

Implementation of Mello-Roos Funding for Construction of the Janss Marketplace Parking Structure

Background

In 1993 the owner proposed a major renovation of the Janss Marketplace to the City of Thousand Oaks (City). The proposed renovation included the construction of a department store and a theater complex. This proposal eliminated much of the existing ground-level parking, required removal of an existing mall building and the alteration of other mall buildings.

In order to comply with City parking codes, the owner proposed the construction of a multi-level parking structure.

In 1994 the City conducted a series of open hearings and after considerable discussion and opposition, approved the project. In 1995 the City issued approximately \$30,000,000 worth of bonds under the Mello-Roos Community Facilities Act of 1982.

The purpose of the bonds was to finance the construction of a four-level parking structure, a public plaza, walkways and street improvements. To facilitate this construction, the owner either relocated or bought out the leases of several mall merchants.

After City Council approval of the Mello-Roos bonds, a citizen complained to the 1995-1996 Grand Jury. The Grand Jury declined to investigate the matter. A complaint was submitted to the 1996-1997 Grand Jury, which did investigate. The 1997-1998 Grand Jury final report contained the following recommendation:

“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.”

Because of this recommendation and receipt of another citizen complaint, the 1998-1999 Grand Jury elected to revisit this matter. In conducting this review, the Cities and Joint Powers Agreement Committee:

- Interviewed the complainant.
- Reviewed the Mello-Roos Facilities Act of 1982.
- Reviewed the Grand Jury manual for guidance on jurisdiction issues.
- Reviewed extensive documentation provided by the complainant.
- Reviewed documents from the Bond Counsel.
- Reviewed the City of Thousand Oaks response to the 1997-1998 Grand Jury report.

Findings

The review of the Mello-Roos Community Facilities Act of 1982 provided the following information which is quoted verbatim from the act:

- F-1 “The local agency may take any actions or make any determinations which it determines necessary or convenient to carry out the purposes of this chapter and which are not otherwise prohibited by law.”
- F-2 “A community facilities district may also finance the purchase, construction, expansion, improvement or rehabilitation of any real or other tangible property with an estimated useful life of five years or longer, or may finance planning and design work that is directly related to the purchase, construction, expansion or rehabilitation of any real or tangible property.”
- F-3 “No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this chapter, which does not directly affect the jurisdiction of the legislative body to order the installation of the facility or the provision of service, shall void such proceeding or any levy for the costs of such facility or service.”
- F-4 “The failure of any person to receive a notice, resolution, order or other matter shall not affect in any way whatsoever the validity of any proceedings taken under this chapter or prevent the legislative body from proceeding with any hearings so noticed.”
- F-5 “The legislative body may sell bonds pursuant to this chapter only if it determines prior to the award of the bonds that the value of the real property that would be subject to the special tax to pay debt service on the bonds will be at least three times the principal amount of the bonds to be sold.”

The review of the Grand Jury Manual provided the following information concerning jurisdiction:

- F-6 The Grand Jury may investigate and report on various matters of County, City and Special District Governments. The Grand

Jury has no power to investigate the activities of private business.

F-7 The Grand Jury has no power to investigate alleged criminal activities. Alleged criminal activity must be referred to the District Attorney.

F-8 Matters in civil litigation are generally not good subjects for Grand Jury investigation. Regardless of what the Grand Jury finds or recommends, the court will decide the dispute based on the law and the evidence presented in court.

The review of the Thousand Oaks response to the 1997-1998 Ventura County Grand Jury final report revealed the following statement:

F-9 “It is extremely unlikely that the City Council would have mustered a four-fifths vote required to actually proceed to condemnation of any lease when they had already told the mall owner that he must make the tenants happy with the lease buy-outs or the Council would not authorize staff to proceed with the requested Mello-Roos financing.”

Other findings

F-10 The property had an appraised value of \$78,000,000.00 in September, 1994.

F-11 The initial value of the bonds issued in March, 1995 was \$29,229,406.30.

