

January 31, 2013

By Email and U.S. Mail

Mr. Kurt Ulrich
Ramsey HRA Executive Director
7550 Sunwood Dr. NW
Ramsey, MN 55303
Email: kulrich@ci.ramsey.mn.us

Re: Landform Professional Services, LLC's contract with Ramsey HRA

Dear Mr. Ulrich:

I am counsel for Landform Professional Services, LLC ("**Landform**"). I understand that the City of Ramsey Housing and Redevelopment Authority ("**HRA**") has received an anonymous memorandum arguing that Landform, and its principal Darren Lazan, should not be compensated for services that Landform has provided to the HRA. I am taking this opportunity to briefly respond to the arguments made in the anonymous memorandum.

As a preliminary matter, Landform has worked with the HRA for a number of years. Landform greatly values its relationship with the HRA, as well as its reputation as a leader in land use planning and engineering. Landform's stock in trade is its professional reputation. As such, Landform is understandably dismayed that an unidentified individual has sought to disparage not only Landform, but a valued client and their contractual practices. Nonetheless, Landform is very confident that neither it nor the HRA have abridged any law of this state.

FACTUAL BACKGROUND

Landform is a party to a "Purchase Of Services Agreement" with the HRA dated April 1, 2011, pursuant to which Landform provides "development management services" (the "**Contract**"). Pursuant to the Contract, the services to be performed by Landform are those described in the Proposal dated April 1, 2011 (the "**Proposal**"), and include project organization, communication and reporting, development-related activities, planning and engineering services, feasibility study, and marketing of development concepts. The services under the Contract are to be performed from April 1, 2011 through March 31, 2013.

The Contract provides that Landform is to receive "Administrative Compensation," "Incentive Compensation," and "Additional Compensation." The administrative compensation is earned for performing various development-related tasks, entirely unrelated to the sale of any real estate.

With respect to the incentive compensation, Landform has agreed to "solicit the interest of various prospective end-users, to include individual entities, corporations, developers, and/or development partners. Landform will coordinate with the development community, and assist in the evaluation, consideration, negotiations, and deal structuring of any disposition of land within the development area." (Proposal p. 7 (emphasis added)) Incentive compensation is calculated based on a percentage (2%) of the total capital cost of the end use (development) of the parcel of property sold or developed.

The "Additional Compensation" will be earned by Landform in the event that Landform prepares various development-related documents, other than the deliverables spelled out in Article III, § B of the Proposal. Additional Compensation will be based on Landform's fee schedule, or as otherwise negotiated with the HRA.

Section X of the Contract provides that "Specifically, neither Landform, its team members, employees nor consultants are real estate brokers or salespersons as defined by Chapter 82 of Minnesota Statutes. Therefore, Landform will not be entitled to any compensation for work which requires a license under said Chapter 82."

The City of Ramsey has received an anonymous legal memorandum, arguing that Landform should not receive any compensation under the Contract because its services performed under the Contract constitute serving as a real estate broker or agent. In support of its argument, the anonymous memorandum relies principally on newspaper articles and unpublished decisions of the Minnesota Court of Appeals. The anonymous author concedes that he or she has not seen a copy of the Contract.

LEGAL ANALYSIS

1. The Contract Does Not Contemplate Compensating Landform For Providing Real Estate Brokerage Services.

The anonymous memorandum argues that Landform is not entitled to receive compensation for its services under the Contract, because such a payment would constitute compensating Landform for providing the services of a real estate broker, without a license. A review of the Contract, however, makes clear that (a) the vast majority of services performed by Landform under the Contract have nothing whatsoever to do with the sale of real estate and (b) to the extent that the services relate to the sale of real estate, they do not constitute services for which a real estate broker's license is required.

Minnesota Statute § 82.81 provides that "No person shall act as a real estate broker or salesperson unless licensed as provided in this section." A real estate broker is defined as any person who "for another and for commission, fee, or other valuable consideration or with the intention or expectation of receiving the same directly or indirectly lists, sells, exchanges, buys or rents, manages, or offers or attempts to negotiate a sale, option, exchange, purchase or rental of an interest or estate in real estate, or advertises or holds out as engaged in these activities" Minn. Stat. § 82.55, Subd. 19(a). Exempted from the licensing requirement are, among other categories, "public officers while performing their official duties," and their employees. Minn. Stat. § 82.56 (f) and (g).

Whether Landform needs to be licensed to perform the functions outlined in the Contract depends on whether it is acting as a real estate broker or salesperson, i.e. whether it (a) performs any of the following functions (b) concerning any interest or estate in real estate (c) for compensation:

- lists;
- sells;
- exchanges;
- buys;
- rents;

- manages, or,
- offers or attempts to negotiate a sale, option, exchange, purchase or rental

Minn. Stat. § 82.55, Subd. 19.

It must be pointed out that most of the services called for under the Contract have nothing at all to do with the sale of real estate. For instance, Article III of the Proposal describes Landform's obligation to perform a wide range of project management services, including reviewing project information, establishing project goals and timelines, assembling development teams, performing planning and engineering services, studying the feasibility of proposed development plans, etc. In short, Landform has been engaged to serve as the HRA's agent to manage a development project. This involves management of a process, and not management of real estate. Nothing in the Contract suggests that Landform engages in or receives any compensation for listing, selling, exchanging, buying, renting or managing any real estate.

