

Grievance of Kimberly Sandstrom Re: Ineligibility Determination 11-Feb-2016

Date: February 12, 2016

To: Sujatha Venkatraman, Director of Stability Support, West Valley Community Services, Inc.

I am disputing the determination made by your staff, Christine Nguyen, that was communicated to me as an email attachment around 6:50 pm, 11-Feb-2016.

My dispute arises from two sources: (1) errors made by your agency in calculating my anticipated annual income, as required in 24 CFR 5.609, and (2) issues related to the availability for resale of the BMR unit that initiated an invitation by Christine to submit my application on 20-Jan.

In support of (1), I provide here hyperlinks to electronic CFR, as well as a screen shot (from the second hyperlink) of a portion of the regulations related to eligibility determination under general HUD program requirements. I have added a red outline for emphasis of the error.

<http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=24:1.1.1.1.5>

http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=24:1.1.1.1.5#se24.1.5_1609

FAMILY INCOME

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§5.609 Annual Income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

In support of (2), to the best of my knowledge, the BMR unit in question was determined to be ineligible for sale in the BMR program on 2-Feb, per email communication with C.J. Valenzuela, Senior Housing Planner for the City of Cupertino. On 11-Feb, I learned from attending the Housing Committee meeting at 9am at City Hall, that the unit was reinspected and C.J. announced that it was determined eligible for sale on 9-Feb.

Discussion of (1) errors made by your agency in calculating my anticipated annual income, as described in 24 CFR 5.609.

Before submitting my application, I realized that my gross pay for 2015 exceeded the limit for my family. I emailed Christine on 21-Jan, asking her to confirm that I was eligible given this fact and emphasizing that one-time bonus was a contributing factor. Christine stated that my qualification could only be assessed if I applied and provided all requested documents. **This is strong evidence that being over limit in the past does not indicate ineligibility in the present**, and aligns with 24 CFR 5.609 (a)(2) which states that *annual income* means all amounts which

Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

Christine suggested that I include a bonus statement with my application and supporting documents, and so I provided a detailed statement on history of bonuses as well as outlook for this year, given pertinent factors affecting my industry and the economy at large. In the statement, and during discussions with Christine, I indicated that I am unlikely to receive another Special Recognition Bonus, as that bonus was paid in Jan.2015, in recognition of outstanding contributions during the Winter, 2014 Furlough, and was a one-time event. I also indicated that the Wellness Bonus is only paid to employees who participate in wellness activities. I confirmed that I am not participating this year, and will be ineligible for this bonus.

I met with Christine and C.J. at 2pm on 11-Feb-2016 at WVCS.

I asked them to detail how my anticipated annual income was determined. The explanation was that my three most recent paystubs (as of 25-Jan.) were examined following my submission of the completed application, fee and all supporting documents.

I was told that because "there was bonus" on my earliest two pay stubs submitted, dated 18 and 31-Dec., 2015, I was over limit.

I pointed out that the gross pay on each and every paystub I submitted is the same (\$3,692.80), and there is no bonus paid during any of the pay periods.

There was a lot of back and forth.

I couldn't understand why the full bonus amounts paid to me in 2015 were being added to current salary to determine my *anticipated annual income*, especially when I documented in my bonus history and outlook statement all the facts related to performance bonuses.

Please see the attachment, BonusOutlook.doc, for all the details, including

- the downward trend in performance bonuses I received in 2013, 2014 and 2015
 - in terms of total dollars

- in terms of a percentage of gross pay
- the precipitous downturn in my employer's stock value, with the expectation that annual performance bonuses would likewise experience a precipitous downturn

Given these facts, there is no basis in imagining that 2016 bonus will be equal to 2015 bonus. But even if one assigns the identical performance bonus from 2015 to salary, the result is $\$96,012.80 + 5,850 = \$101,862.80$ and this amount is undeniably below the limit for my family (\$102,050). [I had in fact, done this exact calculation with Christine in the office at WVCS on 26-Jan. when she informed me that I was over limit. In response, she said she would discuss it again with C.J.]

During the 11-Feb, 2pm meeting, eventually C.J. and Christine explained that if they were to determine my eligibility today, 12-Feb-2016, and looked at today's paystub together with the 15 and 29-Jan. paystubs that they already hold, I would be determined eligible as only salary is reflected in those three paystubs, and there is no indication of any bonus at all.

I dispute that the method described to me represents a HUD compliant method, under 24 CFR 5.609, of determining anticipated annual income. I assert that assigning last year's total bonus to my anticipated income is an error, and denies me fair consideration for eligibility under 24 CFR 5.609.

Neither the spirit nor the letter of the law can be considered upheld in a decision that finds

- I am ineligible on 26-Jan. because paystubs with gross pay of \$3,692.80, but year to date bonuses are included in the three paystubs analyzed
- I am eligible on 12-Feb. because paystubs with gross pay of \$3,692.80 and no record of bonuses are included in the three paystubs analyzed

I understand that incorporating variable bonuses into an anticipated annual income is not trivial and in fact presents a significant challenge. A couple of options for rising to the challenge immediately come to mind: (1) applying a calculation that continues the documented trend in bonus amounts over time into the current year; (2) verifying with the payer of bonuses what the anticipated payment is likely to be. Either option would be preferable to adding all of 2015 bonus to salary, if determining *anticipated annual income* on 11-Feb. or earlier and adding zero bonus to salary, if determining *anticipated annual income* on 12-Feb. or later, as outlined by Christine and C.J.

I intended to share confirmation of this year's mid-year bonus with Christine and C.J. on 9-Feb. at the meeting we had scheduled at 2pm. However, Christine asked that we reschedule our meeting, and so we met 11-Feb. instead. The confirmation document was shared yesterday, and shows my mid-year performance bonus is \$737.00. As I predicted, this is well below last year's mid-year bonus of \$3,150.00. This year's mid-year bonus is payable on 26-Feb-2016.

I assert that due diligence was not exercised in the determination of my anticipated annual income under 24 CFR 5.609. I dispute that it is in the purview of your agency to deem me ineligible, because of

lack of due diligence, and instead to consider an alternate applicant with lower waitlist priority because the due diligence required in the determination of the alternate applicant's anticipated annual income is less strenuous.

Discussion of (2) issues related to eligibility for resale of the of BMR unit in question.

As stated earlier, the unit was deemed ineligible for sale on 2-Feb. following inspection by Cupertino City Building Inspector.

Also on that date, C.J. indicated in email that

Regarding reviewing your eligibility as far as income, assets, etc... we have yet to come to a written decision.

Per C.J.'s statement to the Housing Commission yesterday at the 9am meeting, the unit has been inspected again and found eligible for sale in the BMR program, as of 9-Feb.

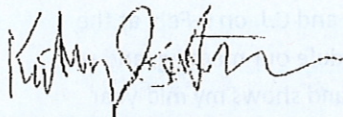
Director Venkatraman, I ask that you respond to my grievance with a fair determination of my eligibility to address

- lack of due diligence exerted by Christine to fairly determine my *anticipated annual income* prior to the email she sent at 6:38pm, 11-Feb., with the signed attachment indicating my over limit status
- inconsistent communications from Christine and C.J. regarding my eligibility
- the facts known, now that the unit has become eligible, especially that my mid-year bonus is confirmed at \$737, significantly down from last year's \$3,150

The most excellent news is: I have the necessary assets to make the purchase now; I have full approval from a lender, not just pre-approval, and can close escrow in 21 days or less, confirmation email attached.

I thank you for your consideration, and hope that together, you and I can resolve this grievance now without further escalation and delays.

Regards,



Kimberly J. Sandstrom

February 19th, 2016

Kimberly Sandstorm

Dear Kimberly Sandstorm,

This letter is to acknowledge the receipt of your letter dated 2/12/2016. I reviewed your case file and met with the Property Manager to discuss your concerns. Here are my responses to some of the concerns that you had in your letter

- Family Income- As per the City BMR policy (Exhibit 3) clearly states that we only look at 24 CFR 5.609 paragraph (b). Paragraph (a) is not being considered in our BMR program. Attached in the income calculation again- The current unit is a 2 bdrm. moderate-income unit and
- The current maximum limit is \$102,050 and your projected/anticipated gross household income including bonus pay came out to \$103,648.14. Total Household Income = \$96,012.80 (Projected/Anticipated Gross Household Income) + \$7,635.34 (Bonus Income) = \$103,648.14 (Total Household Gross Annual Income). You are \$1,589.14 over the maximum income limit.

Total Gross Income: \$11,078.40 divided by 3 pay periods = \$3,692.80 (Avg. Gross Pay Per Pay Period) x 26 pay periods (Bi-Weekly) = \$96,012.80 (Projected/Anticipated Gross Household Income) + Bonus Income per Part 5 Income Inclusions

ESP Stk Gain \$702.01

Performance Bonus \$5,850.00

S Recogn Bonus \$833.33

Wellness Bonus \$250.00

Total Bonuses: \$7,635.34

- BMR process- As per our BMR policy the first phase towards BMR ownership for the buyer is Eligibility-as soon as the unit becomes available the prospective clients is contacted and is asked to submit paperwork for eligibility. There is a parallel process for the seller which is Housing Inspection and Unit appraisal. A buyer who passes the eligibility moves on to the next process. In your situation you were deemed ineligible at the first phase of this process due to your income. Hence, the whole unit inspection situation that happened with this unit in February does not apply to you.

You continue to maintain your current waitlist number 12 and we will be contacting you again when another unit comes for re-sale to start the eligibility process. If you have any questions please feel free to contact me at 408-255-8033 ext. 103 or email me at sujatha@wvcommunityservices.org. For your information, I have attached the BMR policy manual for review.

Sincerely,

V. Sujatha

Sujatha Venkatraman
Associate Director
Stability Support Services

Grievance II of Kimberly Sandstrom Re: Ineligibility Determination 11-Feb-2016

Date: March 1, 2016

To: Josh Selo, Executive Director, West Valley Community Services, Inc.

I am disputing the decision by your staff to find me ineligible to purchase a 2 bedroom moderate income BMR condo which became available for sale 9-Feb-2016. My dispute arises from three issues: (1) the calculation of my family's anticipated annual income was irrational and unfair; (2) contradictory, misleading and incomplete information was provided to me regarding the procedure/timeline for eligibility determination and (3) the eligibility criteria are discriminatory because the current system exerts a disparate impact on older applicants.

Discussion of (1): the calculation of my family's anticipated annual income was irrational and unfair.

In a phone conversation with Sujatha on 16-Feb-2016, she described the procedure for determining anticipated annual gross income. She stated that my family's gross pay received during the three months immediately preceding my application would be used to annualize a gross income figure. This echoed the procedure described by Christine, since Christine said that the determination is forward looking rather than backward looking.

However, in her response to my initial grievance, Sujatha outlines a procedure whereby all three bonuses plus dividends paid to me on company stock throughout the entire calendar year, not just the three months in question, are added to my current salary. This approach is irrational and unfair because of the Statement Regarding History and Outlook of Performance Bonuses that I provided with my application, with my first grievance, and that I attach here. The statement shows both the downward trend of my performance bonuses received in 2013, 2014 and 2015, plus the precipitous decline of my company's stock value, with the expectation of a similarly precipitous decline in my performance bonus for 2016. In fact, my 2016 mid-year performance bonus is just \$737, in contrast to my 2015 mid-year performance bonus, which was \$3,150. My mid-year performance bonus underwent a decline of 76.6%, in line with my prediction. It makes no rational sense to determine eligibility based on the old bonus instead of the 2016 mid-year bonus. In 2015, in addition to a performance bonus I received a \$250 Wellness bonus. In 2016, however, I am not taking part in Wellness activities required for this and thus will be ineligible for the Wellness bonus. Finally, the Special Recognition Bonus I received in Feb. 2015 was a one-time occurrence in the five years I have been with my company, and this type of bonus will not be paid to me in 2016.

I have also attached a detailed statement of my income for all of 2015, with shading of the amounts earned in the three months before my application, which is precisely the term that Sujatha indicated was the relevant period for determining eligibility. Salary alone was my entire income during that period.

I assert that assigning last year's total bonus to my anticipated annual income is irrational given the supporting documents provided. I assert that this approach denies me fair consideration for eligibility under 24 CFR 5.609. I assert that due diligence was not exercised in the determination of my anticipated annual income under 24 CFR 5.609. I dispute that it is in the purview of your agency to deem me ineligible, due to lack of due diligence. I assert that an alternate applicant with lower wait list priority was considered because the due diligence required was less strenuous, and dispute that this is a fair course of action.

Discussion of (2): contradictory, misleading and incomplete information was provided to me regarding the procedure/timeline for eligibility determination.

Christine informed me via email on 28-Jan-2016 that, after consulting with the "City of Cupertino (person overseeing BMR programs)" who turned out to be C.J., I was confirmed to be ineligible to purchase the 2 bedroom unit because my income was over the limit. I had received no signed document to this effect, neither from WVCS nor from the City of Cupertino.

On 1-Feb-2016, C.J. emailed me the Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units and from this document I learned that I had a right to appeal the determination within ten days.

On 2-Feb-2016, I emailed Christine and C.J. to ask for guidance and to share details about my 2016 mid-year performance bonus. I needed guidance because I had received nothing official after Christine's email, and I was unclear whether or not the appeal countdown clock had already begun to tick. Secondly, I had confirmation from my senior director that my mid-year performance bonus would be \$737, not \$3,150 as it had been in 2015; thus confirming my income to be well below the limit.

That same day, 2-Feb-2016, C.J. informed me and Christine via email that the first step was to inspect the unit to see if it was eligible for resale in the BMR program. C.J. went on to say that no official determination of my eligibility had been made; entirely contradicting Christine's email from 28-Jan. It became evident to me that the level of communication between Christine and C.J. that Christine referred to when announcing my ineligibility did not truly exist. In his email, C.J. also asked for my latest paystub and a written statement from my employer verifying

my 2016 mid-year performance bonus, saying that the information would help the staff to make a final decision regarding my eligibility.

