

MEMORANDUM

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DATE: SEPTEMBER 7, 2006 CW1080

TO: AGENCY COMMISSIONERS

FROM: CECILIA V. ESTOLANO, CHIEF EXECUTIVE OFFICER

RESPONSIBLE PARTIES: SERGIO A. BARAJAS, DIRECTOR OF HOUSING
GINGER KEITH, HOUSING MANAGEMENT SUPERVISOR

SUBJECT: CONSIDERATION OF STAFF RECOMMENDATION TO DENY RELIEF FROM THE EXISTING AFFORDABILITY COVENANT CURRENTLY RECORDED AGAINST THE 48 UNIT ROLLAND CURTIS GARDENS APARTMENTS LOCATED AT 1077 W. 38TH STREET CITYWIDE PROJECT AREA (CD8)

RECOMMENDATIONS

That the Agency deny the property owner's request to release the existing affordability covenant recorded against 1077 West 38th Street (the Rolland Curtis Garden Apartments) on June 18, 1981 and which is to expire on January 27, 2011.

SUMMARY

On September 14, 2005, Mr. Dave Lenny, attorney for Mr. Jeffrey Greene, owner of the Rolland Curtis Garden Apartments, formally requested that the Agency provide relief from the existing affordability covenant (**Attachment A**). Mr. Green sought relief on the basis that it was no longer feasible to operate the property as dwelling units for families of low-income. After reviewing his request and relevant historical data from the U.S. Department of Housing and Urban Development, the Los Angeles Housing Department (LAHD) and the accounting firm of Macias Gini & Company, the Agency staff has determined that the project is still viable as an affordable housing project and that the property owner's request should be denied.

The information provided in the Background section of this report memorializes the sequence of events that brought the existing project to its current financial condition and the current owner's request for relief.

RE

Initial Action

SOURCE OF FUNDS

On June 3, 1981, the Agency authorized the issuance, sale and delivery of \$2,735,000 in Construction Loan Revenue Bonds Series 1981. The recommendation above does not require additional funding or impact previously issued Construction Loan Revenue Bonds.

PROGRAM AND BUDGET IMPACT

The recommendation will not result in additional funding or put at risk prior commitments made by the Agency. Staff time for matters such as this is included in Objective CW1080.

ENVIRONMENTAL REVIEW

The proposed action does not constitute a "project" as defined by the California Environmental Quality Act.

BACKGROUND

In November of 2003 the Union Rescue Mission (URM) entered into negotiations with 1031 South Wooster Limited to acquire the subject property located at 1077 W. 38th Street in the City of Los Angeles. Almost immediately, concerns arose among tenants of the subject property as to whether the proposed owner intended to keep the project under the HUD Project Based Section 8 program. At the behest of tenants, the Coalition for Economic Survival (CES) contacted the Mayor's Office, City Council staff, as well as the seller, to clarify the intentions of the buyer. In correspondence dated November 26, 2003 (**Attachment B**), URM verified that, based on its conversations with the proposed buyer, the proposed buyer did in fact intend to retain the Project Based Section 8 status of the property. This seemed to quell the tenant fears and a few months later, on April 7, 2004, the HUD 221(d)(4) loan was paid in full and the sales transaction between the URM and 1031 South Wooster was completed for \$5,050,000. Immediately after the completion of the transaction, on or about April 30, 2004 the owner opted out of the HUD Project Based Section 8 program, contrary to the intentions he had expressed to URM.

In February of 2005, the G&K Property Management Company contacted LAHD at the behest of the owner to seek guidance regarding the rights of the tenants to remain at the project after an opt-out had occurred. In addition, G&K also indicated that it was necessary to do so at this juncture because the owner was opting-out and was not willing to accept the Enhanced Vouchers, made available to project residents, by the Housing Authority of the City of Los Angeles (HACLA). On March 30, 2005, G&K provided tenants 30-Day Notices informing them of changes to the terms of their tenancy. The notices essentially stated that the Section 8 contract was set to expire on April 30, 2005, one year after filing the opt-out notice, and provided the new applicable rents. Although the notices were subsequently rescinded (**Attachment C**) in June of 2005, because Mr. Greene failed to provide the required 60-Day Notice when rental increases exceed 10%, approximately ten tenants had already moved out due to the notice and the indicated changes to the terms of their tenancy.

Apparently, neither the tenants nor their advocates were aware that the CRA had an enforceable affordability covenant recorded against the property. Once made aware of the pending rent increases, the Agency, on May 25, 2005, contacted Mr. Greene and notified him that the project was restricted and that the restrictions were binding to all successors in ownership until January 27, 2011 (**Attachment D**). That letter, was followed by a second letter dated June 6, 2005, from Deputy City Attorney Miguel Dager, indicating in writing that it was the intent of the Agency to enforce the low-income covenant (**Attachment E**).