The anonymous memorandum focuses on Landform's receipt of "Incentive Compensation" and argues that the services Landform provides in exchange for this compensation requires a broker's license. In the context of the Contract taken as a whole, and particularly in light of the contractual provision barring Landform from receiving compensation for services that require a license, the anonymous author's assumption that Landform is being compensated for acting as a broker is erroneous. Regarding Incentive Compensation, Article IV. B. of the Proposal provides

Landform shall solicit the interest of various prospective end-users, to include individual entities, corporations, developers, and/or development partners. Landform will coordinate the efforts of the Development Management Team to provide a uniform front to the development community, and assist in the evaluation, consideration, negotiations, and deal structuring on any disposition of land within the development area.

First, this section contemplates that Landform will "solicit the interest" of parties with an interest in the prospective development. This language does not obligate Landform to "list" or "sell" any interest in real estate, nor does it obligate Landform to offer or attempt to negotiate the sale of any real estate. Rather, Landform understands this language to mean that it will solicit development proposals from businesses and individuals. These business and individuals would in turn present their proposals to the HRA. It should be noted that soliciting development proposals is materially different than soliciting potential buyers. The primary difference is that a development proposal may not involve the purchase of land at all. It is not uncommon for cities to assist in the financing of a development project by granting the land to a private party as an inducement to build a project that generates tax base revenue. Landform has no control over whether a given development proposal results in the sale of land. For that reason, Landform's compensation is not dependent upon a sale. Rather, Landform is compensated based on the overall capital cost of the development, regardless of whether the HRA sells land or gives it away.

Second, this section contemplates that Landform will "coordinate" the "Development Management Team," which is defined in the Contract as including Heidi Nelson, the Executive Director of the HRA. Of course, as a City employee, Ms. Nelson is exempt from the real estate broker licensing requirement, and can negotiate a land sale agreement on behalf of the HRA. Indeed, Ms. Nelson is a necessary part of the Development Management Team precisely because she, and not Landform, is uniquely able to perform that function.

Third, this section contemplates that Landform will “assist in the evaluation consideration, negotiations, and deal structuring on any disposition of land within the development area.” The Contract does not define the term “assist.” Nonetheless, in light of Section X of the Contract, which bars Landform from receiving compensation for providing brokerage services, this section cannot be interpreted to mean that Landform is to engage in activities requiring a brokerage license. See e.g. American Warehousing And Distributing, Inc. v. Michael Management, Inc., 414 N.W.2d 554 (Minn. Ct. App. 1988) (holding that contract provision requiring distributor to “assist” in sales could not be interpreted so as to breach other contract provision barring sales in certain territories). Rather, in light of the understanding and express acknowledgment in the Contract that Landform is not a licensed real estate broker, Landform understands this section to require that it provide assistance in the form of advice regarding land development, land use, and engineering, project feasibility, etc. Landform believes that this type of advice and assistance is valuable to the HRA, and is compensable. Landform does not understand its role as serving as a principal negotiator concerning the sale of land. Historically, that role has been filled by the HRA’s attorney, city staff, and most often the HRA itself in public meetings or closed sessions.

Neither the plain language of the broker licensing statute nor Minnesota case law subjects the provision of this kind of “assistance” concerning a real estate transaction to the broker’s license requirement. Such an overreaching interpretation would be absurd, and would result in dramatic negative consequences for the City of Ramsey. For instance, such an overbroad interpretation would mean that a municipality, like Ramsey, could not hire outside experts to advise it in negotiations over real estate, unless the outside expert was a licensed real estate broker. Yet, municipalities routinely benefit from the advice of outside architects, developers, and land use professionals. This is particularly true of smaller municipalities that, unlike Minneapolis or St. Paul, cannot afford to employ full-time land use professionals on staff. It would be odd to interpret a statute designed to protect consumers as restricting a municipality’s ability to receive professional advice concerning development and sale negotiations. The bottom line is that offering advice and assisting the HRA in its negotiations to sell land does not rise to the level of direct negotiating regulated by the broker licensing statute. This interpretation is consistent with the inclusion of Ms. Nelson on Development Management Team, as well as the assignment of HRA counsel to each and every development proposed over the last three years that progressed to a potential sale of property.

Finally, it should also be noted that the anonymous author’s reliance on unpublished court of appeals decisions is misplaced. Unpublished decisions of the Minnesota Court of Appeals are not precedential, and can be relied upon by courts only in limited circumstances. See Minn. Stat. § 480A.08, subd. 3(c) (stating that unpublished court of appeals decisions are not precedential); Vlahos v. R&I Const. of Bloomington, Inc., 676 N.W.2d 672, 676 n.3 (Minn. 2004) (stating that unpublished decisions should not be relied upon because they “rarely contain a full recitation of the facts.”).

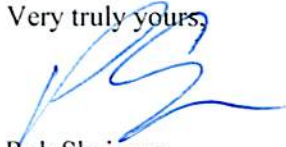
2. There Is Nothing Improper About The HRA’s Method For Calculating Landform’s Compensation

Notwithstanding the suggestion of the anonymous author, there is nothing impermissible about Landform receiving compensation that is tied to the value of the development or the value of real estate. As background, it is Landform’s recollection that this incentive structure was the choice of the HRA. Landform initially presented the HRA with a proposal that involved paying an hourly rate for Landform’s services. The HRA expressed a preference for the “incentive” compensation structure. The HRA’s

decision was practical, because it allowed the HRA to defer compensating Landform until such time as the HRA received the proceeds of a land development. The HRA's choice is also lawful, because the broker licensing law prohibits performing the services of a broker for compensation. It does not prohibit compensating otherwise permissible services based on the value of a development, or for that matter, the price of tea in China.

Landform values its relationship with the HRA, and takes tremendous pride in the progress made in The COR over the last three and a half years and looks forward to completing its contractual obligations for the benefit of all Ramsey residents.

Very truly yours,



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cc: Darren Lazan (by email)
Thomas Bray, Esq. (by email)