



# California Fair Political Practices Commission

January 20, 1989

Douglas H. Holland  
City Attorney  
City of Burbank  
275 E. Olive Ave.  
Burbank, CA 91510

Re: Your Request for Advice  
Our File No. A-88-412

Dear Mr. Holland:

This is in response to your letter requesting advice regarding the responsibilities of Susan Boyle, Redevelopment Division Manager for the City of Burbank, under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTIONS

1. Is Ms. Boyle prohibited from participating in decisions regarding the development of any parcels within 300 feet of real property owned by her husband?

2. Under what conditions may Ms. Boyle participate in decisions regarding the development of property within 300 to 2500 feet of her husband's property?

## CONCLUSIONS

1. Ms. Boyle is prohibited from participating in decisions regarding real property within 300 feet of her spouse's real property interests, unless she can show that the decisions will have no financial effect on the value of her husband's property.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2. Ms. Boyle may be able to participate in decisions involving individual development projects which are between 300 and 2500 feet of her husband's real property interests or beyond, so long as decisions on the individual projects will not have an effect of \$10,000 or more on the fair market value of his property.

#### FACTS

Susan Boyle is the manager of the Redevelopment Division of the City of Burbank Community Development Department. Her job duties include supervision of all projects within the redevelopment area of the city. She is employed by the City of Burbank and reports to the director of community development, who in turn reports to the city manager. She currently supervises a staff of fourteen, including project managers, analysts, administrative assistant and analyst, real estate agents, secretarial and support staff.

Ms. Boyle's general job duties include participation in assembling redevelopment projects and in formulating recommendations to the community development director and city manager. The community development director and city manager make recommendations to the Burbank Redevelopment Agency, which then votes on various aspects of redevelopment projects and other related items.

Pending before the agency are decisions involving a parcel of land known as the "40-acre Site." This site had originally been intended to be developed as a retail shopping mall. For the past two years, however, various plans for development of the parcel have fallen through. Four substantial proposals for mixed retail, commercial and similar uses are currently under consideration by the agency. Staff and agency members began evaluations of these proposals in December 1988, and development of the site will continue for a number of years.

One of the borders of the 40-acre Site is 462 feet from real property owned by Ms. Boyle's husband, Vic Georgino. On the property sits a 10-plex theater complex, also owned by Mr. Georgino. Mr. Georgino is a private landowner and currently has an exclusive right to negotiate with the Redevelopment Agency regarding another property, known as

"Palm Court," which is also located within 500 feet from the 40-acre site.<sup>2/</sup>

#### ANALYSIS

Section 87100 prohibits any public official from making, participating in, or using her official position to influence a governmental decision in which she knows or has reason to know she has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of her immediate family, or on:

\* \* \*

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

Section 82033 defines interest in real property to include any interest in real property located in the jurisdiction, which is owned directly, indirectly or beneficially by the public official or his or her immediate family, if the fair market value of the interest is one thousand dollars (\$1,000) or more.

Ms. Boyle is a public official within the meaning of the Act. (Section 82048.) The real property owned by Ms. Boyle's spouse is valued at more than \$1,000. Therefore, she must disqualify herself from any governmental decisions which would have a foreseeable material financial effect on her spouse's real property interests, distinguishable from the effect on the public generally.

#### Foreseeable Material Financial Effect

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not

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<sup>2/</sup> Ms. Boyle has already disqualified herself from participating in any decisions directly affecting any of Mr. Georgino's real property interests, including Palm Court. Our analysis will address only the effect of the decisions regarding the 40-acre site on Mr. Georgino's theater complex property. Although he is negotiating with the agency regarding other adjacent properties, we need not analyze the impact of the decisions on them because they are the same proximity to the land in question.

required; however, if the effect is a mere possibility it is not reasonably foreseeable. (Downey Community Development Commission v. Downey Cares (1987) 196 Cal. App. 3d 983; and In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

The decisions presently before the redevelopment division will determine the type of development activity which will occur in the 40-acre Site. It is reasonably foreseeable that these decisions will indirectly affect the value of real properties located nearby. (See Curry Advice Letter, No. A-88-158, copy enclosed.) It is necessary, therefore, to next determine whether the effect on Ms. Boyle's real property interests will be material.

Regulation 18702.3 (copy enclosed) provides specific guidelines for determining whether the effects of a governmental decision indirectly affecting real property interests of a public official are material:

(a) The effect of a decision is material as to real property in which an official has a direct, indirect or beneficial ownership interest (not including a leasehold interest), if any of the following applies:

(1) The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

\* \* \*

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and the decision will have a reasonably foreseeable financial effect of:

\* \* \*

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

\* \* \*

(d) For a decision which is covered by subdivision (a)(3) or (b)(1) or (c), factors which shall be considered in determining whether the decision will have the effects set forth in subdivision (a)(3)(A) or (B) include, but are not limited to:

(1) The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest;

(2) Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property;

\* \* \*

Regulation 18702.3(a)(1),  
(a)(3) and (d).

In response to your first question, therefore, Ms. Boyle may not participate in any decisions regarding parcels within 300 feet of the AMC Theater Complex, unless she can show that the decision will have no financial effect upon this real property interest. (Regulation 18702.3(a)(1).)

Your second question asks whether we can provide guidelines for determining the nature and extent of allowable participation by Ms. Boyle in the development of property within 300 to 2500 feet of her property interests. Whether Ms. Boyle may participate in any of the decisions regarding development of real properties which are within 300 to 2500 feet of her real property interests turns on the specific projects involved.

Regulation 18702.3(a)(3) provides that an increase or decrease of \$10,000 in the fair market value of real property located between 300 and 2500 feet of a proposed project is a material financial effect. Further, Regulation 18702.3(d) offers suggested criteria for determining the effect of a decision on real property, including proximity and magnitude of the proposed project, and a foreseeable effect on the income-producing potential of the public official's property.

With regard to the decisions presently before the redevelopment division, the possibilities for development of the

Douglas C. Holland  
January 20, 1989  
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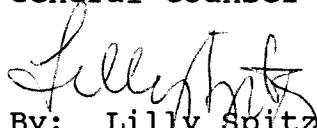
40-acre Site include a variety of retail and commercial development. In light of the wide range of possibilities for development of this nearby property and the potential magnitude of the development, we conclude that Ms. Boyle must refrain from participation in all preliminary decisions regarding the development of the 40-acre Site because of the likelihood of an indirect material financial effect on her property interests. (See Haight Advice Letter, No. A-81-509, copy enclosed.)

It is likely that at some future time, the individual projects within the 40-acre Site will be quite distant from Ms. Boyle's real property interests. At that time the variables, including proposed use of the individual project in the 40-acre site and the distance from Ms. Boyle's real property interest would have to be evaluated. Where it is concluded that the decision on the individual project would foreseeably have less than a \$10,000 effect on her real property interests, she would be able to participate in decisions regarding these individual projects. For example, a proposed office building project more than 2,000 feet from the 10-plex theater would have a different effect than a proposed 4-plex theater project 1,000 feet away.

I trust this response provides sufficient guidance regarding the responsibilities of Ms. Boyle under the Act. If, in the future, you have questions concerning the specific components of these important issues facing the redevelopment agency, please feel free to contact me for additional advice.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Lilly Spitz  
Counsel, Legal Division

DMG:LS:plh

Enclosure



OFFICE OF THE CITY ATTORNEY  
275 E. OLIVE AVE. • P.O. BOX 6459 • BURBANK, CALIFORNIA 91510  
(818) 953-9614

DOUGLAS C. HOLLAND  
CITY ATTORNEY

December 13, 1988

Ms. Lilly Spitz  
Fair Political Practices Commission  
Post Office Box 807  
Sacramento, California 95804

Re: Supplemental Information  
Request for Formal Written Advice  
Our File: 201-1

Dear Ms. Spitz:

During our discussion of late last week, you requested additional information relative to our request for formal written advice on behalf of Susan Boyle, the City's Redevelopment Division Manager. The documents are as follows:

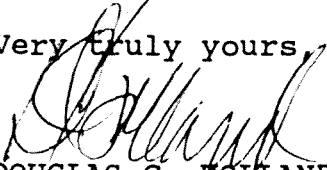
- City Centre Redevelopment Project - Development Status. This document depicts the geographic boundaries of the City Centre Redevelopment Project area. The area shaded in blue is the "40 acre site." The area shaded in yellow depicts the Georgino/AMC Projects. Also on this sheet is a hand drawn depiction of the central elements of the proposed OPA between the Agency and Mr. Georgino.
- Summary Sheet. This document describes in summary and graph form the basic components of the four development proposals submitted for the 40 acre site. All four of the proposals involve essentially integrated development proposals.
- Proposed Owner Participation Agreement Between Victor K. Georgino and Burbank Redevelopment Agency. This is a one page summary of the essential points describing the proposed OPA between the Agency and Mr. Georgino.
- Exhibit. This document more graphically depicts the block within the City Center Redevelopment area which is subject to the proposed Georgino OPA.

