

CITY OF OAKLAND
Agenda Report

TO: Office of the City Manager
ATTN: Robert Bobb
FROM: Ignacio De La Fuente, President of the Oakland City Council
DATE: April 3, 2001

SUBJECT: A REPORT AND RECOMMENDATION FROM THE PRESIDENT OF THE CITY COUNCIL TO NEGOCIATE A DEED IN LIEU OF FORECLOSURE WITH THE WOMEN'S ECONOMIC AGENDA PROJECT (WEAP) FOR 449 – 15TH STREET "THE ATRIUM BUILDING" AND TO CONVERT THE BUILDING INTO NON-PROFIT-OWNED CONDOMINIUMS

SUMMARY:

The Women's Economic Agenda Project ("WEAP") is in default on its loans from the Oakland Redevelopment Agency on the Atrium Building, 678 – 14th Street in Downtown Oakland. Council President De La Fuente proposes that the Agency negotiate a deed in lieu of foreclosure for the building and then convert it into commercial condominiums, to be owned by non-profit organizations that serve Oakland, with priority given to the building's existing tenants.

FISCAL IMPACT:

The Agency will fully recover its defaulted loans of \$2.1 million and \$320,000 from WEAP (\$2,715,975 owed as of 3/15/01). The cost of the condominium conversion project would be self-financing and have no adverse financial impact on the Agency, with the exception of using Agency staff time.

BACKGROUND:

In 1995, the Oakland Redevelopment Agency gave WEAP a \$2.1 million loan to buy the Atrium Building. In 1996 it gave an additional loan of \$320,000 for building rehabilitation costs. Despite numerous deferrals and intensive assistance from the Agency over the years, WEAP continues to be in default on this loan. As of March 15, 2001, WEAP owes the Agency \$2,715,975.

There are approximately eight non-profit tenants currently occupying the Atrium building, including WEAP, plus the Agency of Oakland's Second Start Adult Literacy Program. Recently, the non-profit Protection and Advocacy was forced to move out of the fourth floor of the Atrium Building, since the building owners were unwilling to negotiate a renewed lease for below-market rent.

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Protection and Advocacy was listed in the recent staff report before the Oakland Agency Council documenting the problem of non-profits being forced out of Downtown Oakland due to rising rents. The report also noted that organizations that own their own spaces have not been vulnerable to displacement.

KEY ISSUES AND IMPACTS:

Council President De La Fuente's proposed plan: An Owner-Occupied Non-profit Center in Downtown Oakland:

The Agency has long been legally entitled to foreclose on the Atrium Building to recover for WEAP's defaulted loan. However, the foreclosure process can be costly, acrimonious and uncertain. By negotiating a deed in lieu of foreclosure, WEAP would voluntarily deed the building to the Agency in order to avoid foreclosure proceedings. This alternative should be more attractive WEAP if the Agency ensures that WEAP maintains ownership of the space it currently occupies and ensures the building remains dedicated to non-profit use. In the unlikely event that WEAP refuses to enter into the deed in lieu of foreclosure agreement within 60 days, the Agency should initiate foreclosure proceedings.

Once the Agency gains title to the building, the Agency can develop deed restrictions, Conditions, Covenants and Restrictions ("CC&Rs") and a conversion process to ensure the building always serves the following objectives:

- To preserve in perpetuity this prime downtown space for 501(c)(3) non-profit organizations that serve the citizens of Oakland;
- To create commercial condominium spaces that are more feasible for non-profits to purchase and manage;
- For these spaces to be owned by the non-profits that occupy them (with the possible exception of street-level retail space);
- For the initial non-profit owners to be able to buy the building from the Agency of Oakland at discounted prices that allow the Agency to recover fully its outstanding loan and its costs in completing the conversion project, but not to profit above such recoveries;
- For the subsequent non-profit buyers to benefit from whatever original discount the original non-profit purchaser enjoyed;
- For the initial non-profit owners to be first, any current non-profit tenants in the building and secondly, non-profits currently renting space in downtown Oakland with missions complementary to the existing tenants (subject to qualifying for financing from sources other than the City of Oakland); and
- For this building to function, after its initial establishment, independent from any support from the Oakland Redevelopment Agency or City of Oakland.

The Agency would need to perform some pre-development work that might include the following:

- Comprehensive Engineering Analysis that determines seismic condition, immediate repair needs, projected regular maintenance costs and owner association reserve requirements;
- Clearing of title; and
- Analysis of current space division configuration and needs.

It would then develop an RFP for a team of consultants to complete the conversion, marketing and sale process, including the following steps:

- Performing all civil engineering studies, parcel maps and legal work necessary to subdivide the property into commercial condominiums, subject to Agency-approved CC&Rs and deed restrictions;
- Taking subdivision plan through necessary approvals, including Oakland Planning and Zoning and California Department of Real Estate;
- Completing repairs and subdivision improvements;
- Arranging financing for interested existing tenants and other interested non-profit buyers;
- Negotiating the purchase agreements for all condominium units and rental agreements for ground floor retail space;
- Establishing the building's Owner Association; and
- Managing the building through the conversion process, until the owners' association is ready to take title and the building and select permanent building management.

The result would be a permanent non-profit center in Downtown Oakland where organizations could enjoy the security of owning their own space.

