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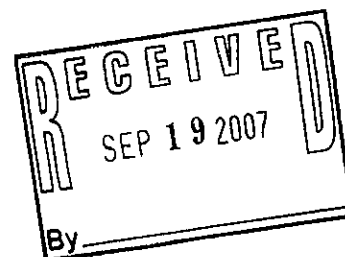
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September 13, 2007

Confidential – Attorney/Client Privileged Communication

Ms. Alayne M. Weingartz
Corporation Counsel
City of Aurora
44 East Downer Place
Aurora, Illinois 60507-2067



Re: 3051 New York Street

Dear Ms. Weingartz:

On August 27, 2007 you called me to ask whether I would review various applications and other records for the construction of a proposed health center at the above location and give my opinion whether the applicant complied with the applicable City Codes. I agreed to undertake this assignment and began my review.

On August 31, 2007, Alderman Irwin called me to express his concern that the public might have concerns about my impartiality in rendering an opinion, because I rent office space from the City's outside counsel, Klein, Thorpe and Jenkins, and because I was a summer law clerk for this firm many years ago. I stated to Alderman Irwin that the City needed to do what was in the best interests of the City and that I was fine with whatever the City decided. That remains my position.

When I called you to inquire how I should proceed, you directed that I complete the assignment for you. Subsequent to that call, I understand that the City retained another attorney to undertake this assignment. I would note parenthetically that while I have great respect for the attorneys at Klein, Thorpe and Jenkins, I have not spoken to anyone at this firm about this assignment. What follows is based on my independent investigation.

Scope of Review

After your initial telephone call to me, you and I met later that day in your office to discuss the assignment. On August 28, 2007, I met with Edward Sieben, Director of the Land Use and Zoning Division of the Community Development Department, and Stephane Phifer, Planning Director of the Planning Division of the Planning and Development Department to discuss the land use process and issues

pertaining to the proposed health center.

The next day I met with John Curley, Assistant Director of Community Development, John Banbury, Assistant Corporation Counsel, and Mr. Sieben to discuss the building permit process and any open issues. On September 5, 2007, I went to the Chicago office of the Illinois Finance Authority and met with the Freedom of Information Officer to discuss the application process at the Authority and inspection of records pertaining to the financing of the proposed health center in Aurora.

Based on the information which I have gathered, I note the following:

Gemini Office Development, LLC

On July 27, 2006, Gemini Office Development, by its authorized agent, Mr. Thomas Lehman, filed a Land Use Petition with the City for approval of a Final Plan for the 3.24 acre parcel at Oakhurst and New York (see Tab 1 for a copy of this Petition). This parcel is now commonly known as 3051 New York Street. Near the bottom of the Land Use Petition, it states:

AUTHORIZATION

I hereby affirm that I have full legal capacity to authorize the filing of this Petition and that all information and exhibits herewith submitted are true and correct to the best of my knowledge. The Authorized Signatory invites City representatives to make all reasonable inspections and investigations of the subject property during the period of processing this Petition.

The Subject Property Owner must sign this form unless the Contact Person has been authorized to do so per a letter that is attached hereto.

Authorized Signature: _____ Date: 27 Jul 06

Attached to this Petition is a letter to the City of Aurora from Theresa Huyck, President of Gemini Office Development, LLC ("Gemini") on that company's letterhead. See Tab 1 for a copy of this letter. This was the only document which I found in my review of the City's records which was on Gemini's stationery. The one sentence letter states:

Dear Sir or Madam:

Please be informed that Mr. Thomas Lehman is acting as authorized agent with regards to obtaining a building permit for the Medical Office Building on Oakhurst at New York.

Sincerely,

Teresa Huyck, President

Gemini purchased the 3.25 acre parcel at Oakhurst and New York on or about March 23, 2006, and, to the best of my knowledge, remains the owner. See copy of deed in Tab 2.

So far as I can determine, Gemini is a limited liability company in good standing with the Illinois Secretary of State. Gemini was registered with the Secretary of State on May 13, 2005 according to the Secretary of State's LLC File Detail report. See Tab 3. The registered agent is shown as:

Kathleen M. Howard
131 S. Dearborn – Suite 1700
Chicago, IL 60603

This address is the Chicago branch of a Seattle based, international law firm, Perkins, Cole. Ms. Howard, an attorney, is "Of Counsel" to this firm according to Sullivan's Law Directory. See Tab 4.

