



Claudia Bill-de la Peña
Mayor

Response to Grand Jury Report Form

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Report Title: Thousand Oaks RDA/City: "The Lakes" Project
Report Date: June 24, 2013
Response By: City Council of the City of Thousand Oaks

SEP 13 2013

VENTURA COUNTY
GRAND JURY

Pursuant to California Penal Code Section 933.05(a), (b), and (c), the City Council of the City of Thousand Oaks provides the following responses to the findings and recommendations included in the above referenced Grand Jury Report. This response also clarifies some facts presented in the Grand Jury Report.

BACKGROUND

The dissolution of redevelopment agencies is governed exclusively by AB x1 26, as amended by AB 1484 adopted by the State Legislature and signed into law by the Governor on June 27, 2012. The City of Thousand Oaks ("City") and its City Council have no active role in the dissolution of the Thousand Oaks Redevelopment Agency ("RDA") as it applies to the "Lakes" project. Instead, the legislation vests all former RDA assets with the Successor Agency to the Redevelopment Agency of Thousand Oaks ("Successor Agency"), a separate legal entity from the City, after the RDA dissolved on February 1, 2012.

The process of disposition of the former RDA's real estate assets is governed by Health & Safety Code § 34191.5(b). That process requires the Successor Agency to prepare a long-range property management plan that addresses the disposition and use of the real properties of the former RDA. This report must be submitted to the Thousand Oaks Redevelopment Successor Agency Oversight Board ("Oversight Board") within six months following the issuance of a Finding of Completion by the California Department of Finance, which has not yet occurred.

The long-range property management plan must (1) include an inventory of all properties of the former RDA, and (2) address the use or disposition of those properties. Health & Safety Code § 34191.5(c). Permissible uses include retention of the property for government use, retention of the property for future development, the sale of the property, or the use of the property to fulfill an enforceable obligation. Health & Safety Code § 34191.5(c)(2).

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Response to Grand Jury Report Form

September 10, 2013

Page 2

Any proceeds from the sale or use of a property, unless needed to fulfill an enforceable obligation, are to be distributed as property tax to the taxing entities. Health & Safety Code § 34191.5(c)(2)(B). There is no provision in the law that would allow disposition proceeds to be used to pay off former RDA debt, whether long-term or short-term.

Before the Successor Agency can transfer or otherwise dispose of former RDA property, the Oversight Board and the California Department of Finance must approve the long-range property management plan. Health & Safety Code § 34191.5(c)(2)(C).

FORMAT OF RESPONSE

The City's detailed response to the Grand Jury Report is set forth in the following pages. The response is ordered in the same manner as the report itself – Facts, Findings, and Recommendation.

RESPONSE TO FACTS

The City has carefully reviewed the "Facts" in the Grand Jury Report and has the following clarifications/corrections related to Facts FA-03, FA-08, FA-11, FA-13, FA-15, and FA-27. The Grand Jury Report statement of the Fact is presented first, followed by the clarification or correction.

FA-03: *"Proposition 18 (1952) established tax increment financing where RDAs keep most of the future increases in property taxes to allow redevelopment to be self-financing."*

City Clarification: Proposition 18 (1952) authorized the State Legislature to provide for the inclusion in a redevelopment plan of a provision for the division of taxes collected on property in a project as follows: to each public agency levying taxes, an amount equal to that which would be produced on an application of the agency's tax rate to the assessed value of the property prior to the redevelopment; the excess to a special fund of the redevelopment agency to pay the interest and principal on any debts incurred by the agency in financing or refinancing the project. It would empower the State Legislature to provide for the irrevocable pledging of such excess for the payment of such principal and interest.

FA-08: *"The Civic Arts Plaza Specific Plan No. 11, adopted in 1989, is the redevelopment plan for the original 22 acres which includes the 7.5 acres of "The Lakes" project just east of the Civic Arts Plaza. Amendment No. 5, May 22, 2012, included an additional 4.8 acres on the west side, totaling 26.8 acres."*

Response to Grand Jury Report Form

September 10, 2013

Page 3

City Correction: The Civic Arts Plaza Specific Plan No. 11 is not a redevelopment plan, as that term is used in State law. It is the City's planning document that governs permitted uses, design standards, and other planning topics within the specific plan boundaries, which includes "The Lakes" and other properties. Amendment No. 5 added 2.8 acres, not 4.8 acres. The Specific Plan area pre-Amendment 5 was about 24 acres, not 22 acres. The current area is 26.8 acres.