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Lilly Spitz  
December 13, 1988  
Page 2

I hope these documents are helpful and I look forward to your  
advice letter at your earliest convenience.

Very truly yours,

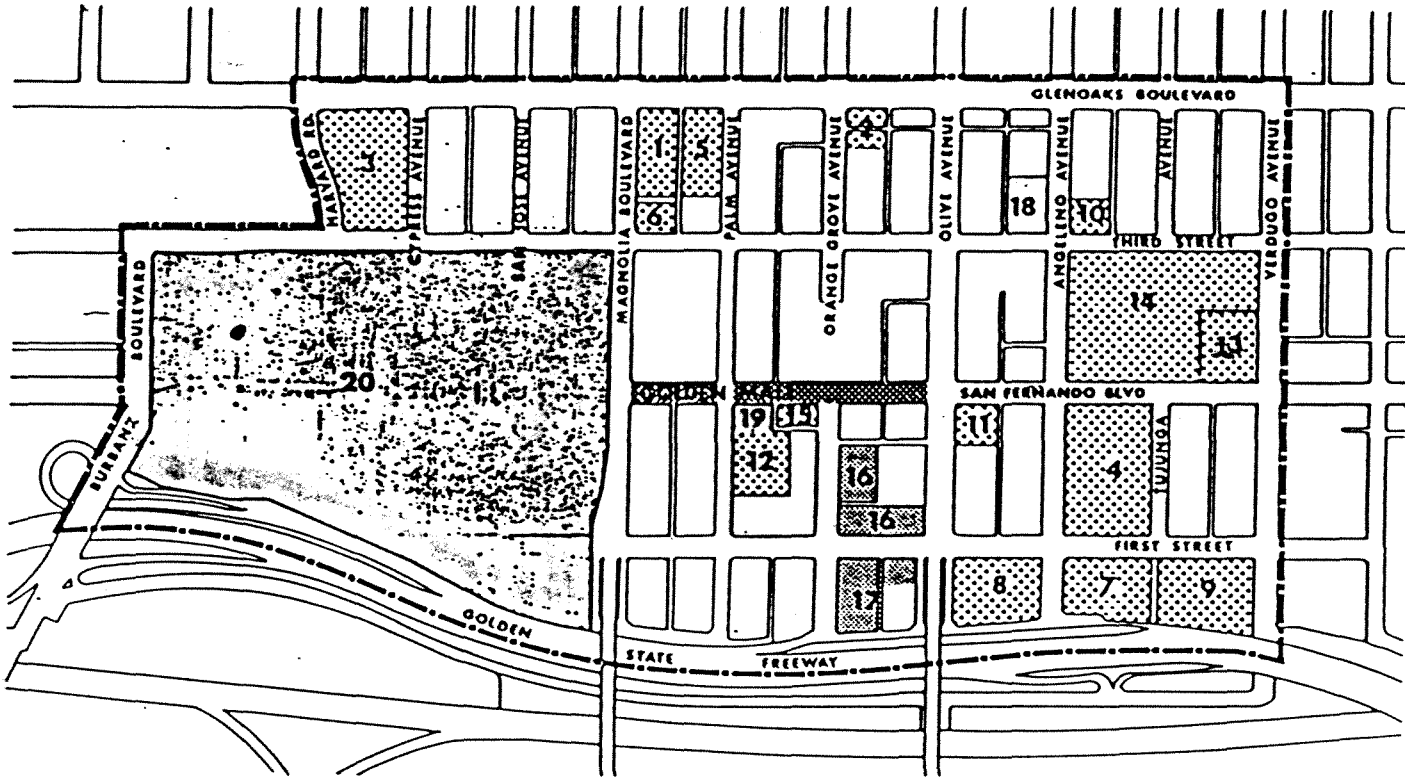


DOUGLAS C. HOLLAND  
City Attorney

Encl.  
DCH/sr

DHPSPITZ

# CITY CENTRE REDEVELOPMENT PROJECT DEVELOPMENT STATUS



 **COMPLETED/UNDER CONSTRUCTION**

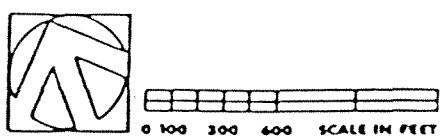
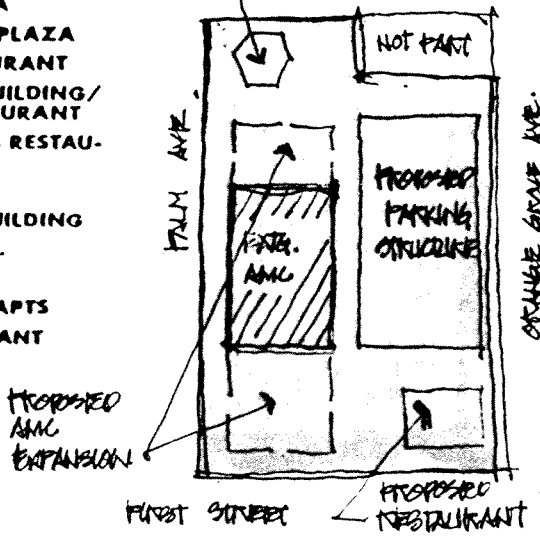
- 1 CALIFORNIA FEDERAL SAVINGS
- 2 VALLEY NATIONAL BANK
- 3 PACIFIC MANOR/HARVARD PLAZA
- 4 HOLIDAY INN
- 5 303 GLENOAKS PLAZA
- 6 BURBANK EXECUTIVE PLAZA
- 7 BLACK ANGUS RESTAURANT
- 8 CUSUMANO OFFICE BUILDING/BOBBY MCGEE'S RESTAURANT
- 9 BOMBAY BICYCLE CLUB RESTAURANT
- 10 SALVATION ARMY
- 11 TUNNICLIFFE OFFICE BUILDING
- 12 AMC 10-PLEX THEATRE
- 13 WESLEY TOWER
- 14 MAYER BURBANK LTD APTS
- 15 FUDDRUCKERS RESTAURANT

 **DESIGN IN PROGRESS**

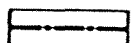

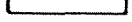
- 16 OFFICE/RESTAURANT PRIVATE/PUBLIC PARKING STRUCTURE
- 17 OFFICE/RETAIL PROPOSED

 **PROPOSED/POTENTIAL**

- 18 COURTHOUSE EXPANSION & PUBLIC PARKING
- 19 PALM COURT MIXED USE/FOOD COURT
- 20 FORTY ACRE PARCEL



**LEGEND**

-  REDEVELOPMENT PROJECT BOUNDARY
- 
- 

Company (Developer)	Site Plan	Elevations Arch.	Pro Forma #'s	City/Agency Revenue	Commitment Letters	Financing Mechanisms
Alexander Haagen 3500 Sepulveda Blvd. Manhattan Beach Calif. 90266	Retail: 820,000 sf GLA Theater: 25,000 sf GLA Rest.: 10,000 sf GLA <u>Office: 300,000 sf GLA</u> Total 1,155,000 sf GLA	Submitted as required Leason Pomeroy Architects	*direct purchase/or participation *pre tax cash flow provided *internal equity provided. *anticipated rent not provided on per sf basis *sales per sf not provided. *ROI not provided *(pro forma shows loss)	Revenues calculated guaranteed for 20 yrs @ \$5M per year revenues not P.V.'d	No commitment letters included	Internal financing plus Wells Fargo line of credit Bank references
"Burbank Gateway Center"	400 room hotel					
Watt/Cusumano 101 So. First St. Burbank, CA 91502	Retail: 499,000 sf GLA Comm. Theater: 215,000 sf GLA 350 rm. hotel <u>Office: 805,000 sf GLA</u> Total 1,519,000 sf GLA	Submitted as required MCG Arch.	*direct purchase plus particip. *pre tax cash flow provided *no ROI provided	\$30,000,000 purchase price \$7,692,425 participation, \$65,434,504 taxes (over 10 yr. period)	Wards Marshalls Stor Mann	Construct financing Tokai Bank Permanent financing, Teachers Insurance
"City Circle Center"						
Triple Five Dev. Development Ent. Ltd. & L. J. Hooker	Retail: 1,697,000 sf Office/ Retail: 60,000 sf Ent/ Theater: 50,000 sf Grocery: 50,000 sf Restaurant: 40,000 sf Health C.: 60,000 sf Hotel Facility: 50,000 sf Office: 3,000,000 sf <u>Hotel: 1,500 rooms</u> Over 4.6M sf	Submitted as required Sunderland Architects	*City gets percentage of net cash flow % undefiend in RFQ/P *retail sales per sf projected by class and type of store *rents are projected at between \$3 - \$30 per sq. ft. *hotel room rate projected @ \$100 per night  *no pro forma provided	All sources of revenue = \$165,000,000 in first ten years  PV of all revenue streams over life of CC project area = \$216,323,780	B. Altman Bonwit Teller	Citi Bank
"Fashion Mall at Burbank"						
P & K Associates J.V. The Price Co. & Kornwasser	Retail: 800,000 sf Theater: 8 plex Restaurants: 3 Office: 717,000 sf <u>Hotel: 250 rooms</u> Total: 1.5M sf Parking: 8,026 spaces	Elevations submitted as required/ Feola-Deenham Partnership	Land acq. = \$4 per yr. lease or 15% of net operating income = total of \$37M for 59 yrs. *\$41M loan for parking *Pro forma submitted complete including ROI	*sales tax = \$2.25M - \$3.25M first year. *Bed tax \$445,000 - \$515,000 based on \$65-85 per night room rate TI = 2,750,000 to 3,000,000 Portion of revenue used to retire the bonds	Price, Home Express, Nordstrom Rack, etc.	Internal financing
"The Burbank Promenade"						

