

MEMORANDUM OF LAW

DATE: November 7, 2001

TO: Todd Hooks, Deputy Director, Redevelopment Division
Community and Economic Development Department

FROM: City Attorney

SUBJECT: Redevelopment Agency Funding of Improvements to the Point Loma High School Bandroom

QUESTION PRESENTED

May the Redevelopment Agency of the City of San Diego [Agency] use redevelopment bond proceeds to fund improvements to the Point Loma High School bandroom [Bandroom Project]?

SHORT ANSWER

No. In order for the Agency to use redevelopment bond proceeds to fund improvements to publicly owned buildings, specific findings must be made to support the expenditure. Those findings include: (1) that the Bandroom Project is of benefit to the redevelopment project area; (2) that no other reasonable means of financing the improvements is available to the community; and (3) that funding the improvements will assist in the elimination of one or more blighting conditions inside the project area, and is consistent with the project area's implementation plan. The proposed findings (attached Exhibit A) are not legally sufficient to support funding the Bandroom Project. Moreover, it is highly unlikely that legally sufficient findings can be developed to support using Agency bond proceeds for the Bandroom Project.

BACKGROUND

The proposed Bandroom Project, within the North Bay Redevelopment Project Area [Project Area], relies on the use of redevelopment bond proceeds to fund improvements to the Point Loma High School bandroom. The Bandroom Project proposes the expenditure of \$25,000 for the purchase and installation of cabinets and shelves inside the bandroom. Findings to

support use of redevelopment bond proceeds for the Bandroom Project have been submitted to this Office for review, and are attached to this memorandum as Exhibit A.

ANALYSIS

If the Agency and the City Council make specific findings to support a project, the Agency may pay for construction of improvements to publicly owned buildings. Cal. Health & Safety Code 33445.¹

A. Findings

1. Necessary Findings. Under CRL section 33445, the Agency may pay for the Bandroom Project if the Agency and City Council make the following findings: (1) that the Bandroom Project is of benefit to the Project Area or the immediate neighborhood; (2) that no other reasonable means of financing the improvements is available to the community; and (3) that payment of funds for the cost of the Bandroom Project will assist in the elimination of one or more blighting conditions inside the Project Area, and is consistent with the implementation plan adopted pursuant to CRL section 33490.

2. Background of Findings Requirement. In 1993 and 1994, the Legislature made three changes to CRL that are significant to the findings needed for funding the Bandroom Project: (1) it narrowed the definition of blight in sections 33030 and 33031; (2) it added provisions to require agencies to show how their proposed actions and projects will eliminate blight, including the adoption of an implementation plan (CRL 33490) listing the various projects and expenditures for the project, and explaining how those actions will eliminate blight; and (3) it added the third set of findings to CRL section 33445 regarding the blight requirement and the consistency with the implementation plan. Along with other provisions, these changes were intended to make redevelopment agencies more consistent with their fundamental purpose of eradicating serious urban blight in areas where private enterprise is not able to do so, and were enacted in response to criticisms that redevelopment agencies had strayed from that purpose. AB 1290 Senate Analysis (Sept. 9, 1993).

B. Definition of Blighting Conditions

An area is blighted if the conditions of blight are so prevalent and so substantial that use of the area is reduced to the point that the area is a serious physical and economic burden on the community which cannot be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment. Cal. Health & Safety Code 33030(b)(1).

CRL section 33031 lists four physical conditions that cause blight and five economic conditions that cause blight. To use redevelopment funds for the Bandroom Project, in addition to the other findings under CRL section 33445, the Agency and Council must determine that the Bandroom Project improvements would assist in eliminating one or more of these conditions in the Project Area.

CRL section 33031(a) lists “physical conditions that cause blight”:

- (1) Buildings in which it is unsafe or unhealthy for persons to live or work. These conditions can be caused by serious building code violations, dilapidation and deterioration, defective design or physical construction, faulty or inadequate utilities, or other similar factors.
- (2) Factors that prevent or substantially hinder the economically viable use or capacity of buildings or lots. This condition can be caused by a substandard design, inadequate size given present standards and market conditions, lack of parking, or other similar factors.
- (3) Adjacent or nearby uses that are incompatible with each other and which prevent the economic development of those parcels or other portions of the project area.
- (4) The existence of subdivided lots of irregular form and shape and inadequate size for proper usefulness and development that are in multiple ownership.

Cal. Health & Safety Code 33031(a).

