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Memorandum

DATE: August 13, 2004

TO: Mayor Satterthwaite and the Urbana City Council

FROM: Steve Holz, City Attorney

RE: Alderperson Laura Huth -- Conflict of Interests

Introduction

A difficult situation has arisen with respect to Alderperson Laura Huth's simultaneous holding of 2 positions—the political position of City of Urbana Alderperson and the employment position as a paid staff Director for the local affiliate of Habitat for Humanity. Because she holds these two positions, Ms. Huth has a conflict of interests.

This conflict arises under both state law and federal law. The state law conflict in this particular circumstance is relatively easy to deal with, as it requires essentially disclosure and abstention, and does not cause significant difficulty. For that reason, this memorandum does not focus on the state conflict issues. (Further information on the state law conflict is contained in the letter dated April 21, 2004, from myself to Ms. Huth, which is attached to this memorandum as **Attachment B.**)

On the other hand, the federal law conflict can be dealt with only by either resigning one of the positions that causes the conflict (this is discussed later in this memorandum), or by obtaining exceptions for the conflict from the U.S. Department of Housing and Urban

Development (“HUD”). HUD personnel have informed me, together with Bruce Walden and Ms. Huth that, under federal regulations, Ms. Huth does in fact have a present, prohibited, conflict of interests. Attached to this memorandum is a proposed ordinance in support of requests to HUD for exceptions from the federal conflict of interest regulations for Ms. Huth’s conflict.

Source of the conflict of interests.

The federal conflict of interests arises out of the fact that, as a city council member, Ms. Huth has decision-making authority with respect to federal funds administered by HUD while, at the same time, Ms. Huth is now the paid executive director of an organization (the local affiliate of Habitat for Humanity) that seeks and receives funds administered by HUD.

The concerns of the federal regulations are:

- Appearance of impropriety. This concern is that, even if nothing improper is going on, the relationship is such that it gives reason to question the impartiality with which the funds are being awarded.
- Revolving door. The concern here is that a government decision-maker could be rewarded for favorable votes by the recipient organization giving that government official a job and, later, continued employment or pay raises. The regulations in this case prohibit anyone from accepting a position with a recipient (such as Habitat) for one year after resigning from a government position with decision-making authority over funds that go to the recipient organization.
- Improper influence. This concern is that the government decision-maker could influence or steer the movement of city contracts, funds, or property to the organization in which the official has a particular interest.

Overview of the HUD conflict exception process.

HUD regulations allow for HUD to grant exceptions for conflicts. However, the HUD exceptions are not necessarily easy to obtain. A request for an exception requires:

- (1) A statement from the attorney of the participating jurisdiction that the situation does not violate state law (This was provided by my office on April 21, 2004);
- (2) Disclosure of the conflict by the individual who has the conflict. The disclosure should be made to the governing body of the participating jurisdiction (i.e., in the case of the

City of Urbana, the City Council). This should be discussed by the City Council, and must be reflected in the minutes of the meeting at which the disclosure was made. In addition, the participating jurisdiction should give assurance to HUD that the disclosure was made, and should describe to HUD how the disclosure was made.

- (3) Justification for the requested exception, on the basis of various factors outlined in the federal regulations. This is discussed later in this memorandum.

Complicating the matter in this case is that there are two “participating jurisdictions.” One is the City of Urbana, because the City receives Community Development Block Grant (“CDBG”) funds from HUD, and distributes those funds to recipient organizations. The other “participating jurisdiction” is the Urbana HOME Consortium, which, itself, is comprised of three entities – the City of Urbana, the City of Champaign, and Champaign County.

This affects the disclosures discussed above. When seeking an exception for the conflict of interest with respect to the CDBG funds that are administered solely by the City of Urbana, the disclosures discussed above need to be made only to the Urbana City Council. However, HUD officials have informed us that, because the HOME funds come through all three organizations that are members of the HOME Consortium, the disclosures about that conflict of interests must be made to the governing bodies of all three jurisdictions, i.e., the Urbana City Council, the Champaign City Council, and the Champaign County Board. Likewise, there must be discussion of the conflict situation by all three governing bodies, and the discussions must be reflected in the minutes of the meetings of each governing body.

