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[REDACTED]

C O N F I D E N T I A L

[REDACTED]

RE: Case No. 96030.Q

Dear [REDACTED]

You are a former [REDACTED] in the [REDACTED] Division of the Department of Planning and Development ("DPD"). You contacted the Board of Ethics staff on [REDACTED], 1996 and asked for guidance on how the City's Governmental Ethics Ordinance restricts your activities in your post-City employment with "K" [REDACTED], a local real estate developer.

It is our opinion that, under Section 2-156-100(a) of the Ethics Ordinance, you are permanently prohibited from assisting or representing any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies--including DPD, the Plan Commission, or the Zoning or Building Boards of Appeals--if the proceeding involves any planned or lakefront development projects on which you worked during your City employment. Additionally, under Section 2-156-100(b) of the Ordinance, you are prohibited for one year after you left City employment from assisting or representing any person, including K [REDACTED], in a business transaction involving the City if that transaction concerns a site or parcel of real property that was the subject of any development proposal, project, or application on which you worked during your City employment.

However, the post-employment provisions of the Ordinance do not restrict you from assisting or representing K [REDACTED] or any other person on development projects or proposals relating to properties with which you were not involved during your City service. This letter explains the Board staff's analysis of the facts you presented under the relevant provisions of the Ordinance.

FACTS: You are a [REDACTED] by training and have degrees in [REDACTED] and [REDACTED]. You were employed by the City from [REDACTED]



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[redacted] until [redacted], as [redacted] for DPD's Zoning Division. You resigned your City position on [redacted] and plan to begin working on [redacted] with K [redacted], a company specializing in projects. You said that, during your City employment, you worked on two developments submitted to DPD by your new employer. You asked specifically if the Ethics Ordinance prohibits you from assisting or representing K [redacted] in projects with which you were not involved during your City employment, or in projects that began after you left your City job. You said your work for K [redacted] may involve appearing before both your former department and other City agencies.

Your City position. You said that your entire City job consisted of working on projects that private developers submitted to the Chicago Plan Commission. Specifically, you worked on two categories of projects that require Plan Commission approval. First, the Commission reviews proposals for "planned developments" filed under §11.11-3 of the City's Zoning Ordinance, and makes recommendations on these for final decision by City Council. Planned developments are specially approved uses of land and air rights. The Zoning Ordinance defines what type of projects qualify as planned developments, including, for example, high-density, multi-family housing, airports, universities, and hospitals. Second, the Commission renders final approvals on all proposed developments that fall within the areas of the City covered by the Lake Michigan and Chicago Lakefront Ordinance, Chapter 16-4, §§16-4-010 through -180 of the Municipal Code (the "Lakefront Ordinance").

You said you worked on all planned and lakefront developments that were submitted to the Plan Commission while you were employed by the City. With each planned or lakefront development proposal, applicants submit site, use, and building plans, and other relevant reports to DPD. The department evaluates the proposals according to the criteria set forth in the Zoning and/or Lakefront Ordinances. You said that, during your City employment, you met personally with the project architects, developers, and attorneys to review their plans and advise them on the specific architectural and urban design issues relevant to their individual projects. (These issues involve viewing the proposed development in relation to the surrounding area and include, for example, choice and placement of trees, location of driveways, and dimensions of buildings.) You then reported on each proposal to the Deputy Commissioner and the Director of Zoning. They were responsible for writing DPD's recommendations on the proposals, which were submitted to the Plan Commission.

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The Commission then conducted public hearings on each application and either (1) rendered a final decision, for projects under the Lakefront Ordinance, or (2) sent its recommendations to the Zoning Committee of City Council for approval, in the case of planned developments. For every planned development approved by Council, a special amendment was made to the Zoning Ordinance. You told us that you attended all hearings of the Plan Commission in order to answer questions, if necessary, about the aspects of proposals on which you worked. You had no voting responsibilities on the Commission. Once developments were approved by the Commission, you also supervised the process by which zoning permits were reviewed to ensure that all developments conformed to the provisions of the individual planned development ordinances.

You said the City's planned and lakefront development process is strictly regulatory and does not involve any contracts between the City and the private developers, or any City funding or qualification for funding, other than possible applications for Tax Increment Financing eligibility. You said you were never involved in negotiating any City contracts, or in Tax Increment Financing designations.

