The "Gateway" Redevelopment Project in the City of Hawaiian Gardens: A Study in Redevelopment Abuse

A Staff Report of the
Joint Legislative Audit Committee

Assemblymember Scott Wildman, Chair

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With special thanks to
JLAC research staff
Legislative Counsel Bureau
California Research Bureau

Executive Summary

Almost two decades ago the Redevelopment Agency of the City of Hawaiian Gardens (Agency) began the process of developing a largely underutilized plot of prime commercial land in an effort to invigorate the local economy and eliminate blight in the community.

Today, landowner/developer Irving Moskowitz (Moskowitz) has opened a card club on the site to complement a bingo parlor that has been operating as a virtual monopoly by the Irving Moskowitz Foundation (IMF) for many years.

The JLAC has found that the history of the "Gateway" redevelopment project is rife with questionable practices on the part of the Redevelopment Agency and the City of Hawaiian Gardens. And in the course of the last two decades, through negligence and malfeasance, the Agency and the City have violated state law.

Although state law expressly prohibits redevelopment funds from being used to subsidize gaming facilities, the JLAC investigation has found that Moskowitz and his agents have effectuated this subsidy in concert with the City and Redevelopment Agency.

Evidence examined by JLAC staff has revealed a redevelopment agency that has:

1) assisted a private landowner to systematically purchase and assemble land within the project area and allowed it to evolve into a gambling operation
2) displaced and/or eliminated viable commercial entities that had been located on the site during the process
3) apparently violated state laws in the establishment of this gaming facility.

Further, evidence has demonstrated that the City of Hawaiian Gardens has received and continues to receive substantial cash payments and loans from Moskowitz-controlled entities, apparently for its support of the venture.

A city that embarked on an economic revitalization effort almost 20 years ago has little to show for its efforts save for an inappropriate gaming establishment, approximately $12 million in expenditures of public funds, and financial dependence on the goodwill of one owner/developer who is operating an illegally-subsidized gaming operation.

Hawaiian Gardens provides an example of what can go wrong, when redevelopment is manipulated or used for the benefit of one individual rather than for the benefit of the community as a whole. The "Gateway" project history categorically establishes the need for stricter oversight of community redevelopment agencies and their practices.

Introduction and Background

On the southeastern edge of Los Angeles County, a tiny city known as the City of Hawaiian Gardens (City) is home for approximately 15,000 people. The 1989 census indicates an astonishingly impoverished and undereducated community -- with a per capita income level of $8344 and less than 500 people holding bachelor's degrees.

After initially incorporating in 1964, City officials, in 1969, formed a Community Redevelopment Agency (Agency) and four years later, adopted a redevelopment plan, placing the entire City into a redevelopment project area.[1]/[2]

However, with an area of only nine tenths of a square mile and approximately 100 commercially-zoned acres, the Agency had limited opportunity for commercial redevelopment.[3]

One of its largest commercial zones, a 22 to 23 acre plot on the City's west boundary or "gateway" into the City, contained a few scattered businesses and several acres of vacant land. This prime property had immediate freeway access and sat upon Carson Street, the town's major highway.

By the early 1980s, the Agency initiated efforts to develop this "gateway" with hopes of constructing a commercial shopping center and affordable housing. But the Agency was faced with an obstacle – one landowner, the Cerritos Gardens General Hospital Company (Hospital Company or CCGHC) and its controlling general partner, Irving Moskowitz (Moskowitz), which owned approximately eight acres that had, for the most part, been sitting vacant for years.

The Agency had apparently encouraged Moskowitz to develop this property, but because the land sat underutilized, the Agency began proceedings to acquire it via eminent domain.[4]

Moskowitz, through his legal counsel, Beryl Weiner (Weiner) of Selvin & Weiner & Weinberger, apparently filed a counter lawsuit on November 24, 1982[5] and ultimately

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[1] Redevelopment Plan for Project Area No. 1, Hawaiian Gardens Redevelopment Agency

[2] California Cities, Towns & Counties

[3] California Cities, Towns and Counties/Interview with Nelson Oliva

persuaded the Agency to allow Moskowitz to develop his Hospital Company's parcels as an owner participant.

However, when no development ensued, a frustrated Agency counsel Graham Ritchie (Ritchie) wrote to Weiner in early 1983:

> *"I read with some amazement your letter . . . To raise these types of questions at this late date and in this manner, after your client indicated that it would produce a plan for the development of the property which could form the basis for negotiating a participation agreement, indicates to me that there does not appear to be any serious interest in proceeding along the lines previously discussed. . . . The extraordinary delay in producing a plan of development (even a tentative one) has used up some of the valuable time. . . "*[6]

Two months later, the Agency again began proceedings to acquire Moskowitz's vacant land by eminent domain. On April 26, 1983, Ritchie served notice on the Hospital Company and on Weiner that the Agency intended to adopt a "resolution of necessity" in order to activate its power of eminent domain.[7] The Agency had apparently already offered Moskowitz/Hospital Company $2.75 million for the property.[8]

It appeared that Moskowitz/Hospital Company would neither sell the property to the Agency nor improve and develop the land, leaving what many in the community considered to be underutilized land and an eyesore.

By June 2, 1983, Ritchie again expressed frustration at Moskowitz and the Company's delays in developing the property. He wrote to Weiner:

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[4] Correspondence and documentation obtained from the City of Hawaiian Gardens
[5] November 24, 1982 complaint filed in Superior Court, County of Los Angeles
[6] February 16, 1983 letter from Ritchie to Weiner
[7] April 26, 1983 letter from Graham Ritchie to CCGHC and Weiner
[8] April 29, 1983 letter from Ritchie to CCGGHC and Selvin & Weiner

> "*. . . It was stated by the Agency staff that the Agency was willing to have the property developed by your client as an owner participant provided the Agency could receive certain assurances that the property would be developed in an orderly and timely manner . . . as a condition . . . it would require that the rear portion . . . be developed promptly . . .*"[9]

During this time, Moskowitz's intent to build a gambling operation became evident; however, gambling was illegal in the City, and the City Council (Council) apparently had mixed feelings about allowing gambling in its City.[10]

After the Council passed an ordinance, which would have allowed for card clubs to operate in the City, the citizens of Hawaiian Gardens reportedly forced the matter onto the ballot.[11]

Ritchie told Weiner that Moskowitz had two options for development of the Hospital Company property at that time: If the citizens voted to permit gambling in the City, Moskowitz would have one year to secure a gambling permit. If the citizens voted against gambling, then Moskowitz would have a total of 18 months to complete a *commercial development* on the property.[12]

Two weeks later, Weiner claimed that the Hospital Company/Moskowitz had sold the property. The sale, however, never materialized.

Moskowitz's initial yearlong period expired. The voters rejected gambling in the City, and the Agency revisited its effort to acquire the Hospital Company property in

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[9] June 2, 1983 letter from Ritchie to Weiner

[10] June 2, 1983 letter from Graham Ritchie to Beryl Weiner

[11] JLAC interviews

[12] June 2, 1983 letter from Ritchie to Weiner

order to effectuate redevelopment. Weiner continued to request additional time. In this instance, he requested time to negotiate a 120-day exclusive right-to-negotiate a Disposition and Development Agreement (DDA). Despite the fact that Moskowitz/Hospital Company had never prepared a pro forma (a financial projection)[13] the Agency approved the request, apparently based upon a presentation that Weiner had made.[14]/[15]

A year expired; the land still lay bare, and the Agency again proceeded to take actions to acquire the Hospital Company property. Weiner again threatened the Agency with litigation.

Evidently to accommodate Weiner, the Agency repeatedly continued its hearings until November 1987 to consider a resolution of necessity for the acquisition of the property. At that time, the Agency adopted the resolution, enabling the Agency to acquire the Hospital Company's property by eminent domain.

On January 21, 1987, the Agency filed an eminent domain action, and again, Weiner filed a cross-complaint, this time accusing the City and Agency of multiple unlawful activities, including racketeering, conspiracy, fraud, malicious intent and violations of both the Constitution and his client's Civil Rights.[16]

Unfortunately, because the Agency staff was negligent in following proper procedures, it was particularly vulnerable to Moskowitz's attempts to thwart the

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[13] July 16, 1985 Staff Report to Agency

[14] July 24, 1985 letter from Dunlap to Moskowitz

[15] Staff Report from the Executive Director for Agency meeting of July 23, 1985

[16] January 21, 1987 Complaint filed in Superior Court and March 19, 1987 Cross Complaint filled in Superior Court

Agency's redevelopment efforts. It appears that the Agency abandoned the eminent domain action.

In May of the following year, 1988, Moskowitz's Hospital Company acquired several additional properties in the area, and took over the operations of a local bingo parlor.

The control over the additional land and the bingo parlor, which contributed approximately $350,000 in licensing fees to the City and additional sums to community programs,[17] clearly gave Moskowitz more leverage during negotiations with the City and Agency.

During the same year, Moskowitz apparently proposed an extensive multi-use commercial development encompassing the entire 23 acres of the Gateway. The proposed development contained at least one anchor tenant, an open-air market, mixed retail, a restaurant, an entertainment center, childcare, senior housing and extensive landscaping.

By 1989, one member of the Agency, Donald Schultze (Schultze) expressed concerns about possible consequences if the City and Agency did not maintain some control over development in the area.[18] Although gambling was still illegal in the City, Schultze feared that Moskowitz had the ability to pass a ballot measure that would legalize gambling, which Schultze believed could leave the City in a precarious position. He proposed securing a Disposition and Development Agreement (DDA) between the Agency and Moskowitz/Hospital Company in order to prevent the total loss of control. Schultze explained in his memorandum.

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[17] August 3, 1993 letter from Weiner to Agency

"If the City does not have some sort of written agreement or development direction [prior] to the election, we will be in the following position if he wins . . . It will make no difference what promises are made to the voters as to what the total development will look like. Once a card club and parking lot are on the 10-acre site, and the bingo club and parking lot are on the four acre site, any further development will depend on how fast and eager you are to condemn and purchase the rest of the property and the developer's willingness to follow through on a total development. He can use the excuse that he can't purchase the additional land because no one wants to sell. Result: He's off the hook, and the City is left holding the bag with a partial development."