Conclusions

As pertains to allegations of criminal activities and/or abuses against the developers and City officials:

C-1 The complaint alleges numerous instances of fraud, deception, collusion and coercion on the part of the developer. The complainant is currently involved in a civil suit with the developer. We conclude that the investigation of the developer is not within the jurisdiction of the Grand Jury. (F-6, F-7, F-8)

C-2 The complaint alleges numerous instances of fraud, violations of the Brown Act, collusion, coercion, violations of eminent domain statutes and improper use of Mello-Roos Bonds on the part of City officials. We conclude that investigation of alleged criminal acts against City officials is not within the jurisdiction of the Grand Jury. (F-7)

Thus the only allegation that falls under the jurisdiction of the Grand Jury is the alleged improper use of Mello-Roos bonds.

As pertains to the alleged improper use of Mello-Roos bonds:

- C-3 The complaint alleges that the Janss Mall was improperly designated as blighted to facilitate issuance of the bonds. We conclude that this allegation is without merit. (F-1)
- C-4 The complaint alleges that the use of Mello-Roos bonds to build the parking structure was improper. We conclude that this allegation is without merit. (F-2)
- C-5 The complaint alleges that the required notifications and hearings were improperly conducted. We find no evidence of this. Even if it were so, we conclude that such omission would not invalidate the use of the bonds. (F-3, F-4)
- C-6 The complaint alleges that Mello-Roos bonds should not have been issued due to the bankruptcy of a former owner. We conclude that the relevant test was value of the real property, not the financial condition of the former owner. (F-5)
- C-7 The assessed value of the real property in question was not three times the principal amount of the bonds as required by the Mello-Roos Act. The actual ratio was 2.67 to 1, not 3 to 1. (F-5, F-10, F-11) However, this variance does not invalidate their use. (F-3)
- C-8 The City recognized a duty to ensure that the tenants were properly treated during the lease buy-out bargaining. (F-9) Comments at City Council public meetings and articles in the local newspaper should have alerted the City to the fact that some tenants were not happy with lease buy-out terms offered by the mall owner. The City should have addressed this problem and offered to serve as mediator between the mall owner and the tenants.

While reasonable people might disagree as to whether the City should have used Mello-Roos bonds, we conclude that their use was proper under provisions of the law.

Recommendations

The Grand Jury recommends that in the future under similar circumstances the City take a more pro-active stance to ensure that tenants are equitably treated by owners.

Responses Required

None.

Additional Information

None.

Responses to Report



City of Thousand Oaks

CITY ATTORNEY
MARK G. SELLERS

March 3, 1999

Charles E. Tennant
1999 Ventura County Grand Jury
800 South Victoria Avenue
Ventura, CA 93009

**Re: Comments on Your Proposed 1999 Grand Jury Findings:
Janss Mall Marketplace Mello-Roos District**

Dear Mr. Tennant:

The Janss Mall is an important community commercial asset. A major face-lift and upgrade was absolutely necessary for this 35 year old open-air mall for it to remain viable and competitive. This mall was competing for patrons with the more modern Oaks Mall as well as with other new, upgraded or better designed facilities (ie. the "Promenade" at the corner of Westlake Boulevard and Thousand Oaks Boulevard).

The City of Thousand Oaks appreciates your efforts in reviewing this matter and agrees with the jury's conclusion on the proper and valid use by the City of the Mello-Roos Community Facilities District bonds (pursuant to Government Code section 53311, *et seq.*) in assisting with the financing of the critical renovations needed for the Janss Mall Marketplace. As you know, the City Council was concerned about the impact of the renovation work on existing tenants and wanted the mall owner to work out any differences with those merchants. Therefore, the City Council required the mall owner to reach agreements with such tenants before the City would proceed with issuing the bonds. As a result of that condition precedent to issuing the bonds, the tenants were in an exceptionally strong bargaining position (they could just delay in coming to agreements as the pressure on the mall owner increased because the owner had to deliver the sites to the new Mervyns or Mann Theater entities). The City's records indicate that the lease buy-outs were very favorable to the affected tenants, and any of the remaining differences could be, or have already been, resolved in private litigation.

