February 17, 2016

The Honorable Edi. E. Birsan
City of Concord City Council
1950 Parkside Drive
Concord, CA 94519

Re: The Jenkins Report

Dear Mr. Birsan,

A William Shakespeare character in The Tempest said it best: “What’s past is prologue.” Nothing is more applicable than this statement as to where the City finds itself after the issuance of the Jenkins report on February 11, 2016.

We thought it would be helpful to the council and the city to point out that a very similar scenario played out in San Diego in 2008 involving Lennar Corporation. In the San Diego case there were (proven) allegations that Lennar was attempting to improperly influence a city official.

Lennar was found to have transferred substantial funds to a city official who was in a key position to influence the award of a major redevelopment contract in the City of San Diego. The San Diego official was Nancy Graham, and she was head of the city’s redevelopment agency, the Center City Development Corporation. The funds in question were transferred to Ms. Graham out of state. Neither Ms. Graham nor Lennar reported this transaction to the City of San Diego.

Enclosed is a December 23, 2008 Voice of San Diego article that accurately chronicles the situation. As in Concord, there was an investigation. Lennar officials
refused to cooperate with the investigation, just as they have refused to cooperate with the special investigator in Concord. But Ms. Graham had no choice: she was ordered to appear in front of the City of San Diego’s Ethics Commission.

After a lengthy hearing that allowed Ms. Graham to present whatever defenses she had available, the commission ruled. Attached is the ruling. The commission adjudicated 18 counts against Ms. Graham for attempting to improperly influence decisions that would materially benefit Lennar Corporation.

Ms. Graham was also investigated by the City Attorney’s Office, was charged with five misdemeanors, pled no contest, and was fined.

After all of the blame-shifting, finger-pointing, and recriminations, the problem the City of San Diego still faced was this: where do you go next after such a blatant attempt to undermine and illegally influence a bid process? Or, as the enclosed article puts it, “what is the residual damage?”

The City of San Diego, through its redevelopment agency, tried to keep the project on track, but ultimately concluded that “If a final deal was struck (with the offending bidder) anyone who opposed the project could sue over Graham’s involvement and potentially invalidate the agreement”.

Due to the taint of Lennar’s actions coupled with the downturn in the markets, the result was that the San Diego project was shelved and hasn’t been revived to this day. Can the City of Concord afford to be mired in litigation for years on this vital project?

You might wonder, how do I know so much about Lennar? Actually, I wrote the book on Lennar. Literally. A copy is enclosed. It is important to know who you are doing business with, and a quick read of the book will give you a better idea.

The bottom line is that Lennar does not honor their agreements, which is why they are named defendants in a long list of breach of contract and fraud lawsuits.

How do we know this? In chapter three of the enclosed book, entitled “Lennar Exposed in Maryland”, there is reference to the fact that a federal judge in Maryland forced Lennar to disclose all pending breach of contract and fraud litigation pending against the company. Lennar produced an extensive 157 page
list of pending lawsuits, but then moved to seal and conceal the list from the SEC, investors, shareholders, and potential counter-parties to contracts. Like the City of Concord.

Lennar lost the suit in Maryland and was ordered to pay nearly $250,000,000 for breach of contract, fraud, fraudulent inducement, negligent misrepresentation, and fraudulent concealment. Lennar was also ordered to pay all legal fees and costs for all parties, a sum surely in excess of $100,000,000. And all of this to not honor a valid and binding contract.

In the context of performing adequate due diligence, The City of Concord has an absolute right to see the actual exhibit from the Maryland case comprising litigation pending against Lennar if the City is seriously considering including Lennar in the bid process on a go-forward basis. What good is a contract with a party with a proven track record of dishonoring valid agreements?

We hope you find some or all of this information to be helpful in deciding on a course of action in this challenging situation. If you have any questions, or need additional information, please feel free to communicate with us at anytime by contacting us at info@swanmountainpress.com.

N. Marsch
Graham’s ‘Residual Damage’ Dooms Ballpark Village

Posted By Voice of San Diego On December 23, 2008 @ 1:00 am In Government | No Comments

Tuesday, Dec. 23, 2008 | JMI Realty, Padres owner John Moores’ development company, has terminated negotiations on the project to eliminate any threat of litigation stemming from the involvement of Nancy Graham [1], the former Centre City Development Corp. president who resigned in July.

