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Petitioner

BEFORE THE CITY OF SAN DIEGO

ETHICS COMMISSION

In re the Matter of:	)	Case No.: No. 2008-54
	)	
	)	**FINAL ADMINISTRATIVE**
NANCY GRAHAM,	)	**COMPLAINT**
	)	
Respondent.	)	[SDMC § 26.0430]
	)	
	)	**Date**: March 4, 2010
	)	**Time**: 9:00 a.m.
	)	**Location**: 202 C Street, 12th Floor
	)	San Diego, CA 92101

Petitioner Alison Adema, General Counsel of the City of San Diego Ethics Commission [Ethics Commission], hereby alleges that the above-named Respondent violated the San Diego Municipal Code as follows:

The Parties

1. Petitioner Alison Adema is the General Counsel of the Ethics Commission and makes this accusation in her official capacity. The Ethics Commission is charged with a duty to administer, implement, and enforce local governmental ethics laws contained in the San Diego Municipal Code [SDMC] relating to, among other things, the provisions of the City's Ethics Ordinance.

2. At all times mentioned herein, Respondent Nancy Graham [Respondent] was the President and Chief Operating Officer of the Centre City Development Corporation [CCDC], a public benefit, non-profit corporation wholly owned by the City of San Diego.

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General Allegations

3. Respondent was required to file economic disclosure forms pursuant to CCDC's conflict of interest code. Thus, Respondent is considered a City Official who is subject to the jurisdiction of the Ethics Commission and who was required to abide by the provisions of the City's Ethics Ordinance. SDMC §§ 26.0413, 27.3503.

4. Respondent assumed office as CCDC's President and Chief Operating Officer on December 1, 2005. She left this office on July 24, 2008.

5. Prior to assuming her position with CCDC, Respondent resided and worked in Florida. Respondent and her spouse at the time, Kevin Lawler, formed N-K Ventures LC, a Florida Limited Liability Company [N-K Ventures]. From the company's formation on May 24, 2001, through May 25, 2005, Respondent and Lawler each had a 50% ownership interest in N-K Ventures. As of May 25, 2005, Respondent's ownership share in N-K Ventures was 25% and Lawler's share was 75%. Respondent assigned her remaining 25% ownership interest in N-K Ventures to Lawler contemporaneous with their divorce on September 4, 2007.

6. On June 10, 2002, N-K Ventures entered into a Profit Participation Agreement with Lennar Communities of South Florida, Inc., [Lennar South Florida] a Florida Corporation, and Trelcom Development, Ltd., owned by The Related Group of Florida, a Florida General Partnership [Related]. The Profit Participation Agreement set forth N-K Ventures' participation in the profits of a joint venture between Lennar South Florida and Related for the development of a mixed-use condominium project on property in Lantana, Florida [Lantana project]. According to the terms of the Profit Participation Agreement, N-K Ventures was to receive certain payments, including 25% of the net profits from the project. In exchange, N-K Ventures contributed its right to acquire the subject property upon which the development was constructed, and provided services to facilitate the development.

7. Lennar South Florida and Related subsequently formed RL Lantana Boatyard, Ltd., a Florida limited partnership, on June 12, 2002, for the purpose of developing the Lantana project. RL Lantana Boatyard is comprised of the following entities:

TRG-Lantana Boatyard, Ltd. (.10%) – General Partner

Lennar-Lantana Boatyard, Inc. (.10%) – General Partner

Trelcom Development, Ltd. (49.90%) - Limited Partner

Lennar Communities of South Florida, Inc. (49.90%) – Limited Partner

Lennar Corporation, a Delaware Corporation [Lennar Corporation] owns a majority of the shares of both Lennar-Lantana Boatyard, Inc. and Lennar Communities of South Florida.