**PROPOSED OWNER PARTICIPATION AGREEMENT BETWEEN  
VICTOR K. GEORGINO AND BURBANK REDEVELOPMENT AGENCY**

Project Location

- City Centre Project, City of Burbank
- Block bounded by Palm Avenue, Golden Mall, Orange Grove Avenue, and First Street

Scope of Development

- 1500 seat, four screen addition to an existing 2500 seat 10 screen AMC Theatre.
- ± 6000 sq. ft. Food Court with ± 3000 sq. ft. of commercial office space on second level
- ± 6500 sq. ft. Restaurant (full service dinner house type)
- ± 400 space public parking structure

Financial Terms

- Georgino to purchase approximately 42,392 sq. ft. of Redevelopment Agency/City property at \$23/sf for \$975,000
- Georgino to purchase property not yet owned by Agency at Agency expense, exclusive of relocation expenses, currently estimated at \$400,000.
- Georgino to contribute 50% of cost of public parking structure. Agency to contribute remaining 50%.

Tentative Schedule

- OPA public hearing before Redevelopment Agency Board for authorization to execute January 3, 1989.
- Escrow open for land sales - Mid January, 1989
- Close escrow - April 3, 1989
- Georgino begins construction on restaurant and food court - Summer, 1989.
- All construction complete - Summer; 1990.

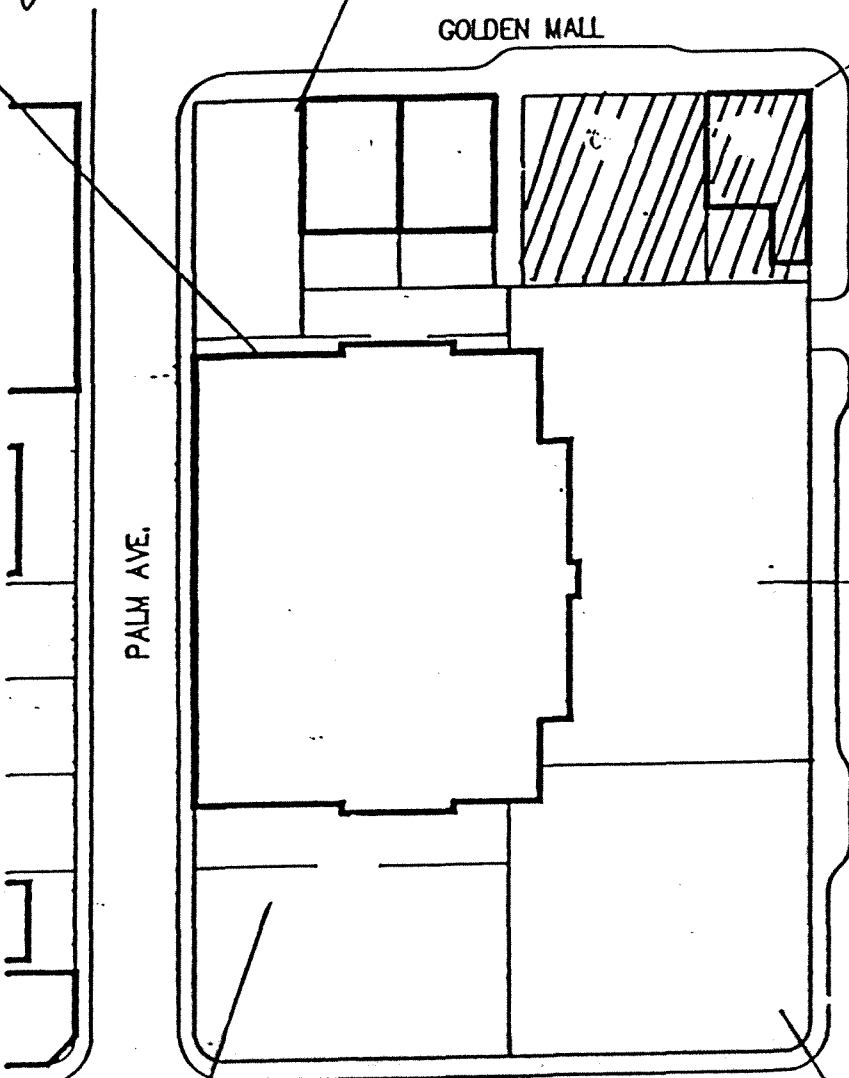
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AMC THEATRE  
EXISTING

6500 sq  
FOOD COURT

NOT INCLUDED IN  
DEVELOPMENT

GOLDEN MALL



PALM AVE.

ORANGE GROVE AVENUE

400 SPACE  
PARKING STRUCTURE

FIRST STREET

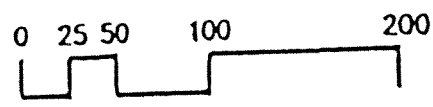
6500 sq RESTAURANT

AMC THEATRE  
EXPANSION

PROPOSED PROJECT

EXHIBIT "A"

STREET AND PARCEL MAP





# OFFICE OF THE CITY ATTORNEY

275 E. OLIVE AVE. • P.O. BOX 6459 • BURBANK, CALIFORNIA 91510  
(818) 953-9614

DOUGLAS C. HOLLAND  
CITY ATTORNEY

October 25, 1988

Ms. Lilly Spitz  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804

Re: Request for Formal Written Advice  
Our File: 201-1

Dear Ms. Spitz:

As the City Attorney for the City of Burbank, I am hereby requesting formal written advice pursuant to Government Code §83114(b) and §18329 of the regulations of the Fair Political Practices Commission. I have been authorized by Susan Boyle, Redevelopment Division Manager for the City of Burbank, to make this request relating to her duties under the Fair Political Practices Act.

### Background Information

Susan Boyle is and has been since November 1, 1987, the manager of the Redevelopment Division of the City of Burbank Community Development Department. Her job duties include supervision of all projects within the redevelopment area of the City of Burbank. She is employed by the City of Burbank and reports directly to the Director of Community Development who in turn reports to the City Manager. She currently supervises a staff of 14, including project managers and analysts, administrative assistant and analyst, real estate agents and secretarial and clerk support staff. Her general job duties include participation in assembling redevelopment projects and in formulating recommendations to the Community Development Director and City Manager who ultimately make recommendations to the Burbank Redevelopment Agency which then votes on various aspects of redevelopment projects and other related items.

Ms. Boyle recently married Vic Georgino, a private landowner and developer in Burbank. Mr. Georgino holds an Exclusive Right to Negotiate with the Redevelopment Agency for the City of Burbank for an area commonly known as "Palm Court" within the City Centre Redevelopment Project area. In the event an agreement is reached between the Agency and Mr. Georgino, this "Palm Court" project will involve the conveyance of Agency-owned real property to Mr. Georgino. He also owns property upon which the current AMC tenplex movie theater is situated. This property is also within the City Centre Redevelopment area and was developed as a redevelopment project by Mr. Georgino prior to the commencement of his relationship with Ms. Boyle. The AMC project was completed in mid-1986.

Oct 28 8 47 AM '88

FPPC

Lilly Spitz  
Re: Request for Formal Written Advice  
October 24, 1988  
Page 2

Ms. Boyle began a social relationship with Mr. Georgino in late 1986, after the completion of the AMC theater project. She disassociated herself from participating in any project or proposal submitted by Mr. Georgino from that date forward. Since their engagement in April of 1988, she formally disqualified herself from any participation in or supervision of any her staff members relative to projects and/or proposals submitted by Mr. Georgino. Specifically, with respect to the Palm Court property (for which Mr. Georgino currently has an Exclusive Right to Negotiate with the Redevelopment Agency), Ms. Boyle has not participated in any preliminary discussions, negotiations, compromises, planning, solicitation of bids, or any other facet of the proposal. Any of her staff members who have been assigned to work on Mr. Georgino's proposed Palm Court Project are not required to and do not in fact report in any manner to Ms. Boyle regarding any aspect thereof.

