

**JOINT MEETING OF THE COSTA MESA  
REDEVELOPMENT AGENCY AND CITY COUNCIL**

**April 13, 2010**

The Redevelopment Agency and City Council met in a Joint Meeting that was held on Tuesday, April 13, 2010 in the Council Chambers of City Hall, 77 Fair Drive, Costa Mesa. Agency Chair/Council Member Katrina Foley called the meeting to order at 6:30 p.m. and led in the Pledge of Allegiance.

**I. ROLL CALL**

Members Present: Agency Chair/Council Member Katrina Foley  
Agency Vice Chair/Mayor Pro Tem Wendy Leece  
Agency/Council Member Eric Bever  
Agency Member/Mayor Allan Mansoor

Members Absent: Agency/Council Member Gary Monahan

Officials Present: Executive Director Kimberly Brandt  
Agency/City Attorney Kimberly Hall Barlow  
Neighborhood Improvement Manager Muriel Ullman  
Management Analyst Alma Penalosa  
Special Agency Counsel Celeste Brady  
Economic Consultant Kathe Head  
Clerk Julie Folcik

**II. CLERK'S STATEMENT**

The Joint Redevelopment Agency/Council Meeting Agenda and Notice and Call was posted at the City Council Chambers, Postal Office, Headquarters Police Department, the Neighborhood Community Center and Mesa Verde Public Library on Thursday, April 8, 2010.

**III. MINUTES**

Joint Redevelopment/City Council meeting of February 9, 2010.

**MOTION: Approve.**

The motion carried by the following roll call vote:

Ayes: Agency Chair/Council Member Katrina Foley, Agency Vice Chair/Mayor Pro Tem Wendy Leece, Agency/Council Member Eric Bever, Agency Member/Mayor Allan Mansoor

Noes: None.

Absent: Agency/Council Member Gary Monahan

**IV. PUBLIC COMMENTS**

Mr. Mike Berry, resident of the Costa Mesa Recovery Zone, expressed concern over housing programs and said the Civic Center Barrio project was a good example because too often the Agency/City sets out on projects for statistical purposes without knowing what success is. He felt housing was being addressed as a liability instead of an asset and said the Agency/City needed to stop complaining about the cost of providing housing and start complaining about the cost of paying for housing that we do not have.

**V. AGENCY MEMBERS' COMMENTS AND SUGGESTIONS – None**

## VI. WARRANT RESOLUTIONS

1. Ratify Warrant Resolution CMRA-392 and approve Warrant Resolution CMRA-393

**MOTION: Approve. Moved by Agency/Council Member Allan Mansoor, seconded by Agency Vice/Mayor Pro Tem Wendy Leece.**

The motion carried by the following roll call vote:

Ayes: Agency Chair/Council Member Katrina Foley, Agency Vice Chair/Mayor Pro Tem Wendy Leece, Agency/Council Member Eric Bever, Agency Member/Mayor Allan Mansoor

Noes: None.

Absent: Agency/Council Member Gary Monahan

## VII. OLD BUSINESS – None

## VIII. NEW BUSINESS

1. First Amendment to the Affordable Housing Agreement for Civic Center Barrio Properties

### CITY COUNCIL RECOMMENDATIONS

1. Approve the 1<sup>st</sup> Amendments for Item (734,740 and 744 James Street); Item 2 (745 West 18<sup>th</sup> Street) and Item 3 (717 and 721 James Street) and authorize the City Manager to execute and carry out the respective contracts, and for the City Clerk to attest the 1<sup>st</sup> Amendment for each item. Further, the City Manager and his authorized designees be authorized to carry out the Agreements as amended by the 1<sup>st</sup> Amendments, including issuance of warrants, as and if necessary.

### CITY COUNCIL/REDEVELOPMENT AGENCY RECOMMENDATIONS:

1. Approve the 1<sup>st</sup> Amendment for Item 4 (707 and 711 West 18<sup>th</sup> Street) and authorize the City Manager and Agency Executive Director to execute and carry out the respective City and Agency contracts, and for the City Clerk/Agency Secretary to attest the 1<sup>st</sup> Amendment for Item 4. Further, the City Manager and Executive Director and their authorized designees be authorized to carry out the Agreements as amended by the 1<sup>st</sup> Amendments, including issuance of warrants, as and if necessary.

