

FICB

Friday, July 16, 1999

CONFIDENTIAL

[Mary], [Title]
[Division]
[Your Department]
[]
[]

**Re: Case No. 99033.Q
Purchase of City Property**

Dear [Mary]:

You requested advice on whether Section 2-156-110 of the City's Governmental Ethics Ordinance would prohibit you from purchasing a parcel of City property under the "negotiated sale" procedure, a procedure under which certain City parcels that are in an urban renewal area are purchased and developed. Section 2-156-110 prohibits a City employee from having a financial interest in the purchase of City property, unless it is sold "through a process of competitive bidding following public notice." The facts as you and [Jane] of [the Department of] described them are in all material respects like those of Case No. 93034.A, in which the Board found that the negotiated sale procedure as described there met the Ordinance requirements of competitive bidding following public notice. Therefore, it is the staff's opinion that the same conclusion follows as in Case No. 93034.A: the Ordinance Section 2-156-110 does not prohibit you from purchasing by negotiated sale the parcel of land in which you are interested, because the procedure meets the Ordinance requirements of competitive bidding following public notice.

[The Department] handles the sales of City-owned property in urban renewal areas. There are numerous ways available to the public to find out about these properties and the development requirements. See Case No. 93034.A. The parcel you are interested in is in [the neighborhood], in a portion set aside for the development of market-rate single family homes. To obtain the parcel, you will follow the City's current procedures for purchase of City property by a negotiated sale. You intend to submit a "Negotiated Sale Application for Purchase of City Property," a form prepared by the Department, in which you describe your plans for the parcel and your financial ability to carry out those plans; along with it, you will submit your economic disclosure and certification of conformity with various laws and other requirements (e.g., nondiscrimination). The City

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will have the property appraised, and you will be required to offer the minimum fair market value of the land. Your application will be assessed according to the criteria the Department currently applies to Requests for Proposals (R.F.P.s), and it will be treated the same as that of any other applicant, according to [Jane], who is responsible for development in [the neighborhood]. The criteria are as follows: (1) Conformance to requirements in the Negotiated Sale Application or Request for Proposals, and [the neighborhood] Plan; (2) High quality architecture and landscape design compatible with the existing built-up community; (3) Economic feasibility and marketability; (4) Financial ability to complete the project as evidenced by equity contributions and written expressions of interest from any financing institutions to finance the project; (5) Offer price; (6) Experience with financing and developing comparably-sized projects, and (7) Conformance to the City's affirmative action goal.

If, after [the Department] reviews your proposal and finds the requirements met, the proposal will go to [the neighborhood] Community Conservation Council and then to the Community Development Commission. At a public meeting, the Community Development Commission will vote whether to authorize the Department to enter into negotiations with you, and, if it does so, will also vote to authorize public notice of the intention to enter into negotiations with you. The notice is published in a major newspaper once a week for two consecutive weeks; it invites others to submit proposals on the property within 30 days. In the event that another proposal is submitted, according to [Jane], the proposal will be assessed using the same standards (as set forth above). The proposal accepted will go for final approval to the City Council. The process, as [Jane] emphasizes, is clearly competitive.

In Case No. 93034.A, the Board found that a materially similar process -- also, in that case, a negotiated sale of parcels designated for residential development on urban renewal land -- met the requirements of competitive bidding, in that all parties submitting bids, or proposals, are treated equally and are bidding on the same terms and conditions. Case No. 93034.A, p. 4. In that case, the Board also found the public notice described there, which is in critical respects the same as the current procedure, met the Ordinance requirement for public notice.

Therefore, as stated above, the same conclusion follows as in Case No. 93034.A. As long as all the parties follow the ordinary procedure for negotiated sales, Ethics Ordinance Section 2-156-110 does not prohibit your purchasing this City-owned property as a negotiated sale.

Staff's opinion is not necessarily dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter our opinion. Other laws or rules also may apply to this situation. Be advised that City departments have the authority to adopt and enforce rules of conduct that may be more

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restrictive than the limitations imposed by the Ethics Ordinance. We understand that you have reviewed the matter with [the assistant to your commissioner] in your department.

We appreciate your inquiry and your concern to abide by the standards embodied in the Ethics Ordinance. We enclose a copy of the Ordinance for your convenience. If you have any further questions, please do not hesitate to contact us.

Very truly yours,
[Signature]

Ellen M. W. Sewell
Legal Counsel

Approved by:

[Signature by SIB]
Dorothy J. Eng
Executive Director