FA-11: *"In City documents regarding the Agency, there appears a statement that "No use of eminent domain" was utilized."*

City Clarification: City records indicate that the use of eminent domain for redevelopment purposes occurred in one instance over 20 years ago to acquire a single parcel. City is not aware of any other uses of eminent domain by the RDA. At the first Oversight Board meeting on April 25, 2012, Successor Agency staff incorrectly stated that the former RDA had never used eminent domain.

FA-13: *"The Lakes" project agreement requires the Developer to construct a multi-tenant commercial retail/restaurant center of no less than 48,000 square feet up to 190,000 square feet. It was to include a cinema and parking structure on the Agency-owned site along with a number of amenities on the City sites known as the "pond" and the "Plaza."*

City Clarification: The Disposition and Development Agreement ("DDA") that the former RDA entered in 2000 called for a project of 160,000 to 190,000 square feet of floor area. The Amendment to the DDA entered in 2002 changed the overall project size to 98,000 to 100,000 square feet of floor area, and allowed phasing of the project. Phase 1 comprised 48,000 to 50,000 square feet of floor area, consisting of restaurants and retail, and Phase 2 comprised a 50,000 square foot movie theater. A parking structure was also included in Phase 2.

2 phases

FA-15: *"In 2008, the second amendment of the DDA provided for the flexibility in the mix of uses between restaurants and other retail businesses."*

City Clarification: The original DDA and the 2002 amendment already provided some flexibility in allocating floor area between restaurant and retail uses. The 2008 Amendment provided additional flexibility.

Agree

FA-27: *"For FY 2010-11 the TOPA#2:*

- *total indebtedness was \$207,674,694*
- *tax increment retained was \$10,508,096*
- *total assessed valuation was \$1,916,051,637*
- *debt ends 2031"*

Response to Grand Jury Report Form

September 10, 2013

Page 4

City Correction: The actual Tax Increment retained by TOPA#2 (Thousand Oaks Boulevard Redevelopment Project Area) was \$6,592,332 (after all passthroughs were paid).

*Substantiated
discovery*

Per Ordinance 1444-NS, the RDA shall not pay indebtedness or receive property taxes after 10 years from the termination of the effectiveness of the Plan, or by November 27, 2031 for the original project area. The current debt for the project area, however, matures December 1, 2021.

RESPONSE TO FINDINGS

The City has carefully reviewed the "Findings" in the Grand Jury Report and has the following responses to each of the Findings FI-01 through FI-13. The Grand Jury Report statement of the Finding is presented first, followed by the City's response.

FI-01: *"The Agency invoked the CRL power of tax increment financing to create a revenue stream from property tax growth, generally thirty years in length for redevelopment projects"*

City Response: Agree.

FI-02: *"The City utilized the Agency funds for financing redevelopment projects which enhanced the quantity of projects that could be accomplished in a "low" property tax City."*

City Response: Partially Disagree. The City is a separate legal entity from the RDA and has no authority to use RDA funds. The RDA utilized funds for a variety of purposes, one of which was to enhance the quantity of projects in or primarily benefitting the Thousand Oaks Boulevard Redevelopment Project Area.

FI-03: *"The Agency created TOPA#2's 1,279 acres for the stated purpose of eliminating blight and for the revitalization of the downtown core."*

City Response: Agree.

FI-04: *"City Council and Agency projects were governed by the identical five elected officials."*

City Council Response: Agree.

Sitting members of the City Council also served on the board of the RDA.

Response to Grand Jury Report Form

September 10, 2013

Page 5

FI-05: *"The original redevelopment plan for these 22 acres known as "Jungleland" increased to 26.8 acres in May, 2012, with the procurement of "blighted" property west of the Civic Arts Plaza."*

City Response: Disagree.

Specific Plan No. 11 is not a redevelopment plan, but a zoning and land use tool to govern development standards and land use designations in the plan area consistent with the City's General Plan. Specific Plan No. 11 was amended on May 22, 2012, to include an additional 2.8 acres on the west side of the Civic Arts Plaza. The original 24 acres and the additional 2.8 acres were already a part of the original 1,279-acre redevelopment project area TOPA#2.

FI-06: *"The Agency used CRL eminent domain authority to procure the original 22-acre property where "The Lakes" project and the Civic Arts/City Hall are located. However, City documents state "No use of eminent domain" was utilized."*

City Response: Agree with Clarification.

The PowerPoint shown at the April 25, 2012, Oversight Board meeting incorrectly included a statement that the former RDA had not used eminent domain. See City response to FA-11.

FI-07: *"The Agency entered into an agreement with the Developer to develop a commercial mixed-use enterprise, "The Lakes" project, with two phases. Only the first phase has been completed."*

City Response: Agree.

