

Attachment 21

Memorandum from City Attorney
Regarding Legislative Advocacy



CITY OF BEVERLY HILLS

OFFICE OF THE CITY ATTORNEY

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MEMORANDUM

TO: The Honorable Mayor and Members of the City Council
FROM: Laurence S. Wiener, City Attorney
DATE: November 3, 2016
SUBJECT: Legislative Advocacy of Barry Brucker

The City has received several letters from Gary Winuk alleging that former Mayor Barry Brucker lobbied on behalf of the One Beverly Hills Project (“Project”) and therefore the City Council should deny the Project. Our office has investigated this allegation and recommends that the City Council consider the Project on the merits and not deny the Project based on the involvement of Mr. Brucker.

Background

As a threshold matter, Beverly Hills Municipal Code Section 1-9-207 provides that any violation of the City’s legislative advocate ordinance “shall be grounds for the city to disapprove any contract, approval, permit, or transaction that was related to any such violation.” Therefore, the City Council has the option to deny this project if it determines that Mr. Brucker violated the ordinance.

Furthermore, Section 1-9-203 provides that, “No former elected official shall represent, for compensation, any person or entity, by making any communication to the city, if the communication is related to a land use matter which was voted upon by the elected official during his or her term of office.” This is the provision that Mr. Brucker is alleged to have violated.

Facts

In 2008, former Mayor Barry Brucker considered and voted upon the Project then known as 9900 Wilshire and now renamed One Beverly Hills. In 2008, the Project was owned by Project Lotus, LLC. Today, after changing ownership on several occasions, it is owned by Wanda Beverly Hills Properties, LLC.

On October 1, 2015, Mr. Brucker registered as a lobbyist for the One Beverly Hills Project.

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Shortly thereafter Mr. Brucker attended several public meetings at which Planning Commissioners were present. Additionally, Mr. Brucker invited Planning Commissioners to meetings and introduced them to various principals of Wanda Beverly Hills, but he did not make any presentations regarding the Project.

Upon learning that his legislative advocacy efforts were potentially illegal under the Beverly Hills Municipal Code, Mr. Brucker resigned from his lobbying position on July 7, 2016. After he resigned, he did contact several commissioners and shared his thoughts regarding the Project. However, none of the commissioners felt pressured.

At no time, did Mr. Brucker discuss the Project with members of the City Council.¹

It should be noted that on August 15, 2016 we received a letter from Mr. Brucker's counsel explaining why Mr. Brucker did not violate our ordinance regarding legislative advocates. That letter, as well as letters from Mr. Winuk, are attached for your review.

Conclusion

Mr. Brucker filed a lobbyist form and proceeded to act in accordance with that form until he was informed that there was some question regarding the legitimacy of his legislative advocacy efforts. At that time, he resigned from lobbying for One Beverly Hills Project and filed a termination of his lobbying registration. Mr. Brucker believes that he did not violate the lobbying ordinance. However, without regard to that, his actions appear to have been primarily targeted at the Planning Commission and primarily involved making introductions. In my opinion, his actions were not secret, (he filed that Legislative Advocate form), he resigned promptly upon being informed that there was a question regarding the advocacy efforts, and his actions had little effect on influencing the Council. For this reason I recommend that the Council consider the Project on its merits and not deny the Project based on Mr. Brucker's involvement.

¹ Mr. Winuk's most recent letter refers to various telephone calls made by Mr. Brucker to various members of City staff. These staff members do not play a role in the approval of the One Beverly Hills Project.

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August 15, 2016

VIA EMAIL

Laurence S. Wiener
City Attorney
Beverly Hills City Hall
455 N. Rexford Dr.
Beverly Hills, CA 90210

Re: *One Beverly Hills Project – Barry Brucker*

Dear Mr. Wiener:

We write in response to the letter dated July 29, 2016 from attorney Gary Winuk of the Kaufman Legal Group to you, regarding former City of Beverly Hills Mayor Barry Brucker and the One Beverly Hills project. Mr. Winuk misunderstands both the facts and the relevant law, and Mr. Brucker has asked that we provide clarification.