Instead, Schultze proposed a proactive approach to dealing with Moskowitz.

"The City should encourage Dr. Moskowitz to develop the property such that we end up with a planned development rather than a 'hodge podge' development," he wrote.[19] *"If he wins [an election in favor of gambling] . . . 1) He will not need our land. He has more than enough to build a card club. 2) He does not need our permission to build, outside of processing a building permit. 3) He does not need our money. He has plenty. 4) He does not need our friendship, goodwill or power of eminent domain."*

A year passed, and the Agency faced serious financial troubles and limited redevelopment opportunities. Moskowitz owned most of the land in the Gateway and controlled the bingo parlor; he was clearly unwilling to sell any land and was evidently litigious.

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[18] June 30, 1989 Memorandum from Mayor Donald Schultze to City Councilmembers
[19] ibid

The Agency knew that Moskowitz wanted to acquire more land, particularly one Agency-owned parcel that was adjacent to his Hospital Company property. And although the Agency had intended to use the property to help to facilitate a development in the Gateway, it appears that the Agency sold the parcel without these conditions to Moskowitz.

By 1992, Moskowitz delivered letters of interest from a potential anchor tenant, superstore Smith's Food and Drug (Smith's), which reinvigorated the Agency's hope about the possibility of redeveloping its Gateway. The Agency agreed to enter into negotiations with Moskowitz's Hospital Company with the intent to restrict its own involvement to the use of eminent domain in assembling the necessary property for the proposed development.[20]

However, in the Agency's attempts to negotiate, it was met by the Moskowitz/Hospital Company's unyielding terms or no deal, according to records and interviews. A frustrated and perhaps desperate Agency signed an agreement that disproportionately benefited the redeveloper, trusting that Moskowitz would implement the multi-use commercial development that he had proposed in 1988 or at least an approximation thereof.[21]

The DDA called for the Agency to purchase three parcels of property within the Gateway and dispose of it to Moskowitz/Hospital Company as the redeveloper. The redeveloper would reimburse the Agency for 50 percent of the fair market value of the acquired property plus ½ the cost of the 13 tenants' relocation and goodwill. The Agency was responsible, among other things, for acquiring the property, disposing of it to the

[20] Documentation on file

redeveloper "free and clear" of possession while paying for all government-mandated on site and off site improvements and the abatement of hazardous materials.

However, after the Agency purchased the property, spending $5.5 million, the redeveloper requested that the Agency leave the tenants in possession of the property and instead secure leases for the redeveloper's benefit, which ultimately exposed the Agency to a series of inverse condemnation complaints. Further, it appears that the redeveloper then delayed closing escrow for approximately eight months, contingent upon obtaining the leases and amending the DDA between the redeveloper and Agency.

At the same time, Weiner began representing the Agency in one lawsuit filed against the Agency by a tenant of the recently acquired property. Although Weiner was never officially retained by action of the Agency Board, Ritchie filed a "Substitution of Attorneys," replacing himself with Weiner in the case. Weiner's firm denied having a conflict of interest to Ritchie. Further, it did not disclose potential conflicts of interest to the Agency Board, and the Agency Board did not officially waive any conflicts.

Another year passed and although the redeveloper still hadn't initiated development activity, it requested another set of amendments to the DDA, this time drastically altering the project, while further obligating the Agency for the benefit of the redeveloper. The thrust of the 1995 amendment deleted the requirement of developing a food and drug establishment and instead, simply allowed for a large "general commercial" development. At the time of consideration, the City was also discussing the possibility of bankruptcy, as it had overspent by $2.2 million.[22]

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[21] May 6, 1993 minutes from Agency open session

[22] July 18, 1995 minutes of City Council session

Oliva reportedly informed Weiner that he would consider recommending an amendment to allow for a large retail development but added that the change would require opening a new environmental assessment under CEQA. He also reportedly told Weiner that if Moskowitz wanted to turn the project into a gambling operation, then the redeveloper may need to reimburse the Agency's acquisition subsidy.

Prior to the Agency's public hearing on the amendments, the Agency fired Oliva and City Attorney Maurice O'Shea (O'Shea) resigned. The Agency, after some negotiation, agreed to the amendments.

It appears that Weiner and his clients immediately began organizing to place a gambling initiative on the ballot, in which they ultimately spent $540,124, predominantly on paying or employing a number of local voters on the campaign, according to campaign statements.

Although the gambling initiative passed, it was challenged in court by a citizen's group called the Committee Against Card Club Associations (CACCA), which alleged that the ordinance was invalid and that the redeveloper and City had violated a series of State and Federal laws in the process of obtaining passage of the initiative and converting of the redevelopment project into a gambling facility.[23]

Weiner counter-sued CACCA and several associated individuals, alleging among other things, conspiracy, violations of the Political Reform Act, unfair competition and "*conducting a vicious campaign to dishonestly, illegally and improperly interfere with the rights of the citizens of the City to pass Measure A.*"

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[23] March 15, 1996 First Amended Verified Petition and Complaint

Unable to afford defense against Weiner's allegations, the individuals in CACCA agreed to enter into a settlement, which included dropping the challenge.

Meanwhile, Weiner began representing the Agency in three other lawsuits, still without being officially authorized by action of the Agency board. JLAC staff could find no Substitution of Attorneys or official authorization for Weiner's representation of the Agency filed for the additional suits.

By 1996, the redeveloper still hadn't even begun demolishing the old structures. However, the Agency now had four civil complaints for inverse condemnation filed against it by tenants; the City had apparently lost 12 of 13 businesses that were cleared from the site, and the Moskowitz-controlled bingo parlor discontinued the license fee payments to the City.

In the same year, it appears that Moskowitz and/or his Hospital Company funded a campaign that ultimately recalled two members of the Agency and City -- Kathleen Navejas and Rene Flores – both opponents of gambling.

Knowing the struggles of the City and Agency, Weiner, during this time, met with the Agency's Executive Director, Leonard Chaidez (Chaidez), reportedly to discuss a possible agreement whereby each month, Moskowitz, through his various entities, would contribute $200,000 to the City, approximately half of the City's budget. The Agency and City would, in general, give Moskowitz special treatment and avoid certain procedures, which appear to have been legally required under the California Environmental Quality Act (CEQA) and the Community Redevelopment Law.[24]

[24] July 25, 1996 letter from Chaidez to Weiner

Although the JLAC is not aware of a written agreement embodying the language in the letter, Moskowitz contributed approximately $200,000 per month to the City, primarily through two nonprofit organizations and reportedly threatened to withdraw them periodically when the public entities did not respond in his favor.[25] In fact, former City Clerk Dominic Ruggeri (Ruggeri) informed Moskowitz on August 3, 1997 that Weiner would *"not make any additional [financial] commitments until, it would seem by the tone of the discussions, Ms. Julia E. Sylva, Esq. is relieved of her duties as the City Attorney."*[26]

In 1999, when the Agency was expected to fund a portion of the improvements, the Moskowitz-controlled Hawaiian Gardens Card Club loaned the funds to the City as a "pass-through" to the Agency, further entangling the public entities with Moskowitz. The Card Club charged prime interest rates for the loan.

To date, 18 years after the Agency began its redevelopment efforts in the City, Moskowitz has constructed a temporary facility to house a card club gambling operation adjacent to the bingo parlor as well as adjacent to a school, city park and church. And while no substantial redevelopment or property improvement on the City's prime strip of land has occurred, the City and Agency are stuck with the very result they originally tried to prevent.

Worse yet, the City and Redevelopment Agency have cumulatively spent millions of taxpayer dollars, subsidizing the very project they were fighting while apparently violating a number of State laws and sacrificing the public interest for the benefit of the redeveloper.

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[25] March 19, 1999 memorandum from Julia Sylva to Agency

Further, because the project is primarily a temporary membrane structure, the improvements will only provide the Agency with a minimal tax increment (increased property value) to offset the redevelopment project area debt.

Meanwhile, the redeveloper has received millions of public tax dollars to subsidize a gambling development in violation of redevelopment law and appears to have thwarted the fulfillment of the public interest for the sake of its/his own private interest.

Finally, the redeveloper, through his counsel, has made efforts to thwart scrutiny, including those efforts to understand and analyze these occurrences by the Joint Legislative Audit Committee (JLAC).

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[26] August 3, 1997 memorandum from Dominic Ruggeri to Irving Moskowitz

Findings

I. The Project

- The redevelopment project is an inappropriate use of redevelopment funds because it appears to violate California Health and Safety Code Section 33426.5.
- The project is inappropriately located, as it places a gambling operation adjacent to a middle school, a hospital, a place of worship and a public park.
- The redevelopment project is not an appropriate use of redevelopment funds because it will likely discourage other appropriate development and business due to its nature – gambling. Gambling has been found to cause blight, rather than eradicate blight, as redevelopment projects are intended to do.
- Because the improvements on the project site are primarily a temporary membrane structure, there is only a minimal increase in value of the property in the project area, which will not provide a significant tax increment beyond that resulting from the changes ownership.
- The project is contrary to the legislative intent of redevelopment, as it is not "*appropriate or necessary in the interest of the general welfare . . . "* and not "*with the least private injury and the most public good,"* per the definition of redevelopment in Health and Safety Code Section 33020.
- The Project evolved from a highly irregular and apparently improper process.

