

October 18, 2006

**CONFIDENTIAL**

[Jane Smith]  
[GH Company]

Chicago, IL 606

**Re: Case No. 06033.A; Post-Employment**

Dear Ms. Smith:

On June 6, 2006, you asked the Board to address whether you, a former [title] of the City's [Z Department], and [Mr. Doe], a former [Z] [title 2], are restricted by the post-employment provisions of the City's Governmental Ethics Ordinance from assisting [R Company], or any other person, with respect to an agreement with the City to develop an industrial facility at [address]. You also requested that the Board address whether, since the dates of your respective departures from City service, your and Mr. [Doe] conduct with respect to this proposed project has been in compliance with the restrictions of the Ordinance. The Board has reviewed the facts you, Mr. [Doe] and representatives from [Z] have presented, and relevant law and Board precedent, and, based on this review, has determined that: 1) as to this development project, both your and Mr. [Doe]'s conduct since your respective departures from City service has been consistent with the relevant post-employment restrictions in the Ordinance; and 2) neither of you is restricted under the relevant post-employment restrictions from assisting [R] or any other person with respect to this project. A brief recitation of the relevant facts presented to Board staff, and then our analysis, follow.

**FACTS** You served as [Z title] from [date] (when you first entered City service) to [date 2, 4 years later] when you left City service to take a position with [Y Co.] in Chicago (you were associated with [Y] until [date 3]). Mr. [Doe] began his City service in [date 4], as a [title 2] in the Department of [Q], and then [2 years later] to [Z] serving as a [title 2] with responsibility for development of [property E types] in the Division. In [2 years later] he assumed responsibility for all [E] developments City-wide, which he retained until he left City service [3 years later]. [Then] Mr. [Doe] joined the [N] as a Vice President. He said that his responsibilities for [N] are to identify real estate development and construction opportunities in the Chicago region.

You explained to staff, and Mssrs. [Doe], [Jones], [Z] Project Manager, and [Brown], Assistant [Z] Commissioner, all confirmed, that, in [date 5], when you were [Z title], the City secured acquisition

authority over several parcels (about 200 acres) located in the area \_\_\_\_\_, including the (approximately 7 acre) parcel at [address] \_\_\_\_\_, for the creation of a tax increment financing district (TIF). The City acquired this parcel in [date 6], and [about one year later], issued a Request for Proposals (RFP) for its redevelopment. The RFP, according to Mssrs. [Jones] and [Brown], was general, calling only for proposals to redevelop the site for an [E] \_\_\_\_\_ use, as the property was zoned for [E] \_\_\_\_\_ use. You recall that there was no minimum job requirement or preferred site plan specified or discussed. You reviewed and approved the issuance of this RFP, in the course of your responsibilities as [Z title]. Mr. [Doe] said, and you and Mssrs. [Jones] and [Brown] confirmed, that he had no involvement in drafting or issuing this RFP.

The City received no responses to the RFP, which expired [3 months after its issuance]. [For the following 2 years], Mssrs. [Jones] and [Brown] said, the City marketed the parcel through alternative ways, such as advertising on websites and real estate periodicals. An abandoned gas station occupied the parcel when the City acquired it. The City demolished the station, and then, [soon after the RFP expired], began an environmental remediation project on the site, involving the Illinois EPA and the DOE, as the parcel had lead-contaminated soil, buried railroad tacks, gas tanks and other hazards. The original RFP had expired, though, and was never re-issued by the City.

You left your [City] position \_\_\_\_\_ in \_\_\_\_\_. You said that, [15 months later], you discovered, essentially by word of mouth from real estate professionals at [Y] \_\_\_\_\_, and through the course of performing your regular responsibilities for the firm (which were, among other things, to monitor vacant [E] \_\_\_\_\_ sites in and around the City), that this parcel was vacant. You then approached [Mr. N] \_\_\_\_\_, a principal in [N Company] \_\_\_\_\_, about submitting a proposal to acquire and develop the parcel. [16 months \_\_\_\_\_] after you had left City service—the two of you, together with several other investors, formed [R].<sup>1</sup> You said you had no involvement with this parcel during the year immediately following your departure from City service, and that your interest in and first contacts regarding the parcel began [15 months after you left your City position]