Background

As you know, Mr. Brucker served on the Beverly Hills City Council from March, 2005 through March, 2013. In 2008, while serving as Mayor, Mr. Brucker voted on a series of entitlement applications regarding the property at 9900 Wilshire. Since then, the property has changed hands three times and the current developer proposes a project that differs substantially from the one that was presented to the Council in 2008. The new project, One Beverly Hills, includes a hotel with up to 134 rooms, a ballroom, three meeting rooms, a spa, two restaurants, a lounge, and a bar, and it would include 42 fewer condominiums. Because of these changes, the new project requires a supplemental environmental impact report, an amendment to the specific plan, and other City approvals.

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On October 1, 2015, more than 30 months after he left city office, Mr. Brucker registered as a lobbyist for One Beverly Hills/Athens Development Group¹ because he was providing community outreach for the One Beverly Hills project, and in conjunction with that outreach would be inviting city planning commissioners to informational meetings being held for the community. On his lobbyist registration form, Mr. Brucker described the client's "desired outcome" as "approval of entitlements." Mr. Brucker's duties for his client did not include contact with members of the Council or city staff about the project. On July 7, 2016, upon learning that a member of the City Council had raised concerns two days earlier about whether his activities fell within the City's revolving door ordinance, Mr. Brucker withdrew his registration and ceased working on any project outreach while he sought advice from counsel.

He did not have to withdraw his registration, however, because Mr. Brucker's activities do not violate any ordinance of the City of Beverly Hills and in no way place at jeopardy the City's decisions regarding whether to advance the One Beverly Hills project.

The City's Revolving Door Ban

The relevant section of the Municipal Code, which Mr. Winuk's letter incorrectly summarizes, reads as follows:

Representation By Former Elected Official: No former elected official shall represent, for compensation, any person or entity, by making any communication to the city, if the communication is related to a *land use matter* which was voted upon by the elected official during his or her term of office.

(City of Beverly Hills Mun. Code, § 1-9-203(B),
emphasis added.)

The term "land use matter is" defined in the code as follows:

LAND USE MATTER: For purposes of section 1-9-203 of this chapter shall mean those matters for which an application has been submitted to the city for administrative or legislative action pursuant to the provisions set forth in title 10 of this code such as, but not limited to, a general plan amendment, specific plan, conditional use permit, variance or a planned development.

(Mun. Code, § 1-9-202.)

¹ The Athens Group is a partner on the project with the Wanda Group, which acquired the property in 2014, after Mr. Brucker had left public office.

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Mr. Winuk mistakenly states that the ordinance prohibits officials from being paid to communicate with City officials on “land use *projects* on which they had voted during their time in office.” This is a critical mistake and not what the ordinance says. A land use “project” can and usually does involve multiple “land use matters,” each of which may require its own application and approval by the City Council over a period of months or even years. For example, a major development may involve a change to the City’s general plan; amendments to a specific plan; approval of a development agreement; application for a zoning variance; application for conditional use permits; etc. By defining the term “land use matter” in reference to an application, the ordinance narrows the range of prohibited activity as that which relates to a particular application voted on by the former official. That becomes readily apparent when the definition is substituted for the term itself in section 1-9-203(B):

No former elected official shall represent, for compensation, any person or entity, by making any communication to the city, if the communication is related to a land use matter for which an application has been submitted to the city for administrative or legislative action . . . [and] which was voted upon by the elected official during his or her term of office.

In the course of representing One Beverly Hills, Mr. Brucker did not engage in communications “related to a land use matter for which an application has been submitted to the city . . . [and] which was voted upon by [Mr. Brucker] during [his] term of office.” The land use matter as to which he was communicating for One Beverly Hills was not voted on by the Council during his term in office and could not have been, because it involves a development plan that was only created after the property changed hands again in 2014, after Mr. Brucker left office.

Nor does the analysis change because the ordinance uses the phrase “communication *related to* a [land use] matter for which an application has been submitted” The ordinary reading of that phrase suggests it reaches communications directed toward that particular application or something connected or associated with that application. For example, a former Council member who voted on a preliminary set of conditions for approval could not then engage in compensated communications with the Council to urge their vote for final approval.