While negotiating the development’s details, Graham had an undisclosed financial relationship with Lennar Corp., a nationwide developer and part owner of the 7.1 acres upon which Ballpark Village would be built. Graham received at least $125,000 last year from a Florida development deal she struck with Lennar. She never reported the income in conflict disclosure forms she filed annually and did not accuse herself from negotiations. She has since been charged with committing five misdemeanor conflict-of-interest and ethics violations.

CCDC, the city’s downtown redevelopment agency, has control over the design and specifications for what is built there. The agency has been in negotiations with JMI since mid-2007 about what form Ballpark Village will take. In 2005, the project was approved with a requirement to build offices. JMI subsequently decided to build a hotel and needed permission to make several changes because of that.

JMI spent the last year and a half working to secure CCDC approval to eliminate 300,000 square feet of office space and instead build a massive 1,929-room Marriott International hotel on the parking lot east of Petco. The progress from those negotiations will be tossed out, another casualty stemming from Graham’s undisclosed business relationships. The company still intends to move forward with the project.

Marriott withdrew from the project in August, citing the country’s economic turmoil. JMI planned to move forward without the hotel chain, but had concerns that the project could be invalidated in court because of Graham’s involvement, said Steve Peace, an advisor for JMI Realty. “This is residual damage of the whole Nancy Graham debacle,” he said.

State law prohibits public officials from negotiating contracts that can financially benefit themselves. Officials who violate the law can be charged criminally; their participation also allows any contract they’ve influenced to be invalidated. It’s not necessary to prove that fraud took place — contracts can be invalidated even if the official wasn’t purposely manipulating negotiations for their own gain.

CCDC initially tried to keep the development on track in the wake of Graham’s resignation. After a voiceofsandiego.org [2] investigation [1] revealed Graham’s undisclosed financial ties, CCDC hired an attorney to conduct an in-depth analysis of Graham’s participation with Ballpark Village to determine whether the agency and developer needed to start fresh.

The agency’s board decided in September to renegotiate only the deal points that Graham had influenced. Peace expressed frustration then that CCDC didn’t start anew. That prevented JMI from talking to potential lenders, he said.

“Rather than say ‘Start the process from scratch,’ [CCDC] tried to go and halfway do it,” Peace said. “That’s what I was objecting to. If you go forward and they haven’t done it right, then you’re at risk, your entitlement’s at risk.”

If a final deal was struck, anyone who opposed the project could sue over Graham’s involvement and potentially invalidate the agreement.
If JMI and CCDC rekindle negotiations about Ballpark Village in the future, JMI will have to provide more justification for eliminating office space. After investigating Graham’s involvement in the deal, CCDC analyzed downtown office space needs to see whether JMI was justified in eliminating the requirement — something Graham approved. The analysis showed that office space will be needed in the long-term, said Jeff Graham, a CCDC vice president. (He is not related to Nancy Graham.)

CCDC’s investigation determined that Nancy Graham had approved the elimination “without apparently serious negotiations.” The requirement was a key part of the development, the investigation found.

CCDC’s board will discuss the termination Jan. 7 and would have to formally act to end negotiations. That action — forced by JMI’s withdrawal, but endorsed by both sides — would acknowledge that CCDC didn’t go far enough in September to correct the situation created by its former president’s resignation.

“It wasn’t the clearest thing we’ve done at CCDC, that’s for sure,” said CCDC chairman Fred Maas. “This is a step in the right direction.”

After the board said negotiations should advance in September, CCDC and JMI had disagreed on one significant point about Ballpark Village: Whether JMI should indemnify CCDC — agree to pay its legal bills — if the agency were sued after finalizing an agreement. That became a sticking point for the redevelopment agency and the developers. In effect, CCDC attempted to lay the blame for Graham’s lack of disclosure on Lennar, saying the company should have reported its financial relationship with Graham.

The developers in turn tried to lay the blame for the Graham fallout on CCDC, her employer, and said the redevelopment outfit should have to pay its own legal bills if a lawsuit was filed.

Maas said CCDC would use the break in negotiations to revisit the project and determine “whether and where we start over.”

Building a tax-generating hotel downtown still makes sense, he said. But, “given the economic times we’re in, it’s a good time to take a deep breath and be deliberate and thorough.”

Please contact Rob Davis [3] directly at rob.davis@voiceofsandiego.org [4] with your thoughts, ideas, personal stories or tips.