In June 2005 G& K Management, on behalf of Mr. Greene, rescinded the Notices previously delivered to tenants and further indicated that the Housing Choice Voucher, provided by HACLA, would be accepted. As previously stated several tenants had already vacated the building based on the March notification. After the notice was rescinded, no further correspondence was received until September 14, 2005 (**Attachment F**). In that correspondence Mr. Greene formally requested relief from the affordability requirements stating that it was no longer feasible to maintain the building as affordable family housing. That request, however, was not responded to since it was addressed to but not received by Deputy City Attorney Miguel Dager. A follow up request was received on October 26, 2005 (**Attachment G**) and responded to on November 4, 2005. In the CRA's response (**Attachment H**) the Agency indicated that it would review Mr. Greene's request and explained that the Agency would hire a Certified Public Accountant to review project records. Mr. Greene agreed to the review process in correspondence dated November 17, 2005 (**Attachment I**).

On December 2, 2005 the Agency identified the CPA firm of Macias Gini & Company LLP (MGC) to perform the required review and provided correspondence to Mr. Greene stating the same (**Attachment J**). In response, Mr. Dave Lenny provided correspondence dated December 5 (**Attachment K**) and December 13 (**Attachment L**) which identified the property management contacts and indicated concurrence with the course of action. On December 19, 2005 the Agency received a summons (**Attachment M**) that named the Agency as the defendant in a lawsuit that alleged a breach of contract. Based on Agency conversations with Mr. Greene's attorney, the intent of the filing was not to bring the matter before a court; but rather was simply a method of assuring the Agency was moving forward with its process. Subsequently the lawsuit was dismissed by the Los Angeles Superior Court on March 2, 2006.

On April 19, 2006 the Agency received the findings of Macias Gini & Company LLP (MGC) (**Attachment N**). The MGC findings indicated that the project, if managed properly, could continue to operate as an affordable housing project. Further, when the Agency staff looked at the MGC report it also concluded and concurred that with proper management, increased occupancy and the restructuring of existing conventional debt that the financial condition of the project could be substantially improved. Based on the audit if rents were held at the HUD approved limit the project could generate gross monthly income in the amount of \$50,437 minus expenses of \$20,963 (\$436 per unit) for an Operating Cash Flow, before Debt Service, of \$29,474 and a negative cash flow of \$1,945 after Debt Service. However these numbers assume Mr. Greene will continue to hold short-term debt rather than refinancing and securing longer-term debt with a lower monthly mortgage. Without Mr. Greene making any genuine attempt to adequately lease, operate and manage the project and the existing funding sources, it is inappropriate and premature for the Agency to consider releasing, in full or in part, the existing affordability covenant.

It is also the belief of the Agency that actions taken directly by Mr. Greene, or at his direction, caused the project to become substantially vacant in a housing market that would have easily supported an occupancy rate of 95%. This fact combined with Mr. Greene's attempt to convert

the project to student housing created the financial environment from which the project is still attempting to recover and from which Mr. Greene is requesting relief. These assertions are evidenced by Mr. Greene's initial unwillingness to accept HACLA rental vouchers at a level commensurate with the target population of the project which then led to a substantial number of vacancies.

Mr. Greene prolonged the period of uncertainty and caused further financial damage to the project when he challenged the Rent Reasonableness & Rent Comparability Study prepared by HACLA. Mr. Greene questioned the proposed market rents provided by HACLA and argued that the rent comparable should be student-housing rents. This was particularly ironic because the Agency had originally entered into this transaction, and issued bonds on the original owners' behalf, to help the University of Southern California replace 102 units lost in the Hoover Project Area which USC had converted to student housing (**Attachment O**).

As such, the preponderance of these facts, and Mr. Greene's lack of genuine interest in maintaining these units as affordable, has led the Agency to its recommendation to deny relief to Mr. Jeff Greene and 1031 South Wooster Limited, from the existing affordability covenant.

Cecilia V. Estolano
Chief Executive Officer

By

Donald R. Spivack
Acting Chief Operating Officer

There is no conflict of interest known to me that exists with regard to any Agency officer or employee concerning this action.

Attachment A	Agreement to be Recorded Affecting Real Property
Attachment B	Union Rescue Mission letter dated 11/26/03
Attachment C	Rescinding Notification (sample)
Attachment D	CRA Letter dated 5/25/05
Attachment E	City Attorney Letter dated 6/06/05
Attachment F	Dave Lenny, Esq., dated 9/14/05
Attachment G	Dave Lenny, Esq., dated 10/26/05
Attachment H	CRA Letter dated 11/04/05
Attachment I	Dave Lenny, Esq., dated 11/17/05
Attachment J	CRA Letter dated 12/02/05
Attachment K	Dave Lenny, Esq., dated 12/05/05
Attachment L	Dave Lenny, Esq., dated 12/20/05
Attachment M	Summons dated 12/19/05
Attachment N	Macias Gini & Company LLP Report dated April 19, 2006
Attachment O	CRA Memo dated 8/25/82