

Approved as to Form and Legality**

City Attorney

City of Oakland
Public Ethics Commission
July 7, 2003

)
) Complaint No.: **Unfiled**
)

In the matter of campaign contributions by Signature Properties dated January 25, 2002, and February 19, 2002.

I. BACKGROUND

During the March, 2002, elections, City Council candidates David Stein and Moses Mayne both received contributions from a company known as "Signature Properties." Mr. Stein reportedly received his January 25, 2002, contribution on January 30, 2002. Attachment 1. Mr. Mayne reportedly received his February 19, 2002, contribution on March 1, 2002. Attachment 2.

A question was raised by city staff whether Signature Properties made its respective contributions while it was within a period of negotiation with the City on a contract to provide certain street improvements along International Boulevard.

II. APPLICABLE LAW AND ANALYSIS

The Oakland Campaign Reform Act ("OCRA") generally prohibits persons seeking to contract with the City and Redevelopment Agency from making a campaign contribution between the time the negotiations for the contract commence, and 180 days after the negotiations have been completed or terminated. This prohibition extends only to contracts that require the approval of the City Council or Redevelopment Agency. [OCRA §3.12.140(A)(B)]

Negotiations are generally deemed to "commence" when the contractor either submits, or is asked to submit, a formal bid, proposal, qualification or contract amendment. Negotiations are generally deemed to be "completed" when the City executes the contract or amendment. [OCRA §3.12.140(G)(H) and (K)]

On July 24, 2001, the Oakland City Council adopted a resolution authorizing the City Manager to negotiate a contract with Signature Properties for the construction of various street improvements along International Boulevard. The City desired to enter the contract because Signature Properties was about to begin street improvements on a separate housing project it was constructing. The City had earlier planned to undertake similar street improvements in the same area as part of its citywide "Streetscape Project." Since Signature Properties was already prepared to begin its improvements, it offered to perform the work the City was planning to perform at less cost and on a faster schedule. According to a City staff report accompanying the proposed resolution, the

street improvements proposed and completed by Signature Properties "would enhance the entrance into Oakland from San Leandro and improve the marketability of their [Signature Properties] units."

The contract was ultimately executed by City representatives on or about November 7, 2001. As stated above, the campaign contributions in question were made well within the 180-day period after the contract was executed.

A representative for Signature Properties told Commission staff that Signature Properties had no intention of influencing the award or negotiation of the contract. The contract was only proposed because Signature Properties was already in position to perform street improvements in the area. It claims Signature Properties offered to construct the City's public improvements "at Signature's cost (without expectation of profit)." Attachment 3. Since Signature Properties does not typically bid on public works projects within the City of Oakland, it did not internally track the 180-day period following the execution of the contract. It claims it will begin doing so in the future.

III. STAFF RECOMMENDATION

Commission staff has prepared and recommends for Commission adoption a proposed Stipulation, Decision and Order to resolve the above matter. Attachment 4. Signature Properties is agreeable to its terms and has executed it, subject to Commission approval. The proposed settlement amount is consistent with other prior settlements the Commission has approved in other comparable matters.

Respectfully submitted,

Daniel D. Purnell
Executive Director

City of Oakland
Public Ethics Commission
July 7, 2003

In The Matter of) Complaint No.: **Unfiled**
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Campaign Contributions By) **[Proposed]** Stipulation,
Signature Properties) Decision and Order
Dated 1/25/02; 2/19/02

It is hereby stipulated by and between the City of Oakland Public Ethics Commission and Signature Properties:

1. On July 24, 2001, the Oakland City Council adopted a resolution authorizing the City Manager to negotiate a contract with Signature Properties for the construction of various street improvements along International Boulevard. The City reportedly sought to enter the contract because Signature Properties was about to begin street improvements on a separate, adjacent housing project it was constructing at Durant Square, the site of the former General Motors facility. The City had earlier planned to undertake similar street improvements in the same area as part of its citywide "Streetscape Project." Since Signature Properties was already prepared to begin its improvements, it offered to perform the work the City was planning to perform at less cost and on a faster schedule. The City of Oakland executed the contract with Signature Properties on or about November 7, 2001. On January 25, 2002, and on February 19, 2002, Signature Properties made campaign contributions in the amount of \$250 each to City Council candidates David Stein and Moses Mayne, respectively.

2. Commission staff contends that Signature Properties was within the 180-day period following the City's execution of a contract requiring City Council approval when the contributions were made, thus potentially violating OCRA Section 3.12.140 [Prohibition On Contractor Contributions]. Signature Properties contends that: 1) it had no intent to influence the award or negotiation of the contract; 2) the contract provided a significant benefit to the City by performing work previously planned by the City at Signature Properties' cost; and 3) Signature Properties does not normally bid on public works contracts within the City of Oakland and therefore had no internal means to track the end of the negotiation period to determine when a subsequent contribution might be permissible. Signature Properties contends that it has since put in place an internal system to track such dates in the future.

3. Pursuant to Commission General Complaint Procedures Section XII(F), Commission staff recommends that the contentions stated in paragraph 2 be resolved as follows:

A) Within ten (10) business days after this Stipulation, Decision and Order ("Stipulation") is approved by the Commission, Signature Properties shall make a

settlement payment of \$250.00 in a check made payable to "The City of Oakland" and mail or deliver the check to the offices of the Public Ethics Commission.

B) Nothing in this Stipulation shall be interpreted as an admission of wrongdoing by Signature Properties, its owners, agents, trustees or representatives. The parties have entered into this Stipulation to avoid any further proceedings before the Commission.

C) Signature Properties and its owners, agents, trustees and representatives knowingly and voluntarily waive all rights to a hearing before the Commission on the merits of the contentions contained in paragraphs 2.

D) Signature Properties and its owners, agents, trustees and representatives understand and acknowledge that this Stipulation 1) will not be effective until it is approved by the Commission; 2) is not binding on any other law enforcement agency and does not preclude the Commission or Commission staff from referring the matter to, cooperating with, or assisting any other government agency with regard to the subject matter of this Stipulation; and 3) will become null and void if the Commission refuses to approve it. If the Commission refuses to approve this Stipulation and a full evidentiary hearing before the Commission becomes necessary, the Commission's prior consideration of this Stipulation will not constitute grounds for the disqualification of any member of the Commission or Commission staff.

E) The terms of this Stipulation pertain only to the campaign contributions to Oakland City Council candidates David Stein and Moses Mayne, dated January 25, 2002, and February 19, 2002, respectively.

4) Signature Properties hereby agrees to the terms set forth in paragraph 3 above.

Dated: _____, 2003

[NAME] on behalf of Signature
Properties

**CERTIFICATION RE: APPROVAL OF STIPULATION
DECISION AND ORDER**

The foregoing Stipulation, Decision and Order ("Stipulation") was presented for approval at a duly noticed meeting of the City of Oakland Public Ethics Commission ("Commission") held on _____, 2003. A quorum of the membership of the Commission was present at the meeting. A motion approving the Stipulation was duly made and seconded, and the motion was adopted by a majority of said quorum.

I hereby certify that the foregoing is true and correct.

Dated: _____, 2003

Daniel D. Purnell, Executive Director
Oakland Public Ethics Commission

*** City Attorney approval as to form and legality elates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*