MEMORANDUM OF LAW

DATE: May 20, 1996

TO: Byron Estes, Project Manager
Barrio Logan Redevelopment Project

FROM: City Attorney

SUBJECT: Adjustment of the Barrio Logan Redevelopment Project Area Tax Base

This is in response to your questions concerning the effect on the Barrio Logan Redevelopment Project Area (the "Project Area") tax base of properties within the Project Area that, subsequent to its adoption, come under ownership of private nonprofit or public entities. This memorandum addresses two specific instances where the County of San Diego has denied your request for a reduction in the tax base.

QUESTIONS

1. Is the County of San Diego required to reduce the Project Area tax base to compensate for the loss of taxes caused by the transfer of ownership of the Mercado Apartments to a private nonprofit entity?

2. Is the County of San Diego required to reduce the Project

Area tax base to compensate for the loss of taxes caused by The City of San Diego's purchase of certain properties necessary to complete the Crosby Street Widening Project?

ANSWER

While an argument could be made that both of these situations should result in a tax base reduction, a review of the applicable law, as well as discussions with Bruce Ballmer, outside counsel to the Redevelopment Agency of The City of San Diego (the "Agency"), suggest that only the street widening should result in such an adjustment.

BACKGROUND

By letters dated July 17, 1995, and December 18, 1995, Patricia K. Hightman, Deputy Executive Director of the Agency, requested that the San Diego County Assessor's Office (the "Assessor") adjust the base year calculations for the Project Area to compensate for the loss of taxes that resulted from the transfer of ownership of certain properties to tax exempt entities. Specifically, the July 17, 1995, letter requested an adjustment due to the acquisition by The City of San Diego of over 30,000 square feet of property for the Crosby Street Widening Project. The December 18, 1995, letter requested an adjustment due to the development of approximately four acres of property as the Mercado Apartments, and their subsequent transfer to a nonprofit entity. The Assessor denied both requests, and you asked our office to respond to the above questions.

ANALYSIS

Historically, the increase in property values in California has resulted in substantial tax increment available to redevelopment agencies. Because of this, agencies had sufficient tax increment, and therefore made comparatively few requests for adjustments to project areas tax bases. As a result, there have been very few cases that address the issue of what happens when a property, that is not tax exempt, becomes so. The California Constitution (the "Constitution"), as well as the few cases that do exist, however, provide insight into

these questions.

The starting point for the analysis of this issue is the Constitution, specifically those provisions which established the use of tax increment financing. The authority for using property tax increment to pay redevelopment agencies' indebtedness is found in Article XVI, Section 16, of the Constitution. That section provides, in pertinent part: "All property in a redevelopment project established under the Community Redevelopment Law . . . . except publicly owned property not subject to taxation by reason of that ownership, shall be taxed in proportion to its value as provided in Section 1 of this article . . . ." Emphasis added.

While it is true that when a project area is established its base year tax assessment is effected by all nonprofit ownership of the property within its boundaries, Section 16 specifically exempts only public property from its taxation provisions. The courts that have been asked to rule on this issue, likewise, have specifically required project area tax base reductions only when a property is transferred to public use.

In Redevelopment Agency v. Malaki, 216 Cal. App. 2d 480 (1963), the court interpreted the language of Article XIII, Section 19 (now Article XVI, Section 16) of the Constitution, and said:

> The word "taxable," then as it appears in subdivisions (a) and (b) of article XVI, section 16, is aimed at future exclusion of publicly owned property; thus the total assessed value shown upon the assessment rolls last equalized before the effective date of redevelopment approval is to be diminished, from time to time, by the assessed values, as shown upon these rolls, of any properties acquired by tax-exempt public entities.

Id. at 490 (emphasis added).

Fifteen years after Malaki, the California Supreme Court in Redevelopment Agency v. County of San Bernardino, 21 Cal. 3d 255 (1978), dealt with an issue almost identical to that in the second question, above. In that case, the Redevelopment Agency sued the County of San Bernardino for its refusal to adjust the tax base to compensate for the loss caused by the dedication of formerly taxable property for use as city streets. Id. at 261. The court held in favor of the Redevelopment Agency, and said: "We think 'taxable property' means property currently taxable; we believe that the assessed value of the taxable property should be redetermined so that the loss of the revenue resulting from the acquisition should be divided proportionately between the redevelopment agency special fund and the taxing agencies." Id. at 267.

While the above holding would seemingly apply equally to property that comes under ownership by private nonprofit entities, as well as public agencies, such an extension is not supported by the rationale of the court. The court, in reaching its decision, based its opinion on the fact that the fundamental goal of redevelopment is to "remedy the blight which 'inadequate public improvements, public facilities, open spaces, and utilities' cause." Id. at 266. The Court stressed that not allowing the tax base to be adjusted to reflect these public projects would penalize redevelopment agencies for making needed public improvements, and thus frustrate the fundamental goals of redevelopment. Id.

Another reason for this distinction is that a redevelopment agency can protect itself from most of the loss of tax increment that results from acquisition of properties by nonprofit entities, by requiring these entities, as part of their negotiated deal, to make payment to the agency in lieu of taxes. By contrast, this option is not available when a property is transferred to public ownership. Further, a policy that would require an adjustment in the tax base every time a property comes under the ownership of a nonprofit entity (or for that matter when one loses its nonprofit status) would be unduly cumbersome. It is unlikely that any court would extend the requirement to adjust the tax base to situations not involving public ownership.

In addition to my analysis of the law in this area, I spoke with Bruce Ballmer, Agency outside counsel. Mr. Ballmer was of the opinion that there is no currently applicable basis for a reduction if the property comes under ownership of a private nonprofit entity.

CONCLUSION

There are very few cases that deal with the question that you ask. The cases that have addressed this issue, one of them a California Supreme Court case, have distinguished between private nonprofit ownership and public ownership. It seems clear from these cases that the Agency is entitled to a reduction in the Project Area tax base for the properties that were acquired for the Crosby Street Widening Project. The treatment of the loss in taxes caused by the transfer of ownership of the Mercado Apartments, on the other hand, is not so clear. It is the opinion of our office however that the more compelling argument is that these facts would not support a reduction in the tax base for the Mercado Apartments.

If you have any questions, or require additional information, please do not hesitate to call.

JOHN W. WITT, City Attorney

By
Douglas K. Humphreys
Deputy City Attorney

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