[Three months later] [R] submitted a proposal to [Z] as a “negotiated sale” to develop the parcel, which included detailed plans to construct a large industrial facility (most likely a warehouse or distribution center, possibly with freezer/cooler capacity), estimated to cost about \$7.5 million, with one major tenant, that would create or maintain at least 83 jobs. The proposal also called for [R] to purchase the parcel from the City for \$1, but also to contribute \$1 million toward environmental soil remediation work, and make a \$300,000 donation to the [sister agency] \_\_\_\_\_. You explained that the \$1 million contribution would be made after closing, and that the City has been paying for the cost of environmental remediation to date, but that that process is not yet complete.<sup>2</sup> The proposal was submitted to and approved by the [J \_\_\_\_\_ Commission] at a public meeting \_\_\_\_\_. A draft redevelopment agreement was prepared by the City’s [I] Department and [Z] staff. As Mr. [Doe’s] \_\_\_\_\_ responsibility at that time was for development of the City’s [North Division] \_\_\_\_\_, he said, and [Jones and Brown] \_\_\_\_\_ confirmed, that he was not involved in this project, which was located in the [South Division] \_\_\_\_\_, and fell under the auspices

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1. You explained that [Y] \_\_\_\_\_ then did not and now does not develop real estate, and that its corporate policy then did not and does not now prohibit its employees from developing real estate. [Y] \_\_\_\_\_ does not have an interest in this proposed redevelopment.

2. Mr. [Jones] told staff that, to date, he estimates that clean-up costs have been about \$600,000.

of a different Assistant [Z] Commissioner. Throughout this period the property, owned by the City, was undergoing a major environmental "clean-up," a process managed by the [Q], and, Mr. [Brown] explained, the main reason for the delays in this project have been due to the complexity of the clean-up. (To date, you said, the Illinois EPA has still not issued an "NFR" (or No Further Remediation required) letter, which is a precondition for closing). You said that, during your tenure as [a Z employee], you were not aware of the cleanup process, and did not monitor it or receive reports of its progress.

[Fourteen months later] responsibilities grew to encompass industrial developments City-wide. This parcel, however, was still undergoing environmental remediation. Although the parcel appeared in his division's inventory and tracking sheets, he said, and Mssrs. [Jones and Brown] confirmed, that there was no work required of [Z] personnel as to it during this time. Mr. [Doe] left City employment [one year later] and [he] became a Vice President at [N]. During his first year with [N], he said, his work on the project was limited to the following: contacting [Q] and its consultant to inquire what work had already been completed on the site, and contacting a [Z] employee to inform the department that the broker's sign had fallen and the surrounding fence damaged, and to inquire whether the City was going to repair the fence and put the sign back up.<sup>3</sup>

The City then completed its environmental clean-up in 2005, and, as a result of [Q's] efforts, both [R] and the City gathered additional information that would increase the project's costs and review time. A redevelopment agreement has been negotiated, you said, for largely the same project as that approved by the [J] Commission.<sup>4</sup> [Z] intends to present the project to the City Council for its approval, and then, if approved by Council, the redevelopment agreement between the City and [R] would be finalized.

## **LAW, ANALYSIS AND CONCLUSIONS**

**Post-employment restrictions.** Section 2-156-100(b) of the City's Governmental Ethics Ordinance, entitled "Post-Employment Restrictions," states:

No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.

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3. Mssrs. [Jones and Brown] do not recall having any contact with Mr. [Doe] during this one-year period, and Mr. [Doe] does not recall the name(s) of the people with whom he spoke regarding this project. He said that he made these status calls because he knew who to call; the [N] project manager at that time had no experience with the City.

4. You explained that the City now requires more substantial reporting from and approval rights of potential tenants and users of the development.

You and Mr. [Doe] , both former City employees, were prohibited by this section, for one year after leaving City service, from assisting or representing any person or client (including [R] or [N] ) in a business transaction involving the City if, during City service, you participated personally and substantially in the subject matter of that transaction. Also, you and Mr. [Doe] are permanently prohibited from assisting or representing any person (including [R] or [N] ) in a contract over which, during your City service, you exercised “contract management authority.”