The current Annual Report of Gemini Office Development, LLC shows the principal place of business as 1 S. Wacker Dr., Ste 800, Chicago, IL 60606, the same address which appears on Gemini's letterhead. This Annual Report, dated March 27, 2007, is signed by Theresa A. Huyck, Manager of Genesis Office Management, LLC, which in turn, is the manager of Genesis Office Development, LLC (emphasis added). See copy of this annual report in Tab 5.

The Various Permit Applications

The property owner of the 3.24 acre parcel, Gemini Office Development, LLC, filed at least six permit applications with the City. At the time these applications were made, the City apparently assigned the address of 240 N. Oakhurst Drive for this property. These applications are:

1. Fire Suppression – Application Form submitted on 3/23/06 and signed by Paul Felch, apparently on behalf of FE Moran Fire Protection, a Northbrook firm.
2. Commercial – New Construction – Application Form submitted on 7/27/06 and signed by Thomas Lehman on behalf of the owner. The general contractor is shown as Krahl Construction.
3. Commercial Foundation Only – Application Form submitted on 11/22/06 and signed by Scott Mousel of Krahl Construction Company.

4. Commercial Miscellaneous – Application Form submitted on 12/4/06 by Kevin J. Horn of Krahl Construction for a new temporary construction trailer.
5. Sign Application form submitted on 3/22/07 by Scott (last name unknown, but likely Mousel) of Krahl Construction.
6. Fire Alarm Application Form submitted on 5/17/07 apparently by Ken Grossinger of Commercial Electronics, Inc.

See copies of these applications in Tab 6.

These applications consistently show the Property Owner as Gemini Office Development, LLC, One South Wacker Drive #800, Chicago, IL 60606, with the exception of the Commercial New Construction Application, in which Thomas Lehman, Gemini’s agent, shows Gemini’s address as 6301 S. Cass Avenue, Suite 301, Westmont, IL 60559. This is the address for Mr. Lehman’s limited liability company, Partners in Development, USA, which, according to the Secretary of State’s records, was established in 2002; Mr. Lehman serves as it member-manager. See Tab 7.

John Spoelma, who works in the City’s Engineering Division, addressed his letter of January 10, 2007, regarding the Gemini Outpatient Facility at 240 Oakhurst, to Thomas W. Lehman, PE, at the Cass Avenue address. See Tab 8 for a copy of this letter. Apparently Mr. Lehman is a professional engineer. A copy of a bio for a Thomas Lehman, PE, which I obtained on-line is in Tab 9. This may or may not be the Thomas Lehman who signed this application.

The information about the Tenant on the six application forms is somewhat inconsistent. Five of the six indicate that the tenant is Gemini Office Development, but the sign application, submitted on March 22, 2007, states that the tenant is “unknown at this time.” In the lower left hand corner of the first page of the sign application, under “Signage Information – Verbage on Sign”, Mr. Scott Mousel from Krahl Construction, the general contractor, has apparently written “Not known at this time – tenant is not determined.” See Tab 10.

Statements Presumably Made by Mr. Lehman

On November 16, 2006, the Planning and Development Committee, a standing committee of the City Council, met to consider Gemini’s request for approval of its final plan. The minutes indicate that Mr. Lehman was present on behalf of Gemini. See Tab 11. The transcript of the meeting indicates the following exchange between Alderman Elmore and an Unidentified Gentleman (presumably Mr. Lehman):

* * *

Alderman Elmore: Is this building being built specifically for a client?

Unidentified Gentleman: We're in negotiations with a tenant; we do not currently have a lease but we still want to move ahead.

* * *

Alderman Elmore: It's a nice buffer between them and the retail center, and these usually are pretty quiet because they usually function in the daytime and that makes it nice. I'd be interested to know who your client is, when you can release that.

Gentleman: OK

* * *

See Tab 12.

Interviewing Mr. Lehman was beyond my assignment and authority. Further investigation is required to test the credibility of his responses to Alderman Elmore's questions posed last November.