II. The Agency and City

- The City and Agency have an inappropriate relationship with Moskowitz and his various entities, which has compromised the ability of City and Agency officials to exercise their duties in the public interest.
- The City and Agency have frequently accommodated Moskowitz's and Weiner's private interest over and above the interests of their citizens.
- The accommodations made by the City and Agency for Moskowitz and Weiner have often exacerbated the financial troubles of the City and Agency.
- The financial problems of the City and Agency, coupled with the financial relationship with Moskowitz and his companies, appear to have tainted the judgment of both the City's and Agency's public officials.
- The Agency relied upon representations of the redeveloper that the redeveloper would produce the multi-use project the redeveloper proposed in the late 1980s. However, the Agency was negligent in agreeing to a DDA that was insufficiently specific and otherwise failed to serve the public interest. In the end, the project that the Agency had planned was never delivered.
- The City and the Agency have failed to protect their scarce public dollars from being squandered on private interests.
- Despite the redeveloper's previous redevelopment delays, Agency officials apparently encouraged the redeveloper to incrementally acquire scarce property, which made the Agency's goals of redevelopment more difficult to obtain.
- The Agency may have violated CEQA in that it appears to have never performed an adequate environmental study or Environmental Impact Report when the project changed from a food and drug retail facility to a 24-hour, seven-day per week gambling operation.
- The Agency Board acted adverse to its taxpayers' interests when it agreed to the terms in the DDA.

- The Agency allowed the redeveloper to use the Agency's power of eminent domain and its tax increment money while forcing viable businesses to relocate.
- Certain officials of the City and Agency may have colluded to violate the law.
- One former Agency Counsel failed in his duties to protect the Agency when he allowed for and encouraged Weiner and his firm to substitute as special counsel to the Agency.

III. The Redeveloper and his Agent/Counsel

- The redeveloper successfully co-opted the City's and Agency's efforts to fulfill a public interest for his own private interest.
- The redeveloper used the Agency's power of eminent domain to forcibly acquire property subsidized by taxpayer dollars for a gambling casino. The redeveloper misled the Agency into believing that he would implement a retail center, which entangled the Agency into a contractual agreement with the redeveloper, and then converted the project to a gambling facility housed in a temporary membrane structure.
- The redeveloper's attorney made a series of misleading and often contradictory statements to public officials in order to benefit his client.
- The redeveloper and/or his attorney has evidently filed three separate legal actions against the Agency in an apparent effort to thwart the Agency's efforts for the public interest.
- The redeveloper's counsel reportedly delayed making required payments and threatened to terminate "charitable" funds, which may have been intended to coerce the City and Agency to favor the redeveloper's interest.
- The redeveloper and/or his attorney appear to have encouraged the Agency and City to ignore certain mandatory procedures and laws.

- The redeveloper's attorney has made efforts to circumvent the City's and Agency's legal counsel, thereby potentially preventing the public bodies from obtaining sound legal advice.
- The redeveloper knowingly hamstrung the Agency when it tied up the property on which the Agency had expended millions of dollars.
- The redeveloper appears to have incessantly delayed the redevelopment project to suit its own private interest.
- The redeveloper, through his counsel, requested, pursued and obtained postponements of hearings to suit his private interests and later filed Complaints in Superior Court against the Agency due, in part, to the Agency's postponements, which were intended to accommodate the redeveloper.
- The redeveloper appears to have breached its contract with the Agency. Although the breach(s) appears to have caused financial distress to the City and Agency, the redeveloper sought and obtained language stating that no breach had occurred.
- The redeveloper's counsel has frequently argued conflicting positions with public officials according to what suited his client's own private needs. For example, in his efforts to thwart the Agency's project, redeveloper's counsel argued that no public financing was necessary to develop the property, that no blight existed and that redevelopment project was not "*compatible with the greatest public good and the least private injury.*" Yet redeveloper's counsel argued the opposite on all three points and demanded public financing for his client. The redeveloper's counsel claimed that *"a large number of corporations have expressed a desire to participate and execute leases,"* yet the counsel publicly stated, *"It is not easy to attract tenants."*
- Redeveloper's counsel, Weiner, has played a dual role for both the redeveloper and the Agency. While serving as the redeveloper's counsel and advocate, Weiner simultaneously served as counsel to the Agency. Moreover, there is evidence that while working on behalf of the redeveloper, Weiner consulted directly with the Agency/City staff and Board members/City Council members, which evidently included providing legal advice.

- In providing legal services to the Agency, Weiner failed to inform the Agency Board of the potential conflicts of interest, and instead claimed and continues to claim that "no conflict" existed.
- Redeveloper's counsel made a series of misleading statements to the JLAC staff. For example, while there is evidence that his client intended to build a casino as far back as 1983, redeveloper's counsel told the JLAC, *"The claim that Dr. Moskowitz said that back in 1989, he was only going to build a casino, [is] just an outright fabrication. We were never going to build a casino."*
- Both the redeveloper and his attorney have failed to fully cooperate with the JLAC investigation.

Recommendations

- The Joint Legislative Audit Committee should continue its investigation of the City and Agency.
- Because the project appears to violate state law, the redeveloper should reimburse the entire subsidy to the Agency. The reimbursement should include any and all fees that the redeveloper's attorney claimed to be due from the Agency as a result of acting as special counsel to the Agency.
- The Agency should consider pursuing a recovery of taxpayer dollars that were spent subsidizing the development.
- The Attorney General should consider assisting the Agency in an effort to recover the public funds that have been expended on the redevelopment project.
- The City and Agency should postpone any and all significant pending decisions that make further commitments to Moskowitz, the Hospital Company, their agents and attorneys until the State completes its investigation and analysis.
- The Agency should reconsider an appropriate project on the "gateway" site.

- Local, State and Federal law enforcement agencies should investigate for criminal or corrupt activity associated with the Hawaiian Gardens' "Gateway Gardens" project.
- The State Bar of California should consider whether its current Rules of Professional Conduct adequately protect public entities and prevent subversion of the public interest when private attorneys represent both their private clients in dealing with a public entity as well as the public entity itself.
- The JLAC may wish to refer the activities of Weiner and partners at Selvin & Weiner & Weinberger herein to the State Bar of California for further investigation, particularly as to the firm's dual representation of the redeveloper and the redevelopment agency.
- The Legislature should consider appointing a monitor/advisor to assist the City and Agency in establishing their independence and integrity.
- The Legislature should prohibit gambling operations to be located within ½ mile of public schools, parks or playgrounds, hospitals and places of worship.
- The Legislature should reform the redevelopment laws to prevent abuses and speculation.
    - It should review the goals and missions of redevelopment and determine if it has met and/or continues to meet its goals.
    - After evaluation, the Legislature should consider alternatives to the current redevelopment structure such that cities and local jurisdictions are not dependent upon sales tax.
    - It should prohibit the use of temporary structures on redevelopment projects.
    - It should create a body of experts to periodically review, assist, advise and guide local redevelopment agencies with critical issues.
- The City of Hawaiian Gardens should pursue programs and related funds from independent sources that will empower its residents – civic, cultural, educational, arts and environmental and job training programs.

The City of Hawaiian Gardens

In the early 1960s, residents of a small, unincorporated area applied to the County of Los Angeles (County) to request a zone change in order to construct on property that was zoned "agricultural." The County reportedly declined the re-zoning request, which fueled a signature drive seeking autonomy for the region. By March 31, 1964, the residents from this tiny region – less than a ½ square mile at the time – incorporated, becoming California's 75th -- and the smallest -- city by a 164-128 vote. The new City had approximately 3300 people.[27] The City now comprises .9 square miles with approximately 100 commercially and industrially zoned acres.

Currently, approximately 15,000 residents live in the City, the majority of whom are of Latino origin. Income appears to be below poverty levels, according to the 1990 U.S. Census, which lists the per capita and median household income as $8,344 and $29,510, respectfully.

The City is governed by five elected city council members who simultaneously serve as the Board of Directors of the Community Redevelopment Agency.[28]

The City's finances have apparently been in disarray for many years. In fact, the City has apparently faced bankruptcy at least once in 1983 and has continued to run a budget deficit of $800,000 to $1 million, according to sworn testimony by former mayor Kathleen Navejas (Navejas).[29]

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[27] Historical Documents obtained from the Los Angeles County Library, City of Hawaiian Gardens

[28] *California Cities, Towns & Counties,* Information Publications 1998, page 167

[29] Deposition of Kathleen Navejas

In 1992, City Administrator, Nelson Oliva (Oliva) retained an independent auditor, Mike Harrison of Conrad & Associates, who found that fiscal year ending June 30, 1992, revenue sources reached $2.4 million while expenditures from the City General Fund reached $3.6 million, leaving a $1.2 million shortfall.[30] Further, in his 13-year audit from July 1, 1979 through June 30, 1992, Harrison identified a $1.5 million debt that the City owed to the Agency.[31]

In February 16, 1993, Oliva reported that the City was overspending by a half million dollars per year. More problematic was that the State, too, was in "*dire financial straits,*"[32] drying up traditional funding sources and ultimately causing more financial hardship on the City.[33] The City was able to make ends meet by utilizing one-time funds.[34]

In 1995, the City was again facing bankruptcy, as it had overspent by approximately $2.2 million in the prior year. With a $3 million budget, the City had spent $5.2 million.[35]

The Community Redevelopment Agency

Five years after the City of Hawaiian Gardens incorporated as a general law city, on September 23, 1969, it adopted ordinance number 99, declaring the need for a

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30 February 4, 1993 minutes of Joint Special Meeting of City and Agency
31 April 27, 1993 Redevelopment Agency meeting minutes
32 February 16, 1993 Joint meeting of City and Agency
33 ibid
34 June 23, 1995 letter from James Chilton, Chilton & O'Connor, Inc. Investment Bankers, to Agency
35 July 18, 1995 minutes from City Council

redevelopment agency to function in the City, and the City of Hawaiian Gardens Redevelopment Agency was created.[36] The City later adopted Resolution No. 40-69, wherein the City Council members declared themselves the board of the redevelopment agency.[37]

In November 1973, the Agency evidently passed the Redevelopment Plan for Project Area No. 1 (Plan), designating its entire City in a redevelopment project area. The Plan set out to eliminate and prevent the spread of blight and deterioration by the following activities: acquiring real property, demolishing certain improvements, assisting displaced occupants with relocation, constructing and reconstructing improvements, disposing property for specific uses in accordance with the plan, redeveloping the land and providing for open space, recreation and other public land uses.[38]

Requirements in the Plan included the following:

- *"Existing business owners and business tenants within the Project Area be given preference for re-entry into business within the redeveloped Project Area.*
- *"Traffic circulation shall not fluctuate significantly over what is presently experienced, nor will any adverse effects upon the quality of the environment result from this plan.*
- *"The Agency shall provide for additional community services and facilities which shall serve to increase the physical and social quality of the neighborhood.*
- *"All real property acquired . . . shall be sold or leased . . . for uses permitted in this plan. The Agency shall reserve such powers and controls in the*

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[36] Ordinance No. 99, September 23, 1969

[37] Resolution No. 40-69, September 26, 1969

disposition and development documents as may be necessary to prevent . . . use of land for speculative purposes and to insure that development is carried out pursuant to this plan.