8. N-K Ventures has been paid approximately $7.5 million pursuant to the Profit Participation Agreement through payments issued by RL Lantana Boatyard. Although Respondent's percentage of ownership of N-K Ventures was modified over time as discussed above in Paragraph 5, Respondent retained her entitlement to 50% of the proceeds from the Lantana project. Respondent's share of the proceeds was in excess of $3.5 million and was paid to Respondent as set forth below:

Date of Payment	**Amount of Payment**
March 20, 2006	$25,000
March 24, 2006	$150,000 (distribution to 3rd party on Respondent's behalf)
April 11, 2006	$679,518
April 26, 2006	$100,000
April 26, 2006	$1,020,000
May 18, 2006	$155,000
November 17, 2006	$15,562
May 4, 2007	$125,000
April 12, 2007	$488,500
August 2, 2007	$271,500
October 28, 2007	$500,000 (distribution to 3rd party on Respondent's behalf)
TOTAL	$3,530,080

9. The Ethics Ordinance prohibits a City Official from knowingly influencing a municipal decision if it is reasonably foreseeable that the municipal decision will have a material financial effect on the City Official's economic interests, which include: "any person from whom a City Official or a member of the City Official's immediate family has received $500 or more in income within twelve months prior to the municipal decision[.]" SDMC § 27.3561.

10. The Ethics Ordinance is interpreted in accordance with applicable provisions of the Political Reform Act of 1974 (California Government Code sections 81000 through 91014) and the regulations of the California Fair Political Practices Commission [FPPC]. SDMC § 27.3503. Government Code section 82030 defines "income" as a payment received, and states that the income of an individual includes a pro rata share of any income of any business entity in which the individual owns a 10% or greater interest. For purposes of disqualification involving sources of income, a City Official has an economic interest in an entity that is a parent, subsidiary, or is otherwise related to the entity that has provided the City Official with income of $500 or more within the previous twelve months. FPPC Regulation 18703.3. A parent-subsidiary relationship exists when one corporation owns more than 50% of the shares of another corporation. In addition, two business entities are considered "otherwise related" if one entity has a controlling ownership interest in the other entity, if there is shared management and control between the entities, if there is an otherwise regular and close working relationship between the entities, or if the two entities share the same controlling owner (50% or greater ownership interest). FPPC Regulation 18703.1.

11. As discussed above, Respondent was an owner of N-K Ventures, an entity that received income from RL Lantana pursuant to the terms of the Profit Participation Agreement it entered into with Lennar South Florida and a third party. In addition, as discussed above, Lennar Communities of South Florida [LCSF] has a 49.9% interest in RL Lantana, and Lennar-Lantana Boatyard, Inc. [LLBI] has a 0.10% interest in RL Lantana. Because Lennar Corporation owns a majority of the shares of LCSF and LLBI, a parent-subsidiary relationship exists between Lennar Corporation and LCSF, and between Lennar Corporation and LLBI. As the parent entity to both LCSF and LLBI, Lennar Corporation effectively holds a 50% interest, i.e., a "controlling

interest" in RL Lantana. Because Respondent received payments from RL Lantana, and because Lennar Corporation has a controlling interest in RL Lantana, it is clear that Lennar Corporation is one of Respondent's economic interests for purposes of the disqualification requirements in the Ethics Ordinance.

12. Respondent was prohibited under SDMC section 27.3561 from knowingly influencing a municipal decision during any twelve month period following a payment from Lennar Corporation, including the RL Lantana payments, if it was reasonably foreseeable that the decision would have a material financial effect on Lennar Corporation, or any of Lennar Corporation's subsidiaries.

13. "Influencing a municipal decision" means affecting or attempting to affect any action by a City Official on one or more municipal decisions by any method, and includes promoting, supporting, opposing, participating in, or seeking to modify or delay such action, as well as providing information, statistics, analysis or studies to a City Official. A "City Official" is defined to include members of the CCDC Board of Directors [CCDC Board] and CCDC employees who are required to file economic disclosure forms pursuant to CCDC's conflict of interest code. A "municipal decision" is defined to include any decision by a City board, as well as contracts and quasi-judicial decisions on land-use matters. SDMC § 27.3503.