You told us that, during your City service, K [REDACTED] submitted two projects to the Plan Commission through DPD, on which you performed the same activities described above. Both projects were approved by the Commission. One was the conversion of the [REDACTED] building [REDACTED] to [REDACTED], which was processed as a planned development. The other project was the construction of the [REDACTED] condominiums [REDACTED], which came under the Lakefront Ordinance. You said that, while the first project is nearly finished, K [REDACTED] may still need to obtain City permits to complete the second project. You said you do not expect to perform any work for K [REDACTED] on either of these projects.

Your post-City employment. You said you will be working for K [REDACTED] chiefly in its new development proposals. You expect to be carrying out a variety of tasks that are performed after K [REDACTED] obtains private financing for any given proposal, but before its project manager assumes responsibility. These tasks include architectural and urban design of the project, and marketing the project for eventual sale. You believe you will be responsible for obtaining City building permits, both for K [REDACTED]'s new projects and for its ongoing projects that were not required to go through DPD or the Plan Commission. You also expect you may be asked to represent K [REDACTED] on new projects that will be

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submitted to the Plan Commission through DPD as planned developments and lakefront projects. On these projects, you would confer with DPD representatives on how the City zoning criteria apply to the proposals in question and, if the projects are approved, you would interact with DPD and Building Department officials during the permitting process.

LAW AND ANALYSIS: POST-EMPLOYMENT. Section 2-156-100 of the Ethics Ordinance, entitled "Post-Employment Restrictions," states:

(a) No former official or employee shall assist or represent any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if the official or employee was counsel of record or participated personally and substantially in the proceeding during his term of office or employment.

(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.

The Board has held that "assisting" and "representing" persons in business transactions involving the City include appearing before any City Commission, Board, Department, or agency, and preparing or submitting documents to any City agency on behalf of that person. Case No. 89144.A.

Subsection (a): Permanent Prohibition. Section 2-156-100(a) permanently prohibits you, as a former City employee, from assisting or representing any person other than the City in any judicial or administrative proceeding involving the City or any of its agencies, if you participated personally and substantially in the proceeding during your City employment.

In Case No. 94001.A, the Board of Ethics determined that "the Plan Commission's consideration of development proposals, projects and applications clearly qualifies as 'administrative proceedings involving the City' for purposes of § 100 (a). So

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do any follow-up hearings or actions on these proposals, projects and applications conducted by or involving other City agencies, including but not limited to the Zoning and Building Boards of Appeals" (p. 4). All planned and lakefront developments require Plan Commission approval and therefore are "administrative proceedings involving the City" for purposes of subsection 2-156-100(a). Further, in your situation, your City job was geared entirely toward Plan Commission action--contributing to DPD recommendations to the Commission on projects, attending all public hearings of the Commission, and ensuring that developers complied with zoning permit requirements as approved by the Commission.

Based on the facts you presented, it is our opinion that you "participated personally and substantially" in all proceedings involving planned and lakefront developments that were submitted to, or considered by, the Plan Commission during your City employment. You advised developers on the specific architectural and urban issues relevant to their proposals, contributed to DPD's staff recommendations to the Plan Commission on each proposal, and attended Plan Commission hearings. You performed these duties in relation to all planned and lakefront development proposals that were submitted to, or considered by, the Plan Commission during your City service. In addition, for all planned developments, you supervised the process by which the zoning permits for each project were reviewed for compliance with the provisions of the individual planned development ordinances.

Therefore, we conclude that you are permanently prohibited by subsection 2-156-100(a) from assisting or representing any person other than the City, including K [REDACTED], in any proceeding conducted by or involving any City agency--such as DPD, the Plan Commission, or the Zoning or Building Boards of Appeals--if that proceeding relates to a particular development proposal or project that was the subject of proceedings before the Plan Commission during your City employment.

Subsection (b): One-Year Prohibition. Section 2-156-100(b) contains both one-year and permanent prohibitions. The first prohibits you, as a former City employee, for one year after the date you left City employment, from assisting or representing any person, including K [REDACTED], in a business transaction involving the City if, while with the City, you participated personally and substantially in the subject matter of that transaction.

You said you anticipate that your responsibilities with K [REDACTED] will involve assisting and representing K [REDACTED]

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██████████ in: (1) obtaining City building permits for its new projects, and for its ongoing projects that did not require DPD or Plan Commission involvement; (2) conferring with DPD representatives on new planned and lakefront developments, and submitting those proposals to the Plan Commission; and (3) interacting with DPD and Building Department officials during the permitting process once those projects are approved. Further, all planned development projects require action by City Council. In performing each of these activities, you will be assisting or representing your new employer in "business transactions involving the City" for purposes of subsection 2-156-100(b).