FI-08: *"The Developer has the option to lease "The Lakes" property for up to 99 years, an option to purchase the property at any time and if the Agency desires to sell or otherwise assign its fee interest then it shall first offer to sell or otherwise assign its fee interest to the Developer."*

City Response: Partially Disagree with Clarification.

The lease has a term of 55 years with options to extend four additional 10-year periods.

*95 years
not 99*

FI-09: *"The Developer has not paid rent due to the negotiated high threshold of return, which has not been met. The Agency received possessory interest*

Response to Grand Jury Report Form

September 10, 2013

Page 6

property taxes, which decreased by 68% between 2006 and 2012. The City received sales tax, which decreased 46% between 2006 and 2012."

City Response: Disagree.

The negotiated threshold of return on the lease is a cumulative 12%, was in line with the typical rate of return used in development agreements statewide in 2006.

The original assessed value of \$32,523,000 in 2006, which generated \$325,230 in Possessory Interest Property Tax, was much higher than the actual value of the leasehold interest in the land and the improvements. The Developer appealed the County Assessor's determination of assessed value, and the County Assessor concurred and reduced it accordingly. Also, the 68% decline appears to be incorrect. Based on Fact # 21, the decline from \$325,230 in 2006 to \$158,100 in 2012 is a decline 51.4%. In FA-21

As to the sales tax decrease, most businesses in Thousand Oaks reported declines from 2006 to 2012; The Lakes was not unique.

FI-10: *"The Study outlines many scenarios for short-term, intermediate-term, and long-term solutions to improve economic success of "The Lakes" and, in extension, to the downtown core."*

City Response: Agree.

FI-11: *"The Agency selected a Developer who had the specific expertise and financial capability to complete the project. The Agency failed to use PPP "best practices" specifications to negotiate the lease."* ?

City Response: Disagree. *Direct contradiction*

The DDA process and the selection of the Developer met all the "best practices" keys listed in FA-24.

FI-12: *"The RSA Oversight Board is responsible to determine the disposition of the former Agency assets."*

City Response: Disagree.

Under Health & Safety Code § 34191.5(c)(2)(C), the Oversight Board is only responsible for approving the long-range property management plan prepared by the Successor Agency. Once the long-range property management plan is approved by the Oversight Board and the California Department of Finance, the

Response to Grand Jury Report Form

September 10, 2013

Page 7

terms of the long-range property management plan govern and supersede all other provisions of the Dissolution Law relating to the disposition and use of real property assets of the former RDA. Health & Safety Code § 34191.3.

FI-13: *"The total indebtedness for the TOPA#2 for FY 2010-11 was \$207,676,694. This remains an obligation of the RDA through the year 2031."*¹

City Response: Disagree.

The statement that the total indebtedness of \$207,674,694 remains an obligation of the RDA through the years 2031 is somewhat misleading. Total indebtedness includes not just outstanding bonds, but legally obligated pass-through payments to various taxing entities. The amount of outstanding bonds is only \$ 94,248,243, while the amount obligated to pass-through payments to taxing entities is \$113,428,451. This amount decreases each year as principal and interest payments on the current bonds are paid, along with pass-through payments made to each taxing entity. Also, the current debt obligations will be fully paid in FY 2021-2022 (by December 1, 2021), rather than 2031.

RESPONSE TO RECOMMENDATION

The City has carefully reviewed the Recommendation in the Grand Jury Report and has the following response to the one Recommendation R-01. The Grand Jury Report statement of the Recommendation is presented first, followed by the City's response.

R-01: *"The Grand Jury recommends the sale of the east and west side properties adjacent to the Civic Arts Plaza/City Hall to pay off long-term former Agency Debt. As debt obligations are reduced, a greater percentage of the property tax for the land will return to school and community college districts, County, City and special districts."*

City Response: It is premature to comment on the best course of action for the east and west side properties at this time. Procedurally, the proper means to address those properties is through consideration and approval of the long-range property management plan. Successor Agency staff is currently preparing the long-range property management plan, which must be vetted and approved by the Successor Agency and Oversight Board in meetings open to the public. In addition, the California Department of Finance must also approve the plan.

¹ The Grant Jury Report references this paragraph under FI-12. It appears that the intent was for this paragraph to be an independent finding.

Response to Grand Jury Report Form
September 10, 2013
Page 8

Furthermore, the Grand Jury's recommendation to pay off long-term debt with property sale proceeds runs contrary to existing law. Proceeds from any sale cannot be used to pay down existing RDA debt. Proceeds from a sale can only be used to pay an existing enforceable obligation related to the property, or distributed as property tax to the taxing entities.

The City of Thousand Oaks wishes to thank the Grand Jury for its time in performing its review and determining its recommendation in this matter.

Date: September 10, 2013

Signed:



Claudia Bill-de la Peña, Mayor