Ms. Penalosa presented the staff report. She reported that between the years of 1993 and 2002, the City and the Redevelopment Agency entered into four separate agreements with Civic Center Barrio Housing Corporation. The agreements resulted in 27 affordable multi-family rental units that were funded using a combination of City and Redevelopment Agency funds. The agreements were structured as simple interest loans with the required annual reserve deposits and debt service payments set at 50% of the positive cash flow. The structure resulted in approximately \$59,000 being due to the City/Agency as residual receipts (debt service payments). Due to several reasons, only one \$3,000 debit service payment was made leaving a balance of \$56,000. Upon review of Civic Center Barrio's financial report, it appeared the developer funded the reserves as required but due to repairs and capital improvements costs being higher than originally anticipated, the developer was pulling out funds from the reserves along with any other available funds such as operating funds to fund the additional repairs. Several years of negative cash flow depleted the reserve accounts, leaving the projects at risk for deferred maintenance and repairs.

Ms. Penalosa reviewed the proposed amendments and said they were intended to restructure the original debt service payments so future projects would have sufficient cash flow to fully fund the reserves as well as continue to maintain the properties to the standards required in the original agreement. She advised the Agency/City Council that Ms. Head from Keyser-Marston, who had completed the financial analysis, was present to answer any questions and concluded her staff report.

Ms. Head clarified that the reserves had been full but were depleted two years ago when Civic Center Barrio performed major renovations and repairs to the properties. The developer expended substantial amounts of funds to do the repairs, used all of the reserves, plus cash flow of their own.

Agency/Council Member Bever inquired about the cost of legal fees to rectify the problem. He also asked if there were time-constraints and if the matter could be continued at a later date rather than take action today. Ms. Penalosa did not have the cost of legal fees available but said it was considerable. She offered to provide the information and said there was no urgency to take action today.

Agency/Council Member Bever, in an attempt to get a sense of where the developer stood financially, asked if the \$59,000 in unpaid debt service included legal costs. Ms. Penalosa reported that legal costs were not included in the \$59,000 of unpaid debt service. She further explained that some of the costs were simply the costs of doing business because on any agreement, staff was required to analyze annual financial statements to confirm accuracy of the payments. Civic Center Barrio was providing incorrect information; staff was returning the information and having it analyzed. Ms. Head was the person involved in the back-and-forth on behalf of staff.

Ms. Head reported that recently Civic Center Barrio had acquired an excellent and cooperative certified public accountant that understood the agreement and was helpful in trying to rectify the problems. Getting rid of the operating reserve ability by depositing funds and immediately drawing them was confusing everyone and did not make financial sense. Consistency, coupled with clarifying the terms of the agreement, will make it easier to administer the four agreements.

Chairperson/Council Member Foley commented that Agency/Council Member Bever wanted to know the cost of the extra work staff did to get Civic Center Barrio in order. Ms. Head replied it was a lot of money.

Agency/Council Member Bever referred to the two alternatives presented and said he said he was hesitant about rewarding \$60,000 to someone who had mismanaged their finances. He asked if, based on the terms of the agreements, other alternatives such as termination clauses, etc. had been considered. Ms. Penalosa asked if Agency/Council Member Bever was asking if staff could call Civic Center Barrio into default as an alternative.

Agency/Council Member Bever inquired what all their alternatives were because he was only seeing two – a) make the changes or b) hand \$60,000. Ms. Penalosa mentioned that if the Agency/Council chose not to approve the alternatives, another option was to require Civic Center Barrio to pay the \$60,000. If Civic Center Barrio failed to pay the \$60,000 it would go into default and staff would pursue legal remedy for the full amount of the loan.

Chairperson/Council Member Foley deferred to Ms. Brady to answer the question.

Ms. Brady agreed with Ms. Penalosa and reported that staff would give notice to Civic Center Barrio that they were in default and owed monies to the Agency/City. Due to subordinate trust deeds, staff would have to foreclose (notice of default) on the properties. The Agency/Council could also sue Civic Center Barrio for breach of contract in a clarification to the rights concerning the reserves. Ms. Brady clarified that the \$56,000 would be returned to the four properties for continued major repairs and capital expenses and not the developer. Legal remedies were available for purposes of default and foreclosure on the properties.