14. Any reasonably foreseeable financial effect on a business entity that is a source of income to a City Official, and that is directly involved in a decision before the official's agency, is deemed to be material. A business entity is directly involved in a decision before an official's agency when it initiates the proceeding, is a named party to the proceeding, or is the subject of the proceeding. An entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject entity. FPPC Regulation 18704.1. As described more fully below, a subsidiary owned and controlled by Lennar Corporation was directly involved in decisions relating to the Ballpark Village project, and accordingly any reasonably foreseeable financial effect of a decision on that subsidiary is deemed to be material. FPPC Regulation 18705.3.

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15. On May 25, 2005, CCDC approved an Owner Participation Agreement [OPA], with Ballpark Village LLC, a Delaware limited liability company [Developer], for the development of two parcels located within the Centre City redevelopment project area known as the Ballpark Village project. The Ballpark Village project is a $1.5 billion mixed-use residential, retail, hotel, and office development sited on three million square feet of acreage adjacent to PETCO Park. On October 18, 2005, the OPA for Ballpark Village was adopted by the Redevelopment Agency.

16. According to the OPA, the Developer's co-managing members and equal owners are JMIR-Ballpark Village LLC, a Delaware limited liability company [JMIR], and Lennar Homes of California, Inc. [Lennar California]. Because Lennar Corporation owns a majority of the shares of Lennar California, Lennar Corporation is considered the parent and controlling owner of Lennar California.

17. Lennar South Florida is one of Respondent's economic interests based on the Profit Participation Agreement it entered into with N-K Ventures obligating it to pay proceeds to N-K Ventures on the Lantana project. Because Lennar Corporation is the controlling owner of Lennar California and Lennar South Florida, these two companies are considered "otherwise related" for purposes of determining Respondent's economic interests. Thus, Lennar South Florida's related entity, Lennar California, is also one of Respondent's economic interests.

18. In addition, as discussed above, Lennar Corporation is the controlling owner of RL Lantana, the company that handled the distribution of the proceeds that ultimately were paid to Respondent pursuant to the Profit Participation Agreement. Because Lennar Corporation is also the controlling owner of Lennar California, RL Lantana and Lennar Corporation are considered "otherwise related" for purposes of determining Respondent's economic interests. Thus, RL Lantana's related entity, Lennar California, is considered one of Respondent's economic interests.

19. During Respondent's tenure with CCDC, she was personally and substantially involved in day-to-day negotiations concerning the following key issues associated with the addition of a large-scale hotel at the Ballpark Village project:

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(a) elimination of the requirement that Developer provide a minimum of 300,000 square feet of office space;

(b) increase in the cumulative average daily trips [ADTs] for the project from 16,500 to 24,401, which in turn would affect the ADTs available for other projects within the Ballpark District;

(c) reduction in the required ground floor retail space from 115,000 square feet to 75,000 square feet;

(d) substitution of 300 parking stalls in the Metropolitan Transit Service garage in lieu of 276 new parking stalls;

(e) upgrade in the capacity of the sewer lines adjacent to the project;

(f) expansion of the Master Plan site area via property acquisition and amendment of the development standards for building massing; and

(g) design review.

In particular, Respondent was actively involved in the negotiations between the Developer and CCDC staff regarding the issues described above. She attended numerous meetings with Developer representatives, CCDC board members, CCDC staff, and other City Officials. In addition to attending meetings, Respondent engaged in written communications with Developer representatives, CCDC staff, and other City Officials. She made recommendations, gave direction, and provided information and opinions that influenced CCDC board members as well as CCDC staff and other City Officials. She directly influenced the recommendations that CCDC staff ultimately made to the CCDC board concerning these key issues on the Ballpark Village project.

20. The Ethics Commission, in accordance with SDMC section 26.0423, authorized a formal investigation into allegations that Respondent violated SDMC section 27.3561. Following the investigation, Petitioner concluded that, during her tenure with CCDC, Respondent influenced various municipal decisions related to the Ballpark Village project when it was reasonably foreseeable that these municipal decisions would have a material financial effect on Lennar California, one of Respondent's economic interests.