Financing the Project

The project is apparently being financed by 501(c)(3) tax-exempt bonds issued by the Illinois Finance Authority (IFA), a self-financed state authority, which has offices in Chicago. Googling "Gemini Office Development" discloses a link to IFA's May 8, 2007 Board minutes, wherein the Board approved a project by Planned Parenthood Association (Chicago Area) and Gemini Office Development, LLC; IFA further approved "the issuance of conduit 501(c)(3) Revenue Bonds in an amount not-to-exceed \$10,000,000 to finance: a) the acquisition of land, construction and renovation; b) the acquisition of machinery and equipment; c) capitalized interest; and d) costs of issuance for projects located in Aurora and Chicago, Illinois." See minutes in Tab 13; this project in No. 9. The minutes indicate that Mr. (sic) Terry (sic) Huyck, Chief Operating Officer of Planned Parenthood Association Chicago and Ms. Cheryl Harris, Chief Financial Officer of Planned Parenthood Chicago were present at the meeting.

The Official Statement for this project, known as the Planned Parenthood / Chicago Area Project, is available on-line at www.munios.com, which does require a no-fee registration and password. Portions of this 84-page document are attached in Tab 14. In the Introductory Statement (bottom of first numbered page), the Official Statement states:

The proceeds from the sale of the Bonds will be loaned to Planned Parenthood /Chicago Area, an Illinois not for profit corporation (the "*Corporation*"), and Gemini Office Development LLC, an Illinois limited

liability company (“*Gemini*” and together with the Corporation, the “*Borrowers*”), to be used together with other funds, to (i) finance the payment of or the reimbursement of the costs of acquiring, constructing, installing and equipping a new healthcare center located in Aurora, Illinois, (ii) finance various capital costs of the Corporation for use in fits facilities located in Chicago, Illinois and Chicago’s suburbs, (iii) refinance certain taxable indebtedness, the proceeds of which were utilized by the Corporation to finance the costs of acquiring, renovating, constructing and equipping certain existing health care centers of the Corporation (clauses (i), (ii) and (iii) are herein referred to as the “*Project*”), (iv)...

On page 6 of the Official Statement, “The Borrowers” are described as follows:

The Borrowers

The Corporation was incorporated in October of 1946 and is an Illinois not for profit corporation providing family planning and reproductive health services in Chicago and the surrounding communities. The Corporation has been determined by the Internal Revenue Service to be an organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (the “*Code*”), as an organization described in Section 501(c)(3) of the Code, and currently operates 10 health centers, seven in Chicago and three in the surrounding suburbs. During fiscal year 2006, the Corporation served approximately 54,000 patients for over 122,000 visits for male and female services.

The need for the Corporation’s services has been growing and the Corporation is expanding its operations and locations to meet these needs. As part of these efforts, the Corporation has formed several subsidiaries to assist in the acquisition of new land and assets and the development of new facilities to meet needs. The Corporation is the sole member of 21st Century Office Development LLC (“*21st Development*”) and 21st Century Office Management LLC (“*21st Management*”), Illinois limited liability companies formed for the purpose of developing and managing real estate for the Corporation’s mission. 21st Development is the sole member of Gemini and Gemini Office Management LLC (“*Gemini Management*”), which are also Illinois limited liability companies. 21st Management is the manager of 21st Development and Gemini Management is the manager of Gemini.

As part of the expansion plans, Gemini acquired a parcel of land in Aurora, Illinois which is the site for a new full service clinic to serve the Bolingbrook, Naperville and Aurora area. See “The Plan of Finance” below.

* * *

“The Plan of Finance” states, in part, on page 7:

The largest component of the Project, for approximately \$7,400,000, is the acquisition, construction, installation and equipping of a full service health center to serve the Bolingbrook, Naperville and Aurora area. The new Aurora health center will provide approximately 13,000 visits each year when it is completed and will also provide space for community education. The Aurora health center is currently scheduled to open in September of 2007.

On page 38, the Official Statement is executed by Steven Tromble (sic), President and Chief Executive Officer, on behalf of Planned Parenthood / Chicago, and by Theresa A. Huyck, President, on behalf of Gemini Office Development, LLC.

I understand from a representative of IFA that the bonds were sold on May 24, 2007 and the transaction closed. I have filed a Freedom of Information Request with IFA, asking to inspect the bond transcript, but IFA's FOIA Officer told me that IFA does not now have a copy of the transcript, but has asked the underwriter to provide a copy to IFA. See Tab 15 for a copy of my FOIA request. The transcript should contain copies of the Preliminary Inducement Resolution (first notice to the IFA Board of the Project), the TEFRA (Tax Equity and Fiscal Responsibility Act) public hearing notice which is published in one or more newspapers, and the transcript of the TEFRA public hearing.