Later that day, 2-Feb-2016, I emailed my 29-Jan-2016 paystub to Christine and C.J., and C.J. asked Christine to print it and add it to my file. I also stated that my manager expected to release bonus statements around 17-Feb, however, my senior director could provide a statement before that. I reiterated what C.J. had said, that the first step was having a unit eligible for resale.

Finally on 2-Feb-2016, C.J. emailed me and Christine again to say that the unit had failed an inspection by the Building Department, and was ineligible for resale. Christine responded to this email with, "Thank you CJ for your update!", on the same day, but that was the extent of her communication.

On 3-Feb-2016, I emailed Christine and C.J. expressing my disappointment. I also asked them to confirm that I retained my position at the top of the wait list for 2 bedroom units, which is where I had been when Christine first contacted me about the unit on 20-Jan-2015.

On the same day, 3-Feb, C.J. responded to my email, asking Christine to confirm that I maintained my place on the wait list should this BMR unit become eligible for resale in the future. That was not the confirmation that I asked for, but in any event, Christine did not respond at all to me, nor to C.J.

There was no response from Christine for the next three business days; presumably while she and C.J. re-considered my file, or while my appeals period ticked by. In his 2-Feb. email, C.J. had clearly stated the former, asking for a more complete record of my income while Christine was silent. Although she was on copy to all of the emails between me and C.J., she had not communicated with me since 28-Jan., and her only response to C.J. had been on 2-Feb. when C.J. informed her that the unit was ineligible for resale.

On 8-Feb-2016, I emailed Christine and C.J. and asked for a meeting. I could not understand Christine's lack of response, and I had a statement from my senior director confirming my mid-year bonus that I wanted Christine to add to my file. We all agreed to meet at 2pm on 9-Feb-2016. However, on the morning of 9-Feb-2016, Christine emailed me and C.J. and said she needed to cancel. We rescheduled our meeting for 2pm on 11-Feb-2016.

On 11-Feb-2016, I attended the 9am Housing Committee meeting at City Hall. At this meeting, C.J. told the committee that the unit had passed a Building Department inspection on 9-Feb-

2016, and was now eligible for resale. I was not made aware of this fact, and if I had not taken the time to attend the meeting, would likely still not know. I also learned that Christine and C.J. intended to sell the unit to an alternate applicant that had been selected as a back-up. I was shocked when a committee member asked Christine how far over the limit my income was, and she answered that she wasn't sure but she thought it was about \$4,000 - \$5,000 over the limit, which was a gross mischaracterization of the facts. I disputed this, but it was clear that Christine was not interested in addressing the issue further. I also pointed out that, just as I had predicted in my Statement Regarding History and Outlook of Performance Bonuses, we now had confirmation that the current year's bonus was a fraction, less than 25%, of last year's. Christine emphasized that the alternate applicant had only salary and their case was very simple; in other words, less strenuous due diligence was required. Meanwhile, I still had not received any coherent, official confirmation of any kind as to my eligibility, and as a result, I had not started the appeals process to which I have a right. In effect, my case had been dropped and my appeals period skipped over.

It was not until well after our 2pm meeting later that day, at roughly 7:00 PM on 11-Feb that I received a signed notice, on letterhead, from Christine that I was ineligible.

I assert that I was not treated fairly with respect to the availability of the unit nor to my eligibility and was misled by contradictory statements by the staff and by an unprofessional and frankly disturbing lack of communication at crucial points in the process.

Discussion of (3): the eligibility criteria are discriminatory because the current system exerts a disparate impact on older applicants.

The maximum annual income limit of \$102,050 applies a disparate impact on older applicants because workers' gross annual pay tends to increase as they become more skilled and experienced in the workforce, after decades of professional development. Because a worker who has been in the workforce for twenty or more years is likely to have a higher salary than a worker with fewer years in the workforce, the system of applying a simple maximum, regardless of age, creates a disparate impact on older workers.

It is not necessary to change the limit for older applicants in order to achieve a non-discriminatory system. Priority points for age could be used as they are for residency and employment in the City of Cupertino.

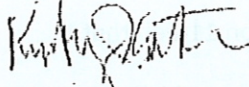
Imagine that the alternate applicant who has been selected by staff to purchase the 2 bedroom moderate income unit is a single mother of 35. If her family income today is \$95,000 is it reasonable to believe that when she is 55, her family income will still be less than \$102,050?

Director Selo, I ask that you respond to my grievance with a fair determination of my eligibility to address the lack of due diligence in the determination of my anticipated annual income and the misleading and opaque process surrounding the unit's status as well as mine. Further, I ask you to reflect on the discriminatory nature of the current eligibility determination process.

Please know that I have the necessary assets, credit and approval from a lender to move forward with the purchase of this unit immediately.

I thank you for your consideration, and hope that together, you and I can resolve this grievance now without further escalation and delays.

Regards,



Kimberly J. Sandstrom

March 7, 2016

Kimberly Sandstorm

Dear Ms. Sandstorm,

This letter is to acknowledge the receipt of your letter dated 3/1/2016. I fully reviewed your case file and met with both Sujatha Venkatraman, Associate Director of Stability Support Services, and Christine Nguyen, Property Manager, to discuss your concerns.

My responses to your questions are as follows:

- Our procedure for determining family income is not forward looking, so we are unable to consider future fluctuations of bonuses based on changes in stock price or company valuation. Our process is to annualize family income using data from the previous three paychecks, a procedure that is part of the BMR qualification process as determined by the City of Cupertino.
- As for your concerns regarding 24 CFR 5.609, please note that as per the City of Cupertino BMR policy, we only apply 24 CFR 5.609 paragraph (b), not paragraph (a), which states that "(b) Annual income includes, but is not limited to: (1) The full amount, before any payroll deduction, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses, and other compensation for personal services".
- Income criteria for the BMR program is determined by HUD, not by West Valley Community Services.

I apologize if you feel the communication regarding your eligibility was unclear. Unfortunately, this does not mitigate or alter your current eligibility.

You continue to maintain your current waitlist number 12. We will be in touch when another unit becomes available for re-sale to start the eligibility process. If you have any questions please feel free to contact me at 408-255-8033 ext. 301 by email me at josh@wvcommunityservices.org.

Sincerely,



Josh Selo
Executive Director



HEALTH • HOME • HEART

West Valley Community Services

April 22, 2016

Kimberly Sandstorm

Dear Ms. Sandstorm,

This letter is to acknowledge receipt of your grievance paperwork on the afternoon of 4/19/2016. Your submission qualifies as Step 3 of the formal grievance procedure.

The West Valley Community Services Board Administration Committee has thoroughly reviewed all of your documents and the income qualifications outlined in Exhibit 3 of the City of Cupertino *Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units*. As a result, we agree that your income in the qualifying period exceeded the limitations and as such you were appropriately disqualified as a potential buyer for the unit that was available in January 2016.

You continue to maintain your current waitlist number 12. Our staff will be in touch when another unit becomes available for re-sale to start the eligibility process.

If you would like to advance your grievance to Step 4 which entails a review by the full Board of Directors, the procedure is as follows:

If the grievance is not settled in Step 3 and the client, volunteer or employee wishes to appeal the grievance to Step 4 of the grievance procedure, the grievance shall be referred in writing to full Board of Directors within five (5) working days after the Board Administration Committee's answer in Step 3 was received and signed by the client, volunteer or employee. The written grievance shall contain a complete statement of facts, the situation or issue in dispute, and the relief requested.

If you decide to advance your grievance to the following step, please communicate directly with Executive Director Josh Selo at 408-255-8033 ext. 301 or by email at josh@wvcommunityservices.org. He will forward the paperwork you submitted to the full board, so no additional submission of paperwork will be required.

Sincerely,

Stan Barkey
Board Chair

Nancy Harper
Vice Chair

Serving the Communities of Cupertino, West San Jose, Los Gatos, Saratoga, and Monte Sereno
10104 Vista Drive, Cupertino, California 95014 • 408-255-8033 • Fax 408-366-6090 •
www.wvcommunityservices.org

Grievance IV of Kimberly Sandstrom Re: Ineligibility Determination 11-Feb-2016

Date: May 3, 2016

To: Board of Directors of West Valley Community Services, Inc.

I remain unsatisfied by the responses to my three prior grievances regarding the determination of my ineligibility made by your staff, Christine Nguyen, that was communicated to me as an email attachment around 6:50 pm, 11-Feb-2016.

I find it disappointing that since Ms. Venkatraman first referred to me as "Sandstorm", neither Mr. Selo, Mr. Barkey nor Ms. Harper examined my grievance closely enough to recognize that my name is Sandstrom and correct the error. It does not give me confidence that a close examination of the facts has been made.

I continue to assert that the calculation of my income was inappropriate as it did not conform with 24 CFR 5.609, as shown in the screenshot below, with red outline added for emphasis¹.

FAMILY INCOME

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§5.609 Annual income.

(a) *Annual income* means all amounts, monetary or not, which:

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph (c) of this section.

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

I do not accept Ms. Venkatraman's assertion that 24 CFR 5.609 (a) is not required by the City of Cupertino to determine annual income, as paragraph (a) *provides the definition* of annual income. Meanwhile, paragraph (b) lists types of income included and paragraph (c) lists types of income excluded from consideration.

Ms. Venkatraman correctly finds that my annual salary is \$96,012.80. However, she then incorrectly adds several irrelevant bonus amounts. I advised WVCS that neither S Recogn Bonus nor Wellness Bonus would be payable in 2016. Further, I advised that Performance Bonus, *if payable*, would decline sharply

1. http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=24:1.1.1.1.5#se24.1.5_1609

in 2016. The remaining ESP Stk Gain is long term capital gains from a sale of shares in June, 2015. Because of my role at my company, I am constrained to buy/sell shares only during limited periods following quarterly, public earnings statements. Based on the current stock price, if I were to sell shares again during the next open trading period available to me, I would experience a long term capital loss as the share price has plummeted.

Furthermore, as part of the fiscal year 2016, fiscal quarter three earnings statement, my employer communicated to employees that the company *is not on track* to pay Year-end Performance Bonus.

My anticipated annual income is therefore \$96,749.80 = \$96,012.80 (salary) + \$737.00 (Mid-year Performance Bonus).

This is clearly well below the \$102,050 limit and far from the \$103,648.14 figure that Ms. Venkatraman assigned to me.

My previous grievances have detailed the issues regarding Christine's finding that I was ineligible being refuted by C.J.'s communication that a decision was not yet made, which was reinforced by C.J.'s request for an additional paystub to help staff make a determination. Earlier grievances also stated the fact that the unit was not available until 9-Feb-2016. According to Ms. Venkatraman's response to my first grievance, when the unit becomes available, the prospective client's eligibility is determined. These issues remain unaddressed.

On one of my several meetings with Christine at WVCS, I noted a sign in the lobby telling clients that they could make an appointment for free income tax preparation at WVCS. I told Christine that I had been trained by AARP as a volunteer tax preparer, and that I could donate some time at WVCS if they needed volunteers. At first Christine's response was positive and she said she would give me contact information. When the contact information was not shared, I followed up and Christine told me it would be a Conflict of Interest for me to volunteer at WVCS and be a client.

Imagine my shock when I found that the 2-bedroom, moderate income unit was, in fact, sold to the Director of Client Services at WVCS, Michelle Ma, and Marissa Ma!

If a Conflict of Interest exists and is recognized by staff, disallowing a client from volunteering, then a Conflict of Interest *must* exist that disallows a staff member and friend of the Program Manager, Housing Services (Christine Nguyen) from being a client.

The Attorney General stated that the common law doctrine of conflict of interest prohibits public officials from placing themselves in a position where their private, personal interest may conflict with their official duties.²

2 California-Law-Governing-Conflict-of-Interest-June-2014.pdf from <http://www.ocde.us/LegalServices/Documents/California-Law-Governing-Conflict-of-Interest-June-2014.pdf>

I find that our courts have said³

A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public (Harnung v. State, 116 Ind. 458 [2 L.R.A. 510, 19 N.E. 151]).

Actual injury is not the principle the law proceeds on. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal. This doctrine is generally applicable to private agents and trustees, but to public officers it applies with greater force, and sound policy requires that there be no relaxation of its stringency in any case that comes within its reason (Cheney v. Unroe, 166 Ind. 550 [117 Am. St. Rep. 391, 77 N.E. 1041]).

I find that WVCS has a duty to the public, who is their principal, because WVCS serves as a public official⁴

Cal Gov Code § 82048

(a) "Public official" means every member, officer, employee or consultant of a state or local government agency.

(b) Notwithstanding subdivision (a), "public official" does not include the following:

- (1) A judge or court commissioner in the judicial branch of government.
- (2) A member of the Board of Governors and designated employees of the State Bar of California.
- (3) A member of the Judicial Council.
- (4) A member of the Commission on Judicial Performance, provided that he or she is subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.
- (5) A federal officer or employee serving in an official federal capacity on a state or local government agency.

because WVCS is a consultant under paragraph (a) of the Cal Gov Code above.

3 NOBLE V. CITY OF PALO ALTO, 89 Cal.App. 47 (1928) from <https://casetext.com/case/noble-v-city-of-palo-alto>

4 ETHICS: DEFINITIONS OF "PUBLIC OFFICIAL" AND "PUBLIC OFFICER", updated January 2015, from <http://www.ncsl.org/research/ethics/50-state-definitions-of-public-official-officer.aspx#CA>

The following excerpt shows that WVCS is a consultant (see (A) (3)). Excerpt is from a Memorandum from the Department of Justice, State of California with Subject : "Consultants" Under the Political Reform Act / Conflict of Interest Code Disclosure⁵

The term "consultant" is not defined in statute. It is a term of art under the Act and does not necessarily equate to the term as used in the private-sector business world. The FPPC has adopted a regulation that defines the term. As amended effective February 1, 2001, the regulation now reads: "Consultant" means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule, or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract which requires agency approval;
5. Grant agency approval to a contract which requires agency approval and to which the agency is a party, or to the specifications for such a contract;
6. Grant agency approval to a plan, design, report, study or similar item;
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code Section 87302

⁵ http://oag.ca.gov/sites/all/files/agweb/pdfs/conflict_interest/doj_conflict_memo_1.pdf, dated August 3, 2001

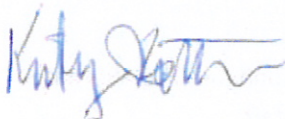
I assert that WVCS's staff and Board of Directors are "bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public", as our courts have stated, and that the staff and Board of Directors have not applied the "disinterested skill, zeal, and diligence" to my case that it deserves.