We would only provide the following clarifications and comments:

- A. The assessed and appraised value of the private properties within the District (the two parcels being the Janss Mall parcel and also the Sears parcel) was at least three times greater in value than the bonded debt issued by the District. There are two parcels within the District which had a total appraised value of \$90,000,000 as of April 1, 1996 (see the enclosed);
- B. The renovation of the Janss Mall was well known and had been planned for quite some time. The City Council held a study session and meetings on this proposed renovation with many mall merchants in attendance. City staff met with members of bot groups on a number of occasions to discuss the general concepts and owner/merchant relationships. As every commercial merchant lease arrangement is different, the City's mediation of each of the individual tenant lease buy-outs, key terms and related issues would be very difficult. In addition, the City may question the appropriateness of a governmental entity becoming embroiled in negotiating the terms of private contracts.

With these two points of clarification, the City feels this 1999 report on the use of Mello-Roos bonds for the renovations needed for the Janss Mall Marketplace was well researched and analyzed. If you have any further questions, please call.

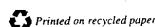
Very truly yours,

Mark G. Sellers, City Attorney

Encl.
xc: City Council
MaryJane Lazz, City Manager
Robert Biery, Finance Director
Paul Farr, Financial Analyst

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Enclosure with City of Thousand Oaks Letter on previous page

SUMMARY OF SALIENT FACTS (Cont'd)	
VALUE CONCLUSIONS	
Land Value (Gross Site Area - 27.16 acres)	
Main Mall Site (Fee Simple) as of April 1, 1996	\$14,200,000
Current Fee Simple Market Value;	
Main Mall	
Replacement Cost Approach	\$65,000,000
Sales Comparison Approach	\$73,000,000 - \$80,000,000
Income Approach	\$75,000,000
Concluded Current Fee Simple Market Value	
as of April 1, 1996	\$75,000,000
Fee Simple Value Market Value; Sears Store	
Replacement Cost Approach	\$16,500,000
Sales Comparison Approach	\$11,000,000
Income Approach	\$14,700,000
Concluded Fee Simple Market Value; Sears Store	
as of April 1, 1996	\$15,000,000

CHARLES R. WILSON & ASSOCIATES, INC.

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April 1, 1996
Gil Pableo, Public Works Department
City of Thousand Oaks
2100 E. Thousand Oaks Boulevard
Thousand Oaks, CA 91362

Re: Market Value Appraisal
JANSS MARKETPLACE SHOPPING CENTER
55 - 315 Moorpark Road
Thousand Oaks, California
Job File #950301

Dear Mr. Pableo:

We have appraised the above-referenced shopping center and have formed opinions of value as set forth below. The accompanying report, of which this letter is a part, describes in detail the site, building improvements, and method of appraisal; it contains the data considered in reaching our final value conclusion. The value conclusions are subject to the Special Assumptions found herein.

Based upon a careful inspection of the subject environs and all discoverable factors that influence value, it is our conclusion that the "As Is" Fee Simple Market Value of the Main Mall portion of the property described in this report; according to the assumptions and limiting conditions contained herein, and subject to the special tax and special assessment liens of the proposed CFD bond financing, as of April 1, 1996, is:

SEVENTY FIVE MILLION DOLLARS
(\$75,000,000)

We have also been requested to provide a separate opinion of the Fee Simple Value of the Sears department store and associated land as of April 1, 1996. Our valuation assumes the Sears store improvements to be vacant and available for lease, giving consideration to the adjacent mall development. This value does not consider the existing lease in place for this property. Our opinion of the Fee Simple Market Value of the Sears department store and associated land as of April 1, 1996, is:

FIFTEEN MILLION DOLLARS
(\$15,000,000)

We appreciate the opportunity to be of service, and we look forward to future consultations at your request.

Sincerely,
CHARLES R. WILSON & ASSOCIATES, INC.



Steven R. Norris, MAI

cc: Mark Sellars - City of Thousand Oaks, City Attorney's Office
Paul Farr - City of Thousand Oaks, Finance Department

CHARLES R. WILSON IS AFFILIATED WITH VALUATION INTERNATIONAL LTD.