- *"No permit shall be issued . . . until the application . . has been processed in the manner herein provided." (required review by secretary-treasurer and/or executive director to determine conformity with plan who must report findings)."*[39]

Cost for the entire project, the City's redevelopment, was estimated, at the time, to reach $5 million, with revenues expected to exceed that amount.

On September 28, 1982, Ordinance No. 259 created the ability for the Agency to use eminent domain in a portion of the Project Area later called the "gateway," the property that is the subject of this JLAC report.[40]

Redevelopment Law and Governance

In an effort to eliminate and prevent blight, create jobs, expand low-to-moderate income housing and attract private investment, the California Legislature created a process called "redevelopment" that allowed for the creation of community redevelopment agencies (CRAs) within each community to prepare and effectuate redevelopment plans.[41]

Redevelopment, as defined in Health and Safety Code section 33020 is

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[38] Redevelopment Plan for Project Area No. 1, Hawaiian Gardens Redevelopment Agency
[39] ibid
[40] Ordinance No. 259, September 28, 1982
[41] September 7, 1999 Legislative Counsel Opinion #19078

> *" . . . the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a survey area, and the provision of those residential, commercial, industrial, public, or other structures or spaces as <u>may be appropriate or necessary in the interest of the general welfare . . .</u>"* [emphasis added][42]

In addition to expanding low and moderate income housing and employment opportunities, redevelopment's purpose is to *"provide an environment for the social, economic and psychological growth and well-being of all citizens."*[43]

CRAs are authorized to undertake activities, such as purchase property, sell or otherwise dispose of the property and enter into contracts to fulfill the purpose of eliminating and preventing blight within a community.[44]

CRAs actually operate as an administrative arm of the State as they are pursuing a State concern and effectuating a State legislative policy.[45] They utilize a *"tax-increment"* to pay the principle and interest on loans, advanced funds or indebtedness incurred to finance or refinance a project. The tax increment results from the increase in property value due to the redevelopment project (project) and is to be placed in a special fund for repayment of indebtedness incurred in financing the project, with a minimum 20 percent earmarked for affordable housing initiatives.

Because of the passage of Proposition 18 in the 1952 election (added Section 19 to Article XIII of the California Constitution, now Section 16, Article XVI), the interim

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[42] Health and Safety Code Section 33020
[43] Health and Safety Code Section 33071
[44] November 16, 1999 Legislative Counsel Opinion to Honorable Scott Wildman
[45] September 7, 1999 Legislative Counsel opinion #19078

tax profits are allowed to be used for bonds and the profits are deferrable until the bonds are paid.[46]

In order to pursue a redevelopment, a CRA must adopt a redevelopment plan prior to proceeding with a proposal to redevelop a project area.

Redevelopment and Gaming

In the legislative session of 1996, Assembly Member Phillip Isenberg (Isenberg), as Chair of the Judiciary Committee, studied both the intent of redevelopment and the consequences of gaming.

He found that gaming tended to be detrimental and opposite to the intent of redevelopment. A bill summary explained.

> *"Numerous studies show that gambling establishments tend to depress – and cannibalize – surrounding businesses, including restaurants, retail outlets and other small business. It is this very economic depression that redevelopment agencies are supposed to fight, not subsidize. It is the job of redevelopment to curb blight; current law states: 'Economic conditions that cause blight [include] . . . an excess of . . . businesses that cater exclusively to adults that has led to problems of public safety and welfare.' Studies show that gambling-related businesses are not compatible with redevelopment activities; in fact, there is a strong correlation between gambling and crime and other social problems. Government should not sponsor enterprises . . . [that] come with social costs that further drain tax dollars."*[47]

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[46] ibid

In a letter to the *Redevelopment Journal*, Isenberg and former Attorney General Dan Lungren (Lungren) criticized the publication for an article that *"totally ignored the criminal activity"* that was uncovered in a gambling related redevelopment in Bell Gardens. They wrote,

> *"The overwhelming evidence has pointed to the incredible lack of local enforcement. Local officials either cannot afford the oversight that is necessary to ensure cleanly run card rooms or are tempted to 'look the other way' as card rooms become the cash cows for the city's coffers. Card room revenue can constitute a substantial part of a city's General Fund revenue, and . . . cities can become addicted to the money and experience lesser incentives to strictly enforce the law. . ."*

Isenberg and Lungren listed a series of violent crimes associated with gambling including two armed robberies, a kidnapping, three unresolved killings and threats of force and violence associated with extortion.[48]

In a memorandum to Paul Deiro of the Assembly Housing Committee, Isenberg's staff, Rick Battson (Battson), stated Isenberg's concern about redevelopment abuses and a lack of *" focus on eradicating blight."* He cited studies which show a

> *"strong correlation between gambling and crime and other social problems,"* concluding that *"Government should not sponsor enterprises that have no net economic benefit but that come with social costs that further drain tax dollars."*[49]

Battson enclosed citations and a book with extensive gambling studies, including the California Redevelopment Association's own *"Gambling in California: Economic*

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[47] Bill summary for AB 2063

[48] March 1996 letter by Isenberg and Lungren in Redevelopment Journal (No. 180)

Development Tool or Source of Crime and Blight."[50] One of the excerpts, *the Social Costs of Gambling* by Robert Goodman, concluded,

> *"A model of economic development that relies on gambling and chance to replace the jobs lost in productive industries is at least disturbing for our future as the losses suffered by unsuccessful betters. The shift in the role of governments from being watchdogs of gambling to becoming its lead promoters is also troubling They have taken on the schizophrenic role of picking up the tab for the increase in problem gambling while, at the same time, spending even more to promote its causes.*
>
> *Instead of serving the needs of the citizens, these governments are becoming predators among them. . . . There is a sad and ironic contradiction between the partnership that state and local governments are setting up with the gambling industry . . . state and local governments are undermining [programs for emerging technologies] by encouraging the growth of an industry, which thrives on siphoning money out of other sectors of our national economy. . .*
>
> *The proliferation of gambling . . . helps to shape a society that harvests short-term profits while accumulating a large residue of costs for the future. By turning to gambling expansion for economic development, governments are creating a legacy that will make long term solutions even harder to realize. As new gambling ventures drain potential investment capital for other businesses, as existing businesses lose more of their consumer dollars to gambling ventures, more businesses are being pushed closer to decline and failure, more workers are being laid off, and enormous public and private costs are incurred to deal with a growing sector of the population afflicted with serious gambling problems . . . The sad problem . . . is that it creates far more problems than it solves . . . [and] lock communities into a future of gambling dependency . . . since they now will depend on their casino revenue to service this debt, they will find themselves . . reluctant*

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[49] February 29, 1996 memorandum from Asembly staff Battson to Committee staff Deiro
[50] ibid

to close or curtail these operations . . . try to promote even more gambling, as a way to meet their debt payments."

Gambling enterprises were found to siphon away money, resources, human skills and government support, in effect "*cannibalizing*" the local economies. For example in Atlantic City, while the casinos grossed more than $33 billion from 1978 to 1993, gambling operations acted as a "*sponge*" to other businesses, which in turn, saw few benefits. In fact four years after the introduction of casinos, about a third of the city's retail business had closed. Further, researchers from the *Journal of Research in Crime and Delinquency* found that the growth of crime reduced property value by $24 million.

Other detriments listed included

- Direct regulatory costs
- Direct crime costs
- "*harder-to-price*" costs such as family disintegration, suicides, increased car accidents[51]

Further, one advocacy group made the following observation.

"The gambling fraternity has ample funds to develop future gambling facilities . . . Ample funds are now being expended for new card rooms, new tribal gambling establishments and to finance pro-gambling lobbying efforts."[52]

As a result, the Legislature enacted the following language into the California Health and Safety Codes.

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[51] Documents obtained from Legislative Intent Service, The Social Costs of Gambling Review of Studies. *"The Luck Business,"* by Robert Goodman

[52] Documents obtained from Legislative Intent Service

"Notwithstanding the provisions of Sections 33391, 33430, 33433, and 33445, or any other provision of this part, an agency shall not provide any form of direct assistance to . . . A development or business, either directly or indirectly, for the acquisition, construction, improvement, rehabilitation, or replacement of property that is or would be used for gambling or gaming of any kind whatsoever including, but not limited to, casinos, gaming clubs, bingo operations, or any facility wherein banked or percentage games, any form of gambling device, or lotteries, other than the California State Lottery, are or will be played."[53]

The Grandfather Clause

The Isenberg prohibition has one exception, specifically if the redevelopment agency has

"*a contract or agreement between a redevelopment agency and a gambling-related business entered into before April 1, 1996, provided that the agreement pertains to a specific project in a redevelopment project area that is in existence before January 1, 1997.*"[54]

Because the Legislature required the contract to be entered into with a *"gambling-related business,"* distinct from a non-gaming business or an undefined, general *"commercial"* business and required the project to be *"in existence"* by January 1, 1997, the exemption does not appear to apply to this redevelopment project.[55] Neither the Cerritos Gardens General Hospital, nor Irving Moskowitz, the redeveloper, is *"a gambling-related business."* Further, the project does not appear to have been *"in*

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[53] California Health and Safety Code Section 33426.5

[54] Section 2 of Chapter 136 of the Statutes of 1996

[55] Opinion of the Legislative Counsel Bureau

existence" by the January 1, 1997 deadline. However, the redeveloper appears to have obtained a building permit for the renovation of an existing building in a blatant attempt to beat the January 1, 1997 deadline. The JLAC believes that the permit was not *"the project*," as defined in the second amendment to the DDA, which specifically identified the project as *"a commercial development of between 50,000 to 80,000 square feet."*[56] Demolition of existing buildings did not even begin until mid-1997, according to a June 13, 1997 letter from Yigal Hirsch to the Agency's Executive Director, Leonard Chaidez (Chaidez).[57]

Moreover, the language in the exemption appears to have intended the exemption, explicitly for two redevelopment projects – the Palm Springs Redevelopment Agency and the Bell Gardens Redevelopment Agency, which both had contracts in place at the time of legislative deliberation.