I ask for

- a full investigation into this lapse
- acknowledgment and rectification of the error that was made in the determination of my eligibility
- a complete reconsideration of the sale of the 2 bedroom, moderate income unit that was unlawfully sold under a classic example of nepotism
- a lawful sale to the person with the highest priority on the waitlist when the unit became available 9-February, 2016

I thank you for your consideration, and hope that together, you and I can resolve this grievance now without further escalation and delays.

Regards,



Kimberly J. Sandstrom

Who I am: Kimberly Sandstrom, mother, resident of Cupertino (renter), employee at Seagate Technology LLC in Cupertino and applicant to the BMR home purchase program. My youngest son lives with me. He graduated from Monta Vista High School last June and is now enrolled at DeAnza.

What I want: An investigation, by the Cupertino City Council, of the BMR eligibility process at West Valley Community Services and a remedy of the error made by staff working on my case. I prefer to rectify the error by working with my elected officials, rather than initiating a legal proceeding.

Statement of the error made in my case: Staff at West Valley Community Services failed to perform due diligence in the determination of my *anticipated gross annual income* for 2016. Instead, staff

- added all 2015 bonuses to current salary, even though I provided documentation of:
 - the fact that two of the three 2015 bonuses would not be payable in 2016,
 - the downward trend in my performance bonus from 2013 – 2015,
 - evidence of my company's stock devaluation at the close of 2015 which would have a negative impact on performance bonus funding levels for 2016;
- informally notified me that I was ineligible, while City of Cupertino staff contradicted this, informing me that a decision was pending;
- stopped communicating with me, and did not respond to emails from me nor City staff, nor answer or return phone calls;
- moved on to an alternate applicant with lower priority on the waiting list than me. The alternate applicant's eligibility determination required less diligence on the part of staff.

Background facts:

1. Before completing the application, I contacted staff at WVCS, noting that my gross pay in 2015 had been over the limit, due to some extenuating circumstances that would not exist in 2016. I asked for confirmation that I was still eligible. Staff responded that I must apply and submit all required documents, plus the application fee, before a determination of my eligibility could be made. **This is strong evidence that being over limit in the past does not indicate ineligibility in the present**, and aligns with 24 CFR 5.609 (a)(2) which states that *annual income* means all amounts which

Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date;

See the attachment: **Family Income** (U.S. Government Publishing Office, 2016) for the full 24 CFR 5.609 regulation.

2. With my application, I provided a detailed statement regarding my bonus history, showing year over year declines in my Performance Bonus and indicating that both the Special Recognition Bonus and the Wellness Bonus that I received in 2015 would not be received in 2016. See the attachment: Statement Regarding History and Outlook of Performance Bonuses. Despite the complete record I provided, staff failed to apply due diligence to the determination of my 2016 anticipated annual income, and instead, summed the total of all bonuses received in 2015 with my 2016 salary. **Given the facts that two of the three bonuses would not be paid in 2016, and the remaining bonus that would be paid had a clear history of decline, there is no basis to support this decision.** My 2016 midyear performance bonus (paid 29-Feb) is less than 25% of my 2015 midyear performance bonus.
3. Staff provided conflicting information about the status of my application, especially when the unit failed inspection and was deemed ineligible for resale. See the Communication Timeline document for greater detail.
4. The eligibility process today exerts a discriminatory, disparate impact on older wage earners. Workers generally benefit from decades of experience, professional development and skill building with higher wages than younger, less skilled colleagues. The simple limit on income therefore negatively impacts the older portion of the workforce more than the younger portion. A point system, similar to the awarding of points for residency and employment in Cupertino could offset the disparate impact of the simple income limit. I am over 55, and my salary is the highest it has been over my lifetime, however, it is less than \$97,000. If the BMR unit is sold to a 35 year old with the same salary as me today, what is the likelihood that their salary will still be under \$102,050 in twenty years?
5. I have presented my grievance to Sujatha Venkatraman, at WVCS, and remain unsatisfied.
6. I have presented my second grievance to Josh Selo, at WVCS, and remain unsatisfied.
7. I strongly feel that I have been discriminated against and treated unfairly, after paying my application fee for this public benefit BMR program. I am only asking to be treated fairly.

Closing statement: Cupertino is my home and it is where I work. Nevertheless, I am being forced out. I live in one of the shabby townhomes on Terry Way, yet my rent continues to skyrocket, even though no amenities are added to increase the value of my accommodations. My neighbor has already been informed of another \$200/month rent increase. I expect my increase to come 1-May. If my rent increases another \$200 this year, I will be paying 23% more than when I moved in, back in 2013. Every day I am tormented by the unsustainable situation I am living in. Please help me to be treated fairly in the BMR purchase program.

My contact information

Name: Kimberly Sandstrom

Email:

Work phone:

Cell phone:

Address:

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Wednesday, January 20, 2016	3:10 PM	Phone call	Christine Nguyen	No	Christine told me that a 2 bedroom condo would soon be available, and I was the applicant at the top of waiting list. She said two alternates would be chosen at the same time, and that an email with application would come soon.
Wednesday, January 20, 2016	3:30 PM	Email	Christine Nguyen	Yes, from Kimberly	I received notification that a BMR purchase unit was soon coming available, and an application was attached to the email. I was notified that my application, with all supporting documents, must be complete 27-Jan. See attachment: Gmail - Re_ City of Cupertino-BMR Purchase Program application package
Thursday, January 21, 2016	7:55 AM	Email	Kimberly Sandstrom	Yes, from Christine	I sent Christine ten questions regarding the opportunity and process. I included my observation that my income was over limit in 2015 because of special circumstances in 2015. I stated that circumstances for 2016 would be different and requested confirmation that my family remained eligible.
Thursday, January 21, 2016	9:15 AM	Email	Christine Nguyen	No	Answers to the ten questions. See attachment: Gmail - Re_ BMR Purchase
Friday, January 22, 2016	11:00 AM	Meeting at West Valley Community Services	Kimberly Sandstrom	N/A	Christine screened the documents that I provided. Employment verification was the only outstanding document. However, Christine required my son's signature on application, and she recommended a statement on performance bonus.
Monday, January 25, 2016	9:45 AM	Meeting at WVCS	Kimberly Sandstrom	N/A	I submitted my application with my son's signature, a bonus statement (which demonstrated year over year decreases in 2014 and 2015 together with a drastic drop in my company's stock price at the end of 2015), all other supporting documents and the application fee. Employment verification with salary remained outstanding.

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Monday, January 25, 2016	1:20pm	Email	Kimberly Sandstrom	Yes, from Christine	I received employment verification in mail at home, and asked Christine when to bring it to the office. Christine did not respond.
Tuesday, January 26, 2016	10:50 AM	Email	Christine Nguyen	Yes, from Kimberly	Christine asked me to come to WVCS to discuss my file. Christine was available between 4 - 7pm that day and asked me to confirm time of meeting.
Tuesday, January 26, 2016	11:00 AM	Email	Kimberly Sandstrom	No	I confirmed meeting at WVCS at 4pm.
Tuesday, January 26, 2016	4:00 PM	Meeting at WVCS	Christine Nguyen	N/A	I gave Christine my employment verification with salary. Christine said I was ineligible. I used Christine's calculator lying on the table to demonstrate that even with 2015 performance bonus added to my salary, my annual income remained under the limit. Christine looked puzzled and tried the calculation herself. She asked herself how they got an amount over the limit. Christine said she would talk with C.J. again about my file. I reiterated that my performance bonus decreased in both 2014 and 2015 and was expected to drop drastically in 2016.
Wednesday, January 27, 2016	9:20 AM	Email	Kimberly Sandstrom	Yes, from Christine	I told Christine that my company was reporting earnings on 29-Jan, and that within days, I would know my midyear performance bonus amount. I expressed my desperation, because of my ever increasing rent, and asked for a week at most to prove my true financial outlook. Christine did not respond.
Thursday, January 28, 2016	6:40 PM	Email	Christine Nguyen	No	Christine said after consultation and confirmation with City of Cupertino BMR staff, I am over limit and ineligible. See attachment: Gmail - Re_ A thought

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Friday, January 29, 2016	N/A	Internal Email	Seagate	N/A	Board of Directors confirms funding midyear performance bonus at minimal level.
Monday, February 01, 2016	12:00 PM	Request for information at City Clerk's Office	Kimberly Sandstrom	Yes, from C.J. Valenzuela	Per City of Cupertino website guidance, I went to the City Clerk's office and asked to see the municipal code governing BMR Program administration. Rather than allowing me to view the code, staff contacted C.J. who came to meet me and said he would email the code to me if I provided contact information.
Monday, February 01, 2016	1:30 PM	Email	C.J. Valenzuela	No, Christine copied	C.J. provided BMR Administrative Manual as pdf attachment. He said bonus must be included in annual income. He clarified that the unit Christine and I had discussed was not officially eligible for resale, pending inspection by City of Cupertino staff.
Tuesday, February 02, 2016	10:00 AM	Email	Kimberly Sandstrom	Yes, from Christine, C.J. copied	I asked for confirmation of my eligibility status because no "official" communication had come from the City, nor from WVCS. I had only received an email from Christine. I shared guidance from my senior management that my midyear bonus would be less than \$750, down nearly 77% from 2015's midyear bonus of \$3,150, and that confirmation would come around 17-Feb.
Tuesday, February 02, 2016	10:15 AM	Email	C.J. Valenzuela	Yes, from Kimberly, Christine copied	C.J. said that the property would be inspected later that day and that was the first step in eligibility process. He said that my eligibility had not yet been determined. He asked for additional paystubs and a statement from management regarding my midyear bonus to help staff make the determination of my eligibility. See attachment: Gmail - RE_RE_Guidance needed
Tuesday, February 02, 2016	10:25 AM	Email	Kimberly Sandstrom	No, C.J. and Christine copied	Per C.J.'s request, I attached 29-Jan paystub. I said my senior director would provide a statement on bonus amount, if needed, but "official" company communication on bonus amount was due 17-Feb.

Communication Timeline

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Tuesday, February 02, 2016	10:45 AM	Email	C.J. Valenzuela	Yes, from Christine, Kimberly copied	C.J. asked Christine to print the paystub and add it to my file. Christine did not respond.
Tuesday, February 02, 2016	3:15 PM	Email	C.J. Valenzuela	Yes, from Christine, Kimberly copied	C.J. stated inspection was done, and unit failed. He said unit was ineligible for sale until further notice, and asked Christine to remove it from the eligible for sale list.
Tuesday, February 02, 2016	6:10 PM	Email	Christine Nguyen	No, C.J. and Kimberly copied	Christine said, "Thank you CJ for your update!"
Wednesday, February 03, 2016	7:45 AM	Email	Kimberly Sandstrom	Yes, from Christine, C.J. copied	I expressed my disappointment. I asked Christine to confirm that I remained at the top of the 2 bedroom waitlist, the same place I had been when she contacted me on 20-Jan.
Wednesday, February 03, 2016	9:50 AM	Email	C.J. Valenzuela	Yes, from Christine, Kimberly copied	C.J. asked Christine to confirm that I maintained my place on the waitlist should this unit become available, which is a different confirmation than I asked for. See attachment: Gmail - RE_ RE_ RE_ Guidance needed. Christine did not respond.
Thursday, February 04, 2016					Christine did not respond.
Friday, February 05, 2016	8:50 AM	Email	Kimberly Sandstrom	Yes, from Christine, C.J. copied	I asked Christine to provide confirmation on my waitlist position, given the unit's unavailability. Christine did not respond.
Friday, February 05, 2016	4:10 PM	Phone call, no answer, so left message	Kimberly Sandstrom	Yes, from Christine	I expressed concern for Christine's well being. I asked Christine to please respond by email or by phone when she was able, because we had not got a response from her yet. Christine did not respond.

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Monday, February 08, 2016	7:30 AM	Email	Kimberly Sandstrom	Yes, from Christine and C.J.	I requested a meeting with Christine and C.J. to understand the developments since Christine contacted me 20-Jan. I suggested an 11am or 4pm meeting that day, and asked for confirmation from both Christine and C.J..
Monday, February 08, 2016	8:00 AM	Email	C.J. Valenzuela	Yes, from Christine, Kimberly copied	C.J. said he was not available that day. He could meet Tuesday, 9-Feb at 10am or 2pm or Thursday, 11-Feb at 2pm, and asked Christine to advise us of her availability.
Monday, February 08, 2016	10:30 AM	Email	Christine Nguyen	No, C.J. and Kimberly copied	Christine said she was available Tuesday at 2pm or Thursday at 2pm.
Monday, February 08, 2016	10:40 AM	Email	Kimberly Sandstrom	Yes, from Christine and C.J.	I suggested Tuesday at 2pm, and asked whether we would meet at WVCS or at City Hall.
Monday, February 08, 2016	11:20 AM	Email	C.J. Valenzuela	No, Christine and Kimberly copied	C.J. said we would meet at WVCS.
Monday, February 08, 2016	10:30 AM	Email	Christine Nguyen	No, C.J. and Kimberly copied	Christine said she was available Tuesday at 2pm or Thursday at 2pm.
Monday, February 08, 2016	10:40 AM	Email	Kimberly Sandstrom	Yes, from Christine and C.J.	I suggested Tuesday at 2pm, and asked whether we would meet at WVCS or at City Hall.

