

City Council/ Successor Agency Board Agenda Item



Successor Agency Meeting Date: March 19, 2013

TO: Honorable Mayor/Chair and Council Board

FROM: Joseph W. Pannone, City Attorney/General Counsel
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SUBJECT: Discussion Regarding Reconveyance of Successor Agency Deed of Trust Recorded Against the Lompoc Theater and Adjoining Property

Recommendation:

Staff recommends the City Council and Successor Agency Board review this report and:

1. The Successor Agency direct staff to take steps necessary for the Successor Agency to reconvey its deed of trust recorded against the Lompoc Theater property, subject to:
 - (i) the Lompoc Housing and Community Development Corporation ("LHCDC") conveying the Lompoc Theater property to the Lompoc Theater Project Corporation ("LTPC") and
 - (ii) staff's receipt of LTPC's articles of incorporation and by-laws, a list of LTPC Board Officers and Members, as well as proof of a formal action by LTPC's Board accepting such conveyance; **and**
2. The Successor Agency direct staff to pursue obtaining approval from the Oversight Board and State Department of Finance for the Successor Agency's reconveyance of the deed of trust; **and**
3. The City Council authorize the City Administrator to send a letter to LTPC approving the transfer of ownership of the Lompoc Theater property from LHCDC to LTPC; **and**
4. The Successor Agency authorize staff to seek written approval from the Calverts for the transfer of ownership of the Lompoc Theater property from LHCDC to LTPC; **and, either**

5. The City Council direct staff to proceed with abatement of the public nuisance created by the Lompoc Theater's marquee; **or**
6. The City Council rely on Caltrans' determinations regarding the public right-of-way under the Lompoc Theater marquee; **and**
7. The City Council rely on LTPC to perform the shoring up work for the marquee through working with LHCDL or on its own after it becomes owner of the Theater; **or**
8. Staff as deemed appropriate.

Background and Discussion:

As you know, the Successor Agency currently holds a deed of trust recorded against the Lompoc Theater and adjoining parking lot (the "Theater"). The deed of trust was recorded by the dissolved Lompoc Redevelopment Agency to secure a loan of \$700,000, plus interest and penalties, made to LHCDL to assist with the purchase of the Theater for a performing arts center. The City of Lompoc also holds a deed of trust, junior to the Agency deed of trust, in the amount of \$225,000, plus interest and penalties, to secure a CDBG loan granted to LHCDL also to assist with the purchase of the Theater. The Calvert Family Trust (the "Calverts") also holds a deed of trust, junior to both the Agency and City deeds of trust, to secure a loan of \$175,000, plus interest and penalties,, which is part of the purchase price for which LHCDL agreed to pay the Calverts for the purchase of the Theater.

The Successor Agency unsuccessfully attempted to have the Lompoc Oversight Board approve a plan to stabilize the Lompoc Theater. The Theater remains in dire need of stabilization.

As indicated at the Council meeting of March 5, 2013, it is now understood one of the first important steps for stabilizing the Theater building would involve the marquee sign, which the City's consulting structural engineer (Fred Schott) has determined should be removed or re-enforced immediately. Staff presented various options for the Council to consider regarding the stabilization of the roof and the marquee.

At that meeting, the Council was advised a group of interested Lompoc citizens has created LTPC, as a California non-profit corporation, whose purpose is to raise funds to stabilize and redevelop the Theater. The goal of that group is to have LHCDL convey a grant deed to LTPC, as the first step in obtaining funding for the needed stabilization and renovation work.

LTPC has requested the Agency reconvey its deed of trust. LTPC would also pursue having LHCDL record a grant deed conveying the Theater to LTPC. LTPC would then become the owner of the Theater and responsible for stabilizing and rehabilitating it.

With that stabilization and rehabilitation, the goals of the Agency loan and community shall have been met.

Both the City and Calverts must approve LHCD's conveyance to LTPC, because of their deeds of trust. After the conveyance, LTPC would then become liable for repayment of the loans secured by the City's (\$225,000, plus interest and penalties) and Calverts' (\$175,000, plus interest and penalties) deeds of trust. In addition, LTPC would become liable for any and all unpaid taxes and assessments against the Theater (presently over \$33,000).

As to the City deed of trust, since that secures a CDBG loan, which was granted for the purpose of eliminating blight, if LTPC is successful in its endeavor, then that purpose would be fulfilled and LTPC would not need to repay that loan, nor would the City have any liability to HUD for that loan. Discussions with HUD representatives will be needed to establish an appropriate timeline for that project's completion.