Even if the project was technically initiated before January 1, 1997, the exemption would still not apply. California Legislative Counsel opined as follows.

> *"There is nothing in any . . . documents that would have put the agency or the public on notice prior to either of those dates that the redevelopment project in question, as embodied in the Plan and the DDA and its amendments, contemplated the placement of a card club within the project without any further amendment of the Plan or the DDA."*[58]

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[56] Amendment No. 2 to the DDA No. 93-26

[57] June 13, 1997 letter from Yigal Hirsch to Chaidez

[58] Opinion of the Legislative Counsel Bureau

The Vacant Land Prohibition

Health and Safety Code section 33426 also prohibits redevelopment agencies from providing assistance in the following circumstances:

> *" . . . a development that will be or is on a parcel of land of five acres or more which has not previously been developed for urban use and that will, when developed, generate sales or use tax pursuant to Part 1.5 of Division 2 of the Revenue and Taxation Code, unless the principal permitted use of the development is office, hotel, manufacturing, or industrial, or unless, prior to the effective date of the act that adds this section, the agency either owns the land or has entered into an enforceable agreement for the purchase of the land or of an interest in the land . . . that requires the land to be developed."*[59]

Because at least five acres of the "site" were vacant, the Agency may be prohibited from providing any assistance. However, the original agreement between the Agency and the redeveloper was entered into in 1993 before the law took effect on January 1, 1994, which may allow for a "grandfather" exemption.

Proper Location for Legal Gaming

Because of the detrimental effects that gambling has been found to have on hosting communities (see above section), the California Legislature has declared that if gambling is to be permitted in the State, extreme care is needed in location decisions. In particular, the State's Business and Professions Code Section stressed the importance of

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[59] Health and Safety Code Section 33426.5

avoiding the proximity of gambling near schools, hospitals, public parks and places of worship by making such location grounds for denying a gambling license. It reads:

> *"In addition to other grounds stated in this chapter, the commission shall consider denying a gambling license for any of the following reasons:*
> *If issuance of the license is sought in respect to a new gambling establishment, or the expansion of an existing gambling establishment, that is to be located or is located near an existing school, an existing building used primarily as a place of worship, an existing playground or other area of juvenile congregation, an existing hospital, convalescence facility, or near another similarly unsuitable area, as determined by regulation of the commission, which is located in a city, county, or city and county other than the city, county, or city and county that has regulatory jurisdiction over the applicant's gambling premises."*[60]

The card club that has been erected is adjacent to all of those considered "*unsuitable"* neighbors, including a middle school, a playground, a hospital, a place of worship and a City Park. Based upon the adjacent uses, the card club appears to be improperly located.

California Environmental Laws

In 1970, the California Legislature enacted the California Environmental Quality Act (CEQA) in order to protect the quality of the environment and the health, wellbeing and social and economic conditions of Californians.[61]

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[60] Business and Professions Code Section 19852

[61] *Guide to the California Environmental Quality Act*, Solano Press Books, July 1996

When contemplating a *"project,"* CEQA mandated a set of guidelines and procedures intended to help minimize the impacts on the environment and protect the wellbeing of citizens. The law requires compliance with the procedures by public agencies charged with overseeing or approving a project (lead agency) that may cause a direct or indirect physical change in the environment.[62]

Initially, the lead agency for a particular project must conduct a study to determine the project's potential impact and then conduct an environmental impact report (EIR) unless it finds there will be no significant adverse impacts to the environment. In the latter case, the lead agency may produce a negative declaration (ND), indicating no significant impact or may produce a mitigated negative declaration (MND), indicating no impact with noted remedies.

Upon *"discretionary"* approval of a project or upon approving significant change in the project, the lead agency is required to conduct an environmental review. Public Resources Code section 21166 articulates three circumstances for which a supplemental or subsequent EIR becomes necessary. They include:

(a) Substantial changes are proposed in the project, which will require major revisions of the environmental impact report.

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.

(c) *New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.*[63]

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62 ibid

63 Public Resources Code 21166

Neither the City nor Agency of Hawaiian Gardens conducted an EIR when it created its initial Redevelopment Plan in 1973 and appears to have not had an historical environmental study on which to rely when contemplating the project.[64] In 1993, when the Agency approved the DDA, the City performed an initial environmental study. Based upon the belief that the project was a food and drug retail operation with an addition of retail in a second phase, the City chose to adopt a negative declaration (ND) rather than prepare an EIR.

And although there may have been deficiencies in the 1993 procedure, the more profound deficiency arose at two junctures:

1) The approval of the second amendment to the DDA, which changed the scope of the development from a drug and food retail operation to a general commercial development.
2) The conversion of the project to a card club.

During the contemplation of the second amendment, Oliva reportedly informed Weiner of CEQA requirements and the necessity of conducting a new environmental study due to the project's change in scope.[65]

However, the Agency terminated Oliva's employment prior to its approval of the second amendment, replacing him with an interim City Administrator/Executive Director (Charles Gomez) and then with Leonard Chaidez (Chaidez). (Hours before Oliva's termination, he alerted City staff that the City could not make payroll).[66]

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[64] Documentation on file

[65] JLAC interview with Oliva

[66] August 9, 1995 memorandum from Oliva to City staff

Chaidez met with Weiner then on July 16, 1996 at which time they reportedly discussed the City's willingness to avoid the CEQA process, possibly in exchange for Moskowitz providing additional funds to the City, according to Chaidez's July 25, 1996 letter to Weiner.[67]

Prior to the Chaidez-Weiner meeting, in September 1995, the local school district, which administered the middle school adjacent to the proposed gambling district, also inquired about the date of the environmental study. The Superintendent, asked how *"one [could] offer comments? . . . When will such a study be conducted?"* he asked. The JLAC staff is unclear if the City responded to the inquiry.

It appears that the City never revisited the environmental review process,[68] which would likely constitute a violation of CEQA.[69] The alteration of the project from a retail facility to a 24-hour, seven-day per week gambling operation naturally creates a distinct set of impacts on both the environment and the health and wellbeing of the community.[70]

Improper Relationships and Entangled Interests

> *"Beryl Weiner told . . . me, in the City Council Chambers, that if the City did not issue the permit that he would 'not deliver a check' from the Hawaiian Gardens Foundation that the City needed to meet payroll expenses. This information was relayed to the members of the City council prior to the issuance of the permit . . .*

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[67] July 25, 1996 letter from Chaidez to Weiner
[68] Documents provided to the JLAC from the City and Agency
[69] Oral opinion of Legislative Counsel Bureau
[70] Opinion of the Legislative Counsel Bureau

> *The City depended upon the contributions from the Hawaiian Gardens Foundations for a substantial portion of its operating revenues, including payroll expenses . . . On several occasions . . . I personally observed Beryl Weiner deliver checks on behalf of the Hawaiian Gardens Foundations to the City . . .*" – Julia Sylva, declaration, sworn under penalty of perjury[71]

Government officials have an obligation to act on behalf of the public and to uphold the public interest over and above any individual private interest.

Unfortunately, in the City of Hawaiian Gardens, the redeveloper has clearly sought and obtained favorable treatment for more than a decade. The Joint Legislative Audit Committee has found numerous instances where the City and Agency have accommodated the private interests of Moskowitz and Weiner at the expense of the citizens and taxpayers of those communities.

And while many of those accommodations throughout the 1980s and early 1990s have cost scarce taxpayers' dollars, the special treatment appears to have accelerated during the years between 1995 and 1999, when the redeveloper began making "*contributions*" to the City through nonprofit charities controlled by him.

It appears that the City and Agency were afraid to oppose Moskowitz's demands due to threats that "charitable" contributions, on which the City relied, would cease.[72]

Although the bulk of the "*charitable*" contributions to the City were made from two nonprofit organizations -- The Hawaiian Gardens Police and Public Safety Foundation and the Hawaiian Gardens Educational Foundation -- both organizations are wholly dependent on the Irving I. Moskowitz Foundation (IMF) apparently with no other source

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[71] Declaration of Julia Sylva, sworn under penalty of perjury

[72] Records on file/Sworn declaration of Julia Sylva

of funds. The organizations are known as *"Moskowitz's Foundations"* to city officials,[73] and although Weiner told the JLAC,

> *"The Hawaiian Gardens Education Foundation] wasn't owned or controlled by Dr. Moskowitz. It was set up with people who were interested in helping out the community"* and that *"the Moskowitz Foundation provided funding based upon grants to the Education Foundation and the Education Foundation then determined what grants it chose to make to the city and it made those grants,"*[74]

Weiner stated in a public City Council meeting that,

> *"The Moskowitz Foundation has put in $4.7 million dollars into the city in the last 18 or 20 months. That's an awful lot of money to go to a city that has an annual revenue of million, eight hundred thousand dollars."*[75]

Evidently, the organizations' functions are to channel IMF funds into the City. For example, in 1996 it appears that the Hawaiian Gardens Education Foundation (EF) received $2.15 million from IMF and contributed $2.05 million to the City. In 1997, the EF received $500,417 from IMF and contributed $488,000 to the City. Similarly, in 1997, the Hawaiian Gardens Police and Public Safety Foundation (PPSF) received $1.4 million from IMF and contributed $1.1 million to the City, indicating that the foundations may have been created as conduits for Moskowitz to contribute to the City.[76]

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[73] July 10, 1997 sworn declaration of Leonard Chaidez

[74] JLAC interview with Beryl Weiner

[75] Audio Cassette of September 9, 1997 City Council meeting

[76] Foundation Tax Forms

(In 1998, PPSF gave $2,203,600.00 to the City; however the JLAC had no available record of the funds that IMF contributed to the PPSF in 1998).