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Monday, February 08, 2016	11:20 AM	Email	C.J. Valenzuela	No, Christine and Kimberly copied	C.J. said we would meet at WVCS.
Monday, February 08, 2016	12:55 PM	Email	Christine Nguyen	No, C.J. and Kimberly copied	Christine said we would meet at WVCS.
Tuesday, February 09, 2016	9:40 AM	Email	Christine Nguyen	Yes, from C.J. and Kimberly	Christine said that an urgent deadline prevented her from keeping our appointment at 2pm. She asked C.J. and I to confirm Thursday at 2pm.
Tuesday, February 09, 2016	9:45 AM	Email	C.J. Valenzuela	Yes, from Kimberly, Christine copied	C.J. said he was available Thursday at 2pm and asked me to confirm my availability.
Tuesday, February 09, 2016	10:10 AM	Email	Kimberly Sandstrom	No, Christine and C.J. copied	I confirmed meeting at WVCS at 2pm on Thursday, 11-Feb.

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Thursday, February 11, 2016	9:00 AM	Housing Committee meeting at City Hall	N/A	N/A	C.J. told the Committee that the condo had passed inspection on 9-Feb, and was now eligible for sale. He said that I had applied, but because "there was bonus" on some of my three paystubs, I was over limit. He said that if I applied the next day (12-Feb) and they considered one paystub from Feb. and two From Jan., I would qualify, since "there was no bonus". I clarified that none of the three paystubs I submitted had bonus payments, they were all the same, with salary only. Christine was asked how far over the limit I was, and she said she wasn't sure but she thought it was about \$4,000 or \$5,000. This was a gross mischaracterization, so I said that was false, and it was more like \$2,000. She said the alternate buyer had a very straight forward case with no bonus, just salary of \$96,000. She said the alternate buyer was already pre-approved for a loan. I said that I was fully approved, not just pre-approved. The committee affirmed that they would take no action since the matter was not on their agenda.

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Thursday, February 11, 2016	2:00 PM	Meeting at WVCS	Kimberly Sandstrom	N/A	I asked if there was a signed purchase contract on the unit in question, and the answer was no. I asked how my annual income was determined and C.J. and Christine described a nonsensical method of attributing all 2015 bonus amounts to my 2016 annual income, despite the evidence I had provided of declining annual bonuses, and despite the statement I handed them at this meeting from my senior director that my 2016 midyear bonus would be \$737, less than 25% of my 2015 midyear bonus. C.J. said it was just an unfortunate timing situation. He said that if they determined my eligibility the next day, with three paystubs from 2016, I would be eligible. I was dumbstruck and disputed that any organization could make such a capricious decision. I said it had to be unacceptable for an individual to be above or below the limit based on when you look, rather than by applying due diligence to the data available. I gave examples of due diligence, such as a calculation based on the bonus data provided to project into the future, or a call to my company could be made to provide guidance on 2016 bonus. I asked what would happen if the alternate buyer failed to perform? Could my eligibility be reconsidered? Christine said no, I was ineligible for this unit no matter what. Alternate buyers below me on the waitlist would be contacted instead and invited to apply. But she said I would stay on the waitlist and could pay the application fee again if another 2 bedroom condo became available and my eligibility would be redetermined at that later time. Christine gave me a copy of the Grievance Procedure.

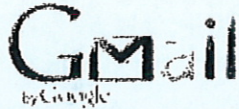
Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Thursday, February 11, 2016	3:30 PM	Email	Kimberly Sandstrom	No	I forwarded to C.J., an email from my loan officer indicating that I was already formally approved with underwriting conditions for a mortgage, and that we could close before 11-Mar. See attachment: Gmail - Sandstrom can close on time for 3_11_2016 COE
Thursday, February 11, 2016	6:50pm	Email	Christine Nguyen	Yes, from Kimberly, C.J. copied	Christine sent a signed letter on WVCS letterhead stating my ineligibility and asking me to confirm receipt.
Friday, February 12, 2016	12:45 PM	Phone call, no answer, so left message	Kimberly Sandstrom	No	I called Sujatha Venkatraman, and when she didn't answer, I left a voice mail to let her know I was walking over to hand her my grievance.
Friday, February 12, 2016	1:00 PM	Phone call, no answer, so left message	Susan at WVCS	No	Susan at WVCS's front desk called Sujatha, and when Sujatha did not answer, Susan left a message that I was at the front desk with a packet for Sujatha that would be left in Sujatha's inbox.
Friday, February 12, 2016	1:15 PM	Phone call, no answer, so left message	Kimberly Sandstrom	Yes, from Sujatha	I called Sujatha, and when she didn't answer, I left a voice mail to let her know that I had left my grievance with Susan at WVCS's front desk, as the message left by Susan had indicated.
Friday, February 12, 2016	1:45 PM	Email	Kimberly Sandstrom	No	I confirmed receipt of Christine's email and attachment, and also that I had left my grievance with Susan at the front desk at WVCS for delivery to Sujatha.

Communication Timeline

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Tuesday, February 16, 2016	10:25 AM	Phone call	Sujatha Venkatraman	No	Sujatha called in response to the voice mail messages left by me and Susan. She said that I am ineligible, and that no BMR purchase unit was available, because the sale to the alternate applicant was 80% done. I asked her if she was telling me that if an error was made and the error was brought to her attention, she would allow the error to stand rather than correcting it. Sujatha did not answer yes or no. She repeated that no unit was available. She also told me that I was "not the only one" involved in the transaction, that there was also a seller and two alternates. Of course, I was fully aware of these facts.

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Monday, February 22, 2016	10:30 AM	Certified mail	Sujatha Venkatraman	No	Sujatha said "...the City BMR policy (Exhibit 3) clearly states that we only look at 24 CFR 5.609 (b). Paragraph (a) is not being considered in our BMR program." However, Exhibit 3 (see attachment: Exhibit 3) makes no reference to paragraph (a) which defines annual income. Nor does Exhibit 3 reference paragraph (d) which describes options for the annualization of income over a period shorter than 12 months. See the attachment: FAMILY INCOME (U.S. Government Publishing Office, 2016) for the full 24 CFR 5.609. She went on to say that my "...projected/anticipated gross household income including bonus pay came out to \$103,648.14." which is \$1,589.14 over the limit. See the attachment: 2.4 Annual Gross Income, like Exhibit 3, also from the City of Cupertino's <u>POLICY AND PROCEDURES MANUAL FOR ADMINISTERING DEED RESTRICTED AFFORDABLE HOUSING UNITS</u>, which appears to reference 24 CFR Part 5. Note that this document does not reference any sections/paragraphs of the CFR as being irrelevant or not part of the City's BMR program, as Sujatha stated. However, the link provided in the document leads to a Page Not Found error as shown in the screen shot, so it remains unclear precisely what the City means when it says, "Annual household income is defined pursuant to the U.S. Code of Federal Regulations and provided on the website of the U.S. Department of Housing and Urban Development".
Tuesday, March 01, 2016	3:45 PM	Meeting at WVCS	Kimberly Sandstrom	Yes, from Josh	I handed my second grievance to Josh Selo.

Date	Approx. Time	Communication Type	Communication Initiated By	Response Requested	Communication Content
Tuesday, March 08, 2016	5:30 PM	Certified mail	Josh Selo	No	Josh offered no new findings.



Kimberly Sandstrom <

>

City of Cupertino-BMR Purchase Program application package

1 message

Christine Nguyen <christinen@wvcommunityservices.org>

Wed, Jan 20, 2016 at 3:29 PM

To:

Hello Kimberly,

We are very happy to inform you that we will be having a 2 bedrooms unit available to sell very soon. Your number on the wait list is up for this unit and we also select 2 more households to be a backup during this review process.

Per our telephone conversation earlier; We are offering you an opportunity to complete and submit your application (see attachment) along with all the support documents listed on page 4 of our package. This complete package must be received by WVCS on/by Jan 27th, 2016.

For your son, we would need a copy of his current school schedule.

At anytime, if you have questions or concerns, please do not hesitate to contact me via email or by phone.

Warm Regards,

Christine Nguyen

Program Manager, Housing Services

West Valley Community Services, Inc.

10104 Vista Drive.

Cupertino, CA 95014

(P) 408.255.8033 x 201

(Direct) 408.956.6112

(F) 408.366.6090

(E) christinen@wvcommunityservices.org(website) www.wvcommunityservices.org

HEALTH · HOME · HEART · West Valley Community Services, Inc.

**BMR rental app 12.22.15-English-REVISED.pdf**

719K



Kimberly Sandstrom

Re: BMR Purchase

1 message

Christine Nguyen <christinen@wvcommunityservices.org>

Thu, Jan 21, 2016 at 9:15 AM

To: Kimberly Sandstrom <

Hello Kimberly,

Below, please find our respond:

Can I preview the home before next Wednesday? It's hard to imagine there being any issues, but because there is a nonrefundable deposit, I would feel more comfortable seeing the home before paying the deposit. I am available, except for occasional meetings each day, and can work with your availability.

I'm completely understanding your concerns. It's the BMR policy that we must review your application package to assess your qualification, then we can arrange the next step such as viewing the unit and so on.

For now, we can only release the common property address but not the Unit # due to privacy of the current owner.

Yes, there is a \$50 application fee is required at the time of submission, which is non-refundable.

Do I need an agent?

No, you don't need an agent to represent in this transaction. Since this is a BMR transaction, there will City of Cupertino's representative and me (WVCS staff) will be assisting you with this transaction from beginning to the end.

Is the loan arranged through the BMR program, or do I need to get the loan on my own? I have pre-approval, BTW.

No, City of Cupertino does not provide any finance. We do have a prefer lender list that we can provide as a reference but you do not require to select them. You may choose to get a mortgage loan at any financial institute for this transaction.

If your inspection uncovers issues, perhaps mechanical or electrical, who pays to fix the defects?

The unit is fairly new. Usually, the seller will pay for the inspection and the fix is something that we can discuss with the seller if there is any issues.

Who is the seller? Individual(s) or is the seller the BMR program?

This is one of our BMR unit.

What is my purchase price?

\$356,995.80

Is it negotiable?

No, the price is set and it's calculated base on the Resale Restriction agreement.

Are there down payment requirements?

Per BMR program's guideline and requirement; the buyer must have atleast 5% down + 3% necessary closing cost

I was divorced in 2014 and filed Head of Household in 2014. In 2013 and 2012, I filed Married Filing Jointly. I am guessing you need a copy of the divorce decree because of this, in addition to the other documents we have discussed?

Yes, that's a good idea to attached a letter to support this.

Finally, in looking at my final paystub for 2015, I see \$6,933 in Performance, Special Recognition and Wellness Bonuses. As a result, my gross pay for 2015 is \$104,480. This is a one time event. The bonuses are unlikely to be paid this year. I am sure that your analysis will look at my salary (which will be included in my Employment Verification letter) to determine my eligibility as bonuses are not guaranteed to be part of my income. Can you verify that this situation does not cause my family to be ineligible?

In order for us to review and assess your qualification, we need you to provide all documents as requested. Then we can respond and provide you the result after we reviewed it.

I hope that I've answered most of your questions. Please feel free to let me know if you have any other questions and I'm happy to assist you.

Warm Regards,

Christine Nguyen

Program Manager, Housing Services
West Valley Community Services, Inc.
10104 Vista Drive.

Cupertino, CA 95014

(P) 408.255.8033 x 201

(Direct) 408.956.6112

(F) 408.366.6090

(E) christinen@wvcommunityservices.org

(website) www.wvcommunityservices.org

HEALTH · HOME · HEART · West Valley Community Services, Inc.

On Thu, Jan 21, 2016 at 7:55 AM, Kimberly Sandstrom ·

· wrote:

· Hi Christine,

I read through the package you emailed me and now I do have a few questions.

Can I preview the home before next Wednesday? It's hard to imagine there being any issues, but because there is a nonrefundable deposit, I would feel more comfortable seeing the home before paying the deposit. I am available, except for occasional meetings each day, and can work with your availability.

Do I need an agent?

· Is the loan arranged through the BMR program, or do I need to get the loan on my own? I have pre-approval, BTW.

If your inspection uncovers issues, perhaps mechanical or electrical, who pays to fix the defects?

Who is the seller? Individual(s) or is the seller the BMR program?

What is my purchase price?

Is it negotiable?

Are there down payment requirements?

· I was divorced in 2014 and filed Head of Household in 2014. In 2013 and 2012, I filed Married Filing Jointly. I am guessing you need a copy of the divorce decree because of this, in addition to the other documents we have discussed?

Finally, in looking at my final paystub for 2015, I see \$6,933 in Performance, Special Recognition and Wellness Bonuses. As a result, my gross pay for 2015 is \$104,480. This is a one time event. The bonuses are unlikely to be paid this year. I am sure that your analysis will look at my salary (which will be included in my Employment Verification letter) to determine my eligibility as bonuses are not guaranteed to be part of my income. Can you verify that this situation does not cause my family to be ineligible?

Regards,

Kimberly



Kimberly Sandstrom >

Re: A thought

1 message

Christine Nguyen <christinen@wvcommunityservices.org>

Thu, Jan 28, 2016 at 6:38 PM

To: Kimberly Sandstrom >

Hello Kimberly,

Just wanted to give you an update on our end. As I have consulted and confirmed with the City of Cupertino (person overseeing the BMR programs); Per BMR program guidelines, we must calculate base on your paycheck that you have submitted and included ALL the bonuses amount that you have received and shown on your paycheck. As the result, your household has exceed the income limits (\$102,050) to qualify to purchase the BMR unit.

Unfortunately, we are not able to make any exception and I hope that you understand.

Please feel free to let me know if you have any questions or concerns.

Warm Regards,

Christine Nguyen

Program Manager, Housing Services

West Valley Community Services, Inc.

10104 Vista Drive.

Cupertino, CA 95014

(P) 408.255.8033 x 201

(Direct) 408.956.6112

(F) 408.366.6090

(E) christinen@wvcommunityservices.org(website) www.wvcommunityservices.org**HEALTH · HOME · HEART · West Valley Community Services, Inc.**

On Wed, Jan 27, 2016 at 9:21 AM, Kimberly Sandstrom >

> wrote:

Hi Christine,

Appreciate all the time you've spent with me and the service you have performed.

I just spoke with the senior director (my boss's boss) and he makes a good point. Our company is making its earning statement on Friday, 29-Jan.

On that day, we also have an All Hands meeting with the executives and the question of funding the mid-year performance bonus is sure to come up.