The Legislative History of the City’s Permanent Ban

This construction of the ordinance is borne out by the agenda materials that accompanied the 2007 adoption of the amendments that added the current language for section 1-9-203(B). Prior to the amendments, there was a one year prohibition on compensated communications by former officials for the purpose of influencing legislative or administrative action, and a second prohibition that read in part:

For any specific matter which was presented to the City during an Elected Official’s term of office, a former Elected Official is

prohibited from representing for compensation any person or entity by making any communication to the City related to the specific matter.

(Former § 1-9-203(B).)

The ordinance defined “any specific matter which was presented to the City” as matters which were “considered by the Council, its subcommittee, or any committee or commission, and “for which an application has been submitted” or “for which a concept review application has been submitted” or “that have been presented to the City Council” or its subcommittee, or a commission or committee. (Former § 1-9-203(B)(2).)

The report by the Chief Assistant City Attorney that accompanied the agenda item explained the difference between the then-current law and the proposal as follows:

In addition, the ordinance contains a provision which states that if a specific matter was presented to the City, the former Elected Official is prohibited from representing, for compensation, any person or entity by making any communication to the City related to that specific matter after he or she leaves office. “Specific matters” are defined to include any matters, administrative or legislation, for which an application has been submitted to any City department or for which a concept review application has been submitted. It also includes administrative or legislative matters that have been considered by the City Council, Commission or Committee or that have been presented to the City Council, Commission or Committee at a meeting of that body.

* * *

The Ad Hoc Committee met to review the ordinance for clarity and discuss whether revisions to the ordinance should be proposed for consideration by the City Council.

First, the Committee proposes that the revolving door provision of one year for Elected Officials and Planning Commissioners be amended to 30 months. The Committee believes that during the first two to three years after leaving public office, a former Elected Official or Planning Commission is still very familiar with the people processes and specific subject matters that work their way through City government

In reaching consensus on the 30 months, the committee discussed that how on average, it likely takes an applicant 30 months for

their project to work its way through the City from the time of concept review and/or application to the time of pulling building permits or breaking ground. The Committee believes that two and one-half years or thirty months, rather than one year, serves as a good bench-mark as to when a former Elected Official or Planning Commission would no longer be in the loop on certain projects that they may have been exposed to during their time in office

Second, the Committee believes that the provision regarding the prohibition against representing for compensation a person or entity on a specific matter *needs to be simplified*. The Committee believes that the concern this section is attempting to address is the representation of developers by former Elected Officials on land use matters. Accordingly, the Committee proposes to revise this section so that a former Elected Official is prohibited from representing, for compensation, any person on a land use matter that was voted upon by that Elected Official during that official's term in office. Land use matters are defined as a matter for which an application has been filed pursuant to the provisions of the City's zoning code such as a general plan amendment, specific plan or conditional use permit.

(Staff Report dated Oct. 2, 2007 from R. Diaz, Chief Asst. City Attorney to Hon. Mayor and City Council regarding Ad Hoc Committee Report Regarding Ethics Ordinance, pp. 1-2, emphasis added)

This staff report makes it very clear that the concern was narrowly focused on former officials representing the same developer on the same land use application that had been voted on by that official in an earlier form. The revisions were all directed at ensuring that while the application was pending – an average time frame of 30 months – the former official would not “switch sides” and represent that developer on that same land use application or matters related to that same land use application.

Nothing in the agenda materials suggest the revised language was intended to broaden, stiffen or otherwise substantively change the prohibition. Instead, as the Chief Deputy City Attorney stated, it was intended only to “simplify” the prohibition. It did so by moving the definitions to an earlier section, and replacing “specific matter” with “land use matter” to more clearly state the Council's intent to reach situations where a former official who had voted on a land use application in some preliminary stage might otherwise represent the developer on the same land use application, or an matter related to that same application.