The relationships between the redeveloper and City officials may have become increasingly entangled during the November 1995 election for Ballot Measure A, which allowed gambling in the City. It appears that several city employees worked simultaneously for the City and the initiative, which was funded by Moskowitz. Former Mayor, Kathleen Navejas, elaborated during sworn testimony:

> *" . . . [City employee] Freddy Licon was being used by yourself [Weiner] and Dr. Moskowitz as a local resident and employee and a very aggressive young man, to do a lot of what I consider improper procedures on behalf of Measure A . . . while working for the City of Hawaiian Gardens and working on Measure A at the same time. . . I think Freddy was the voice piece on behalf of yourself . . . while he was a City employee . . ."*[77]

Further, Navejas stated that City employee and former Mayor, Donald Schultze, was

> *"working on Measure A while working at the taxpayers' expense. I happened to be at some local businesses when he was calling people from City Hall."*

Similarly, the City Clerk was

> *"working on Measure A while conducting city business and being paid by the City,"* she testified.

Further, the City withheld public information and coached city employees on permissible dialogue, according to Navejas's sworn testimony.

City Council members were frequently unabashed in their considerations of Moskowitz's interest over and above the City's interest. For instance, on September 9,

1997, the City Attorney, Sylva, had informed them that an existing City moratorium on Bingo licensing was illegal and therefore needed to be repealed. Although the Council ultimately repealed the moratorium, which had apparently created a monopoly for the Irving Moskowitz Foundation in the city, two of the Council members voted against repealing the ordinance, in essence voting for Moskowitz's private interest over and above the City's interests. One of the Council Members, Member Calcote, made the following statement:

> *"I don't want to approve this. It's a slap in the face to Dr. Moskowitz. We can't forget that they have given millions of dollars to the city. We do owe them. I don't want to say owe them, but we should try to not undermine their business. I think this is an attempt to get back at the Doctor . . . because there has been a lot of fighting back and forth. . . . And it's inappropriate to do this right now . . . It shows that -- Thanks for all the millions that you gave us, but so what, you know, we don't care right now. . . I don't think it will bring us that much money . . . We can always bring this up later if we're really desperate. But if we want Dr. Moskowitz's foundation to continue to help out the city, we need to also cooperate with them. It's a slap in the face, and it's inappropriate. In the long run, we're going to lose out on a lot more money if we do this because it's like telling them to get lost.*

Mayor Cabrera explained that the City was not

> *" repealing the license. It's just that . . . a law that prohibits us to have this ordinance in place because it . . creates a monopoly."*
>
> Calcote stated, *"If someone has a problem with it, they can bring it to the City."*

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[77] Sworn deposition of Kathleen Navejas

The City Attorney and Mayor replied, *"They have."*

Member Schultze then opined, *"My objection to this is I think this is another one of the deals being worked out in the background. Part of the deal is we repeal this,"* Schultze, instead, preferred a lawsuit, hoping that *"If we get sued, maybe it will flesh this person out."*

Cabrera asked, *"Another law suit?"*

Calcote then stated, *"I want the council to really think about this carefully, because we would like the Foundation to continue to support the City. I think this is going to upset them a little bit. You know they're not going to be happy with this, and you're going to have to deal with the consequences. . . [It's] trivial [and] frivolous . . . I've got a gut feeling that this is going to antagonize them a lot more than we really realize and we shouldn't do it. We should not be antagonizing them. We should be cooperating with them as much as possible. . . . Can't we make a special ordinance just for them?"*

Another councilmember [voice not identified] replied, *" Wasn't that talked about once? We wouldn't want a big time bingo person to come in and compete with Moskowitz?"*

Councilmember Alvarez reminded the Council that Bingo was, by law, restricted to nonprofit functions. He asked, *"[What about] churches and schools? The whole purpose . . . is nonprofit. The money has to go somewhere, rather than to profit from it. It can't be spent on private investment."*

City Administrator Jack Simpson then asked,

"Isn't there a chance of possible litigation to the City? We have a moratorium. According to our attorney, it's illegal. I don't want another lawsuit."[78]

In numerous other instances, Mayor Chaidez, who was City Administrator and Agency Executive Director, acted in a manner that was arguably beneficial to the redeveloper and redeveloper's counsel while adverse to the Agency and City. For example, in 1997, he inaccurately interpreted the DDA, to a council member as holding the redeveloper *"harmless . . . from any claims."* He also contended that the Agency had authorized Weiner as the attorney for *"legal aspects relating to the acquisition and relocation of tenants who were occupying the property."* [79]

On July 8, 1997, Chaidez executed two letters, to Moskowitz and Weiner, without authority, in an effort to commit the Agency to terms adverse to its interests.[80]

In the letter to Moskowitz, Chaidez wrote,

"By this letter and notwithstanding any prior statements or communications to the contrary from the City, the Agency or Ms. Sylva, the Agency acknowledges that . . . there exists no breach or default of the DDA by any party . . .the DDA is in full force and effect, is not ambiguous, nebulous, uncertain or lacking in clarity or understanding . . . and was . . . approved by the Agency after full disclosure of all material facts to the Agency and consultation by the Agency with its counsel."

The letter further limits the redeveloper's total payments due to the Agency to a total of $129,308.25 and credits the redeveloper for $109,822.20, leaving an indebtedness of only $19,486.05.[81]

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[78] Audio Cassette of September 9, 1997 City Council meeting

[79] May 28, 1996 memorandum from Chaidez to (name blocked out)

[80] July 8, 1997 letter from Chaidez to Weiner

[81] July 8, 1997 letter to Moskowitz executed by Chaidez

The second Chaidez letter of July 8, 1997, addressed to Weiner, stated,

"By this letter and notwithstanding any prior statements . . . the Agency acknowledges its liability to Selvin & Weiner & Weinberger . . . for the reasonable attorney's fees and costs incurred between May 1994 and January 1997 in connection with SWW's handling of inverse condemnation cases on behalf of the Agency . . . In connection with these services, the Agency hereby acknowledges that the total amount owed by the Agency . . . is a total of $764,376.77. Additional interest . . . is owed but has not been calculated . . . $550,000 shall be paid to SWW out of the proceeds of the escrow involving the sale of . . . real property."[82]

Interestingly, the language was apparently authored by Weiner, as he had sent the language to Sylva under a May 6, 1997 cover.[83] Further, JLAC also has in its possession identical language that was transmitted from the facsimile of Selvin & Weiner & Weinberger. The letters were both written on plain paper with direction to place the letters on "letterhead."[84]

The Agency board formally rescinded the letters on August 26, 1997.

Both letters were executed just months before Chaidez had stated in a sworn declaration that the Redeveloper had refused to comply with the terms of the DDA.[85]

Further, during Chaidez's time as Agency executive director, the Agency had made no substantive effort to compel Moskowitz to pay the money that he owed the Agency, according to Chaidez's sworn deposition. The agency had not gone to Court nor passed any resolutions, according to Chaidez's sworn deposition. The Agency had merely held

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[82] July 8, 1997 letter to Weiner, executed by Chaidez

[83] May 6, 1997 letter from Weiner to Sylva

[84] April 1997 two letters addressed to Weiner and Moskowitz, respectively on plain white paper with direction to place the contents on Agency letterhead

"several conferences" with Mr. Weiner concerning the invoices that were tendered to the developer.[86]

Chaidez and Weiner may have even colluded to violate the law on July 16, 1996, when the two met to resolve financial issues. On July 25, 1996, Chaidez wrote to Weiner in order

> *" . . . to memorialize and clarify our meeting of July 16, 1996 in which we discussed an interim financial assistance plan. . . . It was stated by you at that meeting that Dr. Moskowitz is prepared to fund the City of Hawaiian Gardens through various sources, at a rate of $200,000 per month until the card club is built and operational. [The funding was not to take the form as an advance or a loan. It was to take place from July 1, 1996]. . . . I am positive that the City can work out realistic charges that reflect the costs that the City incurs. . . . The City is willing to construct a statement that would amend the DDA and not reopen the CEQA process in order to clarify no payback on the buy down of the subject property. This can be done as part of the overall agreement without difficulty. The city can work with you or your staff in order to finalize the verbiage . . . The redevelopment Agency will pay its obligations with regards toward fees on inverse condemnation proceedings."* [87]

Although the JLAC has no evidence of a written agreement embodying the terms articulated in the letter, the redeveloper subsequently contributed approximately $200,000 each month to the City through the three nonprofit foundations, which are evidently controlled by the redeveloper. To the knowledge of the JLAC staff, the City

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[85] March 2, 1997 declaration of Leonard Chaidez

[86] July 10, 1997 sworn deposition of Chaidez

[87] July 25, 1996 letter from Chaidez to Weiner

and Agency did not reopen the CEQA process and has not requested a *"payback on buydown,"* despite the project's violation of redevelopment law.

Making matters worse, while Weiner was admittedly advising City officials in contradiction to the City's attorney and claiming that

> *"at no time would I deliberately attempt to undermine your authority as the City Attorney,"*[88]

Weiner apparently contributed and withheld funds in order to gain other concessions, such as the firing of the City Attorney. In August of 1997, former City Clerk Ruggeri noted that Weiner may have refused to release funds committed to the City

> *"until, it would seem by the tone of the discussions, M. Julia E. Sylva, Esq. is relieved of her duties as the City Attorney . . . If, however, no further funds are forthcoming to the City, it is requested that you strongly consider paying that portion (50 percent) of the relocation costs incurred by the Hawaiian Gardens Redevelopment Agency. As the City, due to a lack of funds in the Redevelopment Agency, has been assisting in meeting the Redevelopment Agency's obligations, the City would be able to receive these funds and thereby meet the above listed payday."*[89]

The Agency's Initial Attempts to Redevelop the Gateway

[88] June 16, 1997 letter from Weiner to Sylva

[89] August 3, 1997 memorandum from Ruggeri to Moskowitz

In early 1982, when the Agency began redevelopment efforts in the "Gateway," the Hospital Company owned approximately eight of the 22-23 acres.[90] The Agency clearly wished to begin its redevelopment effort and had apparently entered into an agreement with a developer to redevelop it.[91]

However, in an effort to thwart the efforts of the Agency to acquire the Hospital Company property for the development, the Hospital Company filed a counter complaint against the Agency, the Agency's counsel, its individual members, City staff and H.C. Properties, a company evidently selected by the Agency to develop the property. In the legal action, the Hospital Company alleged that the Agency and City had violated numerous laws, including the California Community Redevelopment Law, the California Constitution and the US Constitution.