My senior director shares the opinion of me and my manager that the bonus will be at most, greatly reduced compared to previous years and at worst eliminated.

We should know for certain on Friday, 29-Jan whether the bonus will be paid, and early next week we should know the dollar amount if they are paid.

My rent has increased 14% over the last two years, and is currently \$30,000 per year. Each spring they increase it, and so in the next month or two, I am expecting an increase notice again. My average gross pay,

including bonuses, as I showed, over the previous three years is under \$95,000. My base salary now is \$96,000.

I will not take part in the Wellness activities this year, as the \$250 bonus is no value if it disqualifies me from affordable housing. If I do not take part in the activities, I will not earn the bonus.

I am absolutely desperate. I am not asking you to make an exception. I don't need an exception because I qualify. I am asking you to allow a few days, a week at most, to pass so that we can look at the actual mid-year bonus for this year.

Regards,
Kimberly



Kimberly Sandstrom <

>

RE: RE: Guidance needed

1 message

Christopher Valenzuela <ChristopherV@cupertino.org>

Tue, Feb 2, 2016 at 10:13 AM

To: Kimberly Sandstrom <

>, Christine Nguyen <christinen@wvcommunityservices.org>

Hi Kimberly, the property will be inspected this afternoon by our City Bldg. Inspector to see if the property is eligible to be resold due a potential modification in the subject BMR unit. That is the first step to see whether or not the seller is eligible to resell this BMR unit. Regarding reviewing your eligibility as far as income, assets, etc... we have yet to come to a written decision. What would be helpful is if you can submit your most recent pay stubs to-date to Christine and CC me as well. I believe you are paid bi-weekly so you may have a Jan. 2016 paystub that you have yet to submit. When is your next Feb. 2016 pay check due? Can your employer provide you with a written letter/verification of your 2016 bonus amount? It will help our staff to have a fully documented complete file of your income before we can make a final decision. Thank you.

Christopher "C.J." Valenzuela

Senior Housing Planner

10300 Torre Avenue

Cupertino, CA 95014

408.777.3251 (Phone)

christopherv@cupertino.org (E-mail)

From: Kimberly Sandstrom [mailto:**Sent:** Tuesday, February 02, 2016 10:00 AM**To:** Christine Nguyen**Cc:** Christopher Valenzuela**Subject:** Guidance needed

Hi Christine and C.J.,

Have to admit that I didn't read all the way through the 47 pages of the regulations, but I did find what I was looking for. There is a clause that allows appeal when an applicant is notified that they have been found ineligible.

I'm wondering if we are at that place yet? I have an email from Christine saying I am ineligible, but no statement from the city, nor from WVCS saying I'm ineligible.

My manger says the mid-year bonus will be confirmed around 17-Feb. However, I have guidance it will be less than \$750. As I predicted in the statement on bonus history and outlook I provided, this is well below last year's

3/13/2016

Gmail - RE: RE: Guidance needed

\$3,150 mid-year bonus.

Please advise whether my eligibility is still under consideration or whether I need to prepare my appeal on determination of ineligibility.

Regards,

Kimberly



Kimberly Sandstrom <

>

RE: RE: RE: RE: Guidance needed

1 message

Christopher Valenzuela <ChristopherV@cupertino.org>

Wed, Feb 3, 2016 at 9:48 AM

To: Kimberly Sandstrom <

Hi Christine, can you confirm that Kimberly will maintain her place on the waiting list should this BMR unit become eligible to be resold in the future. Thank you.

Christopher "C.J." Valenzuela

Senior Housing Planner

10300 Torre Avenue

Cupertino, CA 95014

408.777.3251 (Phone)

christopherv@cupertino.org (E-mail)

From: Kimberly Sandstrom [mailto:

]

Sent: Wednesday, February 03, 2016 7:44 AM

To: Christine Nguyen

Cc: Christopher Valenzuela

Subject: Re: RE: RE: Guidance needed

That is disappointing.

I assume I remain in the current top-spot on the two-bedroom waitlist, as I was when Christine contacted me as the selected candidate on 20-Jan?

I also want to make sure that Christine understands that I did not intentionally "go over her head". The City of Cupertino's published pages on the BMR program instructs the public to go to the City Clerk's office to view the municipal code on the BMR program. That is what I did. I went to the clerk's office and asked to see the code so that I could determine if I had a right to an appeal.

The staff member in the clerk's office contacted C.J. I did not ask to speak with C.J. by name nor by title. I asked to see the code.

Hope to hear good news soon.

Regards,

Kimberly

<https://mail.google.com/mail/?ui=2&ik=8228892234&view=pt&search=inbox&th=152a83fc83d27a82&siml=152a83fc83d27a82>

1/4

On Tue, Feb 2, 2016 at 6:11 PM, Christine Nguyen <christinen@wvcommunityservices.org> wrote:

Thank you CJ for your update!

Warm Regards,

Christine Nguyen

Program Manager, Housing Services
West Valley Community Services, Inc.
10104 Vista Drive.

Cupertino, CA 95014

(P) 408.255.8033 x 201

(Direct) 408.956.6112

(F) 408.366.6090

(E) christinen@wvcommunityservices.org

(website) www.wvcommunityservices.org

HEALTH · HOME · HEART · **West Valley Community Services, Inc.**

On Tue, Feb 2, 2016 at 3:16 PM, Christopher Valenzuela <ChristopherV@cupertino.org> wrote:

Hi Christine, the owner (seller) of this BMR unit is currently not eligible to resell this BMR unit in it's current structural condition. Therefore the seller will need to go through a process in order to bring this unit up to Building Code and receive a final sign off from our Building Dept. before this unit is eligible to be resold. I do not have an estimated timeframe as it depends on how cooperative the seller is on performing the necessary modifications and getting final sign off from our Building Dept. Should this BMR unit be deemed "eligible" to be resold I will notify you of the status change. Until then, this BMR unit is on hold from being eligible to be resold. Thank you.

Christopher "C.J." Valenzuela

Senior Housing Planner

10300 Torre Avenue

Cupertino, CA 95014

408.777.3251 (Phone)

christopherv@cupertino.org (E-mail)

From: Christopher Valenzuela

Sent: Tuesday, February 02, 2016 10:46 AM

To: 'Kimberly Sandstrom'

Cc: Christine Nguyen

Subject: RE: RE: Guidance needed

Christine, can you please print and put Kimberly's Jan. 29 paystub in the file. Thank you.

Christopher "C.J." Valenzuela

Senior Housing Planner

10300 Torre Avenue

Cupertino, CA 95014

408.777.3251 (Phone)

christopherv@cupertino.org (E-mail)

From: Kimberly Sandstrom [mailto:]
Sent: Tuesday, February 02, 2016 10:23 AM
To: Christopher Valenzuela
Cc: Christine Nguyen
Subject: Re: RE: Guidance needed

Hi C.J.,

Attached is 29-Jan paystub. Christine has 15-Jan, 31-Dec and 18-Dec paystubs.

My manager advises he will have bonus confirmation around 17-Feb.

My senior director said he would provide a statement, however getting the approved, official statement in a couple of weeks would be best.

As you say first step is determination of whether unit is eligible for sale.

Thanks for you guidance thus far.

Regards,

Kimberly

On Tue, Feb 2, 2016 at 10:13 AM, Christopher Valenzuela <ChristopherV@cupertino.org> wrote:

Hi Kimberly, the property will be inspected this afternoon by our City Bldg. Inspector to see if the property is eligible to be resold due a potential modification in the subject BMR unit. That is the first step to see whether or not the seller is eligible to resell this BMR unit. Regarding reviewing your eligibility as far as income, assets, etc... we have yet to come to a written decision. What would be helpful is if you can submit your most recent pay stubs to-date to Christine and CC me as well. I believe you are paid bi-weekly so you may have a Jan. 2016 paystub that you have yet to submit. When is your next Feb. 2016 pay check due? Can your employer provide you with a written letter/verification of your 2016 bonus amount? It will help our

staff to have a fully documented complete file of your income before we can make a final decision. Thank you.

Christopher "C.J." Valenzuela

Senior Housing Planner

10300 Torre Avenue

Cupertino, CA 95014

408.777.3251 (Phone)

christopherv@cupertino.org (E-mail)

From: Kimberly Sandstrom [mailto:]
Sent: Tuesday, February 02, 2016 10:00 AM
To: Christine Nguyen
Cc: Christopher Valenzuela
Subject: Guidance needed

Hi Christine and C.J.,

Have to admit that I didn't read all the way through the 47 pages of the regulations, but I did find what I was looking for. There is a clause that allows appeal when an applicant is notified that they have been found ineligible.

I'm wondering if we are at that place yet? I have an email from Christine saying I am ineligible, but no statement from the city, nor from WVCS saying I'm ineligible.

My manger says the mid-year bonus will be confirmed around 17-Feb. However, I have guidance it will be less than \$750. As I predicted in the statement on bonus history and outlook I provided, this is well below last year's \$3,150 mid-year bonus.

Please advise whether my eligibility is still under consideration or whether I need to prepare my appeal on determination of ineligibility.

Regards,

Kimberly



Kimberly Sandstrom < >

Sandstrom PreApproved and can close on time for 3/11/2016 COE

1 message

Kelly Vogel <KellyVogel@princetoncap.com>

Thu, Feb 11, 2016 at 2:17 PM

To: "christinen@wvcommunityservices.org" <christinen@wvcommunityservices.org>

Cc: Kimberly Sandstrom < >, Kelly Vogel <KellyVogel@princetoncap.com>

Dear Christine and Christopher,

I have been working with Kimberly Sandstrom for several months and she has already been formally approved with underwriting conditions. We have just been waiting for her to find the perfect property and it looks like she has found it! I am very excited for her and her next step towards homeownership. She has been so patient through the house hunting endeavor to find her home.

To reassure both of you, Kimberly is approved and her credit, income and assets have already been reviewed by an underwriter and we have complete conditional loan approval.

Since she is already approved and has all of her updated documentation on hand we are simply waiting for the following important items:

- 1) Ratified purchase contract and
- 2) Preliminary title report
- 3) HOA documents (if applicable)

Once we have this we will request the Buyer Settlement Statement to verify all escrow and title fees.

We will be able to close no later than March 11th and possible sooner if all parties are prepared.

I will be able to issue a timeline to all parties to see the expectation of the milestones throughout the loan process.

Please provide the fully ratified purchase contract and the escrow contact information quickly to avoid any delays.

Please feel free to contact me with any further questions or concerns.

I am looking forward to working with you all on this purchase transaction.

Regards~

Kelly

[Click here to see what my clients are saying!](#)

[Market Commentary](#) [Loan Calculators](#) [Apply Now](#)

**PRINCETON CAPITAL**
EXPERTS IN HOME LENDING

Kelly Vogel
Loan Officer
NMLS 290572



Tel: 408.981.9128
eFax: 408.335.1134

12029 Saratoga- Sunnyvale Road
Saratoga, CA 95070
kellyvogel@princetoncap.com
www.princetoncap.com/kellyvogel



[Click to Add My Info to your Contacts](#)

Kelly Vogel
Loan Officer
NMLS 290572
Princeton Capital
12029 Saratoga- Sunnyvale Road
Saratoga, CA 95070
408.981.9128 Tel
408.335.1134 eFax
kellyvogel@princetoncap.com
<http://www.princetoncap.com/kellyvogel>

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Please consider the environment before printing this email.

Statement Regarding History and Outlook of Performance Bonuses

I asked Christine if my application can be processed for the BMR Purchase Program in Cupertino, even though my gross pay for 2015 was slightly over the limit of \$102,000. My annual salary is \$96,000, and my average gross pay over the last three years is \$94,473.

In 2015, I received three cash bonuses: \$5,850 Performance Bonus (all employees with a successful or better performance rating are eligible for this bonus when the company achieves its goals, subject to management approval); \$833 Special Recognition Bonus (the manager of another group nominated me for this bonus when I served her group as well as my own during the 2014-2015 winter furlough when most employees were absent); \$250 Wellness Bonus (this bonus is paid to employees who meet biometric standards and participate in wellness activities). These totaled \$6,933, and I believe it is very unlikely that I will receive bonuses of this magnitude going forward. In 2015, I also received my only Equity Award. This is a stock option that will vest over four years with an estimated value of \$3,000.

For the calendar years 2013, 2014 and 2015, I have seen my cash performance bonuses steadily decline, both in total dollars and as a percentage of gross pay. The highest bonus year was 2013, when I received a bonus of \$8,000 or 9.0% of my gross pay. In 2014, my performance bonus was \$6,000 or 6.6% of my gross pay. In 2015, my performance bonus was \$5,850 or 5.6% of my gross pay. See page three for a table that summarizes my performance bonus history. See pages four through six for my final yearly pay stubs with a calculation of performance bonus as a percentage of gross pay. Finally, bonus and promotion documents are attached at the end as an appendix.

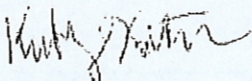
My company's decision to pay performance bonuses is made twice a year, based on several factors, including the company's financial and quality performance. With the recent trends in demand for personal computers, the stock market and the economy at large, I think it is very unlikely that I will see a mid-year performance bonus this year. I predict that if any performance bonus is approved, it will be very slight.

The next page shows my company's stock performance from 2-Jul-2012 until 21-Jan-2016, which I downloaded from <http://investor.shareholder.com/seagate/stockquote.cfm>. Although I don't believe Seagate's board makes decisions on funding employee performance bonuses based solely on the stock market, it seems likely they will be feeling constrained in their ability to fund bonuses. The second image shows the end of calendar year stock price for 2011-2015.

I believe my company is sound, and I am confident that I will receive my base salary in 2016. However, I do not believe I will receive gross pay over \$102,000 in 2016.

I humbly ask that you consider my overall application and not penalize me for my exemplary service to my employer in 2015 that resulted in my gross pay being higher than usual. My family urgently needs affordable housing near work and school. If the city deems it necessary for me to refuse performance bonuses that result in annual gross pay greater than \$102,000, I will gladly refuse such bonuses.