Your activities. The Board’s review of the facts indicates that, while you served as [Z] [title] , the City acquired the parcel at \_\_\_\_\_ and issued an RFP for its development. Because it received no responses to that RFP, the City withdrew the RFP [approximately 4 months later]. You stated that you then had no involvement with this parcel until \_\_\_\_\_ approximately 15 months after you left your City position, when you approached [N] and began working on a proposal to develop the parcel. Based on your representation that you had no involvement with this parcel during the first twelve months following your resignation from City service, the Board concludes that your conduct with respect to this parcel and project was consistent with the restrictions imposed by the Ordinance’s one-year prohibition.

As to the Ordinance’s permanent post-employment prohibition, the Board’s review of the facts presented shows that the redevelopment agreement that the City now contemplates entering with [R] was negotiated more than 15 months after you left City service, and our review warrants the conclusion that you did not exercise contract management authority over that agreement while in City service. Further, the RFP that [Z] issued for the parcel \_\_\_\_\_, was not operative \_\_\_\_\_ when you approached [N] , formed [R] and then submitted a proposal for a negotiated sale of the parcel from the City. Therefore, the Board concludes that your conduct as to this project has also been consistent with the restrictions imposed by the Ordinance’s permanent prohibition.

Mr. [Doe’s] activities. The Board’s review of the facts presented shows that Mr. [Doe] was personally and substantially involved in industrial redevelopment throughout the City. Therefore, he was, under the Ordinance’s one-year post-employment restriction, prohibited from assisting or representing [N] (or any other person) with respect to industrial redevelopment projects in the City, including the project at \_\_\_\_\_, during his first year of post-City employment. Mr. [Doe] did make several phone calls regarding this project during that period. However, based on the information presented to the Board, we conclude that these were in the nature of status inquiries: Mr. [Doe] was gathering information about the progress made by the City on the environmental cleanup of a City-owned lot, and informing the City of a damaged fence and fallen sign and inquiring about the status of repairing it. Based on all the information we have been given regarding the circumstances surrounding these contacts, including what was asked by Mr. [Doe] , what information he forwarded, and what he was seeking, the Board concludes that Mr. [Doe’s] phone calls did not constitute assistance or representation of [N] with respect to this project within the meaning of the Ordinance’s post-employment provisions. The Board concludes, then, on the facts presented to us and recited in this opinion, that Mr. [Doe’s] conduct with respect to this parcel and project was also consistent with the restrictions imposed by the Ordinance’s one-year prohibition.

The facts presented in this case likewise do not warrant the conclusion that Mr. [Doe's] exercised contract management authority over the project or the redevelopment agreement. Thus, the Board concludes that Mr. [Doe's] conduct as to this project has also been consistent with the restrictions imposed by the Ordinance's permanent prohibition.

**Confidential Information.** The Board also advises you that you and Mr. [Doe] , as are all former City employees, are prohibited, under Section 2-156-070, "Use or Disclosure of Confidential Information," from using or disclosing confidential information acquired through City employment. Confidential information, for purposes of this section, means information that may not be obtained under the Illinois Freedom of Information Act, as amended. The facts presented in this case do not support or warrant the conclusion that either you or Mr. [Doe] used or disclosed confidential information acquired through City employment with respect to this project.

#### **DETERMINATION**

The Board has reviewed the facts you, Mr. [Doe] and representatives from [Z] have presented, and relevant law and Board precedent, and, based on this review, determines that: 1) as to this development project, both your and Mr. [Doe's] conduct since your respective departures from City service has been consistent with the relevant post-employment restrictions in the Ordinance; and 2) neither of you is restricted under the relevant post-employment restrictions from assisting [R] or any other person with respect to this project.

The Board's determination does not necessarily dispose of all the 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 letter. Other City rules or policies may also apply. If the facts stated are incorrect or incomplete, please notify us immediately, as any change may alter the determination. Moreover, the Board's review of your and Mr. [Doe's] City duties indicates that you both exercised contract management authority with respect to other City projects and redevelopment agreements not addressed in this opinion. Therefore, we remind you that the determinations in this opinion pertain only to the redevelopment project at [address] , and that you may well be subject to permanent prohibitions with respect to other projects involving the City. We advise you both to contact our office for specific advice if that is the case.

#### **RELIANCE**

This opinion may be relied upon only by persons involved in the specific transaction or activity with respect to which this opinion is rendered.

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Darryl L. DePriest,  
Chair