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October 5, 2004

Lawrence Beerman, Chairman
Loudoun County Planning Commission
Loudoun County Department of Planning
1 Harrison Street, S.E., 3rd Floor
P.O. Box 7000
Leesburg, VA 20177


Dear Chairman Beerman:

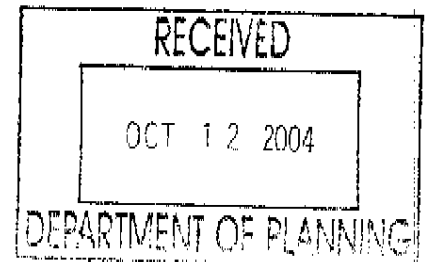
This letter is in response to your request for an advisory opinion as to whether or not you have a conflict of interest arising from an existing business arrangement between the corporation you are currently employed with and another area business.

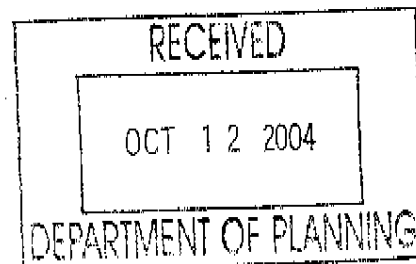
Attached you will find the opinion that you requested. Please be aware that it is based solely on the facts as they have been represented to my office, which are also summarized.

If this office can be of any further assistance, please do not hesitate to contact me at the address or telephone number listed above.

Sincerely yours,


James E. Plowman
Commonwealth's Attorney





**COMMONWEALTH OF VIRGINIA
OFFICE OF THE COMMONWEALTH'S ATTORNEY
COUNTY OF LOUDOUN**

Advisory Opinion

Date Issued:

October 5, 2004

Requested by:

Lawrence Beerman, Chairman, Loudoun County Planning Commission
Pursuant to §2.2-3121(B), 1950 Code of Virginia, As Amended

Facts:

George Mason Mortgage, LLC, (hereinafter "George Mason") currently employs Lawrence Beerman as a Residential Mortgage Broker.

In addition to his current employment, Mr. Beerman was also appointed to the Loudoun County Planning Commission (hereinafter "LCPC") in January 2004. This appointment is a part-time obligation. Mr. Beerman currently chairs the LCPC. The LCPC is an advisory body to the Loudoun County Board of Supervisors. The LCPC hears matters involving rezoning applications, Comprehensive Plan amendments, approved plan revisions, utilities and facilities permits as well as other related matters.

Greenvest, LLC (hereinafter "Greenvest") is one of the largest landowners and land developers in Loudoun County. Greenvest has numerous subsidiaries, one of which is Cambridge Homes (hereinafter "Cambridge"). Cambridge builds homes on approximately thirty-percent of Greenvest's developed residential lots. Cambridge currently is not building any homes in Loudoun County, but is building in Prince George's County, Maryland (The Preserve) as well as Jefferson County, West Virginia (Huntfield).

George Mason is listed as one of three preferred lenders in Huntfield and one of two preferred lenders for The Preserve. Mr. Beerman is the George Mason point of contact under this agreement for these two Cambridge building sites. As an incentive to potential home buyers, Cambridge offers anywhere from \$4,000 to \$10,000 toward closing costs if a preferred lender is used. It is not required that a home buyer use one of the preferred lenders, and Cambridge does not direct a buyer to use one preferred lender over another. Some of the other preferred lenders with

Cambridge are North American Mortgage, RBC, and Washington Mutual. The practice of having preferred lenders is common in the industry and is primarily used for ensuring quality control. The arrangement between Cambridge and George Mason has existed for several years and pre-dates Mr. Beerman's employment with George Mason.

As part of his compensation from George Mason, Mr. Beerman receives commissions on each residential loan he arranges. Mr. Beerman states that his monthly business with Cambridge fluctuates and may be as little as 10% or as much as 25% of his overall work. His annual compensation from this would be expected to exceed \$10,000 annually.

Inquiry:

Whether Mr. Beerman's position with George Mason and George Mason's business relationship with Cambridge, present a conflict of interest if Greenvest presents items before the LCPC.

Brief Answer:

If Greenvest appears before the LCPC, Mr. Beerman would not be required to disqualify himself since he does not have a personal interest in a transaction. Cambridge does not currently have any building sites in Loudoun County and therefore Mr. Beerman would have no personal interest. However, if Greenvest appears before the LCPC specifically regarding its subsidiary, Cambridge, Mr. Beerman would have to disqualify himself.

Disqualification requires disclosure of the personal interest, which is to be recorded in the public records of the advisory committee for a period of five years. In addition, Mr. Beerman shall not vote or in any manner act on behalf of his agency in the transaction if required to disqualify himself.

Discussion:

The State and Local Government Conflict of Interest Act ("the Act") is designed to assure citizens that the judgment of public officers and employees will not be compromised or affected by inappropriate conflicts. Prohibited conduct concerning personal interest in a transaction is governed by §2.2-3112, 1950 Code of Virginia, As Amended.

The relevant point of inquiry regarding this section is whether Mr. Beerman has a "*personal interest in a transaction*" if Greenvest comes before the LCPC. The following definitions set forth in §2.2-3101 of the Act give guidance in this determination:

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from

ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv) above.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity.

If a personal interest in a transaction exists, §2.2-3112 of the Code of Virginia regarding disqualification from participating in the transaction must be complied with. §2.2-3112 states in relevant part that

"Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction: (1) Shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business in which he has a personal interest..."

Based on the facts presented, it is my opinion that you would not have a conflict of interest if Greenvest came before the LCPC for issues involving any subsidiary, other than that of Cambridge. However, in the event that Greenvest is before the board and the issue involves a Cambridge site, it is my opinion that you would have a personal interest in a transaction.

As the facts have been represented, Cambridge is not currently building on any sites in Loudoun County. It is also my understanding that any Greenvest appearance before the LCPC might not be specifically on behalf of a subsidiary, since the matters they are bringing forth are typically in the early stages of real estate development. Based on the above, it would be reasonable to conclude that Cambridge may have future activity at one of the Greenvest sites, since they build on a significant percentage of Greenvest lots.

Therefore, since you will likely be unaware whether or not Cambridge would be involved in one of Greenvest's matters, I would strongly recommend that you make that inquiry. If the answer is that they are not involved, then there still remains no personal interest in the transaction. If the answer cannot be determined, I would urge your voluntary disqualification on that matter. I recognize, however, that it would not be required, and does not specifically violate the laws regarding prohibited conduct under §2.2-3112.

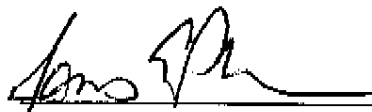
Caution is urged in this area for a simple reason. Any future relationship or business opportunity that arises from one of Greenvest's matters before the LCPC might cause a reasonable person to question your participation and the appearance of undue influence.

Any disqualification needs to be recorded in the public records of the officer's or employees advisory agency. The officer or employee shall be required to state his personal interest and his disclosure shall be reflected in the public records of the agency for five years in the office of the advisory agency, or if the agency has a clerk, in the clerk's office. Once the officer or employee disqualifies himself he shall not vote or in any manner act on behalf of his agency in the transaction.

Disclaimer:

The conclusions expressed above are based on the facts that were verbally represented to my office upon this request. If the facts set forth are incorrect or incomplete, you may not rely on this opinion in the event your conduct is later challenged.

Please let me know if you have additional information for me to consider or if I can be of any other assistance.



James E. Plowman
Commonwealth's Attorney
Loudoun County

cc: Jack Roberts, County Attorney