Best Regards,

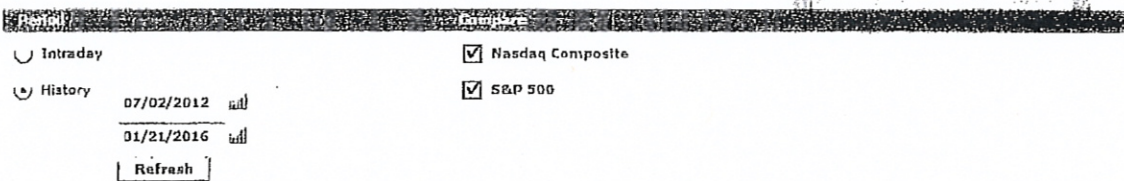
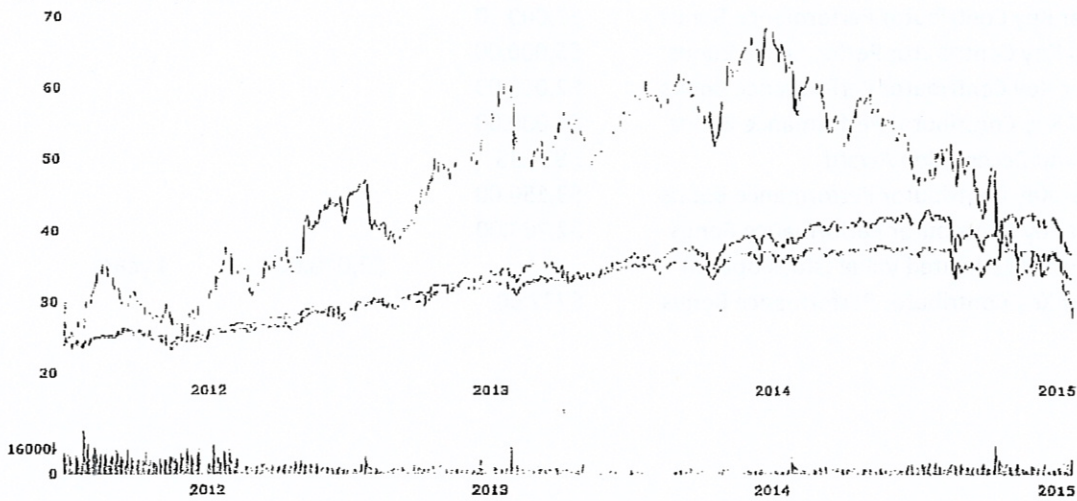


Kimberly Sandstrom

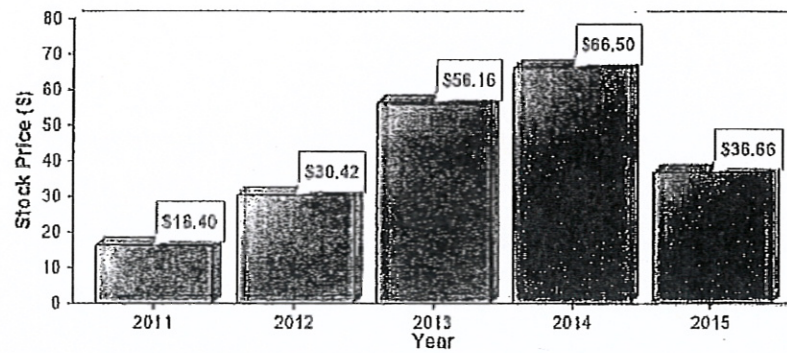
Friday, January 22, 2016

Stock Chart

STX COMP SPX



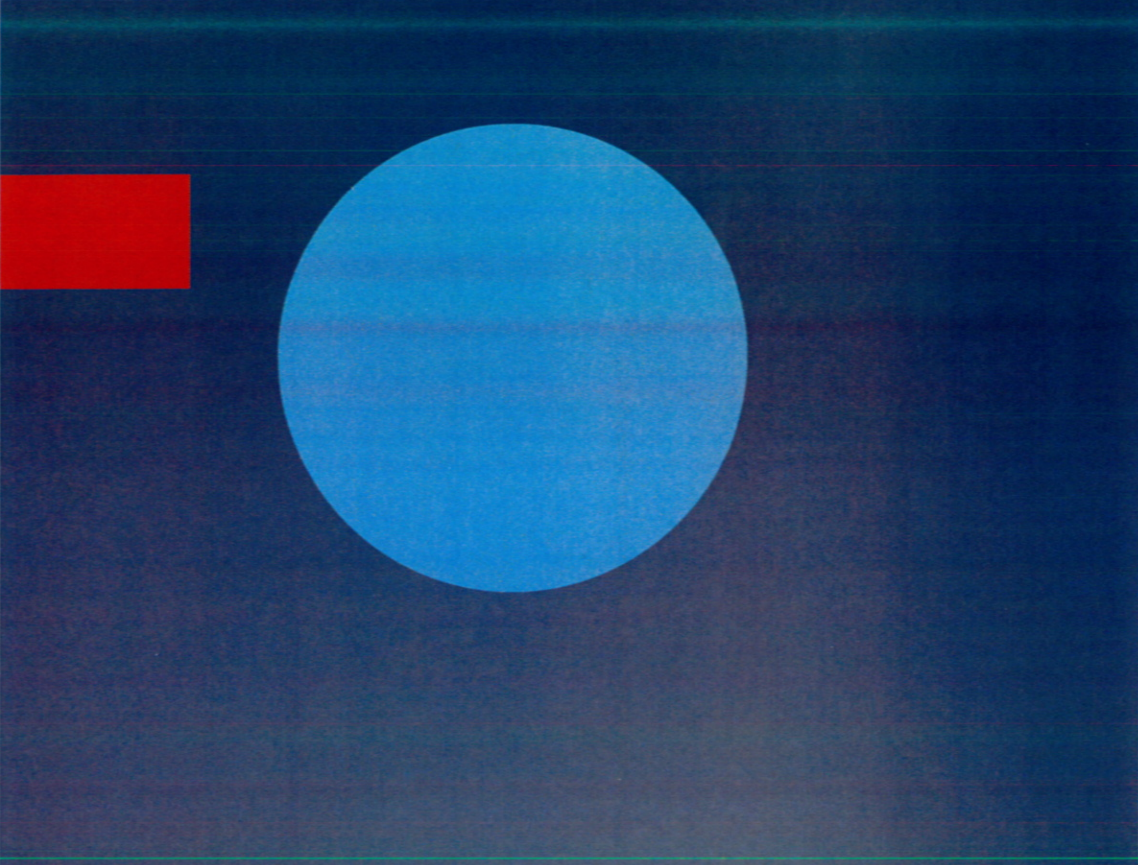
Year End Stock Prices



Summary of Awards History

Date	Award Type	Award Amount	Estimated Value	Vesting Period
28-Feb-13	Mid -Year Key Contributor Performance Bonus	\$3,000.00		
30-Aug-13	Year-End Key Contributor Performance Bonus	\$5,000.00		
28-Feb-14	Mid -Year Key Contributor Performance Bonus	\$2,000.00		
29-Aug-14	Year-End Key Contributor Performance Bonus	\$4,000.00		
31-Jan-15	Reward and Recognition Award	\$833.33		
27-Feb-15	Mid -Year Key Contributor Performance Bonus	\$3,150.00		
28-Aug-15	Year-End Key Contributor Performance Bonus	\$2,700.00		
28-Aug-15	Equity Award Estimated Value (stock option)		\$3,000.00	4 years
26-Feb-16	Mid -Year Key Contributor Performance Bonus	\$737.00		

Date	Pay Period	Gross Pay Pay Type	Comment
16-Jan-15	12/29/2014 - 1/11/2015	\$3,454.40 Salary	
30-Jan-15	1/12/2015 - 1/25/2015	\$3,454.40 Salary	
13-Feb-15	1/26/2015 - 2/8/2015	\$833.33 Special Recognition Bonus	One time bonus, not recurring
13-Feb-15	1/26/2015 - 2/8/2015	\$3,454.40 Salary	
27-Feb-15	2/9/2015 - 2/22/2015	\$3,454.40 Salary	
27-Feb-15	Period Ending 2/20/2015	\$3,150.00 Performance Bonus	Mid-Year performance bonus
13-Mar-15	2/23/2015 - 3/8/2015	\$3,454.40 Salary	
27-Mar-15	3/9/2015 - 3/22/2015	\$3,454.40 Salary	
10-Apr-15	3/23/2015 - 4/5/2015	\$3,454.40 Salary	
24-Apr-15	4/6/2015 - 4/19/2015	\$3,454.40 Salary	
24-Apr-15	4/6/2015 - 4/19/2015	\$3,454.40 Salary	
8-May-15	4/20/2015 - 5/3/2015	\$3,454.40 Salary	
22-May-15	5/4/2015 - 5/17/2015	\$50.00 Wellness Bonus	Wellness bonus requires participation in activities, and I am not participating in 2016
5-Jun-15	5/18/2015 - 5/31/2015	\$3,454.40 Salary	
19-Jun-15	6/1/2015 - 6/14/2015	\$3,454.40 Salary	
19-Jun-15	Period Ending 6/14/2015	\$3,692.80 Salary	
3-Jul-15	6/15/2015 - 6/28/2015	\$702.01 Esp Stock Gain	Dividends reinvested as shares and not received as cash
17-Jul-15	6/29/2015 - 7/12/2015	\$3,692.80 Salary	
31-Jul-15	7/13/2015 - 7/26/2015	\$3,692.80 Salary	
14-Aug-15	7/27/2015 - 8/9/2015	\$3,692.80 Salary	
28-Aug-15	8/10/2015 - 8/23/2015	\$3,692.80 Salary	
28-Aug-15	8/10/2015 - 8/23/2015	\$200.00 Wellness Bonus	Wellness bonus requires participation in activities, and I am not participating in 2016
11-Sep-15	8/24/2015 - 9/6/2015	\$2,700.00 Performance Bonus	Year-End performance bonus
25-Sep-15	9/7/2015 - 9/20/2015	\$3,692.80 Salary	
9-Oct-15	9/21/2015 - 10/4/2015	\$3,692.80 Salary	
23-Oct-15	10/5/2015 - 10/18/2015	\$3,692.80 Salary	
6-Nov-15	10/19/2015 - 11/1/2015	\$3,692.80 Salary	
20-Nov-15	11/2/2015 - 11/15/2015	\$3,692.80 Salary	
4-Dec-15	11/16/2015 - 11/29/2015	\$3,692.80 Salary	
18-Dec-15	11/30/2015 - 12/13/2015	\$3,692.80 Salary	
31-Dec-15	12/14/2015 - 12/27/2015	\$3,692.80 Salary	
15-Jan-16	12/28/2015 - 1/10/2016	\$3,692.80 Salary	
		\$22,156.80 Gross Pay for 12 weeks preceding application to BMR purchase program	
		\$96,012.80 Annualized Gross Pay for 12 weeks preceding application to BMR purchase program	
		\$101,025.74	
		\$3,692.80 Salary	
		\$3,692.80 Salary	
		\$737.00 Performance Bonus	Mid-Year performance bonus
Total Gross Pay Plus Dividends 12/29/2014 - 12/27/2015			
29-Jan-16	1/11/2016 - 1/24/2016		
12-Feb-16	1/25/2016 - 2/7/2016		
29-Feb-16	Period Ending 2/22/2016		



Housing Commission

JUNE 23, 2016

Overview

Disparate
treatment of
my eligibility
and
disparate
impact of
Program on
Older Workers

Conflict
of
interest
and Due
Process

Need for clear,
unequivocal limits
and transparency
in City of
Cupertino BMR
Program

Why did I appeal WVCS's decision?

Initial reasons:

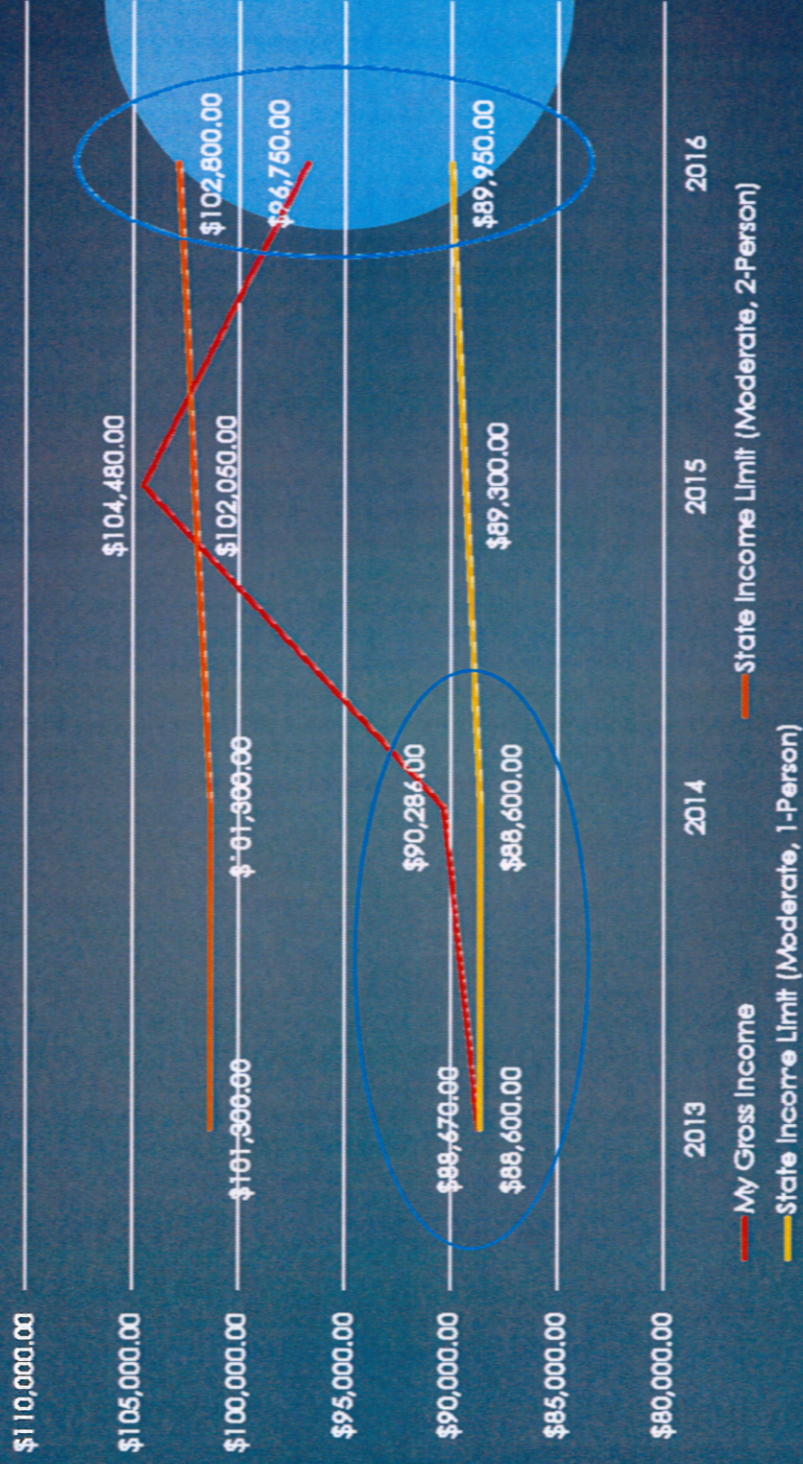
1. Disparate treatment – WVCS did not correctly determine my annual income
2. Disparate impact – the program limit on income negatively impacts older workers

What am I asking the Housing Commission to do?