One Beverly Hills

In 2008, while serving as Mayor, Mr. Brucker voted on a series of entitlement applications submitted by the developer Candy & Candy regarding the property at 9900 Wilshire. In 2015, he was representing an entirely different developer, One Beverly Hills/Athens Development Group, on a new series of applications for a different project that arose long after Mr. Brucker had left the City Council. The only thing that connects the 2008 and 2015 actions are that they concern the same parcel of land – property that the Wanda Group (partnered with Athens on the project) did not even acquire until 2014. The City’s prohibition is not based on the location of the land, however, but instead is based on the existence of an application on which the former official actually voted.

The differences between the land use approvals that Mr. Brucker voted on in 2008, and the various entitlements that the current Council will be asked to vote on, are stark. One need only read the Supplemental Environmental Impact Report – the same document that Mr. Winuk somehow thinks inextricably connects the 2008 and current projects because it is entitled “Supplemental.” Had Mr. Winuk read the document, he would have noted that Mr. Brucker voted in April 2008 to approve a series of applications for a project that would have constructed 252 residential units, plus retail and restaurants in 19,856 square feet of commercial space (subsequent Council action in 2012 reduced that to 235 residential units and 15,856 square feet of commercial space). Since 2008, the property ownership has changed hands three times, and plans for the property have changed as well. The current developer is seeking Council approval for a combined hotel/luxury condominium project. If approved, the current plan will (1) eliminate 15,856 square feet of commercial space, including all retail space; (2) eliminate 42 residential units; and (3) build a 204,291 square foot luxury hotel, with two restaurants, a bar, a public spa and banquet and meeting facilities, none which were included in the prior approved project plans. In order to accomplish those goals, the current developer will request the Council to act on applications for at least the following “land use matters”:

- Certification of the final SEIR
- Approval of a specific plan amendment
- Amended development agreement
- Approval of a tentative tract map
- Architectural review

(9900 Wilshire Boulevard (One Beverly Hills) Project
SEIR (2016), pp. 30-31, 39, 54.)

These are the “entitlements” as to which Mr. Brucker was registered to lobby.

Obviously Mr. Brucker did not vote on any of these applications when he was on the Council, as none were presented in even preliminary form during the years he served.

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Therefore, he is not barred by the ordinance from communicating with City officials for compensation on the One Beverly Hills project.

Moreover, even if someone could make the case that he is covered by the city ordinance, Mr. Brucker's actions in no way put at risk the One Beverly Hills project. Again, Mr. Winuk has failed to cite the relevant provisions of the Municipal Code. It is true that Municipal Code section 1-9-207(A) allows the City, at its sole discretion, to use a violation of the revolving door law as the basis for refusing to approve a pending permit that was the subject of the former official's violation. However, the very next paragraph of the Code states that "[a] violation of this Article *shall not be a basis for invalidating any City decision.*" (Mun. Code, § 1-9-207(B), emphasis added.) In other words, the City can use the violation as a basis for denying a permit, but if it grants the permit, no one else can use the violation as a basis for invalidating the City's approval of the permit. This is consistent with the expressed intent of the code to impose "reasonable restrictions" on former City officials. (Mun. Code, § 1-9-201.)

The State's Permanent Ban

State law provides further support for our position that the only "reasonable" interpretation of the ordinance here is one that allows Mr. Brucker's current lobbying effort to continue. The City's prohibition is analogous to a prohibition that the State imposes on former state officials. Known as the "permanent ban," the law prohibits former state officials from representing or advising a private employer in a proceeding in which the official participated while in office. (Gov. Code, § 87401.) For example, an official who participated in developing or approving a request for proposals cannot, after leaving office, assist a bidder in submitting a response to the request.

Under the Fair Political Practices Commission's regulations, a state official is deemed to have "participated" in a proceeding if he or she took "part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee" (*Id.*, § 87400(d).) "Participation" may also be inferred by an official's supervisory status. (*See Sanford Adv. Letter, No. A-85-182; see also Blonien Adv. Letter, No. A-89-463* [participation inferred when official has overall responsibility for the decision-making aspects of the proceeding].)

