

July 19, 2002

CONFIDENTIAL

The Honorable [John]
Alderman, [XX] Ward
[]
Chicago, IL 606[]

Mr. [Robert],
Department of [A]
[]
Chicago, IL 606[]

**Re: Case No. 02023.Q
Financial Interest in City Business**

Dear Alderman [John] and Mr. [Robert]:

On July 18, 2002, Alderman [John] and Mr. [Robert] asked the Board of Ethics for a staff opinion on what restrictions, if any, the Governmental Ethics Ordinance places on the sale of City-owned property to a real estate development company for the development of twenty-four condominiums and two single-family homes, when Alderman [John] has expressed interest in possibly purchasing one of the homes from the developer. Following a review of the relevant law and Board precedent, staff has concluded that the Ordinance does not prohibit the Department from selling this property to the developer. Furthermore, we conclude that, based on the facts that you have presented, as summarized in this letter, if Alderman [John] were to purchase one of the single-family homes from [Company A], such purchase would not constitute a prohibited financial interest in City business.

FACTS AND RELEVANT LAW

In addition to speaking with the Alderman, Board staff has had several conversations with personnel from the Department [1] and has reviewed documents submitted by the Department concerning the project. In early 2002, the [Company A] Corporation approached the Department of [1] and entered into negotiations to purchase and develop 9 separate city-owned parcels of land, all located in the [local] neighborhood, for a total of \$[XXX],000. The City acquired the land through Sheriff's deed and Tax deed process; the nine parcels were recently appraised at a total of \$[XXX],000. The properties at issue are located in the [] Tax Increment Financing (TIF) District and the [] Redevelopment Project Area. According to a memorandum from Department of [1] Commissioner [Mary

], to be submitted to the Mayor's Office, the Law Department, and the Budget Office on July 31, 2002, [Company A]'s proposal is consistent with the land uses and the goals and objectives of the TIF and Redevelopment plans, which focus on strengthening the area's economic stability and promoting new housing opportunities in the area. The [] TIF was created on June 17, 2000, the [] Redevelopment Area was created on June 4, 1997.

According to the above-referenced memorandum, [Company A] proposes to develop two single family homes and twenty-four condominiums on the 9 City-owned parcels. The single family homes will be sold for \$[XXX],000; the condominiums for \$[XXX],500. Under the terms of [Company A's] purchase agreement, [Company A] must complete the project within 18 months; should it fail to complete it within that time frame, the City will either extend the period or cancel the contract and take the land back. According to documents submitted to the [

] Commission, the City is not providing any financial assistance to [Company A] for this development; the project will be 100% privately funded—75% by [

] Bank and 25% by [Company A].¹ [Company A] has never previously entered into any contracts or development agreements with the City, but has completed a number of other projects in Chicago.

The prospective sale was approved by the [] Commission on June 11, 2002. Following this approval, the Department of [A] published a public notice for two consecutive weeks in the Chicago Sun Times, inviting alternative proposals from other developers, who had 30 days from the date of the first publication of the notice to submit their own proposal. The 30 day period has passed without any other proposals.

The properties are all located in the [XX] Ward, where Mr. [John] is the Alderman. The project was presented to residents of the [XX] Ward at a community meeting held May 23, 2002. In a memo to {Mary }, dated May 31, 2002, Alderman [John] expressed his support of the project. The letter of support from an Alderman is standard procedure when any developer seeks City support for a project—whether the land is purchased from the City or not.

In a conversation with Board staff, the Alderman expressed a recent desire to purchase one of the single-family homes that are to be built on one of the parcels. He asked if the Ethics Ordinance would prohibit him from doing so. During that conversation, the Alderman stated that he was unaware of any particulars concerning the developer's sale of the property, once developed. He also stated that he has had no conversations with the developer with regard to his contemplated

¹Although the project is located in both a City-designated TIF district and Redevelopment Area, as a "market rate" project it does not qualify for funds from either of these programs. According to [Sally], a project manager in the Department of [], these programs are designed to assist affordable housing developers, by providing them with "gap financing", i.e., the difference between the amount of money they need and the amount they have.

purchase of a home, nor has he taken any action to make such a purchase. He has not signed any pre-construction agreement, and has not engaged in any other transactions concerning the purchase of a home from the developer. Nothing in any of the documents reviewed by Board staff makes any reference to Alderman [John]'s possible purchase of a home, and Alderman [John] has stated to Board staff that his support of the project was in no way contingent upon such a purchase. Alderman [John] has stated, both to Board staff and to staff of the Department of [1], that he intends to recuse himself from any discussion or vote on the City's sale of the property to the developer (and any other issues concerning this property) when it appears before City Council or any Council committees.

In review of this matter, the relevant Ordinance provision is Sec. 2-156-110 (Interest in City Business), which prohibits an official from having a financial interest in his own name or in the name of any other person in any contract, work or business of the City, or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid with funds belonging to or administered by the City, or is authorized by ordinance. Unless sold pursuant to a process of competitive bidding following public notice, no elected official shall have a financial interest in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City.

ANALYSIS AND CONCLUSION

In Case No. 92030.A, the Board rendered a decision on a series of hypothetical questions submitted on behalf of an City elected official who owned a real estate company involved in various aspects of property management, brokerage, construction and architectural inspection. One of the questions submitted is directly relevant to the issues raised in the instant case. The official asked if the Ordinance prohibited the real estate company from dealing in property previously owned by the City by purchasing such property from a third party or acting as a broker with respect to such property. The Board determined that the official or his company "...may deal with property that no longer belongs to the City." The Board went on to state that the official "...must follow other mandates of the Ordinance about economic or financial interest respecting that property, just as she would respecting any property in which she has an interest, whether or not that property was once owned by the City."

Staff concludes that the Ethics Ordinance does not prohibit the Department from proceeding with the sale of the City-owned parcels to [Company A]. Based on the Board's determination in Case No. 92030.A, staff further concludes if Alderman [John] were to purchase one of the single-family homes from [Company A] that is to be built on the parcels, such purchase would not constitute a prohibited financial interest in City business, as Alderman [John] would not be purchasing the property from the City, but from the developer.

As noted above, Alderman [John] has not signed any agreement relating to his contemplated purchase of a home from the developer. In the event that he does, and any issues regarding

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[Company A's] purchase of the City-owned property arise before City Council or any City Council committee, we recommend that Alderman [John] contact the Board for further advice, as other Ordinance provisions, including 2-156-030 (Improper Influence) and 2-156-080 (Conflicts of Interest), may apply.

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.

We appreciate your inquiry and your concern to abide by the standards embodied in the Ethics Ordinance. In the event you wish to view the Ethics Ordinance in its entirety, please go to our web site at <http://www.ci.chi.il.us/Ethics/> . If you have any further questions, please do not hesitate to contact us.

Very truly yours,
[Signature]

John H. Mathews
Legal Counsel

Approved by:
[Signature]

Dorothy J. Eng
Executive Director

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