1. Correctly determine my annual income
2. Institute priority points for age (similar to the residency and employment priority points)

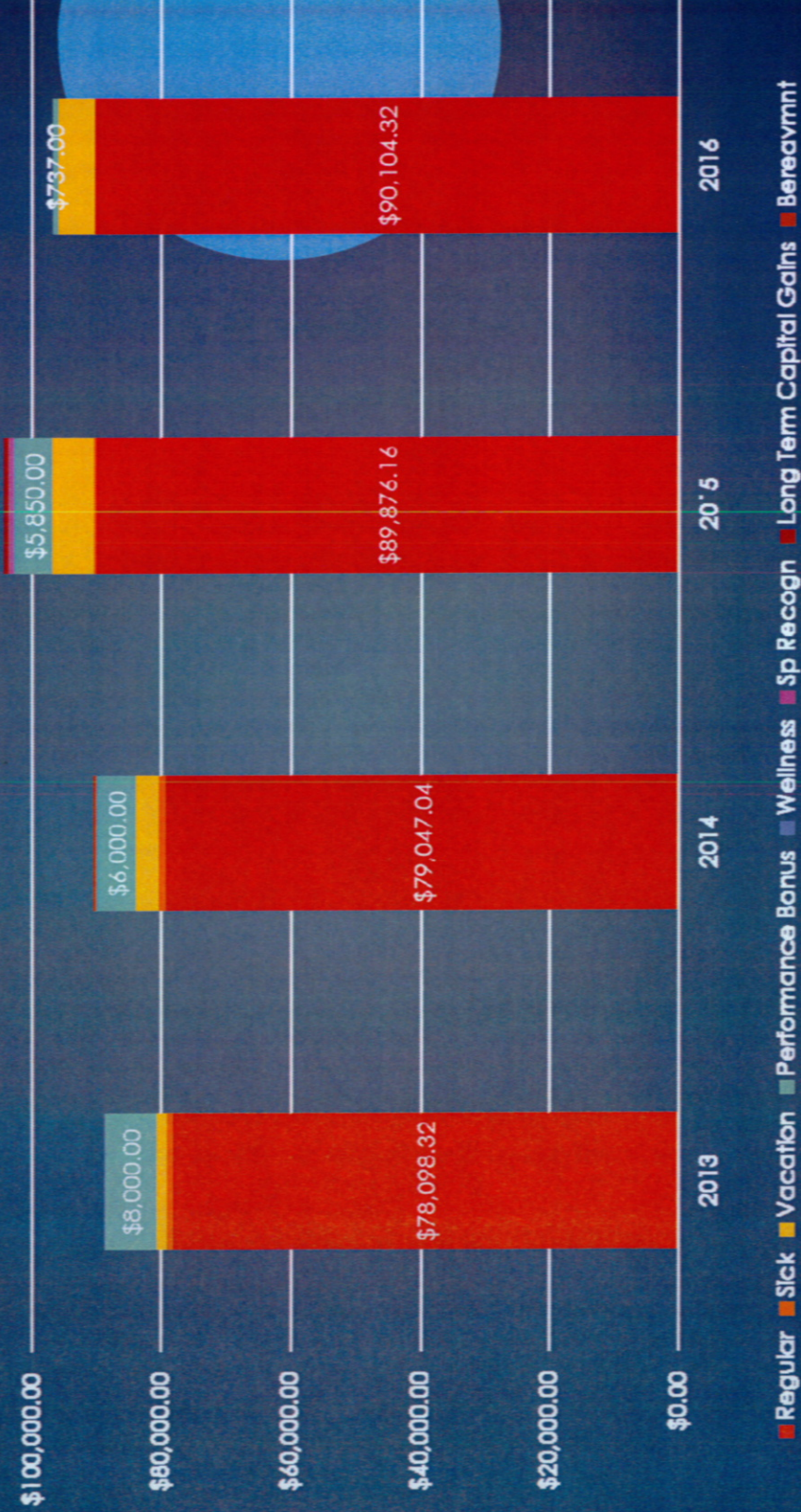
For example: age 40 – 0.5 point, age 45 – 1 point, age 50 – 1.5 points, age 55 – 2 points, etc.

My Gross Income and State Income Limits for Santa Clara County



<http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/reports/state/incnote.html>

Components of My Gross Income



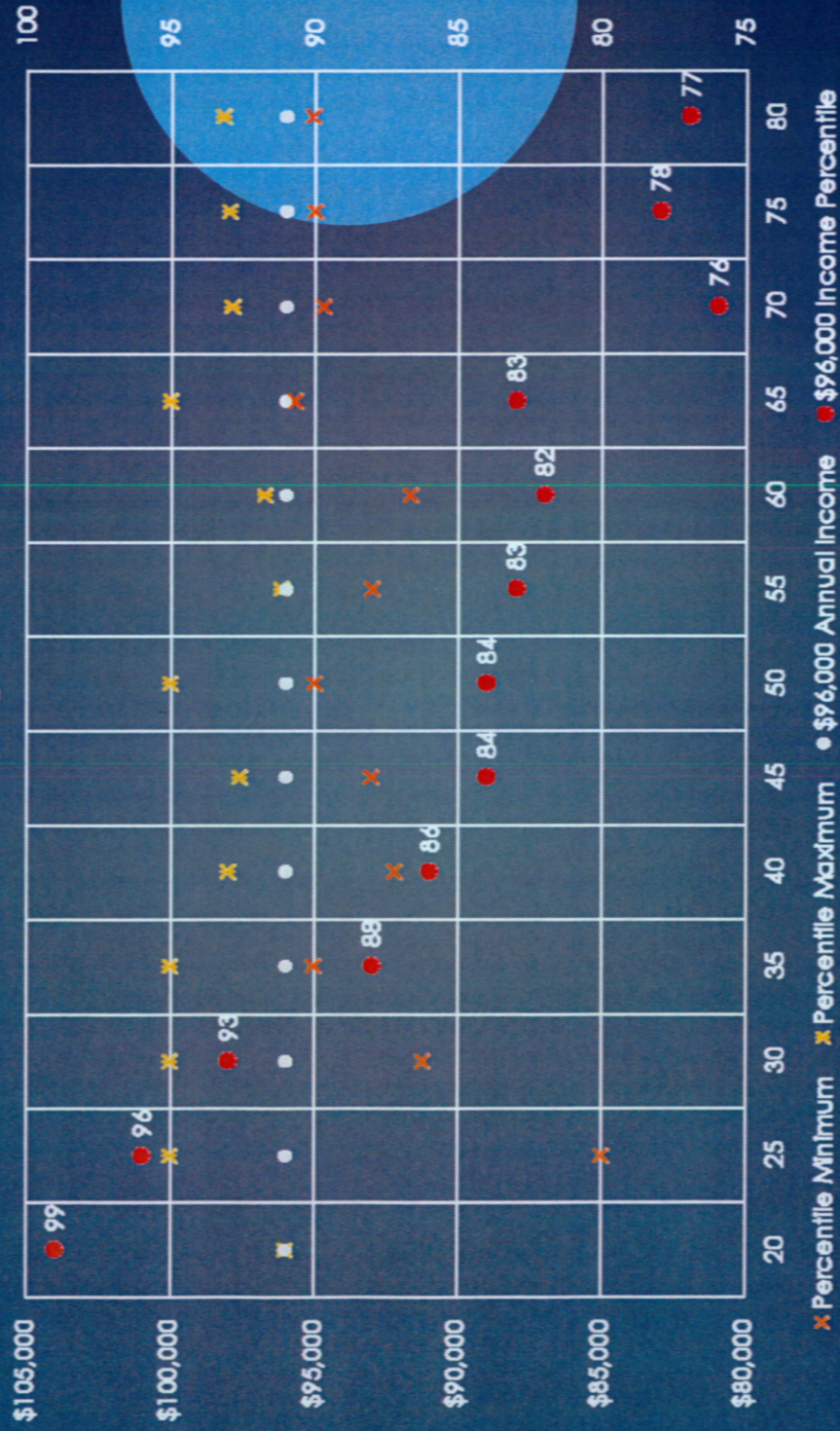
My Company Stock Performance 2013 – 2016

Drastic decline in
value delivers
“major life
change” that Ms
Winchester
referred to, and
its impacts are
real and
measureable



<http://www.nasdaq.com/symbol/stx/interactive-chart>

\$96,000 Income Percentile by Age for 2015 in the United States



Conflict of interest / Due process

Although Christine Nguyen told me that a conflict of interest would arise if I were both a volunteer and a client at WVCS...

...she nonetheless denied me and then sold the 2-bedroom, moderate unit – **while the appeal process was still underway** – to her coworker, Michelle Ma, the Director of Client Services at WVCS; a single woman with no dependents

This is clearly unacceptable and I am asking YOU, Housing Commission, to take action and reverse this illegal sale

Investigative Questions

- ▶ Is Michelle Ma the Director of Client Services at West Valley Community Services?
 - ▶ Date of hire
 - ▶ Date of termination
- ▶ How many City of Cupertino Below Market Rate units are **owned by**
 - ▶ current West Valley Community Services staff
 - ▶ former West Valley Community Services staff
 - ▶ current City of Cupertino staff
 - ▶ former City of Cupertino staff
- ▶ How many City of Cupertino Below Market Rate units are **rented by**
 - ▶ current West Valley Community Services staff
 - ▶ former West Valley Community Services staff
 - ▶ current City of Cupertino staff
 - ▶ former City of Cupertino staff

Questions about sale of APN 369-55-036 on or around 21-Mar-2016

- ▶ How many applicants were contacted and invited to complete their applications, including Ms Ma and I?
- ▶ How many applicants submitted complete applications?
- ▶ Did all of the applicants have the same number of priority points?
- ▶ How many priority points did Ms Ma have?
- ▶ At the time of application, where was Michelle Ma's residency?
 - ▶ Longevity at that address?
- ▶ At the time of application, where was Marissa Ma's residency?
 - ▶ Longevity at that address?
- ▶ What was Marissa Ma's income?
- ▶ What was the waitlist priority number of Ms Ma?



Sunnyvale BMR Program

- ▶ Open House presentations introduce the public to the program
- ▶ Rules and municipal codes that govern the program can be downloaded from the Internet
- ▶ Rules are transparent and stipulate, for example
 - ▶ Definition of Gross Household Income is the gross (pre-tax) amount of income of all adult household members that is anticipated to be received during the coming 12-month period, as further defined in Code of Federal Regulations Title 24, Part 5 (the "Part 5 method")
 - ▶ If there is an Applicant/Co-Applicant, there must be a Head of Household who is financially and/or legally responsible, in full or in part, for all members of his/her household
 - ▶ A Household is defined as living together in the same dwelling unit at the time of, and has been living together in the same dwelling unit for at least six months prior to the date of Program application
 - ▶ Residency in Sunnyvale also has minimum six month longevity requirement

Government regulations compared to Staff recommendations

The Federal Government,
State of California and local
governments all use
**anticipated annual income
for the coming 12-month
period**

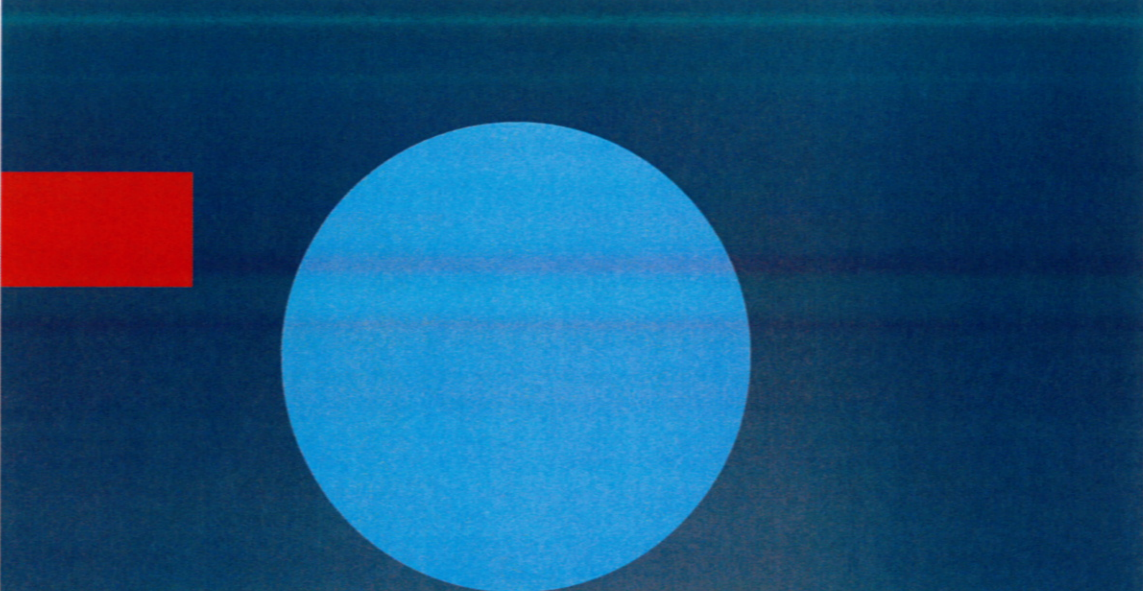
This makes sense –
judging applicant's
eligibility from current
income level, as this best
reflects reality

Staff recommends using
previous year's income

This does not make sense
– judging applicant's
eligibility from income
level that may no longer
reflect reality

In closing

- ▶ Affordable housing is one of the most valuable things in existence in Cupertino...
- ▶ A valuable BMR unit has been sold in a frankly illegal manner
- ▶ Please recommend to the City Council an action that will restore justice and undo the sale
- ▶ Please study the existing programs in nearby communities to make improvements to Cupertino's program
- ▶ Please do not recommend the Ad Hoc change to the rules recommended by staff and instead, require staff to apply disinterested skill, zeal, and diligence primarily for the benefit of the public to the determination of anticipated annual income, as described in 24 CFR 5.609(a).
- ▶ Please reject the recommendation that Cupertino's program ignore the definition of annual income found in paragraph (a) of the CFR.