Our office has already issued a legal opinion (attached hereto) in which an analysis of the various applicable Code sections, including Government Code Section 1090 et seq., Health & Safety Code Sections 33130 et. seq. and Government Code Sections 87000 et seq. has been made. We have recommended that, in the event an agreement is reached with Mr. Georgino, with respect to the development of the "Palm Court" property, that Ms. Boyle expressly waive and divest herself of any interest in the proceeds of any such project including, but not limited to the execution of quitclaim deeds. Although we do believe that Mr. Georgino's property remains his separate property unless an expresse gift to the marital community is made, we believe that requiring a disclaimer and/or quitclaim deed further insulates Ms. Boyle from any conflict of interest.

Our most pressing concern at this time has to do with a 40-acre parcel of land which has been assembled over the course of a number of years by the Redevelopment Agency. This "40-acre Site", as it is known in Burbank, was originally intended to be developed as a retail shopping mall. Unfortunately, approximately two years ago, one of the major department store anchors reneged on its commitment, causing the domino-like collapse of the entire proposed project. The Developer, Hahn and Company, ultimately was declared in default under its Disposition and Development Agreement. Subsequent to that deal falling through, the Disney Corporation executed into an Exclusive Right to Negotiate Agreement with the Redevelopment Agency for purposes of coming up with a proposal for the 40-acre Site.

Lilly Spitz  
Re: Request for Formal Written Advice  
October 24, 1988  
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Earlier this year, Disney declared its inability and/or unwillingness to develop the Site. The Redevelopment Agency then basically opened the Site to the open market and requested proposals. Four substantial proposals for mixed retail, commercial, etc. uses are currently under consideration. The developers are currently putting together final responses to a request for proposals and evaluations of these final responses by staff and the Agency members will begin in earnest on December 1, 1988.

It is anticipated that the Redevelopment Agency will in fact make some sort of final determination as to the disposition and development of the Site; however, what the ultimate result will be is anyone's guess. The Agency could conceivably decide to develop the Site itself, could accept any one of the four remaining proposals, or combinations thereof. All of this information regarding the 40-acre Site is pertinent to our query in that one of its borders is 462 feet from Mr. Georgino's existing AMC Theater Complex and the Palm Court Property for which he currently has the Exclusive Right to Negotiate with the Agency.

Request for Written Advice.

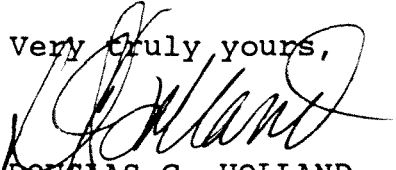
Your advice is requested with respect to the following issues:

1. Under the new materiality rules promulgated by the FPPC, will Ms. Boyle be precluded from participating in any manner in the development of any parcels within 300 feet of either Mr. Georgino's AMC Property or the Palm Court Property? (For purposes of this inquiry, we interpret "participation" to include discussion, negotiation, recommendations and supervision of staff involved in all facets of developing projects for the Redevelopment Agency.)
2. Again, under the new materiality rules promulgated by the FPPC, what guidelines would you formulate for us to utilize in determining the nature and extent of allowable participation by Ms. Boyle in the development of property within the 300 to 2500-foot range of Georgino's property, generally; and specifically relative to the 40-acre Site.

Lilly Spitz  
Re: Request for Formal Written Advice  
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If you have any questions, or if you require additional information regarding this request, please do not hesitate to contact me. Because the development of the 40-acre Site is currently in progress, although in its relatively nascent stage, we would sincerely appreciate your most expeditious attention to this request. Thank you again for your courtesy and cooperation.

Very truly yours,



DOUGLAS C. HOLLAND  
City Attorney

DCH:jm  
JSPFPPC

OFFICE OF CITY ATTORNEY

DATE: October 5, 1988

TO: Robert Ovrom, City Manager  
William Kelly, Community Development Director  
Sue Boyle, Assist. C.D. Director-Redev. Admin.

SUBJECT: Boyle/Georgino Marriage--Potential Conflict of Interest  
Our File: 201-1

Introduction

The very recent marriage of Susan Boyle (Redevelopment Division Manager) and Vic Georgino (private developer with Exclusive Right to Negotiate with Redevelopment Agency) has raised several questions regarding the applicability of the various statutory provisions designed to prevent conflicts of interest within public employment.

The pertinent issues to be addressed are as follows:

1. To what extent, if at all, the provisions of Government Code §§1090 et seq., 87100 et seq., and Health and Safety Code §§33130 et seq., apply to the facts as they exist; and
2. What remedial measures are available to avoid and/or eliminate any potential conflict of interest those provisions proscribe.

It is the opinion of this office after review of the facts and applicable statutory and case authorities that, in fact, all potential legal conflicts of interest can be eliminated which would prevent Susan Boyle from performing her duties as Redevelopment Division Manager. Reasonable measures are available and will be taken to preclude and prevent any such legal conflicts of interest.

Preliminary Facts

Susan Boyle is and has been since November 1, 1987, the manager of the Redevelopment Division of the City of Burbank Community Development Department. Her job duties include supervision of all projects within the redevelopment area of the City of Burbank. She is employed by the City of Burbank and reports directly to the Director of Community Development who in turn reports to the City Manager. She currently supervises a staff of 14, including project managers and analysts, administrative assistant and analyst, real estate agents and secretarial and clerk support staff. She generally participates in assembling redevelopment projects and in formulating recommendations to the Community Development Director and City Manager, who ultimately make recommendations to the Burbank Redevelopment Agency which then votes on various aspects of redevelopment projects and other related items.

Robert Ovrom  
Re: Boyle/Georgino  
October 5, 1988  
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Vic Georgino is a private land owner and developer. He currently holds an Exclusive Right to Negotiate Agreement with the Redevelopment Agency for the City of Burbank for an area commonly known as "Palm Court" within the City Centre Redevelopment Project area. The "Palm Court" project will involve the conveyance of Agency-owned real property to Mr. Georgino. He also owns that property on which the current AMC ten-plex movie theater is situated. This property is also within the City Centre Redevelopment Area and was developed as a Redevelopment project by Mr. Georgino. The project was completed in mid-1986.

Ms. Boyle began a social relationship with Vic Georgino in late 1986, after the completion of the AMC Theater project. In order to avoid the appearance of impropriety, Ms. Boyle disassociated herself from participation in any project or proposal submitted by Mr. Georgino from that date forward. Since their engagement in April of 1988, she has formally disqualified herself from any participation in or supervision of any of her staff members relative to projects and/or proposals submitted by Mr. Georgino. Specifically, with respect to property for which Mr. Georgino currently has an Exclusive Right to Negotiate with the Redevelopment Agency, Ms. Boyle has not participated in any preliminary discussions, negotiations, compromises, planning, solicitation of bids, or any other facet of the proposal. Any of her staff members who have been assigned to work on Mr. Georgino's proposed project are not required to and do not in fact report in any manner to Ms. Boyle regarding any aspect thereof.

#### Applicable Law

##### A. Government Code §§1090, et seq.

Government Code §1090 states that City officers or employees shall not be financially interested in any contract made by them in their official capacities. The obvious question is how this section applies to any further contractual relationship between Georgino and the Redevelopment Agency with respect to the property for which he currently has an Exclusive Right to Negotiate Agreement with the Agency.

Based upon the simple relationship of Ms. Boyle's position as Redevelopment Division Manager to the hierarchical structure of the City, Ms. Boyle is not in any position nor does she have the authority to enter into a contract with Mr. Georgino in her official capacity. Although the concept of entering into a contract has been construed at least by one court to include discussions, negotiations, preliminary drawings, etc., Ms. Boyle has effectively disassociated herself from any of these aspects

Robert Ovrom  
Re: Boyle/Georgino  
October 5, 1988  
Page 3

as well. As long as she continues to disassociate herself from any involvement whatsoever with the proposal, including the direct supervision of any staff members who are involved in the proposal, it is this office's opinion that Government Code §1090 would not be violated.

In addition, it appears that since Mr. Georgino owned the subject property prior to their marriage, it is legally his separate property and she would not, therefore, be financially interested in any contract between Mr. Georgino and the Agency. It would be our recommendation that any future agreements entered into between the Redevelopment Agency and Mr. Georgino include a specific disclaimer by Ms. Boyle of any interest in the agreement and/or property relating thereto.

B. Health & Safety Code §§33130 et seq.

In addition to Government Code §1090, Health and Safety Code §33130 provides that an employee who in the course of his or her duties is required to participate in the formulation of or to approve plans or policies for the redevelopment of a project area shall not acquire any interest in any property included within a project area. Any financial interest must be disclosed.

Ms. Boyle can fully comply with this provision and avoid the statutory proscriptions. Ms. Boyle is not in a position to participate in the formulation of or approve plans or policies for the redevelopment of Mr. Georgino's project since she has specifically taken herself out of the "loop" regarding his proposals. Additionally, she does not at this time have any financial interest in any property within a redevelopment project area. As we already indicated above, if in the future, the Agency enters into an agreement with Mr. Georgino to develop his property as a redevelopment project, it would be our recommendation that any such agreement be structured to include a disclaimer from Ms. Boyle of any interest in the property which she could derive as the result of her marital relationship with Mr. Georgino. Again, as of the date of the marriage, Mr. Georgino's property is legally his separate property absent a gift by him of that property to the marital community.