Timeline of significant events.

The following is a timeline of significant formal events relating to Ms. Huth’s situation.

1. 1997; Ms. Huth elected to Urbana City Council. Council members have the authority to vote on all City of Urbana ordinances and resolutions. These include, among many other matters, city budgets and programs involving federal funds. Council members also vote to approve or disapprove of mayoral appointments to commissions.
2. January 2004; Ms. Huth begins working as paid executive director at local Habitat affiliate.

3. January 2004; City of Champaign staff receives requests from Habitat for donation of a lot funded by HUD monies, and questions whether the request violates HUD conflict of interest regulations because of Ms. Huth's dual roles. Champaign staff communicates that concern to Urbana Grants Management staff. Urbana staff, in turn communicates the concern to myself as Urbana City Attorney.
4. January 26, 2004; I, as Urbana City Attorney, inform Ms. Huth that she is in a conflict situation. This occurs by delivery to Ms. Huth of a draft letter (See **Attachment A**), together with a conversation between Ms. Huth and myself on that same date.
5. April 21, 2004; letter from City Attorney to Ms. Huth (See **Attachment B**):
 - a. With proper disclosure of conflict and abstaining from votes, state law conflict can be avoided.
 - b. Ms. Huth needs to apply to HUD for waiver of the conflict arising out of federal regulations.
 - c. If HUD does not grant waiver, Ms. Huth and Habitat will need to evaluate other options.
 - d. Diligence is required on Ms. Huth's part as a council member and as a person with internal knowledge of Habitat's activities, to identify situations that might affect the conflict of interest.
6. April 21, 2004; letter from City Attorney to HUD in support of requested waiver for Ms. Huth's federal conflict situation (See **Attachment C**), and noting that, with proper disclosure of conflict and abstaining from votes, state law is not violated.
7. June 30, 2004; letter from HUD to City Attorney (See **Attachment D**):
 - a. Disclosure of the conflict has not been adequate; disclosure must be made to each member of the participating jurisdiction (the HOME Consortium), i.e., the city councils of both Cities, and to the County Board, with discussion at each of those meetings.
 - b. The Consortium must provide a rationale for why HUD should grant an exception.
 - c. The process of seeking a HUD exception should have been started and completed before Ms. Huth accepted employment with Habitat.

- d. HUD requires a separate request for waiver of the conflict as it applies to any CDBG funds.
8. August 6, 2004; Letter from Bruce Walden to HUD that, in the next thirty days, Ms. Huth will appear before the Urbana City Council and the other HOME consortium member agencies to make the appropriate disclosures and request concurrence on her waiver requests, and that prompt action will be taken. (See **Attachment E.**)

In addition to these formal events, there were numerous intervening conversations and communications between Ms. Huth, Mr. Walden, HUD officials, and myself.

Alderperson Huth's requests for City funding for Habitat.

As part of the process of requesting exceptions for Ms. Huth, it is important that we make full disclosure of Ms. Huth's activities as they relate to the conflict of interests. After the June 30, 2004 letter from a HUD official, and subsequent phone conversations with HUD officials, I investigated the level of activities by Ms. Huth. City records show the following:

On March 11, 2004, Ms. Huth submitted applications on behalf of Habitat, to the City of Urbana Community Development Department, for CDBG and HOME funds. (See **Attachment F.**)

On March 23, 2004, Ms. Huth appeared before the Urbana Community Development Commission. The minutes of that meeting state that Ms. Huth "noted that she was addressing the CD Commission as a staff representative of Habitat for Humanity." At that meeting, she addressed the Commission in support of Habitat's requests for funding in the following amounts: CDBG: \$90,000.00; HOME: \$178,000.00. The staff recommendation at that meeting was to donate four building lots to Habitat rather than provide the \$90,000.00. (See **Attachment G.**)

On March 24, 2004, the Habitat Board Chair sent a memorandum to the CD Commission and Grants Management Division staff reducing Habitat's total request down to \$39,000. (See **Attachment H.**)

On April 12, 2004, the City of Urbana Committee of the Whole, with Ms. Huth in attendance as a member of the Committee, approved a resolution approving the HOME consortium (FY 2004-05 Annual Action Plan) as well as an ordinance modifying the HOME