Counts

Count 1 – Violation of SDMC sections 27.3561

21. On or about March 15, 2006, Respondent signed a CCDC staff report submitted to the Redevelopment Agency that recommended approval of the Development Permit associated with the construction of affordable housing units required by the OPA. In so doing, Respondent violated SDMC section 27.3561 by influencing a municipal decision when it was reasonably foreseeable that the decision would have a material financial impact on Lennar California, one of Respondent's economic interests pursuant to FPPC Regulations 18703.1 and 18703.3.

Counts 2 through 25 – Violations of SDMC section 27.3561

22. From January 2007 through May 2008, Respondent attended 24 meetings on the following dates with CCDC staff and/or CCDC board members and/or other City Officials and/or Developer representatives during which she participated in the discussions and negotiations concerning the key issues described above in Paragraph 19: January 16, 2007; March 28, 2007; June 14, 2007; June 20, 2007; July 17, 2007; July 23, 2007; August 2, 2007; September 5, 2007; September 17, 2007; September 20, 2007; October 5, 2007; October 17, 2007; January 23, 2008; January 31, 2008; February 7, 2008; February 14, 2008; February 28, 2007; March 6, 2008; April 4, 2008; April 28, 2008; April 30, 2008; May 6, 2008; and May 16, 2008 (she attended two different meetings on this date). In so doing, Respondent violated SDMC section 27.3561 by influencing a municipal decision when it was reasonably foreseeable that the decision would have a material financial impact on Lennar California, one of Respondent's economic interests pursuant to FPPC Regulations 18703.1 and 18703.3.

Counts 26 through 31 – Violations of SDMC section 27.3561

23. Respondent engaged in 6 email communications on the following dates with CCDC staff and/or other City Officials and/or Developer representatives in which she provided information, direction, and opinions concerning the key issues described above in Paragraph 19: April 23, 2007; April 24, 2007; June 26, 2007, August 28, 2007; October 10, 2007; and May 15 – 16, 2008. In so doing, Respondent violated SDMC section 27.3561 by influencing a municipal decision when it was reasonably foreseeable that the decision would have a material financial

impact on Lennar California, one of Respondent's economic interests pursuant to FPPC Regulations 18703.1 and 18703.3.

Count 32 – Violations of SDMC section 27.3561

24. CCDC staff submitted a report to the CCDC board sitting as the Real Estate Committee concerning the key issues described above in Paragraph 19 on July 3, 2007. Respondent signed this report, expressly indicating her concurrence with the information and recommendations set forth therein. In so doing, Respondent violated SDMC section 27.3561 by influencing a municipal decision when it was reasonably foreseeable that the decision would have a material financial impact on Lennar California, one of Respondent's economic interests pursuant to FPPC Regulations 18703.1 and 18703.3.

Counts 33 and 34 – Violations of SDMC section 27.3561

25. CCDC staff made verbal presentations concerning the contents of their reports at meetings of the CCDC board sitting as the Real Estate Committee on July 11, 2007, and May 14, 2008. Respondent personally participated in the discussion concerning the Ballpark Village project at both of these meetings. In so doing, Respondent violated SDMC section 27.3561 by influencing a municipal decision when it was reasonably foreseeable that the decision would have a material financial impact on Lennar California, one of Respondent's economic interests pursuant to FPPC Regulations 18703.1 and 18703.3.

WHEREFORE, Petitioner prays as follows:

1. That the Ethics Commission find that Respondent violated the San Diego Municipal Code as alleged herein;

2. That the Ethics Commission order Respondent to pay a monetary penalty to the General Fund of the City of up to five thousand dollars ($5,000) for each violation; and

3. That the Ethics Commission grant such other relief as it deems just and proper.

Dated: December 10, 2009

CITY OF SAN DIEGO ETHICS COMMISSION

By _____
Alison Adema, General Counsel