

CONFIDENTIAL

Advisory Opinion

Mr. R

Case No. 06002.A, Post-employment

xxxxxx, 2006

You are a partner in D, a Chicago-based developer and construction management company. You formerly served as Executive Director of the City's Department of C. Prior to that, you served as an appointed official on the City's C D Commission. On xxxxxxx, 2005, you asked the Board of Ethics for an opinion addressing how the Governmental Ethics Ordinance applies to your post-City activities on behalf of D and its clients.

After careful consideration of the facts you presented and the relevant law, the Board has determined that you are subject to significant restrictions (set forth in detail below) under the post-employment provisions contained in Section 2-156-100 of the Ordinance. The Board's analysis follows.

FACTS

You graduated from college in 19xx with a B.A. in architecture. Since that time, you have worked exclusively in the construction field. In late 19xx (or early 20xx), you were appointed by the Mayor to serve on the C D Commission ("CD").¹ In April 20xx, you resigned from the CD and entered City employment as Executive Director of the City's Department of C ("C"). C's function is to review and decide building permit applications submitted to the City on behalf of private individuals or entities. As Executive Director of C, you:

1. managed the Department's employees (reviewers and support staff);
2. oversaw the implementation of processes designed to enhance the efficiency of the City's permitting process;
3. exercised ultimate administrative authority for the interpretation of the City's Building Code;

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The C D Commission ("CD") was established by the Chicago City Council in 19xx to assume the duties of the former D D Commission and the Department of U R. CD Commissioners are officials of the City, appointed by the Mayor and confirmed by City Council. The CD reviews and recommends action to the City Council on the establishment of new Tax Increment Financing ("TIF") districts, Redevelopment Area designations, and appointment of members to Community Conservation Councils. The CD also reviews and recommends action by the City on the sale of City-owned property located in TIF districts or redevelopment areas and the provision of TIF financing to private redevelopment projects. You stated that, in your experience, most projects undertaken or reviewed by the CD were initiated either by developers or the City's Department of P.

4. regularly met with reviewers and/or applicants (or their representatives) to consider, among other issues, deficiencies in applicants' plans (identified by reviewers) and alternative interpretations of the City's Building Code being urged by/on behalf of applicants; and
5. oversaw the denial or issuance of City building permits by Department staff.

You resigned from City employment on xxxxxx, 2005. In xxxxx 2005, you joined D, a Chicago-based developer and construction management company. You are one of three owners of D²; your partners are an engineer and a construction contractor. At present, D is managing several non-City ("private") construction projects in Chicago (among them, an indoor soccer stadium project in the South Chicago neighborhood).

As to City projects, D and a joint venture partner, U W (an architectural firm), are currently in the process of finalizing an agreement with the City to build x residences in South Chicago. You stated that, in xxxx 2005, D/U W responded to an RFP--issued by the City's Department of P in xxxxxx 2005-- for the sale and development of xx City-owned lots in the Chicago Redevelopment Area of Chicago ("the Chicago Project"). You stated that D "bid" on xx of the xxx lots and, ultimately, was selected as the developer of those lots.³

You stated that, during your tenure as Executive Director of C, you had no involvement of any kind in the preparation, issuance or award of that RFP, nor in D/U W's response to the RFP. You also stated that, during your tenure as a CD Commissioner, the Chicago Project did not come before the Commission for review, consideration or any other purpose. You further stated that, since leaving City service, you have had no involvement of any kind in the Chicago Project.

You estimate that actual construction on the Project will begin approximately 18 months from the date the sale of the lots/development agreement are approved by the City Council. You estimate that, at the earliest, the matter will be presented to the full City Council in xxxx 2006-- as it must first go to the C D Commission, and then to the Real Estate and Housing Committee of City Council, for review and approval.

QUESTIONS PRESENTED

You have asked the Board to address a series of questions relating to both the Chicago Project and to non-City ("private") construction projects, that is, projects to which the City is not a party. Your questions may be summarized as follows⁴:

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You expect the definitive limited liability company documents to be finalized in xxxxxx 2006.

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You stated that other developers also responded to the RFP and were selected to develop other parcels. You also stated that the City may award D additional parcels (among the xx lots) to develop.

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You also asked whether, as a former City appointed official and employee, you are prohibited under the
(continued...)

1. May you assist or represent D and/or its joint venture partner, U W, on the Chicago Project?

2. As to non-City (“private”) construction projects, may you assist others (D, its clients, etc.) in seeking building permits from the City? Under the Ethics Ordinance, are the following situations materially distinguishable: i) contacts preparatory to the actual filing of a building permit application; ii) contacts designed merely to elicit non-confidential information regarding the City’s building permitting process; iii) contacts for the purpose of advocating a particular interpretation of the City’s Building Code; or iv) advising others e.g., your D partners, the project architect, the property owner, about “peer engineering reviews” or other established City procedures that may be utilized to expedite construction?

3. Even if you are prohibited for a period of time from seeking building permits from the City on behalf of D or its clients, may you seek zoning changes/variances from the City on behalf of D or its clients?

4. Even if you are prohibited for a period of time from seeking building permits or zoning changes/variances from the City on behalf of D or its clients, may you do so on your own behalf as a property owner?

LAW

Section 2-156-100(b) of the Governmental Ethics Ordinance (Post-Employment Restrictions) states:

(b) 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.