Consortium Annual Action Plan (FY 2002-03). Minutes of that meeting reflect that Ms. Huth “recused herself” from those discussions “due to a conflict of interest.” (See **Attachment I.**)

On April 13, 2004, Habitat submitted a written application to the City of Urbana for social service funding for FY 2004-05. The application requested \$9,960.00 in grant funds from the City of Urbana. (See **Attachment J.**)

On May 3, 2004, The City of Urbana City Council passed a resolution approving the HOME Consortium FY 2004-05 Annual Action Plan. Ms. Huth voted “aye.” Later in that same meeting, Alderwoman Patt moved to reconsider that resolution. Upon reconsideration the matter passed again, but with Ms. Huth abstaining “due to a conflict of interest.” (See **Attachment K.**)

On June 14, 2004, the City of Urbana Committee of the Whole voted to send to the City Council, with a recommendation for approval, an ordinance approving the City’s FY 2004-05 budget. Ms. Huth abstained “due to a potential conflict of interest.” (See **Attachment L.**)

On June 21, 2004, the City Council passed an ordinance approving the City’s FY 2004-05 budget. Ms. Huth abstained “due to a potential conflict of interest.” (See **Attachment M.**)

Between January and May 2004, Ms. Huth also worked with Urbana Community Development Department staff to identify appropriate locations for Habitat projects and to pursue possible donations of lots for building sites from the City of Urbana to Habitat. These possible donations were discussed by staff and the CD Commission during the review process for HOME and CDBG funds as a means of best leveraging entitlement funds to promote affordable housing, especially in light of significant funds being dedicated to the Lakeside Redevelopment Plan. The lots under discussion were all purchased and/or prepared with federal HOME funds. No lot dedications have been processed by staff, pending resolution of the conflict issue.

On July 23, 2004 Ms. Huth inquired of myself as to whether the City could transfer a HUD-funded lot directly to a Habitat family or whether the City could transfer the lot to a private individual or another organization, who would then provide the lot to Habitat or to a Habitat family. I informed Ms. Huth that a transfer of this type would violate HUD regulations.

In August 2004, Ms. Huth contacted myself and Mr. Walden to inquire as to whether Habitat could purchase the lot at 1310 Dublin St. for fair market value. I informed Ms. Huth

that, without an exception granted by HUD, even a purchase of the lot would violate the conflict of interest regulations.

On August 11, 2004, Ms. Huth inquired of Mr. Walden as to whether the City could transfer a HUD-funded lot directly to a Habitat family or whether the City could transfer the lot to a private individual or another organization, who would then provide the lot to Habitat or to a Habitat family. Mr. Walden informed Ms. Huth that the City could not participate in transfers of this nature without disclosing their true nature to HUD.

Funding provided to Habitat by the City or the Consortium.

In FY 2003-04, Habitat received the following federal funding through Urbana or the Consortium:

- CDBG: None. (None requested.)
- HOME: None. (None requested.)
- Lots: The City of Urbana provided one lot, 808 Romine, valued at approximately \$5,000.00 to Habitat. The lot was purchased by the City, with the use of HUD funds. Although the transfer occurred in 2003, the council action authorizing the transfer occurred in December 2002.

In FY 2004-05, the following federal funding activity has taken place:

- CDBG: \$90,000 requested of Urbana by Habitat. [Funding request later reduced by Habitat to \$39,000 for CDBG and HOME combined.]
\$5,000 budgeted for Habitat in City's Annual Action Plan.
\$0 released.
- HOME: \$178,000 requested by Habitat. [Funding request later reduced by Habitat to \$39,000 for CDBG and HOME combined.]
\$33,000 budgeted for Habitat in City's Annual Action Plan.
\$0 released.
- Lots: 3 lots slated to be donated by City to Habitat. No transfers have been approved or prepared, pending resolution of the conflict issue.
- Social Service funding: \$9,960 requested of Urbana by Habitat.
\$0 budgeted for Habitat by the City.

Justification for the requested exceptions.