The permanent ban, however, does not apply to new proceedings involving different parties, different subject matters, or different factual or legal issues, even where that new proceeding is related to or grows out of a prior proceeding in which the state official participated. (*See Coler Adv. Letter, No. I-07-089; Rist Adv. Letter, No. A-04-187; see also Donovan Adv. Letter, No. I-03-119.*) For example, a new contract between the same parties would be considered a new proceeding, even if the official participated in the agency's decision to award an earlier contract to the same party, because the new contract contains new terms. (*Ferber Adv. Letter, No. I-99-104; Anderson Adv. Letter, No. A-98-159.*) The same is true for

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an environmental clean-up order in which the official participated while in office that is amended after the official leaves office. In that case, the FPPC advised:

We have found generally that proceedings to draft a plan or agreement are different from proceedings involving implementation of the same plan or agreement, or to *amend* the plan or agreement. . . . Thus we have explained that when the parties to a prior discharge or cleanup proceeding return to an agency with questions on implementation or *amendment* of an existing order, a new proceeding is initiated to which the prohibitions of §§ 87401 and 87402 do not apply. (*Galanter* Advice Letter, No. A-82-079; *Anderson* Advice Letter, No. A-86-324; *Witz* Advice Letter, No. A-88-382; *Chalfant* Advice Letter, No. A-92-509).

(*Donovan* Adv. Letter, *supra*.)

In the *Donovan* Advice Letter, the FPPC applied this same analysis to a former member of the California Educational Facilities Authority Board who had voted to grant Stanford University's applications for bond financing on numerous occasions, and who later, in her private capacity, sought to assist Stanford in refinancing those bonds. The FPPC advised that the "decisions to refinance or increase funding levels of previously established instruments are closely similar to the reopening of cleanup proceedings at different stages . . . to consider new questions." (*Id.*) It thus allowed the former state official to assist Stanford with the refinancings.

Most significantly, the FPPC has applied this standard in the land use context. In the *Wan* Advice Letter, for example, the FPPC advised a former member of the Coastal Commission who voted to approve a coastal development permit that he could advise opponents of the permit holder's application to the Coastal Commission to modify the permit. (*Wan* Adv. Letter, No. A-11-169.) While serving as a member of the Coastal Commission, the official voted to approve a permit application submitted by the Sonoma County Water Agency to allow the agency to manage the flow at the mouth of the Russian River. After leaving the Coastal Commission, the official asked the FPPC whether he could advise a group that opposed the Sonoma County Water agency's application for a Coastal Commission permit changing the management plan for the mouth of the Russian River. Even though the application involved the same applicant and the same project, the FPPC concluded that the permanent ban did not apply. "[E]ven when the parties and the properties remain the same as in a prior proceeding, we will regard a proceeding as 'new' if there are *different factual or legal issues, distinguishable from those considered in the prior proceeding.*" (*Id.*, emphasis in original.) The FPPC noted that it viewed a land use plan, zoning changes, and a coastal development permit for the same project to be three *separate* proceedings. Because the Sonoma County Water Agency's application

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involved a modification of the prior management plan emphasizing a different approach to the management of the mouth of the river, the FPPC concluded that it was a new proceeding.²

The FPPC's analysis applies with equal force here. Although Mr. Brucker voted to approve an Environmental Impact Report for the same property in 2008, the Supplemental Environmental Impact Report and other entitlement applications involve new parties and new factual issues distinguishable from those at issue in the earlier proceeding. As a result, under the State's permanent ban, these new applications would be considered a new proceeding to which the permanent ban does not apply.

Conclusion

The plain language of the City's ordinance, its legislative history, and analogous state law all make clear that Mr. Brucker's work on the One Beverly Hills project was entirely permissible. The unfounded allegations to the contrary have threatened Mr. Brucker's longstanding reputation for integrity. We therefore request that you respond to Mr. Winuk's letter by confirming the propriety of Mr. Brucker's actions and clearing his good name.

Sincerely,



Karen Getman
James Harrison

KG:PS
(00284101-3)

² See also *Jenkins* Adv. Letter, No. I-07-017 (2007) ("if the proposal to prepare the EIR involves different parties, different subject matter, or different factual or legal issues from those considered in previous proceedings the proceedings may be considered 'new proceedings' to which the permanent ban would not apply."); *Quarles* Adv. Letter, No. A-98-004 ("Each amendment to [a storm water management] permit will be considered a new proceeding. Therefore, you may participate in amendment to the permit unless you have already participated in the specific amendment").