“Assisting” and “representing” a person in business transactions involving the City include helping a person to seek, as well as perform, a contract. Case No. 89119.A. “Assisting” and “representing” also include activities such as rendering advice, appearing before any City commission, board,

⁴(...continued)

Governmental Ethics Ordinance from having an ownership interest in D, an entity that has (or will soon have) a contract with the City to purchase and develop xx or more City-owned lots. Please be advised that Ordinance Section 2-156-110, which limits the interest that a City official or employee may have in a City contract, *does not apply to interests acquired after the City official or employee leaves City service.*

department or agency, negotiating contracts, or preparing or submitting documents on behalf of that person. Case No. 89144.A. Further, the one-year prohibition under Section 2-156-100(b) begins on the date the employee's or official's City employment or term of office terminates, not on the date that he or she stopped performing particular tasks. Case No. 94011.A.

ANALYSIS AND DETERMINATIONS

One-Year Prohibition. The Board first addresses the one-year prohibition. Under the first clause of subsection 2-156-100(b), a former official or employee is prohibited, for one year after leaving City service, from assisting or representing any person in a business transaction involving the City, if he participated personally and substantially in the subject matter of that transaction during his term of office or employment.

In this case, you served as a member of the City's C D Commission from approximately late 19xx until xxxxl 2004. Analysis of the one-year restrictions imposed on you *as a consequence of your service on the C D Commission* is unnecessary, however, as more than a year has elapsed since you resigned from that appointed office.

You also served as the Executive Director of C from xxxx 2004 until xxxxxx, 2005. C's function is to review and decide building permit applications submitted to the City on behalf of private individuals or entities. The Board has previously concluded that "...the process by which the City considers, and decides, building permit applications constitutes a 'business transaction' involving the City within the meaning of Section 2-156-100(b)." Case No. 05055.A at page 6. The facts presented establish that, during your tenure at C, you exercised ultimate administrative authority for the interpretation of the City's Building Code; regularly met with reviewers and/or applicants (or their representatives) to consider, among other issues, deficiencies in applicants' plans (identified by reviewers) and alternative interpretations of the City's Building Code being urged by/on behalf of applicants; and oversaw the denial or issuance of City building permits by Department staff. Based on the foregoing, **the Board concludes** that you participated personally and substantially in the process by which the City considers and decides building permit applications **and determines**, therefore, that:

you are prohibited for one year from the date you left City employment, that is, until xxxxxx, 2006, from assisting or representing D, or any other person, on any matter before C (or any other City department or agency) involving the City's building permitting process.

Please **note** that this prohibition:

- i) applies to both City, e.g., the Chicago Project, and non-City ("private") construction projects;
- ii) includes contacts preparatory to the actual filing of a building permit application;
- iii) includes contacts designed merely to elicit non-confidential information regarding the City's building permitting process, as well as contacts for the purpose of advocating a particular interpretation of the City's Building Code;
- iv) includes advising others, e.g., your partners, the project architect or the property owner, about "peer engineering reviews" or other established City procedures that may be utilized

to expedite construction; and

v) applies to applications to other City departments or bodies, e.g., the Zoning Department or the Zoning Board of Appeals, for zoning changes or variances. *See* Case No. 05055.A, wherein the Board concluded that "...zoning is a basic component of the City's review of, and decision on, building permit applications."

Please **note further** that this prohibition:

i) does **not** apply to building permit or zoning applications on your own, personal behalf as a property owner--in contrast to applications on behalf of D, its clients or an LLC or other legal entity-property owner, of which you are a member/partner; and

ii) does **not** apply to contacts with City departments or bodies other than C (e.g., the Mayor's Office, D, the CD, the City Council) to address development or construction matters unrelated to the building permitting process, e.g., TIF Financing or real estate marketing.

Permanent Prohibition. The Board next addresses the permanent prohibition. Under the second clause of sub-section 2-156-100(b), a former official or employee is permanently prohibited from assisting or representing any person other than the City on a contract over which the former official or employee exercised contract management authority during his term of office or employment. Section 2-156-010(g) defines the term "contract management authority" as "personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance."

In this case, you stated that, during your tenure as Executive Director of C, you had no involvement of any kind in the preparation, issuance or award of the xxxxxx 2005 RFP for the sale and development of the xx City-owned lots in the Chicago Redevelopment Area ("the Chicago Project"), nor in D/U W's response to the RFP. You also stated that, during your tenure as a CD Commissioner, the Chicago Project did not come before the Commission for review, consideration or any other purpose. Based on your representations, **the Board concludes** that you did not exercise contract management authority over the Chicago Project during your service as either the Executive Director of C or a CD Commissioner.⁵ **The Board determines**, therefore, that:

upon the expiration of the one-year prohibition (set forth above) on xxxxx, 2006, you are not prohibited from assisting or representing D, or any other person, on City building permitting matters related to the Chicago Project.

Other Constraints. The Board also brings to your attention Section 2-156-070 of the Governmental Ethics Ordinance, "Use or Disclosure of Confidential Information." This section prohibits you, as a former City appointed official and former City employee, from using or disclosing confidential information gained in the course of or by reason of your position or employment. Confidential information, for purposes of this section, means any information that may not be obtained under the Illinois Freedom of Information Act, as amended.

The Board's determinations in this matter do not necessarily dispose of all issues relevant to your situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. Other laws or rules may also apply to your situation. If the facts recited are incorrect or incomplete, please notify us immediately, as any change may alter our opinion.

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.

Darryl L. DePriest
Chair