Agency/Council Member Bever made the comment that the Agency/Council were basically minority partners. Ms. Brady stated the Agency/Council were junior lien holders.

Agency/Council Member Bever mentioned that if the Agency/City was agreeing to make the \$59,000 a reserve allocation, the Agency/City was still waiving \$59,000. Ms. Brady concurred and said the \$59,000 would be going to the Civic Center Barrio properties and not the City/Agency. The residual receipt payments accumulatively would have been due amongst the four affordable housing agreements and payable to the City or the Agency depending on which agreement it was.

**MOTION: Given the fact that additional information was not available, Agency/Council Member Bever requested that the Civic Center item be continued.**

Prior to voting on Agency/Council Member Bever's motion, Chairperson/Council Member Foley gave the floor to Agency Member/Mayor Mansoor

Agency Member/Mayor Mansoor inquired about Civic Center Barrio. He asked when the project was started, what were some of the terms, how long would it remain an affordable housing project, and what the disposition would be when the project was completed. Ms. Brady explained there were four contracts; the first contract was executed in 1993, two agreements for two projects were executed in 1995, and one agreement for a fourth project was executed in 2002. Each project included 55-year covenants for affordable housing. The Agency/City provided subordinate loans (affordable housing agreements) for each of the four projects and the repayment terms for each of the loans was in the form of residual receipts.

Agency Member/Mayor Mansoor asked what the Agency/City was legally committed to because it sounded as if the Agency/City was the lender and Civic Center Barrio was defaulting. Ms. Brady stated that the Agency/City was the subordinate lender and Civic Center Barrio was defaulting. Agency Member/Mayor Mansoor asked if in the event the Agency/City did not assist Civic Center Barrio with the restructuring and allowed them to default, would the Agency/City foreclose and own the property. Ms. Brady stated that if the Agency/City foreclosed on the junior lien, the Agency/City would have to cure (pay off) the first in order to take over the properties. Ms. Brady added it was a choice that was available to the Agency/City but it was also another cash outflow.

Agency Member/Mayor Mansoor complimented the Civic Center Barrio property. However, he felt Civic Center Barrio was stigmatizing the property with excessive signs and asked if the Agency/City was requiring the signs. Ms. Brady replied that the Agency/City was not requiring Civic Center Barrio to post the signs. Agency Member/Mayor Mansoor added he also had concerns with the bookkeeping.

Chairperson/Agency Member Foley opened the session for public comment.

Mr. Mike Berry, resident of the Costa Mesa Recovery Zone, expressed concern about the Keyser Marston report not reflecting what funds were being generated in the process of operating the properties. He added that without knowing how much money was being generated over the years and the good it had done, was the Agency/City accomplishing the goals they set out to do when the project was approved? The Agency/City was forgetting to ask if these projects are successful from a financial and housing standpoint and if the Agency/City can afford to do more. Civic Center Barrio has not been in compliance and the Agency/City continues to do business with them. The Agency/City needs to stop saying that it does not matter because it does matter. The Agency/City has numerous options that are not being explored.

Chairperson/Council Member Foley asked Ms. Head if she could respond to Mr. Berry's questions.

Ms. Head reported that each agreement had an Attachment No. 2 that contained the Keyser-Marston analysis for the period that was being discussed. At the end of each analysis there were a series of tables that reflected the revenue generated and the operating expenses incurred by each project and the net operating income that came out of each project. The numbers (that the developer and Keyser-Marston agreed to) were used to determine what residual receipts were owed by each of the projects. Ms. Head announced that should the Agency/City choose not to execute the 1<sup>st</sup> Amendment, the developer had set aside the funds to go into the reserve account or the Agency/City accounts. The Agency/City's decision would prevail. Ms. Head commended the developer for operating the projects in an exemplary fashion. She added the developer was a good affordable housing developer/operator who maintained the income and affordability restrictions set by the Agency/City and maintained the buildings. By putting the money in the reserve account, staff was hoping the developer would not draw from cash flow to do capital repairs.