KAUFMAN LEGAL GROUP
A PROFESSIONAL CORPORATION

July 29, 2016

Via E-mail & First Class Mail

Laurence S. Wiener
City Attorney, City of Beverly Hills
City Hall
455 N. Rexford Drive
Beverly Hills, CA 90210

Dear Mr. Wiener:

I write in regards to the City of Beverly Hills' continued consideration of the development known as "9900 Wilshire," or "One Beverly Hills." The City is required under its ordinances to disapprove any requested approval, permit or transaction that is related to a development project where a former elected official of the City was paid to communicate with the City about the same project. Former Mayor Barry Brucker did just that in 2015 by lobbying on behalf of the One Beverly Hills project proponents. As a result, the City cannot issue any approval, permit, or approve any transaction related to One Beverly Hills.

At the Beverly Hills City Council meeting on April 9, 2008, the City Council approved General Plan amendments, a Specific Plan, zoning changes and a Development Agreement for a "gateway" multi-use development project referred to as 9900 Wilshire. The vote for each of these items was 4-1 in favor and then-Mayor Barry Brucker voted in support of each item.

In 2014, the 9900 Wilshire project, with the entitlements approved at the April 9, 2008 Council meeting, was purchased by The Wanda Group. The Wanda Group is the largest development group in China, with holdings across the globe. In 2015, the Wanda Group changed the name of the project to One Beverly Hills, and added a new element to the project, a hotel.

Mr. Brucker, during his time in office, championed governmental ethics, including restrictions on post-employment for public officials. As a result of his efforts, a strong post-employment restriction ordinance was passed. That ordinance placed a lifetime ban on elected officials being paid to communicate with the City on land use projects on which they had voted during their time in office. (Beverly Hills Ordinance Title 1, Chapter 9, Article 2) In addition, the ordinance listed a single repercussion for violating this provision. It states that if a former elected official violates the ordinance, the violation "shall be grounds for the City to disapprove any contract, approval, permit, or transaction that was related to any such violation." (Beverly Hills Ordinance 1-9-207)

Barry Brucker left service as an elected official of Beverly Hills in 2013. In 2015, The Wanda Group hired Brucker to serve as a lobbyist for the project. As a lobbyist, Mr. Brucker

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communicated with the City regarding the 9900 Wilshire/One Beverly Hills project. Mr. Brucker disclosed this publicly by registering as a lobbyist with the City in October of 2015. There is clearly and without doubt a violation of the post-employment restrictions put into the Beverly Hill City ordinances. The ordinances only provide for a single remedy when such a violation occurs; rejection of any contract, approval, permit or transaction related to any such violation.

As the former Chief of the Enforcement Division of the Fair Political Practices Commission (FPPC) I developed a keen sense of the importance of these ethics laws. As citizens we demand that our public officials do their work in the interest of the public, not in their own interests. It is a key foundation of our democracy. I prosecuted thousands of cases across the State to ensure that these ethics rules were enforced.

The violation by Mr. Brucker is egregious and offensive. Having former public officials be compensated to continue work on a project they voted for is unconscionable. It raises questions of whether their initial vote was made in order to “feather their nest” for the future. It also raises questions of undue influence when a former elected official comes back to lobby their former colleagues. It makes the whole process tainted and destroys public trust in their government.

The City of Beverly Hills – and Brucker himself – recognized this potential public harm by passing the post-employment restriction or “revolving door” ordinance. And the penalty put in place by the ordinance is entirely appropriate. Why should a developer who violates City law by hiring a former elected official to exert this undue influence bear no burden for their illegal actions? The ordinance addresses this by ensuring that no further permits or approvals can accrue. If not, then there is no consequence at all for these actions that undermine the democratic process.

We, myself and individual City of Beverly Hills residents respectfully request that you enforce your revolving door ordinance and reject any contract, approval, permit or transaction related to this violation. We are hopeful the council will take this action on its own, as required by ordinance, without need for further legal action.