As mentioned briefly above (in “Overview of the HUD conflict exception process”), the regulations set forth factors that HUD must use in determining whether HUD should grant an exception for a particular conflict situation. For example, the HOME regulation states as follows:

“(e) Factors to be considered for exceptions. In determining whether to grant a request of exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section [the disclosure and the opinion of the participating jurisdiction’s attorney], HUD will consider the cumulative effect of the following factors, where applicable:

(1) whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) whether the person affected is a member of a group or class of low income persons intended to be the beneficiaries of the assisted activity, and the exception would permit such person to receive generally the same interest or benefits as are being made available or provided to the group or class;

(3) whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

(4) whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section [i.e., whether the interest existed before the individual held the positions that created the conflict];

(5) whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) any other relevant considerations.” (24 C.F.R. § 92.356(e).)

As explained by HUD officials, it is not enough to simply ask for an exception; in order to obtain an exception, the request for the exception must be justified under these factors quoted above. I do not believe that the City Councils and the County Board are required to make any findings with respect to those factors. However, the factors must be addressed in a communication to HUD.

Among the factors that HUD might consider would be a resignation by Ms. Huth of either her City Council seat or her Habitat position. According to HUD staff, this is the means by which most conflicts at this level are resolved. Note, however, that the only resignation that is certain to clear up all future conflict between these two positions would be for Ms. Huth to resign the Habitat position. This is because of the one-year revolving door prohibition in the regulations; even if Ms. Huth were to resign her council seat immediately, the regulations could prohibit her from accepting the Habitat position for one year after that. In that regard it is worth noting that, prior to Ms. Huth accepting the Habitat position, the most recent council action to provide funding to Habitat was a December 14, 2002 ordinance authorizing transfer of a building lot to Habitat. (See **Attachment N**.)

Another factor that HUD might consider would be a decision by Habitat not to seek federal funding through the City of Urbana or the Consortium.

The federal regulations are found at:
24 C.F.R. 92.356 (HOME program)(See **Attachment O**); and
24 C.F.R. 570.611 (CDBG program)(See **Attachment P**).

Follow-up communications with HUD.

If the appropriate disclosures, discussions, and minute entries are made, I will then write to HUD requesting an exception for Ms. Huth's conflict with respect to the HOME program or the CDBG program, or both, as the case may be.

Note that, although I have tendered an ordinance by which the Council may voice its approval of exception requests, the HUD regulations neither mention nor require that the Council pass an ordinance or resolution. As far as city council involvement goes, the regulations require only the disclosures, discussions, and reflections of those disclosures and discussions in the council minutes. This has been confirmed by HUD staff. As long as the disclosure-related items, the discussion, and the minute entries are completed and my office prepares a letter stating that the activities don't violate state law (that letter has already been sent to HUD), HUD defers to local practice with respect to which official for the participating jurisdiction should send a request for an exception. HUD officials have stated that they could be satisfied by a letter from the mayor or the director of Community Development, unsupported by any additional resolution or ordinance of the council. I have opted to seek approval by ordinance because of the fact that three separate jurisdictions are involved.

ORDINANCE NO. Ordinance No. 2004-08-102

An Ordinance Requesting that the U.S. Department of Housing and Urban Development Grant Exceptions for Conflicts of Interest of Alderperson Laura Huth

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Alderperson Laura Huth, with the assistance of the City Attorney, has disclosed to the City Council the existence of conflicts of interest of Ms. Huth, pursuant to 24 C.F.R. 92.356 and 24 C.F.R. 570.611, resulting from Ms. Huth's positions on the Urbana City Council and with the local affiliate of Habitat for Humanity as its Executive Director.

Section 2. That the Council has discussed the matter at a meeting of the Council.

Section 3. That the Council hereby directs that the record of the discussion be reflected in the official minutes of the meeting.

Section 4. That the Council hereby authorizes the City Attorney to submit to the U.S. Department of Housing and Urban Development requests for exceptions to the conflicts of interests of Ms. Huth on behalf of the City, in accordance with the above-mentioned regulations.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

PASSED by the City Council this _____ day of _____, 2004.

Aye:

Nay:

Abstained:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this _____ day of _____, 2004.

Tod Satterthwaite, Mayor