CRL section 33031(b) lists “economic conditions that cause blight”:

- (1) Depreciated or stagnant property values or impaired investments
- (2) Abnormally high business vacancies, abnormally low lease rates, high turnover rates, abandoned buildings, or excessive vacant lots
- (3) A lack of necessary commercial facilities that are normally found in neighborhoods
- (4) Residential overcrowding or an excess of bars, liquor stores, or other business that cater exclusively to adults, that has led to problems of public safety and welfare.
- (5) A high crime rate that constitutes a serious threat to the public safety and welfare.

Cal. Health & Safety Code 33031(b).

Three recent cases have discussed the definition of blight under CRL sections 33030 and 33031:

Beach-Courchesne v. City of Diamond Bar, 80 Cal. App. 4th 388 (2000); *Friends of Mammoth v. Town of Mammoth Lakes*, 82 Cal. App. 4th 511 (2000); and *County of Riverside v. City of Murrieta*, 65 Cal. App. 4th 616 (1998). In each of these cases, the local legislative body had adopted findings to establish a redevelopment project area and those findings were challenged. Each court reviewed the findings to determine whether the findings of blighting conditions were supported by actual evidence of blighting conditions.²

In each case, the respective courts rejected any attempt by the local legislative body to minimize the serious nature of the blight intended to be addressed by redevelopment. For example, the court in *Beach-Courchesne v. City of Diamond Bar*, rejected the city's findings under CRL section 33031(a)(1) because no structure had been identified as unsafe or unhealthy for persons to live or work. 80 Cal. App. 4th at 398. After rejecting other findings for similar reasons, the court concluded:

The purpose of the CRL is to provide a means of remedying blight where it exists. The CRL is not simply a vehicle for cash-strapped municipalities to finance community improvements. If the showing made in this case were sufficient to rise to the level of blight, it is the rare locality in California that is not afflicted with that condition.

Id. at 407.

Likewise, in *Friends of Mammoth*, the court examined each of the indicators for physical and for economic conditions of blight. Although the project area contained aging and deteriorating buildings, there was no showing that the buildings were unsafe or unhealthy for people to live or work. The court stated that a building could have code violations and be in need of repair, but not be an unsafe building for purposes of redevelopment. *Friends of Mammoth*, 82 Cal. App. 4th at 551-53. Further, although the findings included certain conditions that "limited" the economically viable use of the parcels, redevelopment law requires that the blighting conditions "prevent or substantially hinder" a parcel's economic viability.

Physical conditions causing blight do not result just from factors that *limit* a parcel's economic viability; they arise from factors that "*prevent or substantially hinder*" a parcel's economic viability. . . . Redevelopment "never can be used just because the public Agency considers that it can make a better use or planning of an area than its present use or plan."

Id. at 554 (emphasis in original; citations omitted).

Although in these cases the courts were looking for evidence to support findings of blight to establish a project area, each court narrowly interpreted the language describing blighting conditions, and underscored the serious nature of blight intended to be addressed by redevelopment.

C. Review of Proposed Findings

Attached to this memorandum as Exhibit A are the proposed findings for the Bandroom Project. CRL section 33445(b) provides that the findings made by the legislative body under section 33445(a) are “final and conclusive.” This language has been interpreted to mean that a court cannot review the sufficiency of the facts supporting the findings. However, a court may still review whether the findings *on their face* comply with the requirements of the statute and whether the proper procedures (notice, etc.) were followed in reaching those finding. *Meaney v. Sacramento Housing and Redevelopment Agency*, 13 Cal. App. 4th 566, 578-79 (1993). On their face, the proposed findings are legally insufficient under CRL section 33445, and would not withstand judicial scrutiny.

1. Findings of Benefit. Under section 1.a. of the proposed findings, it is stated that the Bandroom Project will benefit the Project Area or the immediate neighborhood by serving “as an economic improvement . . . by increasing the academic success of the students. The success of students graduating from public schools is directly and positively related to student’s involvement in and exposure to arts and culture courses, particularly music.” The finding continues by comparing SAT scores of students who have had music course work to students who have not. The finding made under this requirement is inadequate. The Bandroom Project proposes to pay for building improvements, not for a music program, so any finding relating to exposure to a music program is irrelevant. The finding does not support *how* the improvements effect the quality of the existing band program, nor does it explain how the cabinets and shelves increase students’ exposure to a music program or the adequacy of the program, which are what the SAT statistics listed in the findings address.