Sincerely,



Gary S. Winuk
Former Chief of Enforcement
Fair Political Practices Commission

cc: John A. Mirisch, Mayor
Nancy H. Krasne, Vice Mayor
Lili Bosse, Councilmember

Julian A. Gold M.D., Councilmember
Kathy Reims, Councilmember
Mahdi Aluzri, City Manager

KAUFMAN LEGAL GROUP
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August 9, 2016

VIA U.S. MAIL AND E-MAIL

Laurence S. Weiner
City Attorney, City of Beverly Hills
City Hall 455 North Rexford Drive
Beverly Hills, California 90210
lwiener@beverlyhills.org

Dear Mr. Weiner:

I am writing to follow-up on my June 29, 2016 letter to you regarding the City of Beverly Hills' consideration of the "9900 Wilshire" or "One Beverly Hills" Project and former Mayor Barry Brucker's unlawful lobbying efforts on behalf of The Wanda Group for the Project.

As you are aware, as a paid lobbyist for the Wanda Project, Mr. Brucker is subject to the City's lifetime ban on lobbying or having paid communications with City officials in connection with the Wanda Project. (Beverly Hills Ordinance 1-9-203.) Mr. Brucker's registration as a lobbyist for the Project in October 2015 confirms that he is a paid lobbyist. Attached is a copy of Mr. Brucker's signed lobbyist registration.

As specifically noted on the City's lobbyist registration form, "Registration must occur within 10 days after a Legislative Advocate (Lobbyist) begins Legislative Advocacy (Lobbying)." The form specifically and clearly describes the activities that are considered to be "Legislative Advocacy," mirroring the definition of the term in the City Ordinance. By signing and submitting the lobbyist registration form, Mr. Brucker verified that he was a "Legislative Advocate." He also verified he was "Attempting to Influence ...Municipal Legislation" and specifically named the "Desired Outcome" of his lobbying to be "Approval of entitlements" for the "One Beverly Hills" land use project. As a result, he has admitted he engaged in actions violating the City law.

Mr. Brucker statements in the Beverly Hills Courier indicate that he believes he has not violated the City's legislative advocacy laws because he claims that he has not directly communicated with any City Councilmembers or Planning Commissioners regarding the Project and, therefore, he never actually lobbied any elected or appointed City officials. This is inconsistent with his signed registration statement, and contrary to the express provisions of the City's legislative advocate (lobbyist) ordinance.

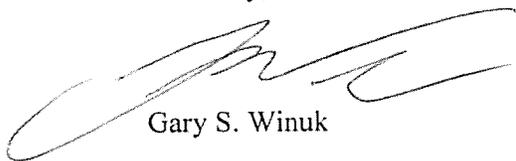
The City law is clear, “No former elected official shall represent for compensation any person or entity by making any communication to the City if the communication is related to a land use matter which was voted on by the elected official...” Specifically, prohibited communications under the City’s lifetime lobbying ban include “any formal or informal appearance before” the City, including City Council, Planning Commission or Committee meetings or any officer or employee of the City, or any oral or written communication with any City Councilmember, Commissioner or Committee member or any officer or employee of the City. (Beverly Hills Ordinance 1-9-202.)

We understand that Mr. Brucker attended public hearings for the Wanda Project, including appearances at the City’s public scoping meeting for the Project in December 2015 and the Planning Commission’s hearing for the Project’s Draft Supplemental EIR on May 12, 2016. We also understand that Mr. Bruckner appeared and spoke at other City community meetings for the Wanda Project where Councilmembers and Commissioners were present. We also have information suggesting that Mr. Brucker personally conducted briefings for the Project with Commissioners and Councilmembers.

The purpose behind the adoption of such a broad-ranging prohibition is to recognize the substantial influence a former elected official can wield on those responsible for the approval or rejection of a project, especially when the official had prior involvement with the project. The City’s legislative advocacy ordinance, which Mr. Brucker voted for, properly focuses attention on the power of former elected officials, particularly in the context of a land use matter the former elected official voted on, and ensures the integrity of the process and the impartiality of government officials involved in the decision-making process. This is particularly important where, as here, the former Mayor had a hand in appointing or approving a member of the Commission considering the project. In short, Mr. Brucker’s actions directly conflict with City law, and have irrevocably tainted the planning process for the Wanda Project.