Housing Commission

AUGUST 11, 2016

Overview

Speculation
vs
Reasoning

Answers to
Investigative
Questions
and a
Closer look
at Conflict
of Interest



Role of Housing
Commissioners in
bringing a
recommendation
to the City
Council

No Speculation Necessary – Facts Provided to
Estimate 2016 Gross Income

2015

Wages: \$89,876.16

Capital Gains: \$702.01

Performance Bonus:
\$5,850.00

S Recogn Bonus:
\$833.33

Wellness Bonus: \$250.00

2016 Estimate

Wages: \$96,012.80

Capital Gains: \$0.00

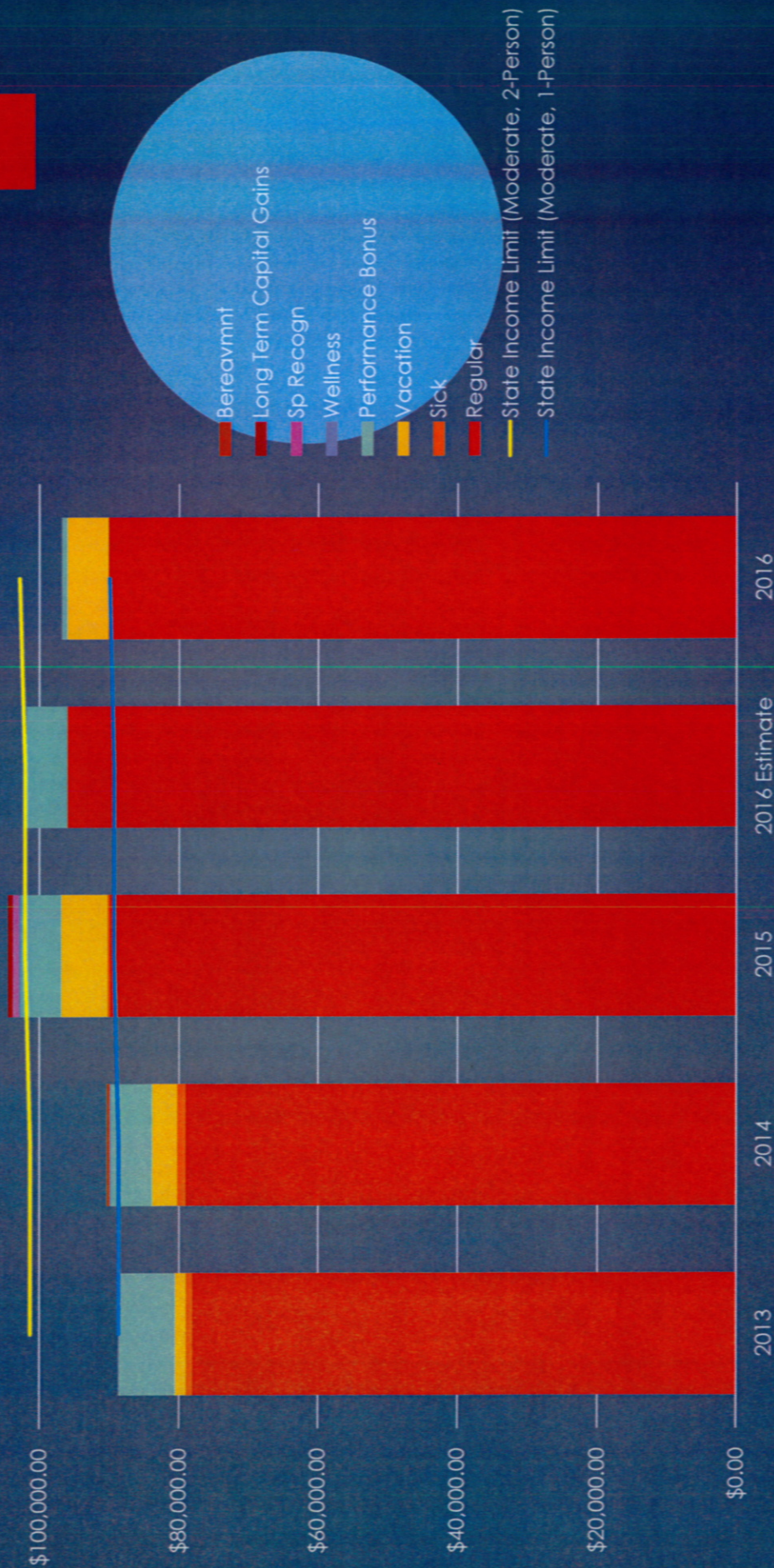
Performance Bonus:
\$5,850.00

S Recogn Bonus: \$0.00

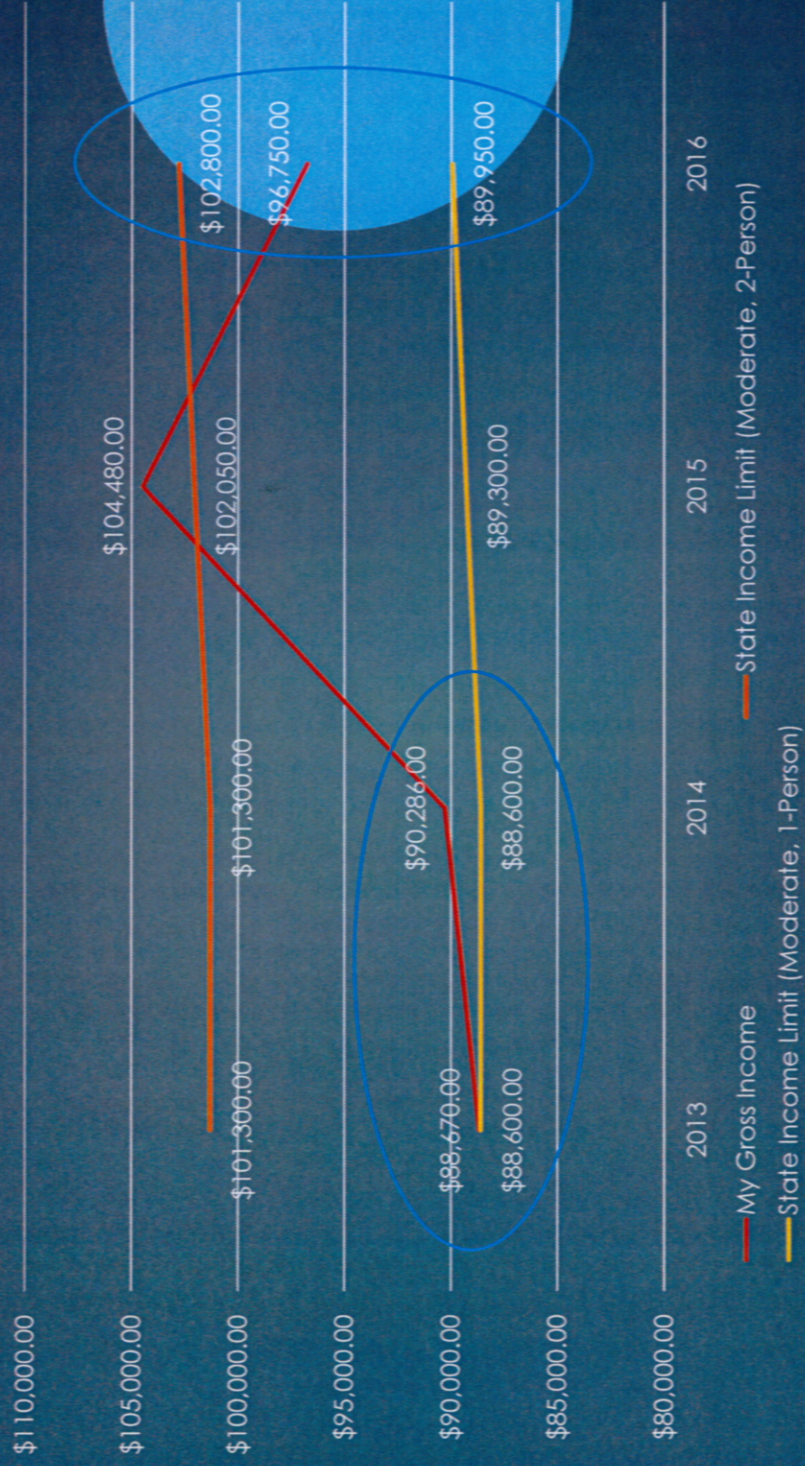
Wellness Bonus: \$0.00

$\$96,012.80 + \$5,850.00 = \$101,862.80$

Actual and Anticipated Gross Income



My Gross Income and State Income Limits for Santa Clara County



<http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/reports/state/incnote.html>

Recall: Investigative Questions

- ▶ Is Michelle Ma the Director of Client Services at West Valley Community Services?
 - ▶ Date of hire
 - ▶ Date of termination
- ▶ How many City of Cupertino Below Market Rate units are **owned by**
 - ▶ current West Valley Community Services staff
 - ▶ former West Valley Community Services staff
 - ▶ current City of Cupertino staff
 - ▶ former City of Cupertino staff
- ▶ How many City of Cupertino Below Market Rate units are **rented by**
 - ▶ current West Valley Community Services staff
 - ▶ former West Valley Community Services staff
 - ▶ current City of Cupertino staff
 - ▶ former City of Cupertino staff

Questions about sale of APN 369-55-036 on or around 21-Mar-2016

- ▶ How many applicants were contacted and invited to complete their applications, including Ms Ma and I?
- ▶ How many applicants submitted complete applications?
- ▶ Did all of the applicants have the same number of priority points?
- ▶ How many priority points did Ms Ma have?
- ▶ At the time of application, where was Michelle Ma's residency?
 - ▶ Longevity at that address?
- ▶ At the time of application, where was Marissa Ma's residency?
 - ▶ Longevity at that address?
- ▶ What was Marissa Ma's income?
- ▶ What was the waitlist priority number of Ms Ma?

C. Prohibition on Self-Dealing

The Attorney General stated that Section 1090 was enacted to prevent "self-dealing" in contracts by public officials.⁸

In a 1983 opinion, the Attorney General stated:

"Section 1090 of the Government Code codifies the common law prohibition and the general policy of this state against public officials having a personal interest in contracts they make in their official capacities. Mindful of the ancient adage, that 'no man can serve two masters,' a self-evident truth, as trite and impregnable as the 'law of gravity,' the section was enacted to ensure that public officials 'making' official contracts not be distracted by personal financial gain from exercising absolute loyalty and undivided allegiance to the best interest of the entity which they serve, and at least with respect to those contracts, it does so by removing or limiting the possibility of their being able to bring any direct or indirect personal influence to bear on an official decision regarding them. The mechanism of the section is one of prohibiting public officials from being personally financially interested as private individuals in any such contract..."⁹ [Emphasis added.]

In a 1993 opinion, the Attorney General stated:

"... Section 1090 is concerned with financial interests, other than remote or minimal interests, which would prevent officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their public agencies. Moreover, when Section 1090 is applicable to one member of the governing body of a public entity, the proscription cannot be avoided by having the interested member abstain; the entire governing body is precluded from entering into the contract. A contract which violates Section 1090 is void."¹⁰

Screen shot from California Law Governing Conflict of Interest, June, 2014 by Orange County Department of Education



Housing Commission Chair
disallowed presentation of
Conflict of Interest slides, so
slides have been deleted



Responsibilities of Housing Commission

(from COMMISSIONER'S HANDBOOK, 2016, City of Cupertino)

D. DISCRIMINATION AND EQUAL PROTECTION

All rules, regulations, laws, services and facilities must apply equally to all persons, and not give favor to any segment of the community. Similarly, all laws and ordinances of the city must afford equal protection to all facets of the community, unless the purpose of a city action requires special classification of the community.

E. DUE PROCESS

All governmental procedures and process must allow an affected party a right to be heard, and to present controverting fact or testimony on the question of right in the matter involved. Unfair determinations, such as bias, predetermination, refusal to hear, etc., may invalidate actions.

F. REASONABLENESS

Every action of municipal government must be reasonable, or otherwise stated, not capricious, extreme, arbitrary, or abusive.

In closing

- ▶ Affordable housing is one of the most valuable things in existence in Cupertino...
- ▶ A valuable BMR unit has been sold in a frankly illegal manner
- ▶ Please recommend to the City Council an action that will restore justice and undo the sale
- ▶ Please reject the recommendation of staff, upholding the status quo
- ▶ Please recognize that no speculation is needed to find that I met the income eligibility limit, even assuming performance bonus at same level in 2016 as in 2015
- ▶ Please do not play a part in continuing the unethical action that has occurred and instead, work to undue this action