Among the allegations, the Hospital Company, stated:

- *Neither the City nor the Agency took "meaningful steps to effect the owner participation requirements of the plan" while leading the owners to believe that they would.*
- *The Hospital Company/Moskowitz "made overtures for the development," which were "rejected."*
- *The Agency and/or City entered into an agreement with H.C. Properties to develop certain property within the project area. That agreement was "legally invalid."*
- *H.C. Properties did not contact all of the owners and made "inadequate attempts to solicit cooperation in joint development."*
- *There was no "valid public use or purpose" for the taking of the property.*
- *Agency counsel, Graham Ritchie, purportedly, during hearings, stated that there were no plans to exercise the right of eminent domain.*

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[90] Documentation of parcel ownership history obtained from the County Assessor

- *The Agency required the allowance of land-owners in the project area to participate in redevelopment.*

On February 14, 1983, Beryl Weiner wrote to Ritchie and Mr. Ray Harris, City Administrator for the City, apparently in effort to settle the litigation. He stated his client's interest

> "*in diligently working with the . . . Agency towards good faith and reasonable participation in the Redevelopment Project No. 1 through retention and feasible development of our . . . property."*[92]

Weiner further inquired about possible assistance and market feasibility and concluded with the following statement.

> *"Of course, given the pendency of litigation between us, we are discussing these matters with you on the understanding and agreement that nothing contained herein shall be deemed to be an admission or waiver of any matter which is the subject of our litigation."*[93]

By February 16, 1983, in frustration by the landowner's tactics, Ritchie wrote to Weiner:

> *"I read with some amazement your letter . . . To raise these types of questions at this late date and in this manner, after your client indicated that it would produce a plan for the development of the property which could form the basis for negotiating a participation agreement, indicates to me that there does not appear to be any serious interest in proceeding along the lines previously discussed. . . . The extraordinary delay in producing a plan of development (even a tentative*

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91 Various correspondence, October 1982

92 February 14, 1983 letter from Beryl Weiner to Ritchie and Ray Harris

93 ibid

one) has used up some of the valuable time. . . [contributing] very little to the advancement of the participation by your client in the program. . . We . . . made very advantageous proposals to secure [your client's] participation. The Agency has received indications from others that they would be willing to proceed with this type of development without extraordinary delays. If the agency is unable to arrive at some type of acceptable agreement with your client shortly, there will be no alternative but to recommend . . . that it seek another developer."[94]

Weiner responded one month later by complaining that Ritchie had not provided enough information from which Moskowitz could develop a proposal.[95]

Two months later, on April 26, 1983, Ritchie served notice to the Cerritos Gardens General Hospital and to Weiner, that the Agency intended to adopt a resolution of necessity to acquire its property by eminent domain.[96] The Agency desired to develop affordable housing and a commercial shopping center consistent with the Redevelopment Plan for the project area and offered the landowner $2.75 million.[97] Two days later, Ritchie offered $2.75 million to purchase the property owned by the Hospital Company.[98]

On May 10, 1983, Beryl Weiner told Ritchie that Moskowitz/Hospital Company preferred *"a disposition before the litigation truly heats up."* He further complained about the lack of receipt of notice to his client, Moskowitz/Hospital Company, to which he later acknowledged receipt.

While the JLAC staff is unclear about the specific results of the litigation, it is apparent that Moskowitz successfully thwarted the Agency's efforts to acquire his land

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94 February 16, 1983 letter from Graham Ritchie to Beryl Weiner
95 March 17, 1983 letter from Weiner to Ray Harris and Graham Ritchie
96 April 26, 1983 letter from Graham Ritchie to CCGHC and Weiner
97 ibid
98 April 29, 1983 letter from Graham Ritchie to CCGHC and Weiner

for redevelopment purposes.[99] Ostensibly, Weiner persuaded the Agency to allow his Moskowitz/Hospital Company to redevelop the strip as an owner-participant.

By June 2, 1983, Ritchie again expressed frustration at Moskowitz and the Company's delays in developing the property or allowing the Agency to acquire it. He wrote again to Weiner:

> *". . . The Agency has consistently made it clear that it wishes to see a development of the Cerritos Gardens Hospital . . . The Agency staff met with a member of your firm and representative of your client on two occasions prior to commencing proceedings to condemn the property. It was stated by the Agency staff that the Agency was willing to have the property developed by your client as an owner participant provided the Agency could receive certain assurances that the property would be developed in an orderly and timely manner . . . as a condition . . it would require that the rear portion . . . be developed promptly."*[100]

Moskowitz's intentions to build a gambling operation on the property, which was illegal at the time, became evident in this time period. Ritchie wrote:

> *"It became evident that your client desired to . . . in the nature of a poker club and . . was hopeful that the city would legalize draw poker for that purpose. . . . some members of the Agency board and . . . City Council are opposed to the proposal for legalizing draw poker."*[101]

Ritchie told Weiner that he had two options. If the voters wanted to legalize gambling, then the council and Agency would allow Moskowitz/Hospital Company one

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[99] November 24, 1982 complaint filed in Superior Court, County of Los Angeles

[100] June 2, 1983 letter from Ritchie to Weiner

year to secure a gambling permit. If, at the end of the year, Moskowitz failed to secure the permit, he was required to begin commercial development of his property and have it completed within 18 months.

> *"If not developed by the owner within the 18 month period, the Agency must have the ability to acquire the property by paying its then fair market value without being burdened by litigation over the question of the 'right to take.'"*

But Weiner abandoned the redevelopment effort, according to Ritchie, who wrote:

> *"Those negotiations were unilaterally terminated by you at a time when the Agency was actively seeking to sell mortgage revenue bonds principally to provide low interest rate mortgages for residential development on the rear of your client's property.*[102]

A year expired. The City's voters rejected gambling, and the Agency again began condemnation proceedings and set a date for a hearing. Weiner told the Agency that the Hospital Company had sold part of the land to Mr. Kevin Kirwan (Kirwan). The Agency continued its public hearing for approximately two weeks to allow Moskowitz/Hospital company to present a plan for the back portion of the property when Ritchie discovered that the Hospital Company *"was still the owner of record."* The "sale" was revocable and any future development of the property, if sold, had to be consented to by Moskowitz/Hospital Company, the owner of record.[103]

Weiner, again, blamed others for the delays in his June 13, 1983 letter to the City Council. He wrote,

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101 June 2, 1983 letter from Ritchie to Weiner

102 ibid

103 ibid

"To date, we have not been offered any meaningful participation. In our view, while accusations of delay have been thrust upon us, we have acted expeditiously and our requests to proceed . . . have been thwarted."

Weiner maintained the notion that on May 10, 1983, his client sold six acres of the property to Kirwan, leaving approximately three acres in the ownership of the Hospital Company/Moskowitz.[104] The sale was evidently contingent on obtaining a permit to operate a card club, which was unlawful, thereby rendering the sale void.[105] However, due to the alleged sale of the property, the Agency allowed the Hospital Company 10 additional days to complete a plot plan for the development of its remaining three acres.

Clearly the Hospital Company missed the deadline but had requested that the condemnation proceedings be terminated. (Weiner had the letter delivered to the homes of the Council members).[106] Attached to the letter was correspondence from Mr. Michael Montgomery (Montgomery) to the Agency, informing them that Kirwan had entered into a purchase agreement to purchase said land and intended to build a card casino within one year. Montgomery suggested that the agency allow Kirwan 18 months to complete his development and if not completed in that timeframe, that Kirwan would waive all legal objections to the right to take his property.[107]

Ritchie met with Selvin & Weiner attorney Brian Walton (Walton) in order to explore a potential settlement with Moskowitz/Hospital Company. While the meeting

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[104] June 13, 1983 letter from Weiner to Council Members
[105] Documentation on file
[106] June 13, 1983 letter from Weiner to Council Members
[107] May 31, 1983 letter from Michael Montgomery to Redevelopment Agency

was considered unproductive by the Agency, Ritchie suggested to Walton that he provide an alternate proposal if he felt the 18-month agreement was unreasonable. Walton indicated that he would provide such a proposal or at least would review it with his client.[108]

Finally, by June 1985, Moskowitz created a set of site plans and requested permission to present them before the agency in order to obtain a 120-day exclusive right to negotiate a Disposition and Development Agreement (DDA).[109] At the request of the executive director, the Agency scheduled a special study session to consider the site plan. And although no specific economic pro forma had been generated, the Agency granted the 120-day exclusive right-to negotiate a DDA with the stipulation that his company fund the necessary appraisals and economic market study, prepare the economic pro forma and draft a proposed agreement.[110]

It appears that negotiations either broke down or that no further activity occurred, because one year later, the Agency revisited its attempt to acquire Moskowitz's property by eminent domain. It scheduled a hearing on June 24, 1986 to determine the necessity of condemnation, and on May 28, 1986, Executive Director Doug Dunlap (Dunlap) sent notice to Moskowitz inviting his comments.[111]

On June 4, 1986, special counsel to the City, Maurice O'Shea (O'Shea), wrote a follow-up letter to Moskowitz in order to "*seek an amicable disposition*" of the property.

