

This material may be subject to the confidentiality provision of Section 7A (b) of the Clayton Act which restricts release under the Freedom of Information Act

June 20, 1985

Victor Cohen, Esq.
Premerger Notification Office
Bureau of Competition
Room 303
Federal Trade Commission
Washington, D.C. 20580

RECEIVED
JUN 21 9 50 AM '85
PREMERGER
NOTIFICATION
OFFICE

Dear Mr. Cohen:

This is to confirm the conversation that we had on June 18th concerning whether a possible acquisition that [redacted] is considering making would require the filing of Hart-Scott-Rodino Notification and Report Forms.

In our conversation I described a proposed acquisition of all of the voting securities of a corporation having total assets in excess of \$25 million whose major asset was the ownership of real property in [redacted] and who was only engaged in the business of developing and selling lots of such real property, without being engaged in the construction and sale of buildings or the rental of buildings. You advised that, based on my description of the proposed transaction and the business activities of the [redacted], the Premerger Notification Office was of the opinion that the acquisition of 100% of the voting securities of the [redacted] would be exempt from the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act, the basis of the exemption being: 1) Section 7A(c)(1) of the Clayton Act, which exempts acquisitions of goods or realty transferred in the ordinary course of business from such filing requirements; and 2) Rule 802.1(a) of the Rules issued pursuant to Part 800 of Title 16 of the Code of Federal Regulations which provides that for purposes of Section 7A(c)(1) of the Clayton Act an acquisition of the voting securities of an entity whose assets consist or will consist solely of real property and assets incidental to the ownership of real property shall be deemed an acquisition of realty. It is my understanding that the Premerger Notification Office's position is that a corporation, such as the [redacted] that is engaged in the development of land and that is not engaged in the construction and sale of buildings or in the rental of buildings is deemed to be an entity whose assets consist solely of real property and assets incidental to the ownership of real property and that the acquisition of all of the voting securities of such a corporation is exempt from the filing requirements, notwithstanding the provision of Rule 802.1(b) since even though all of the assets of the entity are being acquired, the assets consist solely real property and assets incidental to the ownership of real property.

O.T.
APC 6-21-85

June 20, 1985

Page 2

In the remainder of this letter I have set forth a detailed explanation of the proposed transaction and the business activities of the [REDACTED] and certain other persons. I am providing this explanation in order to assure that the advice that you provided to me in our telephone conversation is still accurate when examined against this more detailed explanation of the proposed transaction and the business activities of the [REDACTED] and these other persons.

As I stated, the acquisition would be in the form of a purchase of all of the voting securities of the [REDACTED] that has total assets that are in excess of \$25 million. The purchase would be made from a company that presently owns all of the voting securities of the [REDACTED] (the "Parent"). The major asset of the [REDACTED] is real property located [REDACTED] that has been subdivided into nine phases containing a total of 553 residential lots. The only business of the [REDACTED] consists of the development and sale of these residential lots.

[REDACTED] as completed development of three of the nine phases and all of the lot sales have taken place in the three developed phases. The development work on the lots consists of the installation of utilities, the establishment of roadways, and the general grading of the lots to establish view planes and view channels.

After a lot is sold, the owner, if he wishes to build on the lot must obtain a building permit from the governmental authorities that approves of the construction of the building and of any additional grading that may have to be performed on the lot in order to assure that the residence will not violate another person's view planes and view channels. In addition, before a residence can be constructed, the architectural committee of a homeowners' association that has been established for the owners of the residential lots (the "Homeowners' Association") must approve the building plans. (The charter of the Homeowners' Association provides that the [REDACTED] is a member of the Homeowners' Association. In addition, two of the three present members of the [REDACTED] and the third member is an officer of the Parent.)

No assistance is provided by the [REDACTED] or the [REDACTED] (both of which are defined below) in enabling an owner to build on his lot. The owner must provide any additional grading of the lot, obtain any architectural plans, must obtain the required building permits, must obtain the approval of the architectural committee of the Homeowners' Association, and must arrange for the building of the residence.