It must also be remembered that as long as Ms. Boyle is employed as the Redevelopment Division Manager, she will be prohibited from acquiring an interest in real property in the redevelopment area. Our initial review of the law suggests that appropriate disclaimers and/or execution of quitclaims should provide sufficient insulation to ensure compliance with this provision of the law. We would also suggest that it might be prudent to condition any conveyance of Agency property to Mr. Georgino on

Robert Ovrom  
Re: Boyle/Georgino  
October 5, 1988  
Page 4

the presentation of a validation proceeding. Such a proceeding would be designed to request a court to validate the entire transaction and, in essence, find that the safeguards outlined in this paragraph provide full legal assurances that Ms. Boyle has not, by virtue of a separate transaction involving the Agency and Mr. Georgino, acquired an interest in property in violation of Section 33130.

C. Government Code §§87000 et seq.

The final area of concern revolves around Government Code §87000, et seq. Specifically, Government Code §87100 provides that no public official or employee shall make, or participate in the making of, or in any way attempt to use his official position to influence a decision in which he knows or has reason to know that he has a financial interest.

Government Code §87103 defines a "financial interest" as one where it is reasonably foreseeable that the decision will have a material financial effect on the official or a member of his or her immediate family.

Obviously, again, whether or not the proscriptions of these sections are applicable depends upon the extent, if any, of Ms. Boyle's participation in the making or influencing of a decision regarding Mr. Georgino's property. Secondary, of course, is the extent if any, of her "financial interest" in a resulting decision.

It is our opinion that the proscriptions contained in these sections are avoided by Ms. Boyle's total removal from participation in any manner whatsoever in discussions, negotiations, recommendations, etc., relating to Mr. Georgino's existing property. In addition, we have been recently advised of a new FPPC rule which creates a presumption of a conflict of interest on any decisions relating to property within 300 feet of a property in which the employee or a member of her immediate family has an interest. It is our recommendation that from this point forward, Ms. Boyle refrain from participating in any manner whatsoever in the discussions, negotiations, formulation or recommendations, etc., regarding any property within 300 feet of the property for the Palm Court proposal and the AMC Theater complex.

The new FPPC rules also have a potential impact on decisions relating to property outside of the 300 foot radius within a radius of 2,500 feet of the property in which an employee or a member of his or her family has an interest. Under these circumstances, the rules provide that a decision will be material if the decision will have a reasonably foreseeable financial

Robert Ovrom  
Re: Boyle/Georgino  
October 5, 1988  
Page 5

effect of (1) \$10,000 or more on the fair market value of the real property owned by the employee or a member of the immediate family, or (2) will affect the rental value of the property by \$1,000 or more per 12-month period. The FPPC rules also requires consideration of two additional factors in determining whether a decision will have the proscribed effects. These two factors which must be considered are:

1. The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property owned by the employee or a member of his or her family; and
2. Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property.

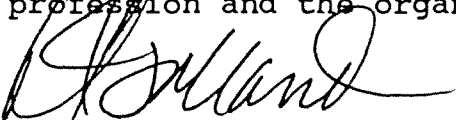
We have drafted a request to the California Fair Political Practices Commissions to assist us in formulating guidelines to help define Susan Boyle's future role with respect to anything outside the 300-foot perimeter of Georgino's "Palm Court" proposal and the AMC Theater complex. We believe that Ms. Boyle may continue to work on the projects outside of this 300 foot radius during this interim period while we wait on the FPPC opinion. The potential for a conflict of interest relating thereto may be remote and would be speculative at best at this time.

#### Conclusion

We have reviewed the applicable law with respect to this rather unique situation which has occurred as the result of the marriage between Sue Boyle and Vic Georgino on October 2, 1988. Based upon the facts as they exist, it is our opinion that Ms. Boyle's current posture of removing herself from any participation whatsoever in discussions, negotiations, recommendations, etc., relating to Georgino's property for which he has an Exclusive Right to Negotiate Agreement with the Agency sufficiently minimizes any legal conflict of interest as defined in the applicable code sections and related case authorities. We are confident that the Fair Political Practices Commission will assist in formulating guidelines for future actions as well.

Rober Ovrom  
Re: Boyle/Georgino  
October 5, 1988  
Page 6

This memorandum is also limited to conflicts of interest as expressly defined under state law. We have not been requested nor do we offer an opinion as to whether any appearances of conflicts of interest may exist. Such a determination is an ethical issue that should only be resolved after due consideration of standards and factors relevant to Ms. Boyle's profession and the organization.



DOUGLAS C. HOLLAND  
City Attorney

DCH:JCS:jm  
JSPOVROM

cc: Al Dossin, Mayor  
Robert Bowne, Vice-Mayor  
Michael Hastings, Councilmember  
Mary Lou Howard, Councilmember  
Mary Kelsey, Councilmember



OFFICE OF THE CITY ATTORNEY  
275 E. OLIVE AVE. • P.O. BOX 6459 • BURBANK, CALIFORNIA 91510  
(818) 953-9614

88-412  
DOUGLAS C. HOLLAND  
CITY ATTORNEY

December 13, 1988

Ms. Lilly Spitz  
Fair Political Practices Commission  
Post Office Box 807  
Sacramento, California 95804

Re: Supplemental Information  
Request for Formal Written Advice  
Our File: 201-1

Dear Ms. Spitz:

During our discussion of late last week, you requested additional information relative to our request for formal written advice on behalf of Susan Boyle, the City's Redevelopment Division Manager. The documents are as follows:

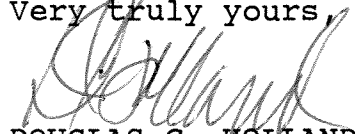
- City Centre Redevelopment Project - Development Status. This document depicts the geographic boundaries of the City Centre Redevelopment Project area. The area shaded in blue is the "40 acre site." The area shaded in yellow depicts the Georgino/AMC Projects. Also on this sheet is a hand drawn depiction of the central elements of the proposed OPA between the Agency and Mr. Georgino.
- Summary Sheet. This document describes in summary and graph form the basic components of the four development proposals submitted for the 40 acre site. All four of the proposals involve essentially integrated development proposals.
- Proposed Owner Participation Agreement Between Victor K. Georgino and Burbank Redevelopment Agency. This is a one page summary of the essential points describing the proposed OPA between the Agency and Mr. Georgino.
- Exhibit. This document more graphically depicts the block within the City Center Redevelopment area which is subject to the proposed Georgino OPA.

DEC 16 8 23 AM '88  
FPPPC

Lilly Spitz  
December 13, 1988  
Page 2

I hope these documents are helpful and I look forward to your  
advice letter at your earliest convenience.

