarding the details of the development, adding that the Commissioners were briefed on the details only two days before the December meeting, clearly from their reaction during the proceeding.

Per Gordo, the Mayor, Zoning Director and City Manager "cook up these things among themselves with the developers and then once everything is according to them is fine, they meet individually with the different Commissioners, asking for their support/approval. She stated she believed going in they believed the vote would be in their favor.

The December meeting brought strong opposition mainly by the petition from the unit owners in addition to other residents in the area. She emphasized that although Grossman touched on several key points including the density of the project, the City not following the law, the requirements of having a definite bridge design/location, etc., "what carried the day was Katz." Gordo said that when a developer of Katz' caliber, active and supportive of the City, and having received an award from the City, comes before the Commission in opposition, they listen. Ultimately, the item was deferred.

²² Grossman, on behalf of South Pointe Condominium's Association addressed the Commission in opposition of the project, requesting for the item to be deferred.

With the deferral, Gordo stated her focus as well as the unit owners', was the bridge. She decided to meet with everyone, including SIB officials and staff, confronting them regarding the bridge. Prior to meeting with the Commissioners, she requested a meeting with the Mayor, but he was unavailable.

On January 15, 2019, Gordo met meeting with "Hans," mentioning his experience, touching on his 19-year history with the City. When questioned regarding any past meetings with Ottinot, she indicated they never met prior to the 15th. She indicated the substance of the meeting revolved around issues and negative impact surrounding the bridge and questioning Hansbun's judgment and recommendation to the Commission, "to allow such a monstrosity, an atrocity."

She recalled Grachova's presence during Commission meetings.

Questioned as to Ottinot's position during the meeting, Gordo stated, "normal," replicating the Mayor, City Manager and Zoning Director regarding the 'conceptual bridge' and disagreeing with her. In addition, she recalled expressing her concern over the lies and unanswered questions.

After their meeting, Gordo learned that Ottinot researched and found the area did not support the building. She stated Ottinot's actions were transparent and he was the only official in the City to do something. Gordo said she was grateful that he checked and followed through, and more so, advising her about the potential problem.

Asked if she thought Ottinot's discovery of a 'potential problem' stemmed from their meeting, she indicated she could not speculate, but guessed that after 19 years as City Attorney, Ottinot should have known that the Mayor, City Manager and Zoning Director were less than transparent.

As to being aware of Ottinot resignation/leaving the City, "absolutely not." She described her relationship with Ottinot as very tense, since she believed he was part of the problem. Furthermore, "I didn't want to meet with Hans and Hans didn't want to meet with me." She said they met because the Mayor was on vacation.

Gordo indicated that even after the December 20th meeting, although "ignorant" on many issues, referring to the planning report as "Chinese," she stated feeling relieved after the item was deferred. From that point on, she mentioned advocating against the bridge. Gordo said her intention after the meeting was to speak to everyone in the City, "to expand from the trio of the corrupt." She did not understand the significance of the situation until reading the Planning report in late January and the letter sent to her by Crush, Katz's attorney.

Gordo reached out to the neighbors (Katz, Newport and Plaza of the Americas) and a January meeting was scheduled in Katz' conference room, with approximately 15 in attendance. The substance of the meeting was regarding parking, traffic, etc., not the Comprehensive Plan.

Gordo mentioned staying in touch with Katz, Newport and Plaza of the America, with an agreement to keep each other abreast of updates and developments concerning the Infinity Project. Per Gordo, the City did not reach out to her with updates.

Gordo stated that she continues to communicate with the City, with the difference being she continues the fight as her individual name, to insure the Association cannot be construed as doing anything wrong and does not want to put the Association at risk.

Daniel Katz, RK Centers
17100 Collins Avenue, Suite 225
Sunny Isles Beach, Fl 33160

Daniel Katz is a Principal at RK Centers. Appearing pursuant to a COE subpoena, Katz was interviewed via Zoom on July 30, 2019 by COE Advocate Michael Murawski and this Investigator and questioned regarding the allegations herein.

Katz indicated personally knowing Ottinot for approximately 15-20 years, as his father, Raahan Katz has a long-standing relationship with Ottinot and professionally as SIB City Attorney for 14 years.

On or about January 2019, RK was looking to employ a Vice President of Governmental Relations and Chief Legal Strategies, as their real estate company was expanding in Florida. At the time, Ottinot was looking to retire. Therefore, they reached out to him, offering the position.