Compliance with City Codes

The proposed Health Center is a permitted use under the applicable City Zoning Regulations at the subject site on New York Street. See Tab 16 for a Summary of Land Use History prepared by Stephane Phifer, City Planner, in late August, 2007. I understand from staff that the applicant has provided more parking than is required and has provided an acceptable landscape plan.

A temporary occupancy permit was issued on August 16, 2007, with an expiration date of September 16, 2007, a copy of which is in Tab 17. Section 110.4 entitled "Temporary Occupancy" of the 200 International Building Code ("Building Code"), which the City adopted, sets for the effect of the issuance of a temporary occupancy permit, which is to permit occupancy on a temporary basis. To have issued the temporary occupancy permit, the City's Building Official must have found that the building could be occupied safely during the 30-day period.

The Temporary Certificate of Occupancy and Compliance (Tab 17) sets forth three special conditions, pertaining respectively to engineering, zoning and building issues. I understand that the applicant has satisfied the zoning issue. You would need to check with staff to determine the current status of the engineering and building issues.

Section 110.5 entitled “Revocation” of the Building Code does give the Building Official the power to suspend or revoke a certificate of occupancy or completion “whenever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of the code.”

In the last two months, it has become clear that Planned Parenthood will operate the health center on New York Street. I understand that last month a ground sign was erected at the northeast corner of the site which states “Planned Parenthood” followed by the address, 3051 E. New York Street. As noted earlier, the six permit applications (Tab 6) state that the tenant will be the owner, Gemini Office Development, LLC. The question has been raised: should the City revoke, suspend or not renew the temporary certificate of occupancy because the City acted on incorrect information during the permitting process? In addressing this question, I note the following:

- Section 101.3 entitled “Intent” of the Building Code states:

101.3 Intent. The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, means of egress facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire and other hazards attributed to the built environment.

- Section 105.1 entitled “Required” of Section 105 entitled “Permits” of the Building Code states:

Section 105 Permits

105.1 Required. Any owner or authorized agent who intends to construct, enlarge, alter, repair move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

Thus it is the owner or its authorized agent who is responsible for applying for and obtaining the required permit(s).

- The City’s permit application forms require a signature by “the owner or a duly contracted representative of the owner of said property.”
- Gemini Office Development, LLC, which is a for-profit entity, is

the owner of 3051 New York Street, the site of the proposed health center. Its agents applied for and obtained the required permits, including the temporary occupancy permit.

- I was unable to determine if Planned Parenthood, which is a not-for-profit entity, has a lease, license, operating agreement, or other written agreement with Gemini Office Development, LLC to occupy the land and health center building.
- I was unable to determine, what, if any, information was known to those persons who signed the various permit applications as the owner's agent.
- In my opinion, tenant information is not material to the permitting process where an owner takes responsibility for obtaining the required permits and completing the work pursuant to City Codes to insure the safety of the occupants.

Given the foregoing, it is my opinion that Gemini Office Development, LLC's failure to provide consistent information to the City about the tenant for the proposed health center or its apparent failure to fully disclose tenant information to the City, is not a sufficient basis for suspending, revoking or not renewing a certificate of occupancy (temporary or final) for the health center.

Based on my findings and analysis set forth in this letter, it is also my opinion that Gemini Office Development, LLC, has substantially complied with the applicable City Codes in the development and construction of the building at 3051 E. New York Street, with the possible exception of the engineering and building matters raised in the temporary certificate of occupancy (Tab 17).

I note that late this afternoon I received a fax from Bill Wiet, the Mayor's Chief of Staff, regarding his recollection of all contacts he has had with Planned Parenthood. I have not interviewed Mr. Wiet or analyzed these documents, but I wanted you to be aware of them. The documents which Mr. Wiet sent me are in Tab 18.

I am emailing this letter to you per our telephone call this evening. I understand that Planned Parenthood has sued the City and is seeking a TRO tomorrow, presumably so it can open the health center next week.

I appreciate the opportunity to assist you. If you have comments or questions about this letter, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Richard A. Martens". The signature is fluid and elegant, with a large initial 'R' and 'M'.

RICHARD A. MARTENS

RAM:mm
Enclosures