Very truly yours,

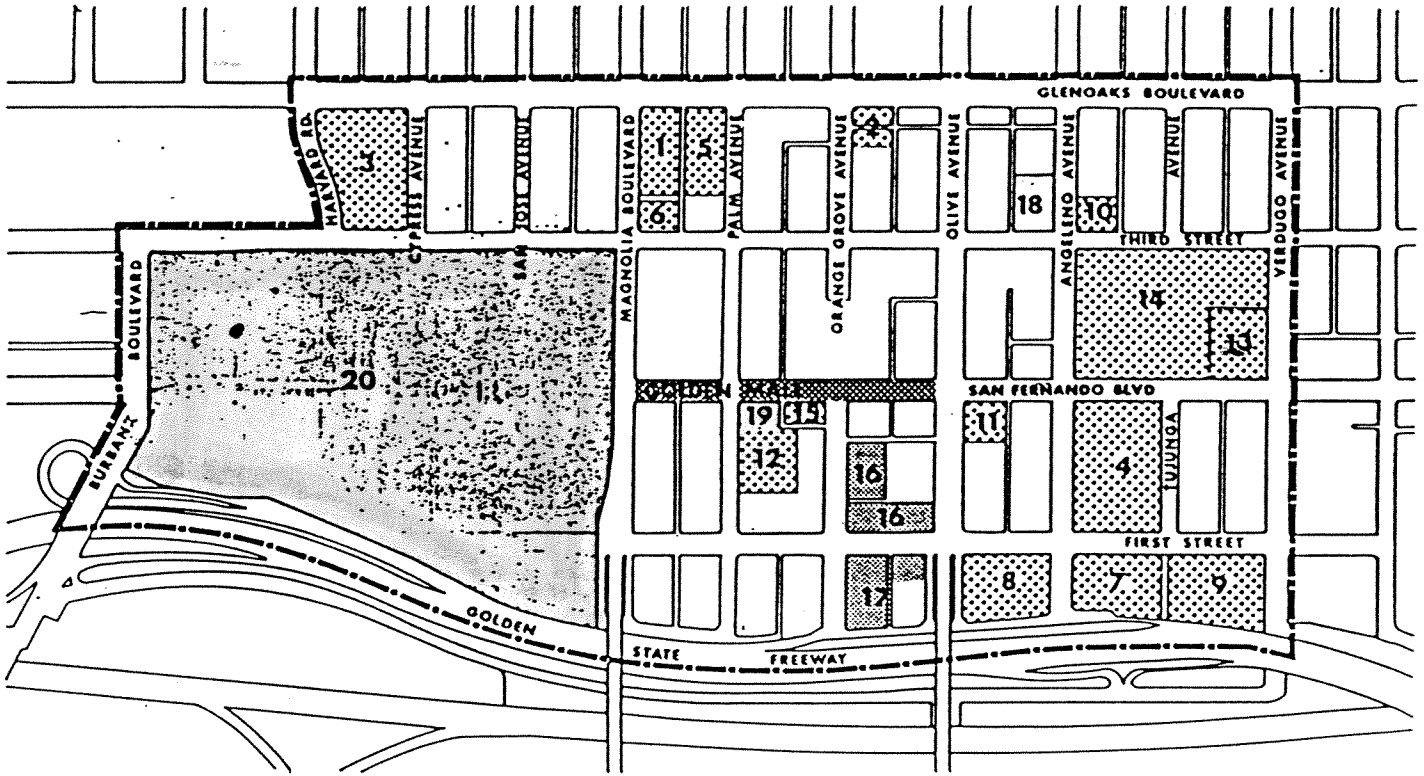


DOUGLAS C. HOLLAND  
City Attorney

Encl.  
DCH/sr

DHPSPITZ

# CITY CENTRE REDEVELOPMENT PROJECT DEVELOPMENT STATUS



 **COMPLETED/UNDER CONSTRUCTION**

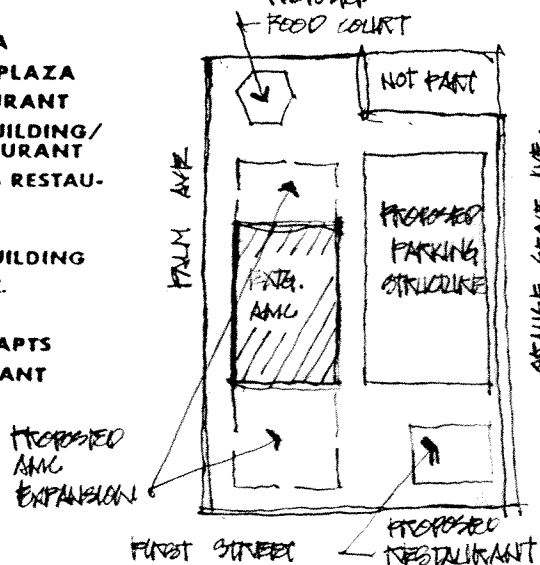
- 1 CALIFORNIA FEDERAL SAVINGS
- 2 VALLEY NATIONAL BANK
- 3 PACIFIC MANOR/HARVARD PLAZA
- 4 HOLIDAY INN
- 5 303 GLENOAKS PLAZA
- 6 BURBANK EXECUTIVE PLAZA
- 7 BLACK ANGUS RESTAURANT
- 8 CUSUMANO OFFICE BUILDING/BOBBY MCGEE'S RESTAURANT
- 9 BOMBAY BICYCLE CLUB RESTAURANT
- 10 SALVATION ARMY
- 11 TUNNICLIFFE OFFICE BUILDING
- 12 AMC 10-PLEX THEATRE.
- 13 WESLEY TOWER
- 14 MAYER BURBANK LTD APTS
- 15 FUDDRUCKERS RESTAURANT

 **DESIGN IN PROGRESS**

- 16 OFFICE/RESTAURANT PRIVATE/PUBLIC PARKING STRUCTURE
- 17 OFFICE/RETAIL PROPOSED

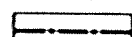
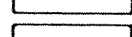


 **PROPOSED/POTENTIAL**

- 18 COURTHOUSE: EXPANSION & PUBLIC PARKING
- 19 PALM COURT MIXED USE/FOOD COURT
- 20 FORTY-ACRE PARCEL



0 100 300 600 SCALE IN FEET

**LEGEND**

-  REDEVELOPMENT PROJECT BOUNDARY
- 
- 
- 

Company (Developer)	Site Plan	Elevations Arch.	Pro Forma #'s	City/Agency Revenue	Commitment Letters	Financing Mechanisms
Alexander Haagen 3500 Sepulveda Blvd. Manhattan Beach Calif. 90266	Retail: 820,000 sf GLA Theater: 25,000 sf GLA Rest.: 10,000 sf GLA <u>Office: 300,000 sf GLA</u> Total 1,155,000 sf GLA	Submitted as required Leason Pomeroy Architects	°direct purchase/or participation °pre tax cash flow provided °internal equity provided °anticipated rent not provided on per sf basis °sales per sf not provided. °ROI not provided °(pro forma shows loss)	Revenues calculated guaranteed for 20 yrs @ \$5M per year revenues not P.V.'d	No commitment Letters included	Internal financing plus Wells Fargo line of credit Bank references
"Burbank Gateway Center"	400 room hotel					
Watt/Cusumano 101 So. First St. Burbank, CA 91502	Retail: 499,000 sf GLA Comm. Theater: 215,000 sf GLA 350 rm. hotel <u>Office: 805,000 sf GLA</u> Total 1,519,000 sf GLA	Submitted as required MCG Arch.	°direct purchase plus particip. °pre tax cash flow provided °no ROI provided	\$30,000,000 purchase price \$7,692,425 participation, \$65,434,504 taxes (over 10 yr. period)	Wards Marshalls Stor Mann	Construct financing Tokai Bank Permanent financing, Teachers Insurance
"City Circle Center"						
Triple Five Dev. Development Ent. Ltd. & L. J. Hooker	Retail: 1,697,000 sf Office/ Retail: 60,000 sf Ent/ Theater: 50,000 sf Grocery: 50,000 sf Restaurant: 40,000 sf Health C.: 60,000 sf Hotel Facility: 50,000 sf Office: 3,000,000 sf <u>Hotel: 1,500 rooms</u> Over 4.6M sf	Submitted as required Sunderland Architects	°City gets percentage of net cash flow % undefiend in RFQ/P °retail sales per sf projected by class and type of store °rents are projected at between \$3 - \$30 per sq. ft. °hotel room rate projected @ \$100 per night °no pro forma provided	All sources of revenue = \$165,000,000 in first ten years  PV of all revenue streams over life of CC project area = \$216,323,780	B. Altman Bonwit Teller	Citi Bank
"Fashion Mall at Burbank"						
P & K Associates J.V. The Price Co. & Kornwasser	Retail: 800,000 sf Theater: 8 plex Restaurants: 3 Office: 717,000 sf <u>Hotel: 250 rooms</u> Total: 1.5M sf Parking: 8,026 spaces	Elevations submitted as required/ Feola-Deenham Partnership	Land acq. = \$4 per yr. lease or 15% of net operating income = total of \$37M for 59 yrs. °\$41M loan for parking °Pro forma submitted complete including ROI	°sales tax = \$2.25M - \$3.25M first year. °Bed tax \$445,000 - \$515,000 based on \$65-85 per night room rate TI = 2,750,000 to 3,000,000 Portion of revenue used to retire the bonds	Price, Home Express, Nordstrom Rack, etc.	Internal financing
"The Burbank Promenade"						

**PROPOSED OWNER PARTICIPATION AGREEMENT BETWEEN  
VICTOR K. GEORGINO AND BURBANK REDEVELOPMENT AGENCY**

Project Location

- City Centre Project, City of Burbank
- Block bounded by Palm Avenue, Golden Mall, Orange Grove Avenue, and First Street

Scope of Development

- 1500 seat, four screen addition to an existing 2500 seat 10 screen AMC Theatre.
- $\pm$  6000 sq. ft. Food Court with  $\pm$  3000 sq. ft. of commercial office space on second level
- $\pm$  6500 sq. ft. Restaurant (full service dinner house type)
- $\pm$  400 space public parking structure

Financial Terms

- Georgino to purchase approximately 42,392 sq. ft. of Redevelopment Agency/City property at \$23/sf for \$975,000
- Georgino to purchase property not yet owned by Agency at Agency expense, exclusive of relocation expenses, currently estimated at \$400,000.
- Georgino to contribute 50% of cost of public parking structure. Agency to contribute remaining 50%.

Tentative Schedule

- OPA public hearing before Redevelopment Agency Board for authorization to execute January 3, 1989.
- Escrow open for land sales - Mid January, 1989
- Close escrow - April 3, 1989
- Georgino begins construction on restaurant and food court - Summer, 1989.
- All construction complete - Summer; 1990.

SH\_1209/jed

AMC THEATRE  
Existing

6500 #  
Food COURT

NOT INCLUDED IN  
DEVELOPMENT

GOLDEN MALL

PALM AVE.