Katz indicated Ottinot accepted the position and the Employment Agreement between RK and Ottinot was entered on January 3, 2019. Ottinot was to start on February 7, 2019. He did not recall the first time he or his father approached Ottinot regarding the position, but mentioned no verbal or written agreement was reached prior to January 3, 2019.²³

Pertaining to the Infinity Project, RK has been in opposition, formally objecting to the project from its inception, citing numerous issues pertaining to parking and construction surrounding the Infinity Project.

Documents reviewed show an email dated December 12, 2018, with a Letter of Objection-Zoning Hearing PZ2018-02 Infinity-16700-16750 Collins Avenue, from RK to the City requesting a postponement of the December 20, 2018 hearing for January 2019, requesting additional time to prepare, as they just found out about the December Zoning hearing.²⁴

RK has been consistently vocal regarding the negative impact not only to RK and their shopping center, but also the impact to surrounding properties with issues relating to maximum density and intensity for properties that located in the Town Center District, land development regulations being inconsistent with the Comprehensive Plan, the bridge and the increase in vehicular and pedestrian traffic.

He indicated he never spoke to Gordo.

²³ Copy of the Employment Agreement between Ottinot and RK is attached as part of the exhibits.

²⁴ Copy of the email and Letter of Objection is attached as part of the exhibits.

Pursuant to a duces tecum subpoena, Katz provided a copy of the Ottinot's Employment Agreement.

Documents/Exhibits:

- Ottinot-R.K./FL Management, Inc. Employment Agreement (01/03/19)
- Hans Ottinot' s letter of resignation (01/04/19).
- RK Press Release Letter (01/04/19)
- Joseph Centorino Memorandum- City of Sunny Isles Beach Ethics Issues
- Documents/Emails corresponding to Infinity project
- Emails between Hans Ottinot and Raanan Katz
- City of Sunny Isles Beach Florida Draft Evaluation and Appraisal Report, June 2005.
- Courtney Callahan Crush letter with attachment (February 20, 2019): City of Sunny Isles Beach 2007 Comprehensive Plan Evaluation and Appraisal Report-Based Amendments (May 2007 Transmittal Draft)
- SIB 2007 Comprehensive Plan Ear Based Amendments (Draft)
- Resolutions Passed and Adopted/Approved as to Form and Legal/Sufficiency by Ottinot:

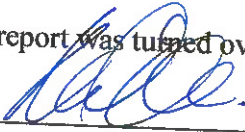
1. Resolution No. 13-Z-137
2. Resolution No. 14-2-149
3. Resolution No. 18-2-166
4. Resolution No. 05-Z-95
5. Resolution No. 06-Z-104
6. Resolution No. 06-Z-106
7. Resolution No. 07-Z-109
8. Resolution No. 09-Z-119
9. Resolution No. 12-Z-130
10. Resolution No. 12-Z-131
11. Resolution 12-Z-133
12. Resolution 12-Z-134

- Ottinot's January 15, 2019 email with attachments to Hasbun and response, is attached as part of the exhibits.
- Copy of a document with comments provided by Ottinot on or about January 2016 regarding the Comprehensive Plan evaluation and Appraisal Report process.
- Clifford A. Schulman from Letter of Intent/attachments dated February 2, 2018 to Hasbun.
- Clifford A. Schulman Amended Letter of Intent dated May 9, 2018
- City of Sunny Isles Beach Notice of Zoning Hearing December 20, 2018 (Neighbors-MiamiHerald.com, Sunday December 9, 2018.
- Photograph of the Zoning Hearing Sign at project parcel site.
- Aerial view depicting 300 ft radius resident notification.
- List of names and addresses of affected parties (within the 300 ft radius) noticed of Zoning Hearing.
- 12/20/18 SIB Commission Meeting video reviewed by COE staff.

- 12/20/18 Commission meeting Agenda/Minutes.
- Florida Department of State-Division of Cooperation Sunbiz.org: Sands Pointe Ocean Beach Resort Condominium Association.
- Florida Department of State-Division of Corporation Sunbiz.org: RK Center, LLC; RK Centers, Inc.
- Aerial photographs of Infinity project sight (Google Earth).

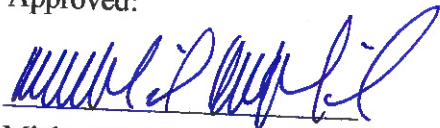
Conclusion:

This report was turned over to the Advocate for determination.



Nilda Olmo, Investigator

Approved:



Michael P. Murawski, Esq.
Advocate