



CITY OF TUCSON

The Sunshine City

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March 20, 2002

Rob Tomlinson
8418 E. Kent Pl
Tucson, AZ 85710

Re: Subcommittee – LUC Large Retail Establishment (Big Box) Regulations

Dear Mr. Tomlinson:

You have been authorized by the Planning Commission to appoint a subcommittee to review the Large Retail Establishment (Big Box) regulations in the LUC for the purpose of providing a recommendation to the Planning Commission, and ultimately to the Mayor and Council, on proposed amendments to those regulations. The subcommittee will include several Planning Commissioners and will also include several individuals who are not now members of the Planning Commission.

Since the subcommittee is being established and appointed by the Planning Commission provide a recommendation, the members of the subcommittee, both those from the Planning Commission and the individuals who would be asked to serve, are subject to the state conflict of interest laws, A.R.S. § 38-501 *et. seq.* I understand that you are considering appointing Mary Beth Savel, Thomas Saylor Brown, and Joyce Joosten to this subcommittee. Each of these individuals raises different questions concerning the application of the state conflict of interest laws, which are addressed below.

With respect to the application of these provisions, it is important to remember that they are directed at the "possibility of personal influence which might bear upon an official's decision." *Yetman v. Naumann*, 16 Ariz. App. 314, 317, 492 P.2d 1252, 1255 (1972). Quoting from the U.S. Supreme Court, the Arizona Court of Appeals stated:

The statute is thus directed not only at dishonor, but also at conduct that tempts dishonor. This broad proscription embodies a recognition of the fact that an impairment of impartial judgment can occur in even the most well-meaning [persons] when their personal economic interests are affected by the business they transact on behalf of the Government. *Id.* Quoting from *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 549 (1961).

Mary Beth Savel is a partner in the law firm of Lewis and Roca. In her capacity as an attorney with that firm, Ms. Savel has represented clients seeking approval under the existing Large Retail Establishment regulations in staff review, in communications with the City Attorney's Office and before Mayor and Council. I understand that Ms. Savel would be


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compensated by these clients for the time she spends working on these issues on the subcommittee. Her clients clearly have a direct interest in the regulations that is not common to commercial and developer clients and the number of those clients is relatively small. The law firm is also presently representing Wal-Mart in litigation against the City challenging the validity of the Large Retail Establishment regulations. The proceedings of the subcommittee and its recommendation may directly effect the proceedings in that lawsuit and the income of the law firm in litigating that case. Since Ms. Savel is a partner, she would have a direct interest in the law firms overall income. These latter two matters are sufficient to require that Ms. Savel be disqualified from serving on the subcommittee.

Thomas Saylor-Brown is an architect who presently represents a Large Retail Establishment that is pursuing proposed development under the existing regulations. That project has received Mayor and Council approval as a special exception I understand that the project has been substantially reviewed by City staff and is expected to be finished within the next several weeks. The amendment process through consideration by the Mayor and Council to the effective date of any new regulations is likely to be at least six months. It appears that any new amendments would not likely have any effect upon Mr. Saylor-Brown's present project. Thus, Mr. Saylor-Brown does not have any conflict of interest at the present time. In the event a new Large Retail Establishment client retains Mr. Saylor-Brown prior to the completion of the subcommittee's work, that will require further analysis.

Joyce Joosten is a officer of the Harrison East South Neighborhood Association. She has been a vocal opponent of a proposed Large Retail Establishment at Old Spanish Trail, 22nd Street and Harrison Road, which is approximately one half mile from her home. While these facts may establish that she has a strong personal interest or a particular viewpoint, neither of those are grounds for disqualification under the conflict of interest laws. The Harrison East South Neighborhood Association has no direct pecuniary interest in the specific project or the regulations as a whole and Ms. Joosten lives far enough away from that specific site so that it does not appear that the specific project would directly effect the value of her property. As such, there is no pecuniary interest and no conflict of interest.

Sincerely,



Michael W. L. McCrory
Principal Assistant City Attorney

MWLM:ds

c: James Keene, City Manager
William Vasko, Director, Planning Department