Article printed from Voice of San Diego: http://www.voiceofsandiego.org

URL to article: http://www.voiceofsandiego.org/topics/government/grahams-residual-damage-dooms-ballpark-village/

URLs in this post:
[4] rob.davis@voiceofsandiego.org: mailto:rob.davis@voiceofsandiego.org

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BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of:  

NANCY GRAHAM,  

Respondent.  

Case No.: 2008-54

ADMINISTRATIVE ENFORCEMENT ORDER

[SDMC § 26.0439]

Date: May 20, 2010
Time: 9:00 a.m.
Location: 202 C Street, 12th Floor
San Diego, CA 92101

Pursuant to San Diego Municipal Code [SDMC] section 26.0436 et seq., the City of San Diego Ethics Commission appointed an ad hoc subcommittee composed of Commissioners Lee Biddle, Clyde Fuller, and Larry Westfall to serve as the Presiding Authority in the matter of Nancy Graham [Respondent], Ethics Commission Case No. 2008-54. The Presiding Authority bifurcated the hearing into two parts. The first, concerning legal issues, was considered by the Presiding Authority following the submission of briefs submitted by the parties. In accordance with SDMC sections 26.0437 and 26.0438, the Presiding Authority issued a Recommendation concerning the bifurcated legal issues on May 12, 2010, and the Ethics Commission deliberated in open session on May 13, 2010. As reflected in the minutes from the Ethics Commission meeting on May 13, 2010, the Ethics Commission determined that, when a City Official has received income from a business entity, the City Official’s economic interests for purposes of SDMC section 27.3561, include the business entity as well as any “affiliated entities” of the
business entity in accordance with the criteria delineated in FPPC Regulations 18703.1 and 18703.3.

The second portion of the Administrative hearing was held on May 20, 2010, at which time the Presiding Authority heard testimony and reviewed evidence relating to the allegations in the Final Administrative Complaint [Administrative Complaint] brought by Petitioner against Respondent. In accordance with SDMC sections 26.0437 and 26.0438, the Presiding Authority issued a Recommendation on July 20, 2010, and the Ethics Commission deliberated in open session on August 12, 2010.

The Administrative Complaint alleges that Respondent violated the conflict of interest provisions of the Ethics Ordinance (SDMC section 27.3561) as the former President and Chief Operating Officer of the Centre City Development Corporation [CCDC]. After deliberating pursuant to SDMC section 26.0438 with regard to each violation alleged by Petitioner in the Administrative Complaint, and based on findings of fact, conclusions of law, and the entire record of the proceedings, the Ethics Commission found by the concurring votes of at least four Commissioners as set forth in the Ethics Commission Resolution dated August 16, 2010, that Petitioner established by a preponderance of the evidence that Respondent violated the Ethics Ordinance as set forth below.

Further, for each finding of a violation of the Ethics Ordinance, the Ethics Commission voted on the penalty to be imposed in consideration of all of the relevant circumstances, including, but not limited to: (1) the severity of the violation; (2) the presence or absence of any intention to conceal, deceive, or mislead; (3) whether the violation was deliberate, negligent, or inadvertent; (4) whether the Respondent demonstrated good faith by consulting the Commission staff for written advice that does not constitute a complete defense; (5) whether the violation was an isolated incident or part of a pattern, (6) whether the violator has a prior record of violations of Governmental Ethics Laws; (7) the existence of any Mitigating Information; and (8) the degree to which the Respondent cooperated with Commission staff by providing full disclosure, remedying a violation, or assisting with the investigation. SDMC §26.0438(f).

Based on the concurring votes of at least five Commissioners as set forth in the Ethics
Commission Resolution dated August 16, 2010, the Ethics Commission imposed the penalties on Respondent set forth below for her violations of the Ethics Ordinance.

Counts 7, 8, 9, 10, 12, 13, 14, 15, 24, and 25 – Violations of SDMC section 27.3561

SDMC section 27.3561 prohibits City Officials from participating in municipal decisions if it is reasonably foreseeable that the decision will have a material financial effect on the City Official or one of the City Official’s economic interests, including sources of income of $500 or more within the prior twelve month period.

The Ethics Commission finds that Respondent committed ten violations of SDMC section 27.3561 by participating in meetings with CCDC staff and/or CCDC board members and/or other City Officials and/or representatives of Ballpark Village LLC, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of the developers of Ballpark Village and one of Respondent’s economic interests. The Ethics Commission’s specific findings and imposition of penalties on Counts 7, 8, 9, 10, 12, 13, 14, 15, 24, and 25 are as follows:

Count 7 – Respondent participated in a meeting on July 23, 2007, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 7.