With regards to the question on compliance, Chairperson/Council Member Foley commented that the main area out of compliance was not the operations of the affordable housing development but the administration of the books. Ms. Head concurred. Chairperson/Council Member Foley added it was not that Civic Center Barrio was not making money but rather, they were spending it and not putting it into reserves. Ms. Head explained that Civic Center Barrio was putting funds into the reserves and then spending the reserves to do capital improvements. Chairperson/Council Member Foley mentioned that Civic Center Barrio was not paying the residual receipts to the Agency/City. Ms. Head

concurrent and added that up until the last 4 months both entities could not agree on what the residual receipts were.

With regards to defaulting Civic Center Barrio and taking the second lien, Ms. Head advised that the money originally put into the projects by the Agency/City was needed to fill a financial gap. The Agency/City was not a traditional lender; therefore, there was not the expectation that the money would be available to pay back the loans as in a conventional loan. If the Agency/City were to foreclose on the loans, there would be no reasonable expectation that the loans would be paid back to the Agency/City.

In an attempt to answer Mr. Berry's questions, Chairperson/Council Member Foley asked what the goal of the project was and if the Agency/City has been successful in meeting the goal. Ms. Penalosa advised the goal was to provide affordable housing to low-income families in nice units. The agreement required staff to inspect the units every other year and analyze rent rolls annually. Staff never had a problem with Civic Center Barrio as they have done an exemplary job of maintaining the units and providing affordable housing.

Agency Member/Mayor Mansoor asked who would own the Civic Center Barrio properties if the Agency/City chose to foreclose and what would be the disposition. Ms. Head explained that if the Agency/City foreclosed, the first would automatically foreclose. The bank (the first) would step in an attempt to sell the building. If funds were left after the bank's lien was fully paid, then they would get to the Agency/City's loan.

Agency Member/Mayor Mansoor stated the bank had the majority of the Civic Center Barrio loan. Ms. Head stated that because the bank had a supportable amount of the loan and the Agency/City loans were financial gaps, the Agency's/City's money was never supported by the project's income and the Agency/City could have legitimately provided the money as a grant.

Vice Chair/Mayor Pro Tem Leece inquired about rent rolls and asked if staff inspected the units to verify that tenants met HUD requirements. Ms. Penalosa reported that tenants were low to very low-income who were 50% of AMI, and it was a requirement of the housing RHNA to provide for low to very-low household incomes. She assured Vice Chair/Mayor Pro Tem Leece that staff checked the eligibility of new tenants and double-checked rent rolls annually for calculation accuracy.

Agency/Council Member Bever referred to the operating expenses and asked if the City's administrative costs were reflected anywhere on the analysis. Ms. Penalosa advised that the City's administrative costs did not appear on the analysis.

Chairperson/Council Member Foley asked if as part of the approval process and in an attempt to get Civic Center Barrio into compliance, the City could be reimbursed for the net of the additional costs incurred. Ms. Penalosa stated there was nothing in the Agreement mandating such request and added that the Agency/Council could make it a condition of the approval. Chairperson/Council Member Foley asked if staff would be able to identify the costs. Ms. Penalosa confirmed that staff would be able to identify the costs.

Chairperson/Council Member Foley asked for further discussion to continue the Civic Center Barrio item and asked if it was costing the Agency/City more to not have the item resolved. Ms. Penalosa assured Chairperson/Council Member Foley that there would be no harm in continuing the item to another month.

Agency Member/Mayor Mansoor wanted to know what date the item would be continued to. He asked Agency/Council Member how much time he needed.

Agency/City Attorney Hall Barlow notified Chairperson/Council Member Foley that the next Redevelopment Agency meeting was set for May 11<sup>th</sup>.

**MOTION: Continue the First Amendment to the Affordable Housing Agreement for Civic Center Barrio Properties – Agency/Council Member Bever moved to continue the matter to the June 8, 2010 Redevelopment Agency meeting for consideration, as well as a report on reimbursing administrative costs. Vice Chair/Mayor Pro Tem Leece, seconded the motion.**

The motion carried by the following roll call vote:

Ayes: Agency Chair/Council Member Katrina Foley, Agency Vice Chair/Mayor Pro Tem Wendy Leece, Agency/Council Member Eric Bever, Agency Member/Mayor Allan Mansoor,

Noes: None.

Absent: Agency/Council Member Gary Monahan

**IX. REPORTS**

1. Agency/City Attorney – None.

2. Executive Director – None.

**X. ADJOURN**

Agency Chair/Council Member Katrina Foley adjourned the meeting at 7:10 p.m.