Since January 1, 1985, sales of the lots that have been developed for sale by the [REDACTED] have only been sold by another [REDACTED] (the [REDACTED]) under an exclusive listing agreement. The listing agreement cannot be terminated, without cause or the occurrence of either of two specific events (the bankruptcy of the [REDACTED] or the termination of employment of an individual as the [REDACTED]) unless 12 months notice is given. (If termination is for cause or upon the occurrence of either of the two specific events, then the listing agreement can be terminated on 60 days advance notice.) The voting

June 20, 1985

Page 3

securities of the [REDACTED] are owned solely by the [REDACTED] and his wife, who are also its only officers and directors. These persons are not in control of, or significant shareholders of, the Parent. (They own less than two one-hundredths of one percent of the outstanding voting securities of the Parent.)

As of May 31, 1985, the balance sheet of the [REDACTED] included the following categories of assets:

Operating Cash

Accounts Receivables (which arose from the sale of lots)

Inventory (in the form of lots that are available for sale)

Real Estate Under Development (lots that are in the three developed phases but on which improvements must be made before they are available for sale)

Other Assets (which consist of escrow deposits on lots, deposits for permits, deposits with contractors)

Mortgage Notes (which arose from the sale of lots)

Property and Equipment (which consist of the sales office, and improvements in form of utilities and grading)

Furniture and Fixtures

Transportation Equipment

Land Held for Future Development

Since approximately September, 1984, the [REDACTED] has not engaged in the construction or sale of buildings on the real property, has no houses for sale on the real property and has no present intent to engage in the construction or sale of buildings. Prior to that time, the [REDACTED] did, on occasion, build and sell a house on the real property. Only one such house was sold in each of 1984 and the 1983 calendar years.

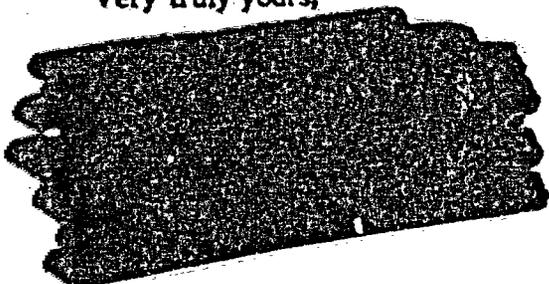
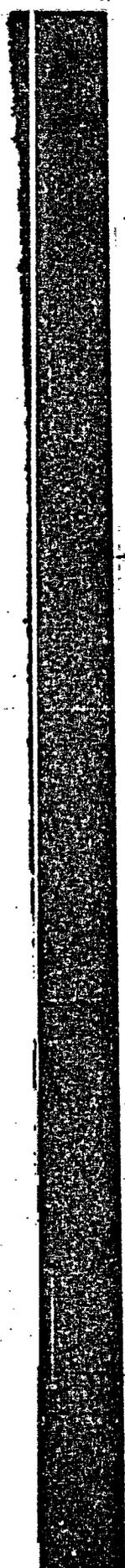
Under the terms of the exclusive sales agreement, the [REDACTED] or a corporation in which the individual who is the [REDACTED] owns at least 90% of the voting securities (the [REDACTED]), may obtain a form of financing from the [REDACTED] that could involve the construction and sale of residences by the [REDACTED]. This arrangement is that these corporations could, at any one time, purchase and own up to an aggregate of two lots at a stipulated sales price, with the payment of the purchase price being deferred for up to 24 months. The deferred purchase price would be paid out of the proceeds of the sale together with simple annual interest thereon of 9-1/2%. The purchase price would be secured by first mortgages on the lots that would be subordinated in favor of a qualified lending institution making residential construction loans. The [REDACTED] however, has no equity investment in either the [REDACTED] and, aside from receiving interest upon the deferred purchase price of the lots, would receive no benefit from the sale of the residences constructed on the lots. At the present time, the [REDACTED] has constructed, and is attempting to sell, two houses under this program. The voting securities of the [REDACTED] are owned solely by the [REDACTED] and his wife, who are also its only officers and directors. As reported above, these persons are not in control of, or significant shareholders of the Parent.

June 20, 1985
Page 6

If you have any questions about the above explanation, please do not hesitate to contact me.

Thank you.

Very truly yours,

A large, dark, rectangular area that has been completely redacted, obscuring the signature and any text that might have been present.A long, narrow, vertical black bar that runs down the right side of the page, completely redacting any text or graphics that might have been there.