Section 1.b. of the proposed findings state that the Bandroom Project will “help with the security, organization and appearance of the Pt. Loma High School Bandroom.” Again, the findings do not specify *how* the improvements will help in the listed ways. More problematic, however, with both 1.a. and 1.b., is that the findings do not describe what benefits the physical improvements will give to the more general Project Area or to the immediate neighborhood.

2. Findings of No Other Reasonable Means of Financing. In order to meet the finding that “no other reasonable means of financing the . . . improvements are available to the community” (*see* CRL section 33445(a)(2)), other avenues of financing must have been researched. Here, the proposed findings, under section 2, lists general redevelopment policy and funding sources. However, these statements are not legally sufficient.

Because the Agency is proposing to pay for the school’s improvements, the school district must be given the task of looking into alternative methods of financing the project, and the school district, not the Agency or the City, must conclude that other means of financing the project are unavailable. *Meaney*, 13 Cal. App. 4th at 581. In *Meaney*, the City of Sacramento’s Redevelopment Agency and the County of Sacramento agreed to fund a new county courthouse with redevelopment money. The City approved the project and made the determination under CRL section 33445 that there was no other reasonable means of financing the courthouse. *Id.* at 580. The court held that the City’s finding regarding the County’s inability to finance the courthouse was insufficient and that the County must “speak to its own finances.” *Id.* at 580. The court explained that when a required determination affects a legislative body other than the city, that other legislative body must make the determination. *Id.* at 581. Thus, the school district must

determine whether any other reasonable means of financing exists to fund the Bandroom Project. The proposed findings are insufficient because they do not indicate that the school district made any determinations regarding the financing of the project.

3. Findings of Elimination of Blight. Given the discussion of blight above, this finding will not and cannot be met. Section 3 of the proposed findings concludes that installation of shelves and cabinets inside the bandroom will help eliminate blight by “improving the likeliness of success for the Pt. Loma High School students” and that it will correct the “inadequate design and [will increase] the security of the Pt. Loma High School Bandroom.” Even if these results were true, given the narrow definition of blight and the purpose of redevelopment, these results cannot support the finding that the Bandroom Project will help to eliminate one or more blighting conditions inside the Project Area.

It is clear from courts’ interpretation of blight (see discussion above), that redevelopment is intended to correct serious physical and economic problems within a project area. The proposed findings do not include facts to support a finding of either economic or physical blight within the bandroom. Instead, the finding implies that the likelihood of success of students will increase with the additional cabinets and shelves. There is no information that any economic conditions causing blight (*see* CRL section 33031(b)) exist within the bandroom or that those conditions effect the success of students from Point Loma High. Even without the benefit of a court’s interpretation of blight, CRL section 33031(b) plainly lists conditions such as depreciated or stagnant property values, abnormally high business vacancies, low lease rates, lack of necessary commercial facilities, excess of bars or other adult establishments, and overcrowding, as giving a picture of the extreme conditions that make up economic blight. Adding cabinets and shelves to a bandroom will not assist in correcting an economic condition that causes blight, even with the most liberal and creative interpretation of the requirement.

Likewise, section 3.b. of the proposed findings states that the Bandroom Project will help to reduce physically blighted conditions “by correcting the inadequate design and increasing the security” of the bandroom. Although one of the physical conditions that causes blight can be a substandard design (*see* CRL section 33031(a)(2)), that condition will only be considered to be causing blight if it “prevent[s] or substantially hinder[s] the economically viable use or capacity” of the building. CRL 33031(a)(2). Here, any inadequate design in the bandroom is not alleged to substantially hinder the bandroom’s viable use, and thus cannot be considered blighted. Accordingly, the findings under section 3 of the proposed findings are not sufficient.

4. Findings of Consistency with Implementation Plan. The Bandroom Project was first included in the *Second Amended North Bay Redevelopment Project Five-Year Implementation Plan*, on June 19, 2001, pages 13-14. The Bandroom Project is listed in and is consistent with the language of the Implementation Plan. However, mentioning the project in the Implementation Plan does not guarantee that the Bandroom Project will be able to be funded; adequate and legally sufficient findings under CRL section 33445 still need to be made prior to funding the project. As outlined in this memorandum, the information provided does not support any legally sufficient findings.

CONCLUSION

Specific findings are required to be made in order to support use of redevelopment money for the proposed Bandroom Project. The proposed findings are not legally sufficient to support funding this project. Given the nature of the project, it is highly unlikely that legally sufficient findings can be developed.

CASEY GWINN, City Attorney

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By
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Attachment
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