BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION

In re the Matter of:  ) Case No.: 2008-54
) ADMINISTRATIVE ENFORCEMENT
) ORDER
NANCY GRAHAM, ) [SDMC § 26.0439]
) Respondent.
) 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.

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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