

INQUIRY INTO THE CITY OF THOUSAND OAKS PROCEDURES FOR DEVELOPMENT OF THE JANSSE MARKETPLACE

BACKGROUND

In response to merchant complaints channeled through the Cities & Joint Powers Committee, both during the current 1997/98 and the 1996/97 Grand Jury terms, a subcommittee was formed to investigate the complaints. It became necessary to examine several procedural aspects which led to the City of Thousand Oaks' (City) extended redevelopment district encompassing the Jansse Mall (Mall) and subsequent sponsorship of a Community Facilities District Number 1994-1. Establishment of the district allowed application for a Mello-Roos bond in the amount of \$29,229,406.30, to erect the Mall's parking structure on land which had been donated to the City by the Mall developer. It was determined that the parking facility would be leased back to the City for a period of fifty years, with all maintenance and security to be provided by the current owners. In order to build the parking structure, several Mall merchants with valid leases had to be either relocated or bought out of their leases.

INQUIRY

The subcommittee took testimony from twelve complainant owners of eight stores. Approximately thirty merchant owners had been impacted. A visit was made to interview the City's Director of Finance and the City Attorney. A past City Council person and a currently seated City Council person, along with certain past community leaders, were invited to offer information.

We examined pertinent records dating from 1994 to the present and procured taped proceedings of the City Council meeting wherein the ex-owner of the Jansse Mall presented his proposal to the City.

A walking tour of the Jansse Marketplace offered us a perspective on the Mall's current status.

FINDINGS

The City:

In 1993, the primary owner of the Jansse Mall met with a City Council member, the City Manager, City Attorney and the City Finance Director/ City Treasurer to describe his plan and needs for the Jansse Mall renovation. No minutes were kept of that meeting. Built in the 1960's, the Mall was the first shopping complex in the City and in the owner's opinion, was ready for cosmetic improvements and an increased major

tenant base. The Mall is located in a Thousand Oaks Boulevard commercial redevelopment project area created by the City in 1979. The then-owner of the Mall had a long history of association with the City and wanted whatever help the City might be in a position to provide. A study session was held by the City Council in February, 1993, to discuss proposed renovation.

The City's primary source of revenue was and is sales tax generated by area businesses. Based on increased competition for customer dollars from newer area shopping centers, it was determined that a renovation would benefit all parties involved. Certain existing buildings would need to be removed to make room for a newly acquired department store building. That building plus a new theater complex would eliminate a major portion of the existing ground level parking and require the removal of one existing building along with alteration of certain others. In order to meet City parking requirements for any such center, a multilevel parking structure was proposed.

The land on which the parking structure would be built, along with public walkways adjacent to the Mall's food court was leased to the City. Construction costs for the parking structure and walkways, along with tenant relocation and/or lease buyouts would come from the sale of Mello-Roos bonds issued under the Community Facilities Act. Bonds are repaid by a special tax on real property at the Mall. City funds are not used for repayment, but Mall lessees, who each bear a share of repayment, are billed to remit their payment portion monthly or quarterly to Mall owners.

In 1995, the City issued Mello-Roos bonds in the amount of \$29,229,406.30 to be used for the four level parking structure, a public plaza, adjacent walkways and street improvements. Mello-Roos was chosen for its tax exempt status and low rate of interest. The thirty year bonds specify that funds be used for the public benefit. Public benefit is defined as public safety, police, roads, senior and teen services, libraries, cultural facilities and parks.

Based on the potential for increased revenue for the Mall, to be renamed the Janss Marketplace, plus increased sales taxes to the City and consideration of costs for adjusting traffic flow into the new center, justification was made for Mello-Roos application. All agencies responsible for the loan's processing approved the application. Bond funds were used to build the parking structure and other public facilities as stated above, to be leased back to the City for a period of fifty years. Responsibility for the structure's maintenance and security was designated to an alliance between the past owner and new real estate investment partners. Bond monies would also be used to buy out leases of merchants whose stores were located in buildings to be demolished to make room for the new department store and theater complex. Buyouts were mandatory, since they were made under the threat of condemnation. Eminent domain may be used by a municipality to acquire private property for the public good, not solely private use. Property can be

condemned in a for-profit complex if that property meets the guidelines stated above as public benefit.