At that March 5, 2013, meeting, the Council was informed the sidewalk under the Theater marquee is Caltrans right-of-way. Based on Council direction, Caltrans has been advised of the situation and provided a copy of Mr. Schott's report. After reviewing the report, Caltrans has advised the City Administrator Caltrans will be taking an interim measure of placing barricades on its right-of-way to warn the public of the potential danger caused by the privately owned marquee.

In addition, based on direction from the Council, Mr. Schott is preparing plans for temporarily shoring up the marquee. He is not available to attend the March 19th meeting. The cost for the preparation of those plans is estimated at not more than more than \$1,500.00, which is money being paid from unencumbered General Fund reserves, as authorized by the City Council at the March 5, meeting. The cost estimate for that shoring will be known on or about March 27, 2013, upon receipt of Mr. Schott's plans. That cost would also be paid from unencumbered General Fund reserves, if the City performs that work. The legal costs for that nuisance abatement process could be \$6,000. Those abatement costs, including the legal fees, would be recoverable as a lien against the Theater property. If the property is conveyed to LTPC, then that entity would be liable for paying that lien.

However, if LTPC works with LHCD to perform the shoring up work or becomes the owner of the property and performs the shoring up work, then the City would not incur any of those costs. At this time it is uncertain when LTPC may be able to coordinate with LHCD to do the shoring up work or when the conveyance to LTPC would actually be accomplished.

A 2005 appraisal valued the Theater at \$875,000. A 2009 appraisal valued the Theater property at \$700,000. Based on Mr. Schott's report, as provided to and discussed with the Council at the March 5, 2013, meeting, the cost to stabilize the Theater's roof is estimated between about \$480,000 to \$1,500,000. Mr. Schott has estimated the cost to

demolish the Theater building to be as much as \$800,000. There are also several years in back property taxes due (over \$33,000) on the Theater, which would become the obligation of the Agency, the City or the Calverts, if one of them were to become the owner of the Theater through foreclosure. In addition, if one of those entities did foreclose on the Theater and became its owner, then that entity would be responsible for all the repair work needed for the Theater, including any needed repairs for the areas of the building currently occupied by tenants. Based on the foregoing, none of the three deeds of trust have any resale value or value for foreclosure.

With the foregoing in mind, the Mayor and City Administrator have had conversations with representatives of the State Department of Finance ("DOF") and the County of Santa Barbara regarding the nature of the value of the Agency's deed of trust. Each of those representatives indicated they could support the Agency releasing its deed of trust. The representative from DOF indicated the Agency Board would need to take an action approving the reconveyance of the deed of trust and then seek approval from the Agency's Oversight Board for that reconveyance. Once those approvals were granted, the Agency would then need to submit those actions to DOF for approval. With DOF's approval, the Agency could then proceed with the reconveyance.

If LTPC becomes the owner of the Lompoc Theater property, it is unclear what the timeline would be for the renovation of that property. It is also unclear when LTPC would be able to pay the overdue property taxes or take steps necessary to stabilize the Theater building's roof.

Fiscal Impact:

The General Fund reserves will be expending up to \$1,500 for the above noted plans. If the City authorizes staff to pursue nuisance abatement regarding the marquee, an additional expenditure to cover the shoring up of the marquee and related \$6,000 in legal fees would be needed from General Fund. That expenditure would become a lien against the Lompoc Theater property. The only other financial impact staff believes will result from the suggested reconveyance of the deed of trust the Agency holds against the Theater is the staff and attorney time needed to prepare this report, the reconveyance documents, the report to the Oversight Board and the memo to DOF to obtain approval.

Conclusion:

The Successor Agency is being requested to consider recordation of a reconveyance of its deed of trust to LHCDC, concurrently with LHCDC recording a grant deed to convey the Theater to LTPC. The City Council is being asked to consider approving the recordation of the grant deed from LHCDC to LTPC. The Successor Agency Board is being requested to consider authorizing staff to seek approval from the Calverts for the recordation of that grant deed. The City Council is also being asked to determine whether: (i) to direct staff to commence the abatement of public nuisance process to

temporarily shore up the marquee or (ii) to rely upon Caltrans' decision regarding protection of the right-of-way and (iii) to wait for LTPC to work with LHCDC to do the shoring up work or become the owner of the Theater and perform that shoring up work.

Respectfully Submitted,

Joseph W. Pannone,
City Attorney/General Counsel

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL/BOARD

Laurel Barcelona,
City Administrator/Executive Director