ORANGE GROVE AVENUE

400 SPACE  
PARKING STRUCTURE

FIRST STREET

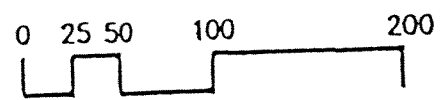
6500 # RESTAURANT

AMC THEATRE  
EXPANSION

PROPOSED PROJECT

EXHIBIT "A"

STREET AND PARCEL MAP





OFFICE OF THE CITY ATTORNEY  
275 E. OLIVE AVE. • P.O. BOX 6459 • BURBANK, CALIFORNIA 91510  
(818) 953-9614

DOUGLAS C. HOLLAND  
CITY ATTORNEY

October 25, 1988

Ms. Lilly Spitz  
Fair Political Practices Commission  
P.O. Box 807  
Sacramento, California 95804

Re: Request for Formal Written Advice  
Our File: 201-1

Dear Ms. Spitz:

As the City Attorney for the City of Burbank, I am hereby requesting formal written advice pursuant to Government Code §83114(b) and §18329 of the regulations of the Fair Political Practices Commission. I have been authorized by Susan Boyle, Redevelopment Division Manager for the City of Burbank, to make this request relating to her duties under the Fair Political Practices Act.

Background Information

Susan Boyle is and has been since November 1, 1987, the manager of the Redevelopment Division of the City of Burbank Community Development Department. Her job duties include supervision of all projects within the redevelopment area of the City of Burbank. She is employed by the City of Burbank and reports directly to the Director of Community Development who in turn reports to the City Manager. She currently supervises a staff of 14, including project managers and analysts, administrative assistant and analyst, real estate agents and secretarial and clerk support staff. Her general job duties include participation in assembling redevelopment projects and in formulating recommendations to the Community Development Director and City Manager who ultimately make recommendations to the Burbank Redevelopment Agency which then votes on various aspects of redevelopment projects and other related items.

Ms. Boyle recently married Vic Georgino, a private landowner and developer in Burbank. Mr. Georgino holds an Exclusive Right to Negotiate with the Redevelopment Agency for the City of Burbank for an area commonly known as "Palm Court" within the City Centre Redevelopment Project area. In the event an agreement is reached between the Agency and Mr. Georgino, this "Palm Court" project will involve the conveyance of Agency-owned real property to Mr. Georgino. He also owns property upon which the current AMC tenplex movie theater is situated. This property is also within the City Centre Redevelopment area and was developed as a redevelopment project by Mr. Georgino prior to the commencement of his relationship with Ms. Boyle. The AMC project was completed in mid-1986.

Oct 28 8 47 AM '88  
FPPC

Lilly Spitz

Re: Request for Formal Written Advice

October 24, 1988

Page 2

Ms. Boyle began a social relationship with Mr. Georgino in late 1986, after the completion of the AMC theater project. She disassociated herself from participating in any project or proposal submitted by Mr. Georgino from that date forward. Since their engagement in April of 1988, she formally disqualified herself from any participation in or supervision of any her staff members relative to projects and/or proposals submitted by Mr. Georgino. Specifically, with respect to the Palm Court property (for which Mr. Georgino currently has an Exclusive Right to Negotiate with the Redevelopment Agency), Ms. Boyle has not participated in any preliminary discussions, negotiations, compromises, planning, solicitation of bids, or any other facet of the proposal. Any of her staff members who have been assigned to work on Mr. Georgino's proposed Palm Court Project are not required to and do not in fact report in any manner to Ms. Boyle regarding any aspect thereof.

Our office has already issued a legal opinion (attached hereto) in which an analysis of the various applicable Code sections, including Government Code Section 1090 et seq., Health & Safety Code Sections 33130 et. seq. and Government Code Sections 87000 et seq. has been made. We have recommended that, in the event an agreement is reached with Mr. Georgino, with respect to the development of the "Palm Court" property, that Ms. Boyle expressly waive and divest herself of any interest in the proceeds of any such project including, but not limited to the execution of quitclaim deeds. Although we do believe that Mr. Georgino's property remains his separate property unless an expresse gift to the marital community is made, we believe that requiring a disclaimer and/or quitclaim deed further insulates Ms. Boyle from any conflict of interest.

Our most pressing concern at this time has to do with a 40-acre parcel of land which has been assembled over the course of a number of years by the Redevelopment Agency. This "40-acre Site", as it is known in Burbank, was originally intended to be developed as a retail shopping mall. Unfortunately, approximately two years ago, one of the major department store anchors reneged on its commitment, causing the domino-like collapse of the entire proposed project. The Developer, Hahn and Company, ultimately was declared in default under its Disposition and Development Agreement. Subsequent to that deal falling through, the Disney Corporation executed into an Exclusive Right to Negotiate Agreement with the Redevelopment Agency for purposes of coming up with a proposal for the 40-acre Site.

Lilly Spitz  
Re: Request for Formal Written Advice  
October 24, 1988  
Page 3

Earlier this year, Disney declared its inability and/or unwillingness to develop the Site. The Redevelopment Agency then basically opened the Site to the open market and requested proposals. Four substantial proposals for mixed retail, commercial, etc. uses are currently under consideration. The developers are currently putting together final responses to a request for proposals and evaluations of these final responses by staff and the Agency members will begin in earnest on December 1, 1988.

It is anticipated that the Redevelopment Agency will in fact make some sort of final determination as to the disposition and development of the Site; however, what the ultimate result will be is anyone's guess. The Agency could conceivably decide to develop the Site itself, could accept any one of the four remaining proposals, or combinations thereof. All of this information regarding the 40-acre Site is pertinent to our query in that one of its borders is 462 feet from Mr. Georgino's existing AMC Theater Complex and the Palm Court Property for which he currently has the Exclusive Right to Negotiate with the Agency.

Request for Written Advice.

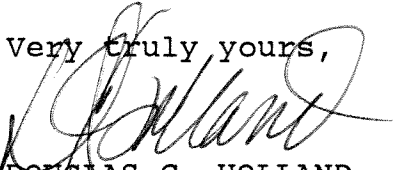
Your advice is requested with respect to the following issues:

1. Under the new materiality rules promulgated by the FPPC, will Ms. Boyle be precluded from participating in any manner in the development of any parcels within 300 feet of either Mr. Georgino's AMC Property or the Palm Court Property? (For purposes of this inquiry, we interpret "participation" to include discussion, negotiation, recommendations and supervision of staff involved in all facets of developing projects for the Redevelopment Agency.)
2. Again, under the new materiality rules promulgated by the FPPC, what guidelines would you formulate for us to utilize in determining the nature and extent of allowable participation by Ms. Boyle in the development of property within the 300 to 2500-foot range of Georgino's property, generally; and specifically relative to the 40-acre Site.

Lilly Spitz  
Re: Request for Formal Written Advice  
October 24, 1988  
Page 4

If you have any questions, or if you require additional information regarding this request, please do not hesitate to contact me. Because the development of the 40-acre Site is currently in progress, although in its relatively nascent stage, we would sincerely appreciate your most expeditious attention to this request. Thank you again for your courtesy and cooperation.

Very truly yours,



DOUGLAS C. HOLLAND  
City Attorney

DCH:jm  
JSPFPPC

OFFICE OF CITY ATTORNEY

DATE: October 5, 1988

TO: Robert Ovrom, City Manager  
William Kelly, Community Development Director  
Sue Boyle, Assist. C.D. Director-Redev. Admin.

SUBJECT: Boyle/Georgino Marriage--Potential Conflict of Interest  
Our File: 201-1

Introduction

The very recent marriage of Susan Boyle (Redevelopment Division Manager) and Vic Georgino (private developer with Exclusive Right to Negotiate with Redevelopment Agency) has raised several questions regarding the applicability of the various statutory provisions designed to prevent conflicts of interest within public employment.

The pertinent issues to be addressed are as follows:

1. To what extent, if at all, the provisions of Government Code §§1090 et seq., 87100 et seq., and Health and Safety Code §§33130 et seq., apply to the facts as they exist; and
2. What remedial measures are available to avoid and/or eliminate any potential conflict of interest those provisions proscribe.

It is the opinion of this office after review of the facts and applicable statutory and case authorities that, in fact, all potential legal conflicts of interest can be eliminated which would prevent Susan Boyle from performing her duties as Redevelopment Division Manager. Reasonable measures are available and will be taken to preclude and prevent any such legal conflicts of interest.

Preliminary Facts

Susan Boyle is and has been since November 1, 1987, the manager of the Redevelopment Division of the City of Burbank Community Development Department. Her job duties include supervision of all projects within the redevelopment area of the City of Burbank. She is employed by the City of Burbank and reports directly to the Director of Community Development who in turn reports to the City Manager. She currently supervises a staff of 14, including project managers and analysts, administrative assistant and analyst, real estate agents and secretarial and clerk support staff. She generally participates in assembling redevelopment projects and in formulating recommendations to the Community Development Director and City Manager, who ultimately make recommendations to the Burbank Redevelopment Agency which then votes on various aspects of redevelopment projects and other related items.