Project Feasibility:

Estimated Acquisition and Conversion Costs:

Repayment of Agency loans	\$2,715,975.00
Repayment of Equitable loan (2 nd position)	\$500,000.00
Payment of delinquent taxes	\$140,000.00
Acquisition costs and title fees	\$50,000.00
Conversion, construction & sales costs	\$1,800,000.00
TOTAL COST	\$5,205,975.00

TOTAL BREAK-EVEN SALES REVENUE

Atrium Sellable Non-profit Office Space = 36,095 sq. ft. @ \$125 per sq. ft. = \$4,511,875

Atrium Sellable Retail Space = 5,505 sq. ft. @ \$140 = \$770,700

Total Sales Revenue = \$5,282,575

The purchase price of \$125 would result in monthly mortgage payments similar to **or less than** what the downtown non-profits are currently paying in rent. Of downtown non-profits surveyed, current rents, including in the Atrium Building, range from \$1.28 -

\$1.90 per sq. ft., with the City of Oakland's Adult Literacy Program paying full market rent at \$2.50 per sq. ft. Atrium condo owners would pay only \$1.10 - \$1.40 per sq. ft. monthly, plus have the security of owning their own space.

The following chart shows possible monthly payments on a typical sized space of 2,600 sq. ft. (approximately one-fourth of a floor) with a \$325,000 purchase price (@ \$125/sq. ft.) with and without a down payment. These figures are rough estimates based on estimates from local realtors and developers:

With \$100,000 down payment:

COST	MONTHLY PAYMENT
20 year loan @ 10% on \$225,000	\$2,070
Taxes	\$350
Insurance	\$100
Association Fee	\$350
TOTAL MONTHLY COST	\$2,870.00
Per Square Foot Cost	\$1.10

Without any down payment:

COST	MONTHLY PAYMENT
20 year loan @ 10% on \$325,000	\$3,162
Taxes	\$350
Insurance	\$100
Association Fee	\$350
TOTAL MONTHLY COST	\$3,962.00
Per Square Foot Cost	\$1.52

Note that these figures are estimates. Further research will be on-going to ensure project feasibility.

Tenant Selection:

A potentially controversial and difficult decision will be how to select the non-profits that will have the opportunity to buy the affordable spaces in the Atrium building. The most equitable method for selection is to give first preference to existing non-profit tenants, particularly WEAP. If the existing tenants all qualify for financing and elect to enter into purchase agreements, this will leave very little space for any additional non-profit tenants.

An issue the Agency will need to decide is whether the City's Second Start Adult Literacy Program should also be given existing-tenant status and allowed to remain without 501(c)(3) status. Due to the disruption already caused to this recently relocated program that has a complementary mission to its Atrium tenants, we strongly recommend that Second Start be treated as an existing tenant.

A brief description of the Atrium's existing non-profit tenants that would receive a right-of-first-refusal on Atrium condominiums is as follows:

Women's Economic Agenda Project: Provides minorities, women and youth with life and job-readiness training and opportunities.

Second Start Adult Literacy Program: Provides literacy tutoring and support services to adults with limited literacy.

Public Interest Law Project: Provides free legal services to low-income people.

Western Center on Law & Poverty: Provides free legal services to low-income people.

Disability Rights Advocates: Performs high-impact litigation on behalf of people with disability who are denied access.

Black Women Organized For Educational Development/Black Women's Resource Center: Promotes improving the socio-economic well-being of women and girls, focusing on the special needs of African American women.

Oakland Learning Center: Provides free learning disability diagnosis for low-income parents.

Yahweh Enterprises: Provides free educational counseling for low-income families.

UNPLUG: Combats commercial manipulation of children in schools.

If there are condominium units not purchased by the existing Atrium tenants, next preference should be given to non-profits that are currently renting space in Downtown Oakland and that have missions complementary to those of the existing tenants.

Limitation of Future City or Agency Involvement:

Taking foreclosure actions on WEAP will be difficult for the Agency, as it recognizes the valuable service this organization brings to our community. However, the Agency has a fiscal obligation to recover its loans. To avoid difficult decisions like this in the future, it is recommended that the Agency and City do not act as lenders on the building or for any of its new owners. This would not limit the organizations' ability to apply for City grants or contracts for services. If we want to create a stable, sustainable non-profit center that will hopefully serve as a model for future projects, it is important that all buyers qualify for financing from some other source.

President De La Fuente's proposal is a win-win solution for the Agency, WEAP, threatened Downtown non-profits, and the citizens of Oakland. It allows the Agency to recover its loan, WEAP to remain as an owner of its space and insure the future stability of its current non-profit neighbors, and for the Agency to help establish ownership opportunities for threatened downtown non-profits.

Necessity of WEAP's Cooperation:

The above proposal requires WEAP's agreement. To avoid foreclosure, WEAP may try various ways to secure the full payment due to the City. If WEAP is able to pay the full amount owed to the Agency, the Agency would no longer have any rights to the building nor be able to protect the existing non-profit tenants.

ENVIRONMENTAL OPPORTUNITIES:

There are no identified environmental opportunities identified in this report.

DISABILITY AND SENIOR CITIZEN ACCESS:

Current Atrium tenant Disability Rights Advocates is a leading litigation specialist and advocate enforcing the Americans with Disabilities Act. This project would provide this and similar advocacy groups a stable, affordable space from which to carry out their important missions.

RECOMMENDATIONS:

1. Direct the Agency to begin immediate negotiations for a deed in lieu of foreclosure with WEAP. If an agreement is not reached within 30 days, the Agency should initiate foreclosure proceedings by filing a Notice of Default.
2. If deed in lieu is successfully negotiated, commence pre-development work immediately and develop for Council's review the following:
 - a) Draft Conditions, Covenants and Restrictions ("CC&Rs") and deed restrictions that will govern the condominium owners of the building and ensure that the above detailed Project Objectives are met;
 - b) Draft a Request For Proposals for a development team that can complete the conversion, marketing and sales project as specified above.
3. Return with a status report to CEDA Committee within 30 days.

Respectfully Submitted,

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President of the Oakland City Council

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