We thus request that the City conduct a proper public investigation into the extent of Mr. Brucker’s lobbying activities on behalf of the Wanda Group, and urge the City to suspend the Wanda Group’s application pending completion of that investigation. We trust that Mayor Mirish, who chairs the City’s Sunshine Taskforce, will support this request to ensure openness in government.

Sincerely,



Gary S. Winuk

Cc: Beverly Hills City Council (Via email at MayorandCityCouncil@beverlyhills.org)
The Beverly Hills Courier
City of Beverly Hills Sunshine Taskforce

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August 26, 2016

VIA U.S. MAIL AND E-MAIL

Laurence S. Weiner
City Attorney, City of Beverly Hills
City Hall
455 North Rexford Drive
Beverly Hills, California 90210

Dear Mr. Weiner:

I am writing to follow-up on my June 29 and August 9, 2016 letters to you regarding the City of Beverly Hills' consideration of the "9900 Wilshire" or "One Beverly Hills" Project ("Project") and former Mayor Barry Brucker's unlawful lobbying efforts on behalf of The Wanda Group for the Project.

As you are aware, as a paid lobbyist for the Wanda Project, Mr. Brucker is subject to the City's lifetime ban on lobbying or having paid communications with City officials in connection with the Wanda Project. (Beverly Hills Ordinance 1-9-203.) Mr. Brucker's registration as a lobbyist for the Project in October 2015 confirms that he is a paid lobbyist.

On August 9, I sent you a request for records under the California Public Records Act (CPRA). The request was for all City of Beverly Hills records that reflect communications between former Mayor Brucker and any employee or official of the City from the time he registered as a lobbyist in October 2015 to the present. In response to that request, the City provided several records, including a phone log of calls placed by former Mayor Brucker to City officials and employees.

The city phone logs show that after Mr. Brucker registered on Oct 1, 2015, he made at least 31 calls to 12 different city officials, including a 24-minute call to Mayor John Mirisch on Oct. 14. Mayor Mirisch and several other city officials on the log play a direct role in the city's review of the Wanda Project. Other city officials Brucker called include:

- Byron Pope, City Clerk, 7 calls
- Cheryl Friedling, Deputy City Manager, managing strategic communications, media relations, marketing, brand management, community outreach, public affairs and intergovernmental relations, 4 calls
- Chad Lynn, Director of Parking Operations, 3 calls
- Jackie Perez, Executive Assistant in City Clerk's office, 2 calls

- Adrienne M. Tarazon, executive assistant to the Mayor, 2 calls
- Public Works Department general number, 2 calls
- Jim Latta, Human Services Administrator, 1 call
- Llene Knebel, Executive Assistant II at Community Services Department, 1 call
- David Yelton, Plan Review and Inspection Manager, 1 call
- Raj Patel, Assistant Director of Community Development/Building Official, 1 call.
- Therese Kosterman, Public Information Manager, 1 call

The Wanda Company was quoted by the Los Angeles Times as saying that “Brucker quit working for Wanda on July 6, a day after his lobbying was discussed at a council meeting.” However, the phone logs provided by the City show that Mr. Brucker called the City Manager, Byron Pope, on July 7, 14, 15 and 16.

As you can see, many of the people on the call log are directly involved in City functions that relate to the Project being submitted by the Wanda Group. This appears to again run directly counter to public statements made by former Mayor Brucker and the Wanda Group.

We strongly feel this further validates the need for the City to fully investigate former Mayor Brucker’s lobbying activity and its effect on the Wanda Group Project. The Project must be put on hold while this investigation is conducted so that the complete facts about Mayor Brucker’s lobbying efforts can be made public. As we have articulated before, the City ordinances require the City Council to deny any further contract, approval, permit or transaction if, in fact, Mayor Brucker’s lobbying efforts violated the City ordinance. (Beverly Hills Ordinance 1-9-207.)

Sincerely,



Gary S. Winuk

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