



## MIAMI-DADE COMMISSION ON ETHICS & PUBLIC TRUST

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### MEMORANDUM

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**TO:** File

**FROM:** Michael P. Murawski, Advocate

**SUBJECT:** Conclusion Memorandum

**DATE:** January 12, 2021

**CASE NO:** K 19-34

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On or about August 7, 2019, City of Sunny Isles Beach (“SIB” or “City”) 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).

The investigation was assigned to COE investigator N. Olmo.

The investigation revealed the following: (For details see Final Investigative Report)

**Analysis and Conclusion:**

Sometime around July 2019, SIB Special Transition Counsel retained attorney Joseph Centorino to investigate whether or not former SIB City Attorney Hans Ottinot had violated any provisions of the City or County ethics codes. After reviewing Mr. Centorino’s report, it was determined that the only allegation that appeared to need follow up investigation was the allegation that Ottinot may have violated section 2-11.1(j) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance entitled “Conflicting employment prohibited.”

The investigation showed that, after more than a decade as City Attorney, Mr. Ottinot announced his retirement as SIB City Attorney on January 4, 2019, effective February 7, 2019.

On that same day, RK Centers (RK) issued a Press Release announcing hiring Hans Ottinot, as Vice President of Government Relations and Chief Legal Strategies. RK has been a property owner and developer in the City of SIB for many years and has worked extensively in the City. Investigation showed that Mr. Ottinot signed his employment agreement with RK on January 3, 2019. It should be noted that Mr. Ottinot and Danny Katz have known each other for years and aside from all the business interactions RK has had with the City over the years they are also personal friends.

The evidence showed that there was a controversial development project being proposed in the City called the “Infinity Project.” Among other things, this project called for the construction of a building on the west side of Collins Avenue, which runs through SIB, and included a proposed “pedestrian bridge” to be built to allow pedestrians to get from the west side of Collins to the ocean side by going over Collins avenue. The east side of the bridge however was proposed to be built on a piece of property in very close proximity to Sands Pointe, where Ms. Gordo resided and would have a significant impact on Sands Pointe residents.

On January 15, 2019, a little more than a week after Ottinot had announced his retirement from the City and had, technically “accepted” his future employment with RK, Ottinot met with Ms. Gordo to discuss her concerns about the Infinity Project. It should be noted that RK, as well as others in the community, were opposed to the Infinity Project. Ottinot advised that the meeting with Gordo was at her request and as far as he was concerned, he was simply meeting with a concerned resident.

After meeting with Ms. Gordo, on the afternoon of the 15th, Ottinot e-mailed Claudia Hasbun, the SIB Planning & Zoning Director, and updated her 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 wrote, 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.] 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.

Mr. Centorino’s report suggested that Ottinot may have violated Section 2-11.1(j) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance entitled: “Conflicting employment prohibited” because at the time of his meeting with Ms. Gordo and at the time he e-mails Ms. Hasburn, Ottinot had technically already “accepted” employment with RK who also opposed the Infinity Project.

Based upon my review of the evidence in this case, there is insufficient cause to file an ethics complaint against Mr. Ottinot for violating Section 2-11.1(j) of the ethics code. That section of the code states:

“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.”

After consulting with agency counsel, there does not appear to be support for the proposition that Section 2-11.1(j) of the County Ethics Code has been formally interpreted to prohibit merely accepting conflicting prospective employment as was suggested in the memorandum. Although Mr. Ottinot had, in fact “accepted” future employment with RK as of January 3, 2019 there is no evidence that he was actively working for RK in the span of time when he announced his retirement on January 4, 2019 until he left the City on February 7, 2019.

Moreover, there is insufficient evidence to show that Mr. Ottinot’s judgment was impaired in the performance of his official duties for the short time he remained a SIB employee from the time he met with Ms. Gordo on January 15, 2019 until he left the City on February 7, 2019.

While he did notify Planning and Zoning Director Hasburn about the concerns raised by Ms. Gordo, there is no indication that he persisted in advocating a position that was contrary to the City’s position or used his official position to reverse the City’s position on the matter.

Given the burden of establishing an ethics violation of clear and convincing evidence, it is recommended that this matter be closed with no further action as it is the opinion of the Advocate that while Mr. Ottinot’s actions may have caused an appearance of impropriety that invited scrutiny, the evidence in this case is insufficient to sustain an ethics complaint.