According to State regulations, cities act as intermediaries between the applicant and the bond purchasers. Bonds are backed by real property located within the Mello-Roos district, in essence a lien against the total value of the holdings. Payments are made by the land owner through assessments to, in this case, the lessees of the Mall.

The impact of the City's move to utilize Mello-Roos funding without a thorough background check on the financial status of the Mall's owner had repercussions, which have been listed under the following Store Owners section.

Store Owners:

One store owner had a verbal agreement with the then Mall owner which included store frontage, windows and walls. After spending \$30,000 for a private architect, \$14,000 on signage, it became necessary to add \$110,000 to the operating budget of \$200,000. The rent was doubled.

Another tenant testified that the original owners had promised an expanded restaurant of 8,000 square feet, a 260 seat facility, a liquor license and a \$449,960 tenant allowance once the renovations were finished, in exchange for a buy-out of their then-current lease. The business was lost.

Testimony indicated that one shop owner was unable to sell his business for three years, due to the inconveniences caused by the renovation. He had verbal agreements from the owners to relocate to a new spot in the mall. The then-Mall owner offered a \$300,000 lease buy-out because of the threat of condemnation under laws of eminent domain.

A year passed before the merchant received a three to five month payment on the buyout. At the time, \$150,000 was still due and payable. The owner has spent \$25,000 in attorney's fees attempting to coordinate financial aspects of his situation. He indicated that his current indebtedness is projected at \$1,000,000, including \$400,000 more in attorney's fees.

One tenant whose store was in a section to be demolished for the parking structure was offered a \$320,000 lease buyout, a prorated amount which reflected projected revenue for the length of the lease. The agreement contained a 10% penalty fee for late payment of buyout funds. The tenant found it necessary to hire an attorney to procure his payment and subsequent late fees. The entire process took close to two years. During that time, the tenant had no source of income.

Another shop owner, still in place in the Mall, felt pressure to sign a new lease with a change of location or face eviction. After agreeing to the new lease, to cover their share of the Mello-Roos repayment, taxes went from \$80 to \$800 a month.

CONCLUSIONS

According to testimony received by this Grand Jury, there appears to be a discrepancy in opinions on the need for a parking structure and hence the need for the issuance of Mello-Roos bonds. Two city officials stated that they were unaware of the Janss Mall's original owner's financial problems when he made his proposal to the City Council. Whether that knowledge would have changed the City's backing of Mello-Roos bonds could only be conjecture.

The City's use of Mello-Roos bond funding opened the door to inequitable treatment of merchants.

Another then-city official unsuccessfully worked to get an agreement to a proposal that the Mall merchants be given lead time to build reserves, to help them repay bond assessments.

Mall merchants who were adversely impacted by renovations, evictions, delayed buyouts and relocation were and are citizens of Thousand Oaks or within its sphere of influence. Considerations of their financial well-being should have been taken into account before and during renovation.

The City might have tried to be more impartial in its decision-making process. The promise of financial windfalls from increased sales taxes are not necessarily the only criterion to be used in a project with this type of impact on the community.

The new Janss Marketplace is certainly a viable entity in today's economic environment, but there is no indication that revenues are higher now than before. There are currently ten or more vacant stores within the complex.

Those who have suffered the most from all events which took place are the merchants. There are lost businesses, lifetime investments and savings reduced to little or nothing, partnerships which can no longer be maintained and a depletion of profits that have caused a reduction of long-term goals.

RECOMMENDATIONS

- That the City use its influence to serve as a liaison between merchants and owners in order to expedite a fair resolution to the problem of merchant financial impact
- That a more thorough investigation be conducted by a future Grand Jury regarding the implementation of Mello-Roos funding for the Janss Marketplace parking structure, which appears to benefit only a for-profit organization

RESPONSE

City of Thousand Oaks