

802.2(d)

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, December 20, 2005 6:46 PM
To: Verne, B. Michael
Subject: Confirmation re December 16, 2005 Telephone Conversation

Mr. Verne

This email is to confirm my understanding of our telephone conversation of Friday, December 16, 2005. Our conversation concerned the applicability of the exemption from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR Act"), provided by subsection (d) of 16 CFR Section 802.2 regarding office and residential property.

Background

Our client is a commercial homebuilder. As we discussed, our client entered into a non-binding letter of intent to purchase the homebuilding assets of another company (the "Seller"). The letter of intent contemplates that our client will acquire from the Seller the assets described below pursuant to the terms of a definitive purchase agreement.

The letter of intent contemplates that our client will acquire the following assets (collectively referred to herein as, the "Acquired Assets"):

- * The following three categories of residential lots:
- * lots that have been subdivided and platted for residential use, but not yet sold to homebuyers, all with varying levels of improvements thereon ranging from no improvements to completed residences (the "Unsold Lots");
- * lots that are under contract with residential homebuyers, but have not closed, all with varying levels of improvement thereon ranging from poured foundations to completed residences (the "Backlog Lots"); and
- * lots that have been subdivided and platted for residential use, but that have no improvements thereon (the "Future Lots," and together with Unsold Lots and Backlog Lots, the "Acquired Lots");
- * All housing inventory (including all work in progress, specification homes and model homes) constructed on the Unsold Lots and the Backlog Lots (the "Direct Construction"); and
- * Various other assets relating to the homebuilding business of the Seller, including, without limitation, the Seller's trade name, software related to its accounts payable, signage, subcontractor agreements and rights to architectural plans and CAD engineering drawings (the "Other Construction Assets").

The acquisition of the foregoing assets will be structured in a series of closings to be completed over a period of approximately 48 months. At the initial closing, which the letter of intent contemplates will occur in the first quarter of 2006, it is contemplated that our client will acquire all of the Unsold Lots, Backlog Lots, Direct Construction and Other Construction Assets. The letter of intent contemplates that our client will acquire the Future Lots through a series of subsequent closings taking place between June 2006 and April 2010. Subject to further due diligence by our client, the approximate

values expected to be attributed to these assets are as follows:

Initial Closing:

Estimated Purchase Price

(dollars in millions)

Unsold Lots.....

\$31.5

Backlog Lots.....

8.0

Direct Construction.....

7.7

Other Construction Assets.....

>1.0

Total (initial closing).....

\$48.2

Subsequent Closings:

Future Lots.....

\$55.5

Total Purchase Price.....

\$103.7 million

The estimated aggregate amount that our client expects to pay for the Acquired Lots is approximately \$95.0 million.

Applicability of Rule 802.2(d)

During our call, we discussed my understanding of the scope of Rule 802.2(d) and whether the Acquired Lots would fall within the concept of “office and residential property” set forth in Rule 802.2 (d). Based on our conversation and my review of Informal Staff Opinion 0503022, it is my understanding that the staff of the Federal Trade Commission Premerger Notification Division interprets subsection (d)(2)(iv) of Rule 802.2 relating to “assets incidental to ownership of such property” as illustrative, but not exhaustive, of “real property that is used primarily for office or residential purposes.”

Based on the foregoing understanding, I inquired whether the Acquired Lots could qualify as “office or residential property” pursuant to subject (d)(2)(iv) of Rule 802.2. I understood you to conclude that, because the Acquired Lots are being purchased together with other residential property assets (i.e., completed homes and other assets related to the construction of such homes), that the Acquired Lots would constitute “assets incidental to the ownership” of residential property, thus,

qualifying for the exemption provided by Rule 802.2(d). Further, I understood this conclusion to relate to both Acquired Lots with improvements constructed thereon and Acquired Lots with no improvements but upon which residences are to be constructed. I respectfully request that you confirm that the foregoing understanding of our telephone conversation is correct by responding to this email.

Thank you for your attention to this matter.

AGREE-
B. Michael
12/20/05

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