

## MEMORANDUM

To: File

From: Michael P. Murawski, Advocate

Re: Wayne Rinehart; K05-19

Date: December 20, 2005

Cc: Manuel W. Diaz, Sylvia Batista and Robert Meyers

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This investigation was undertaken after we received information from several “community activists” from the Community Council 5 area. These individuals relayed to COE investigators that WAYNE RINEHART (“RINEHART”) appeared before CC5ZAB on or about February 26, 2004 during the presentation on item 04-C25-01/03-123 and stated, in pertinent part, the following: “[A]fter numerous conversations with Mr. Price<sup>1</sup> regarding the entryway on 186 street...as you know there is zero stacking there...there’s constant problems with that situation... and after reducing the height of the building and moving the entryway to sixty-eight avenue...and the eyesore of the shopping center...I urge your support in this application...”

The community activists relayed that subsequent to the meeting, they had two meetings with the developer/applicant for item 04-C25-01/03-123, JOSEPH MILTON, to discuss changes to the zoning application. During the first meeting, JOSEPH MILTON told the community activists that RINEHART had contacted him (MILTON) and

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<sup>1</sup> Stanley B. Price was the attorney for Joseph Milton in the subject application.

requested payment even though the zoning application had been defeated. During the second meeting, JOSEPH MILTON told the community activists that RINEHART had told him (MILTON) that he (RINEHART) “had the [CC5ZAB] votes” to get the application passed.

The community activists were concerned that RINEHART was acting as a paid lobbyist on behalf of MILTON without being registered as a lobbyist. Also, they were generally concerned that RINEHART, who is the Chairman of the Miami-Dade County Planning Advisory Board, was selling his influence with CC5ZAB.

Mr. Price acknowledged that prior to the February 26, 2004 CC5ZAB meeting he met with RINEHART and requested his assistance in getting the item passed. Mr. Price did not elaborate on exactly what the “assistance” was.

Mr. Price advised RINEHART, prior to the February 26, 2004 meeting, that JOSEPH MILTON would be responsible for compensating him. Mr. Price told COE investigators that he and RINEHART discussed a fee of \$5,000 (Five Thousand dollars) for his assistance in getting the application approved. Mr. Price further advised that shortly after the February 26, 2004 meeting, he was contacted by RINEHART, and that RINEHART complained that he had not received compensation for his assistance and that he had been “stiffed” for \$5,000 by JOSEPH MILTON.

JOSEPH MILTON advised COE investigators that he hired Mr. Price to represent him for the presentation before CC5ZAB. JOSEPH MILTON further advised that, prior to the February 26, 2004 meeting, he was informed by Mr. Price that RINEHART was influential in the area and it would be helpful to bring him [RINEHART] on board to assist in getting the application approved.

JOSEPH MILTON advised that he told Mr. Price to “go ahead and do what is necessary” to ensure approval of the application. JOSEPH MILTON further advised COE investigators that he recalled that RINEHART did appear at the February 26, 2004 meeting and spoke in favor of the item.

JOSEPH MILTON further advised COE investigators that sometime after the February 26, 2004 meeting, RINEHART contacted JOSEPH MILTON via telephone and requested payment from JOSEPH MILTON despite the fact that the zoning application had not passed.

JOSEPH MILTON further advised that he was not sure what the payment requested by RINEHART was for, but that he (MILTON) supposed it was for RINEHART’s favorable comments at the CC5ZAB meeting, or other contacts that were made by RINEHART to ensure approval of the item.

COE investigators interviewed each of the Community Council #5 members and were advised by each that they were not “lobbied” in any way by RINEHART on the JOSEPH MILTON application.

When RINEHART was interviewed by COE investigators, he claimed that he was in fact hired by JOSEPH MILTON to review the plans of the proposed project for a fee of \$5,000. Furthermore, RINEHART stated that his recommended changes to the project were not incorporated by JOSEPH MILTON prior to submitting the application to the CC5ZAB. When asked by COE investigators whether RINEHART could provide any proof of his “work product” (i.e. a report or plans review summary or an invoice) RINEHART stated that there was no written report, and that the invoice had been lost. JOSEPH MILTON’s statement during his first interview by COE investigators was that

RINEHART was hired at Mr. Price's suggestion because he was influential in the area and could assist in getting the application approved—there was no mention that RINEHART was to conduct a “plans review”, in fact, the term was never mentioned in Mr. Milton's or Mr. Price's testimony.

However, even if RINEHART was hired to be a paid lobbyist by JOSEPH MILTON, an ethics complaint can not be sustained against RINEHART as it appears he did not violate section 2-11.1(s) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance. That section, which regulates “lobbyists”, states in part (b) that ““lobbyist”, specifically excludes attorneys or other representatives employed or retained solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communications (emphasis added).

The evidence this investigation uncovered does demonstrate that Mr. Rinehart was hired by JOSEPH MILTON. Both JOSEPH MILTON and Stanley Price admit that a “fee” of \$5,000 was discussed with Mr. Rinehart for his services. Both were contacted by Mr. Rinehart as Rinehart was seeking to collect his fee. There is no question that Mr. Rinehart appeared at the February 26, 2004 zoning hearing and voiced his support for JOSEPH MILTON's application.

Because the February 26, 2004 meeting was a publicly noticed quasi-judicial proceeding, Rinehart's appearance there does not constitute “lobbying”. There is no evidence that he “lobbied” any other individual in connection with the application.

Similarly, Mr. Rinehart can not be charged with violating the “gift” provisions of the ethics ordinance when he asked JOSEPH MILTON for \$5000.00, because a “gift”

must be sought “without adequate or lawful consideration”. Since Mr. Rinehart was ostensibly hired to appear before CC5ZAB and lend his support to MILTON’s application (and it appears that is precisely what he did), then Mr. Rinehart provided consideration for his fee.

Accordingly, this investigation is closed.