



## ***Conflict of Interest--Pursuing Zoning Change for Client's Property Located Adjacent to Architect's Property***

### **Summary**

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The Council found no violation of R. 3.202 of the Code of Ethics and Professional Conduct by a member whose client was aware that member owned property across the street from the client's property, and who retained architect to pursue a zoning change which would benefit both owners.

**All initials, names, dates, places, and gender references in this decision have been changed.**

### **Reference**

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*Code of Ethics and Professional Conduct, Cannon III, Obligations to the Client*

R. 3.202      If members have any business association, direct or indirect financial interest, or other interest which could be substantial enough to influence their judgment in connection with their performance of professional services, the members shall fully disclose to their clients or employers the nature of the business association, financial interest, or other interest, and if the clients or employers object to such association, financial interest, or other interest, the members will either terminate such association or interest or give up the commission or employment.

**Commentary:** *These rules are intended to embrace the full range of situations which may present a member with a conflict between his interest and those of his client or employer. In some situations, a conflict is easily discerned, as when the architect owns property adjacent to property upon which he has been asked to design a structure and is faced with design options which would affect the value of his property. Other instances are not so clear, and that is more frequently the case as new systems and procedures of the construction process, such as design-build, come into the market. In every case, the architect must take adequate steps to ensure that the client is aware of any substantial interest which the architect has which might run counter to the interests of the client.*

### **Facts**

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Both the client and the architect knew each other as two of the larger property owners in an area of town, Neighborhood X, for which a development plan was being prepared. The client knew, and was impressed with, the architect's work from observing the success of a small commercial/office development designed and built by the architect in another area of town. The client contacted the architect to discuss the



design of a similar development on the client's property in Neighborhood X. Several meetings occurred between the architect and client, and letters containing different proposals for the terms of the architect's services were exchanged. No agreement was reached by the architect and client about services for the design and development of the client's property. They did reach an oral agreement for the architect to provide services in the public and planning meetings about the new development plan for Neighborhood X.

Both the architect and the client knew at the beginning of this professional relationship which neighborhood property the other owned. They knew that the zoning category of the client's property would need to be changed if the project he envisioned was to proceed. Both the architect and the client knew at the beginning of the relationship that the location of their parcels of property would mean that a zoning change for the client's parcel would also apply to the architect's parcel. Over a period of years, the architect participated in public meetings and met with appropriate public officials to discuss the proposed development plan and to argue for the rezoning of his client's property as part of that plan. Bills for the architect's services over those years were submitted to the client, who paid them all. The architect was successful in his attempts to obtain a rezoning of the client's property (and because of its location, his own). The client appeared at all hearings related to rezoning.

The client's attention was shortly diverted to another personal project. He advised the architect that he would be taking no action on developing the Neighborhood X property until the personal project was finished. The architect was not contacted by the client for six months. The architect believed he had no further contractual duties to the client and began the development of his own small commercial/office development (similar in scope to the one he had previously completed). In the interim, the client had retained another architect to begin design development on the Neighborhood X property. When the client learned that the architect was

proceeding on a project virtually identical in scope to the client's, he demanded that the architect stop until the client completed his. The architect refused. The client then filed an ethics complaint, alleging that the architect's development of his own property was a conflict of interest.

### **Discussion**

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It is possible for there to be a relationship between an architect and client, which is not reduced to writing, but which establishes an architect/client relationship that would require the disclosure of any actual or potential conflicts of interest that might be substantial enough to influence the architect's judgment in performing professional services. The *Commentary* to R. 3.202 specifically addresses, by example, ownership of adjacent property as a situation requiring disclosure. There is no evidence in this case that the architect made a formal disclosure of his ownership interest in the property adjacent to the client's or of the type of project the architect envisioned for his own property. However, it is clear that the client knew at the beginning of their professional relationship that the architect owned the adjacent property. He voiced no objections. The client learned about the type of project envisioned by the architect for his own property about mid-point through the process that finalized the zoning changes and development plan for Neighborhood X. The client voiced no concerns or objections. It was only when the client and architect began competing with each other as developers that the client asserted the conflict of interest claim.

### **Conclusion**

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The architect did not violate R. 3.202. The evidence is clear that the client knew about the architect's ownership of the adjacent parcel of land and retained his services anyway. The evidence is clear that the client continued to use



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the architect's services even after the rezoning hearing in which the architect presented his proposal for use of his own property. The architect did not pursue his own project until the work he had agreed to perform for the client was completed and many months had gone by with no word from the client. On this set of facts, we conclude that the architect met all obligations under R. 3.202.

L. Kirk Miller, FAIA, Chairman  
Samuel A. Anderson III, FAIA  
Melvin Brecher, FAIA  
Kenneth DeMay, FAIA  
Robert P. Madison, FAIA  
D. Susan J. O'Brien, AIA

*The hearing officer, Norma Merrick Skalrek, FAIA, did not participate in the decision of this case, as provided in the Rules of Procedures.*

**April 15, 1994**