Approved by:  \_\_\_\_\_

Date: January 12, 2021

Jose Arrojo, Executive Director

**Addendum to Analysis and Conclusion**

After his review of the investigator’s competent and exhaustive report regarding the good faith Complaint filed in this matter by Sunny Isles Beach City Attorney Ed Dion, the Advocate concluded that the only allegation that appeared to need follow up investigation was the allegation that Mr. Ottinot may have violated section 2-11.1(j) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance entitled “ Conflicting employment prohibited.”

This addendum considers whether Mr. Ottinot’s conduct as the Sunny Isles Beach Attorney, specifically, his drafting and distribution of an e-mail wherein he questions whether the Infinity Project violated the City’s Comprehensive Plan, when his prospective employer was contemporaneously engaged with the City in opposition to the project, might constitute a violation of Section 33-7(b) of the City Code relating to conflict of interest.

Section 33-7(b) of the City Code provides, in relevant part, that no city official, officer or employee shall by his conduct, give reasonable basis for the impression that anyone can unduly influence him in the performance of his official duties or that he is affected by position or influence of any party or person. Clearly, this section of the City Code is more restrictive than the comparable County Ethics Code provision inasmuch as it purports to prohibit conduct that *creates a reasonable impression that a conflict of interest exists.*

In considering whether Mr. Ottinot's conduct may have violated Section 33-7(b), it is notable that the investigation into this matter revealed the following timeline: on December 12, 2018, RK corresponded with City elected and appointed officials and voiced its opposition to the Infinity Project, with a copy to Mr. Ottinot; also, in December 2018, Mr. Ottinot negotiated his employment position with RK; on January 3, 2019, Mr. Ottinot signed an employment agreement with RK; and finally, on January 15, 2019, Mr. Ottinot suggested that the Infinity Project's density and square footage for project was inconsistent with the City's Comprehensive Plan. He shared this conclusion with City elected and appointed officials.

The City's Planning and Zoning Director's impression, as related to this agency, was that Mr. Ottinot's assessment of the project's non-compliance with the Comprehensive Plan was incorrect and may have been influenced by his prospective employer's opposition to the project. The Director's belief is buttressed by her assertion that Mr. Ottinot was very familiar with the City's Comprehensive Plan and its density and square footage prohibitions.

The issue becomes then, from the Director's position or that of a similarly placed person, whether it is reasonable to conclude that a well-informed and long-serving City Attorney may be providing an incorrect opinion to elected and appointed officials that supports the position of his prospective employer because he is affected by the position or influence of RK officials.

In his response to this inquiry, Mr. Ottinot, through counsel, has maintained that his view regarding the project's non-compliance with the City's Comprehensive Plan was correct, thus removing one factor from the of conflict-of-interest analysis: that an incorrect opinion was offered in support of his prospective employer and influenced by RK. In support of this position, he has provided the well-considered opinion of an expert in municipal land use matters.

Moreover, Mr. Ottinot, through counsel, also points out that he disclosed his prospective employment with RK on January 4, 2019 and that a press release regarding his hire was distributed. He asserts that at the time that he forwarded his email regarding the project, the recipients knew about his prospective relationship with RK. This transparency should thus militate against any objective appearance of conflict of interest or influence.

Had Mr. Ottinot sought guidance from the Ethics Commission when he began to negotiate his hire by RK, and certainly once he accepted the employment, he would have been advised that in order to avoid an appearance of impropriety and ward off the possibility that his conduct might give rise to a reasonable basis for the impression that RK was unduly influencing him in the performance of his official duties, or that he is affected by position or influence of any party or person – *that he should recuse himself from any matter that might impact RK*. Regrettably, such guidance was not requested nor afforded.

For the reasons articulated herein, and while still hesitant to agree that there is insufficient evidence to conclude that Mr. Ottinot's conduct violated Section 33-7(b) of the City Code,

undersigned concurs that given the burden of establishing an ethics violation by clear and convincing evidence, that this matter be closed with no further action.

A handwritten signature in blue ink, appearing to read "Jose Arrojo".

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Jose Arrojo, Executive Director

Date: January 12, 2021