Robert Ovrom  
Re: Boyle/Georgino  
October 5, 1988  
Page 2

Vic Georgino is a private land owner and developer. He currently holds an Exclusive Right to Negotiate Agreement with the Redevelopment Agency for the City of Burbank for an area commonly known as "Palm Court" within the City Centre Redevelopment Project area. The "Palm Court" project will involve the conveyance of Agency-owned real property to Mr. Georgino. He also owns that property on which the current AMC ten-plex movie theater is situated. This property is also within the City Centre Redevelopment Area and was developed as a Redevelopment project by Mr. Georgino. The project was completed in mid-1986.

Ms. Boyle began a social relationship with Vic Georgino in late 1986, after the completion of the AMC Theater project. In order to avoid the appearance of impropriety, Ms. Boyle disassociated herself from participation in any project or proposal submitted by Mr. Georgino from that date forward. Since their engagement in April of 1988, she has formally disqualified herself from any participation in or supervision of any of her staff members relative to projects and/or proposals submitted by Mr. Georgino. Specifically, with respect to property for which Mr. Georgino currently has an Exclusive Right to Negotiate with the Redevelopment Agency, Ms. Boyle has not participated in any preliminary discussions, negotiations, compromises, planning, solicitation of bids, or any other facet of the proposal. Any of her staff members who have been assigned to work on Mr. Georgino's proposed project are not required to and do not in fact report in any manner to Ms. Boyle regarding any aspect thereof.

#### Applicable Law

##### A. Government Code §§1090, et seq.

Government Code §1090 states that City officers or employees shall not be financially interested in any contract made by them in their official capacities. The obvious question is how this section applies to any further contractual relationship between Georgino and the Redevelopment Agency with respect to the property for which he currently has an Exclusive Right to Negotiate Agreement with the Agency.

Based upon the simple relationship of Ms. Boyle's position as Redevelopment Division Manager to the hierarchical structure of the City, Ms. Boyle is not in any position nor does she have the authority to enter into a contract with Mr. Georgino in her official capacity. Although the concept of entering into a contract has been construed at least by one court to include discussions, negotiations, preliminary drawings, etc., Ms. Boyle has effectively disassociated herself from any of these aspects

Robert Ovrom  
Re: Boyle/Georgino  
October 5, 1988  
Page 3

as well. As long as she continues to disassociate herself from any involvement whatsoever with the proposal, including the direct supervision of any staff members who are involved in the proposal, it is this office's opinion that Government Code §1090 would not be violated.

In addition, it appears that since Mr. Georgino owned the subject property prior to their marriage, it is legally his separate property and she would not, therefore, be financially interested in any contract between Mr. Georgino and the Agency. It would be our recommendation that any future agreements entered into between the Redevelopment Agency and Mr. Georgino include a specific disclaimer by Ms. Boyle of any interest in the agreement and/or property relating thereto.

B. Health & Safety Code §§33130 et seq.

In addition to Government Code §1090, Health and Safety Code §33130 provides that an employee who in the course of his or her duties is required to participate in the formulation of or to approve plans or policies for the redevelopment of a project area shall not acquire any interest in any property included within a project area. Any financial interest must be disclosed.

Ms. Boyle can fully comply with this provision and avoid the statutory proscriptions. Ms. Boyle is not in a position to participate in the formulation of or approve plans or policies for the redevelopment of Mr. Georgino's project since she has specifically taken herself out of the "loop" regarding his proposals. Additionally, she does not at this time have any financial interest in any property within a redevelopment project area. As we already indicated above, if in the future, the Agency enters into an agreement with Mr. Georgino to develop his property as a redevelopment project, it would be our recommendation that any such agreement be structured to include a disclaimer from Ms. Boyle of any interest in the property which she could derive as the result of her marital relationship with Mr. Georgino. Again, as of the date of the marriage, Mr. Georgino's property is legally his separate property absent a gift by him of that property to the marital community.

It must also be remembered that as long as Ms. Boyle is employed as the Redevelopment Division Manager, she will be prohibited from acquiring an interest in real property in the redevelopment area. Our initial review of the law suggests that appropriate disclaimers and/or execution of quitclaims should provide sufficient insulation to ensure compliance with this provision of the law. We would also suggest that it might be prudent to condition any conveyance of Agency property to Mr. Georgino on

Robert Ovrom  
Re: Boyle/Georgino  
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the presentation of a validation proceeding. Such a proceeding would be designed to request a court to validate the entire transaction and, in essence, find that the safeguards outlined in this paragraph provide full legal assurances that Ms. Boyle has not, by virtue of a separate transaction involving the Agency and Mr. Georgino, acquired an interest in property in violation of Section 33130.

C. Government Code §§87000 et seq.

The final area of concern revolves around Government Code §87000, et seq. Specifically, Government Code §87100 provides that no public official or employee shall make, or participate in the making of, or in any way attempt to use his official position to influence a decision in which he knows or has reason to know that he has a financial interest.

Government Code §87103 defines a "financial interest" as one where it is reasonably foreseeable that the decision will have a material financial effect on the official or a member of his or her immediate family.

Obviously, again, whether or not the proscriptions of these sections are applicable depends upon the extent, if any, of Ms. Boyle's participation in the making or influencing of a decision regarding Mr. Georgino's property. Secondary, of course, is the extent if any, of her "financial interest" in a resulting decision.

It is our opinion that the proscriptions contained in these sections are avoided by Ms. Boyle's total removal from participation in any manner whatsoever in discussions, negotiations, recommendations, etc., relating to Mr. Georgino's existing property. In addition, we have been recently advised of a new FPPC rule which creates a presumption of a conflict of interest on any decisions relating to property within 300 feet of a property in which the employee or a member of her immediate family has an interest. It is our recommendation that from this point forward, Ms. Boyle refrain from participating in any manner whatsoever in the discussions, negotiations, formulation or recommendations, etc., regarding any property within 300 feet of the property for the Palm Court proposal and the AMC Theater complex.

The new FPPC rules also have a potential impact on decisions relating to property outside of the 300 foot radius within a radius of 2,500 feet of the property in which an employee or a member of his or her family has an interest. Under these circumstances, the rules provide that a decision will be material if the decision will have a reasonably foreseeable financial

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effect of (1) \$10,000 or more on the fair market value of the real property owned by the employee or a member of the immediate family, or (2) will affect the rental value of the property by \$1,000 or more per 12-month period. The FPPC rules also requires consideration of two additional factors in determining whether a decision will have the proscribed effects. These two factors which must be considered are:

1. The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property owned by the employee or a member of his or her family; and
2. Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property.

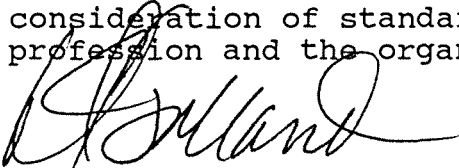
We have drafted a request to the California Fair Political Practices Commissions to assist us in formulating guidelines to help define Susan Boyle's future role with respect to anything outside the 300-foot perimeter of Georgino's "Palm Court" proposal and the AMC Theater complex. We believe that Ms. Boyle may continue to work on the projects outside of this 300 foot radius during this interim period while we wait on the FPPC opinion. The potential for a conflict of interest relating thereto may be remote and would be speculative at best at this time.

#### Conclusion

We have reviewed the applicable law with respect to this rather unique situation which has occurred as the result of the marriage between Sue Boyle and Vic Georgino on October 2, 1988. Based upon the facts as they exist, it is our opinion that Ms. Boyle's current posture of removing herself from any participation whatsoever in discussions, negotiations, recommendations, etc., relating to Georgino's property for which he has an Exclusive Right to Negotiate Agreement with the Agency sufficiently minimizes any legal conflict of interest as defined in the applicable code sections and related case authorities. We are confident that the Fair Political Practices Commission will assist in formulating guidelines for future actions as well.

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This memorandum is also limited to conflicts of interest as expressly defined under state law. We have not been requested nor do we offer an opinion as to whether any appearances of conflicts of interest may exist. Such a determination is an ethical issue that should only be resolved after due consideration of standards and factors relevant to Ms. Boyle's profession and the organization.



DOUGLAS C. HOLLAND  
City Attorney

DCH:JCS:jm  
JSPOVROM

cc: Al Dossin, Mayor  
Robert Bowne, Vice-Mayor  
Michael Hastings, Councilmember  
Mary Lou Howard, Councilmember  
Mary Kelsey, Councilmember



# California Fair Political Practices Commission

October 31, 1988

Douglas C. Holland  
City Attorney  
P.O. Box 6459  
Burbank, CA 91510

Re: 88-412

Dear Mr. Holland:

Your letter requesting advice under the Political Reform Act was received on October 28, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Kathryn E. Donovan*  
Diane M. Griffiths  
General Counsel

DMG:plh  
cc: Susan Boyle