This subsection of the Ordinance prohibits you from participating in these transactions if, during your City service, you participated personally and substantially in "the subject matter" of the transactions. The subject matter of the first category of transactions listed above--obtaining building permits for new K ██████████ projects and projects that did not involve DPD or the Plan Commission--is one in which you had no involvement during your City employment. None of these projects came before DPD during your City employment and, further, you did not participate in the building permit process in your City job. (Your supervision of the review of permits for approved planned development projects related only to zoning permits and did not include building permits.) Therefore, you are not prohibited by the one-year provision from assisting K ██████████ in obtaining building permits for its development projects that did not involve DPD while you worked there.

Both the second and third categories of transactions described above--submitting new planned and lakefront developments to the Plan Commission through DPD, and following up on City permits for those projects--involve representing K ██████████ before City agencies in regard to new planned and lakefront developments. The Board determined in Case No. 94001.A that the subject matter of each planned and lakefront development proposal, project, or application is "each site or parcel of real estate on which the proposal, project or application is to be developed" (p. 5), because each development proposal is so individually tailored to, and circumscribed by, the particular site on which it is located. Following the Board determination in Case No. 94001.A, we conclude that the subject matter of each planned and lakefront development proposal, project, or application on which you will be representing K ██████████ is each site or parcel of real estate on which the proposed project is to be developed.

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It is our opinion that you participated personally and substantially in this subject matter only so far as it pertains to the parcels of real estate involved in planned and lakefront developments that came before DPD and the Plan Commission during your City service. On those parcels, you advised private developers on architectural and urban criteria specific to each individual development site, contributed to DPD recommendations to the Plan Commission on the issues relevant to those sites, and attended all Plan Commission hearings on proposals to develop the sites. You also supervised the review of zoning permits required by the planned development ordinances for each development site.

Thus, in addition to being subject to the permanent prohibition in relation to any City proceeding relating to the development projects on which you worked during your City employment, you are also prohibited by the Ordinance, for one year after leaving City service, from assisting or representing any person, including K [REDACTED], in any transaction involving the City or any of its agencies, if that transaction relates to a site or parcel of real estate on which you worked during your City employment. You told us you expect to assist K [REDACTED] with its new planned and lakefront development projects, begun after you left your City job. As long as those projects do not involve the same sites or parcels of real estate on which you worked while with DPD, Section 2-156-100(b) does not prohibit you from working on them. This is so even though you would be representing K [REDACTED] before City agencies, including your former department.

The #1 Building and the #2 Condominiums: You told us you do not expect to perform any work for your new employer in relation to its two projects on which you worked in your City job. However, applying the above analysis to these two projects, we conclude the following: you are permanently prohibited by subsection 2-156-100(a) of the Ordinance from assisting K [REDACTED] in any proceeding involving any City agency if that proceeding relates to the #1 or #2 projects. Further, subsection 2-156-100(b) prohibits you for one year from the date you left City employment from assisting or representing any person, including K [REDACTED], in any business transaction involving the City if that transaction concerns the #1 or #2 sites.

Subsection (b): Permanent Prohibition. The second provision of Section 2-156-100(b) permanently prohibits a former City employee from assisting or representing any person in any contract if the employee exercised management authority over the contract while with the City. The facts as presented in

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this letter do not appear to warrant application of this provision.

CONFIDENTIAL INFORMATION. As a former City employee, you also are subject to Section 2-156-070 of the Ordinance, entitled "Use or Disclosure of Confidential Information." It states:

No current or former official or employee shall use or disclose other than in the performance of his official duties and responsibilities, or as may be required by law, confidential information gained in the course of or by reason of his position or employment. For purposes of this section, "confidential information" means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

This section prohibits current and former officials and employees from using or revealing confidential information they may have acquired during the course of their City job.

Our conclusions are based on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts presented are incorrect or incomplete, please notify us immediately, as any change in the facts may alter our opinion. Other laws or rules also may apply to this situation.

We appreciate your bringing this matter to our attention and your concern to abide by the standards embodied in the Ethics Ordinance. If you have any further questions about this or any other matter, please do not hesitate to contact us.

Sincerely,



Ellen M.W. Sewell
Legal Counsel

Approved:



Dorothy J. Eng
Executive Director

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