Count 8 – Respondent participated in a meeting on August 2, 2007, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 8.

Count 9 – Respondent participated in a meeting on September 5, 2007, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar...
Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 9.

**Count 10** – Respondent participated in a meeting on September 17, 2007, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 10.

**Count 12** – Respondent participated in a meeting on October 5, 2007, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 12.

**Count 13** – Respondent participated in a meeting on October 17, 2007, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 13.

**Count 14** – Respondent participated in a meeting on January 23, 2008, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 14.

**Count 15** – Respondent participated in a meeting on January 31, 2008, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 15.

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Count 24 – Respondent participated in a meeting on May 16, 2008, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 24.

Count 25 – Respondent participated in a second meeting on May 16, 2008, during which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 25.

Counts 26 through 31 – Violations of SDMC section 27.3561

SDMC section 27.3561 prohibits City Officials from participating in municipal decisions if it is reasonably foreseeable that the decision will have a material financial effect on the City Official or one of the City Official’s economic interests, including sources of income of $500 or more within the prior twelve month period.

The Ethics Commission finds that Respondent committed six violations of SDMC section 27.3561 by engaging in email communications with CCDC staff and/or other City Officials and/or representatives of Ballpark Village LLC in which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of the developers of Ballpark Village and one of Respondent’s economic interests. The Ethics Commission’s specific findings and imposition of penalties on Counts 26 through 31 are as follows:

Count 26 – Respondent engaged in an email communication on April 23, 2007, in which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 26.
Count 27 – Respondent engaged in an email communication on April 24, 2007, in which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 27.

Count 28 – Respondent engaged in an email communication on June 26, 2007, in which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 28.

Count 29 – Respondent engaged in an email communication on August 28, 2007, in which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 29.

Count 30 – Respondent engaged in an email communication on October 10, 2007, in which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 30.

Count 31 – Respondent engaged in an email communication on May 15 and 16, 2008, in which she attempted to influence decisions concerning the Ballpark Village project when it was reasonably foreseeable that the decisions would have a material financial effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to pay a penalty in the amount of $1,500.00 for Count 31.
Counts 33 and 34 – Violations of SDMC section 27.3561

SDMC section 27.3561 prohibits City Officials from participating in municipal
decisions if it is reasonably foreseeable that the decision will have a material financial effect on
the City Official or one of the City Official’s economic interests, including sources of income of
$500 or more within the prior twelve month period.

The Ethics Commission finds that Respondent committed two violations of SDMC
section 27.3561 by participating in CCDC meetings concerning the Ballpark Village project
when it was reasonably foreseeable that the decisions would have a material financial effect on
Lennar Homes of California, one of the developers of Ballpark Village and one of Respondent’s
economic interests. The Ethics Commission’s specific findings and imposition of penalties on
Counts 33 and 34 are as follows:

Count 33 – Respondent participated in the discussion concerning the Ballpark Village
project at the meeting of the CCDC board sitting as the Real Estate Committee on July 11,
2007. In so doing, Respondent attempted to influence CCDC decisions concerning Ballpark
Village when it was reasonably foreseeable that the decisions would have a material financial
effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to
pay a penalty in the amount of $4,000.00 for Count 33.

Count 34 – Respondent participated in the discussion concerning the Ballpark Village
project at the meeting of the CCDC board sitting as the Real Estate Committee on May 14,
2008. In so doing, Respondent attempted to influence CCDC decisions concerning Ballpark
Village when it was reasonably foreseeable that the decisions would have a material financial
effect on Lennar Homes of California, one of her economic interests. Respondent is ordered to
pay a penalty in the amount of $4,000.00 for Count 34.
Based on the findings set forth above and pursuant to SDMC section 26.0438, the Ethics Commission orders that Respondent pay a monetary penalty in the amount of $32,000 to the General Fund of the City of San Diego in accordance with the provisions of SDMC sections 26.0439(b)(3) and 26.0440, within 30 days of the date this Order is served on Respondent.

IT IS SO ORDERED.

Dated: August 16, 2010

CITY OF SAN DIEGO ETHICS COMMISSION

By

Larry Westfall, Chair
CRIME AND DECEPTION
How Lennar Corporation Swindled America's Largest Pension Fund

Nicolas Marsch