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[108] Documentation on file
[109] June 10, 1985 letter from Moskowitz to Agency
[110] July 24, 1985 letter from Dunlap to Moskowitz
[111] May 28, 1986 letter from Dunlap to Moskowitz

O'Shea again advised Moskowitz of the pending hearing and requested a discussion prior to the June 24 hearing.[112]

The City's Planning Commission resolved that acquisition of the property including Moskowitz's property was in conformance with the City's General Plan and the proposed amended General Plan on June 11.

The following day, Weiner threatened the Agency with litigation. He wrote:

> *"I would be remiss if I did not reflect my shock and dismay of the events that preceded my clients receipt of the . . . letter. . . Not only is there an obligation of good faith and fair dealing, but as the owner of real property and improvements in the City of Hawaiian Gardens, there are certain inalienable rights afforded our client which are being ignored. It is my hope that the Agency will reconsider its action so as to avoid unnecessary litigation that will undoubtedly occur if efforts to condemn this property continue."*[113]

O'Shea advised Moskowitz and Weiner that the Agency postponed its hearing in order to pursue *"good faith and fair manner*." He reiterated the Agency's intent to acquire his property and invited the parties to testify before the Agency Board[114] and held meetings with Weiner in effort to finalize the disposition.[115]

Four days later, the City offered Moskowitz $4.3 million for his property ($10.51 per square foot).[116]

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[112] June 3, 1986 letter from Maurice O'Shea to Moskowitz

[113] June 12, 1986 letter from Weiner to Dunlap

[114] June 20, 1986 letter from O'Shea to Weiner and Moskowitz

[115] July 17, 1986 letter from O'Shea to Weiner

[116] June 26, 1986 letter to Moskowitz from Dunlap

The agency postponed declaring a resolution of necessity until late September. The week prior to its meeting, a member of Weiner's law firm, Thomas Mesereau, Jr. (Mesereau) wrote to the agency, informing them of the following:

1) *Moskowitz authorized the firm to "complete and finalize an agreement reached with the city"*
2) *Moskowitz's intent was to enter into an appropriate agreement with Costco Wholesale Corporation for development of this property as quickly as possible."*
3) *Delays were due to Weiner's travels to New York and "vacation schedules of other participants."*[117]

At the Agency Board meeting of September 23, 1986, the executive director recommended a continuation of the resolution of necessity for 30 days because

> "*There is essentially an agreement with both the property owner [Hospital Company] and the proposed lessee [Costco Wholesale Corporation]."*

The lessee's representative stated that "*if all goes well,*" they could open doors to Costco by March or April 1987.[118] One month later, on October 17, 1986, Mesereau sent a letter to Dunlap reportedly with a draft lease agreement with Costco Wholesale Corporations and the Hospital Company.[119] In order to "*allow sufficient time for the property owner to negotiate a lease agreement and DDA for a private development on the 8.75-acre parcel,*" the Agency continued the hearing until November 7, 1986.[120]

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[117] September 16, 1986 letter from Mesereau to Agency Board and staff
[118] September 23, 1986 Agency Minutes
[119] October 17, 1986 letter from Mesereau to Dunlap
[120] November 6, 1986 Report to Agency from the executive director

At the request of Weiner, the Agency again moved the hearing to November 11, 1986.[121]

At the hearing, O'Shea made three preliminary statements:

- *Public interest and necessity require the project*
- *The project as planned is located in the manner that would be most compatible with the greatest public good and the least private injury*
- *The property sought to be acquired is necessary for the project.*

Dunlap described the history and blighted condition of the property and declared that *"there are no alternative sites of a similar size, under one ownership and vacant."*[122]

Weiner then acknowledged that Moskowitz had already been given an exclusive right to negotiate for property development, but blamed failure to develop the property on outside forces, such as the general economy, the high interest rates and the

> *"economic limitations of this community to support substantial tenants . . . The problem is, as you all know, that it's not easy to develop property such as this in this community. It is not easy to attract developers . . . to attract tenants . . . because . . . they want to be certain that there is a market that will meet their criterion . . . The only way this property can be developed properly is by the City making a contribution to the developer."*

Furthermore, Weiner blamed the Agency and the City themselves. He claimed that the City wanted Costco on this property and that the negotiations with Costco

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[121] November 4, 1986 letter from Mesereau to Dunlap

[122] November 11, 1986 Certified copy of Transcript from Resolution of Necessity Hearing

"have been infected . . . tainted in such a way that it is not possible for there to be arms-length negotiations between the owner of the property and Costco."[123]

Dunlap, in particular, Weiner said, displayed conduct that was "*improper . . . bad-faith . . . fraudulent . . . inappropriate"* as he allegedly, was *"carrying on secret negotiations with the Price Club . . . to sell this property to the Price Club . . . There was no useful purpose in our continuing our negotiations,"* Weiner stated.

Weiner also claimed they were victims to Costco as well.

"*Costco has had an attitude . . . that if we don't negotiate . . . the lease they want, that the City will condemn the property and they will get it from the City another way,"* he said. *"You can't negotiate when somebody puts a gun to your head."*

Together, Weiner claimed, the City and Costco were "colluding" against his client. As evidence, Weiner distributed copies of a Costco representative's notebook (note: Weiner did not have permission to copy or show the notebook).

Finally, Weiner attacked the project itself and the procedures. The project, he said, was not a *"public project"* and that *"any Resolution of Necessity against this background constitutes an abuse of discretion,"* and conflicted with the owner-participation provision in the Plan, and would ultimately cause "*private injury*" to Moskowitz.

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[123] ibid

As long as the Agency did not adopt a Resolution of Necessity, Moskowitz would *"cooperate,"* Weiner warned. However, he threatened litigation, which would *"tie up"* the property for *"years"* if the Agency did adopt the Resolution of Necessity.[124]

After Weiner concluded his remarks, Dunlap disputed that he had any agreement or informal understanding with Costco, and the Agency passed Resolution No. 86-17, declaring the necessity to acquire the Hospital Company property.[125]

One month later, Selvin & Weiner began its demands to view public records.[126]/[127]

On January 21, 1987, the Agency filed an eminent domain action to acquire the Hospital Company property[128] and two days later made a $4 million deposit of probable compensation.[129]

The Hospital Company filed a cross-complaint against the Agency, the City, all of the members of the Council and Agency Board, individually, and legal Counsel, accusing them, among other things, of racketeering, conspiracy, fraud, malicious intent and violation of Constitutional and Civil Rights.[130] Within the cross-complaint, the Hospital Company alleged that the Agency hearing where it adopted the resolution of necessity was a sham, that a pre-existing agreement was in place to condemn the property and that

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[124] Transcript of public hearing 1986

[125] Agency Resolution No. 86-17

[126] December 19, 1986 letter from Mesereau to O'Shea and December 29, 1986 letter from O'Shea to Mesereau

[127] January 16, 1987 invoice from City of Hawaiian Gardens to Selvin & Weiner

[128] January 21, 1987 Complaint filed in Superior Court of the State of California

[129] Notice of Deposit filed January 23, 1987 in Superior Court for the County of Los Angeles, State of California

[130] March 19, 1987 Cross complaint filed in Superior Court of the State of California

"at all times relevant . .. cross-complainant acted justifiably, innocently, reasonably and in full reliance . . ."[131]

Simultaneously, Weiner filed an answer to the eminent domain action, alleging, among other things, the following:

1) The subject property was not blighted.
2) *"No public assistance is required to improve this property or to alleviate blight."*[132] (Weiner later demanded and received public assistance).
3) The Agency's behavior, he said, was a *"gross abuse of discretion"*
4) Agency Board member Donald Schultze allegedly had a *"conflict of interest."*
5) *"The proposed project is not . . . compatible with the greatest public good and the least private injury."*[133]

Shortly thereafter, on March 30, 1987, the redeveloper filed yet another legal action, this time claiming $10 million in damages due to injury to business and property.[134]

Agency Counsel Maurice O'Shea sought liability coverage from the Southern California Joint Powers Insurance Authority. Although the Insurance Authority did not offer coverage, it stated,

"The Cross-Complaint by the Hospital is the archetypical example of an attempt to obfuscate the valid exercise of the Eminent Domain proceeding. It raises practically every conceivable allegation in that direction."[135]

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131 ibid

132 March 19, 1987 Answer to Complaint to Eminent Domain

133 March 19, 1987 Answer to Complaint in Eminent Domain filed in Superior Court of the State of California for the County of Los Angeles.

134 March 30, 1987 Complaint filed in Superior Court for Damages and Injunctive Relief

On April 8, 1987, Mesereau confirmed his plan to inspect City documents, particularly credit card charges and other charges incurred by the executive director, warrant resolutions and the warrant register.[136]

Less than two months later, on May 26, 1987, the Agency voted to abandon existing litigation and eminent domain unless a DDA was executed with Costco by the close of the next business day.[137]

By July 1, 1987, Mesereau told O'Shea that although the Hospital Company/Redeveloper was attempting to develop its property consistent with the City's and Agency's interests, one of the development firms that he had contacted reportedly questioned whether Moskowitz/Hospital Company would be able to successfully work with the City. While Mesereau, himself, represented to the development firm that

1) The parties could develop the subject property to mutual benefit
2) The Agency would not seek condemnation for one year from the date the litigation was abandoned in order to allow Moskowitz/Hospital Company to make a *"good faith effort to develop"* the property,[138]

Mesereau pleaded for a letter that would confirm his representations. He wrote:

"*We are sincerely interested in putting past problems behind us . . . It could hurt all of us if a valuable business opportunity were lost . . ."*[139]

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135 April 1, 1987 letter from James Moore to Maurice O'Shea
136 April 8, 1987 letter from Mesereau to Carol Dorfmeyer, City Clerk
137 May 26, 1987 Agency minutes
138 July 1, 1987 letter from Mesereau to O'Shea
139 ibid

Evidently to secure the written commitment, on July 14, 1987, Mesereau brought representatives from a development firm called Pacific Commercial Development Group to the Agency's executive director.[140]

O'Shea then delivered a letter stating that the Agency will provide the same treatment and consideration to all property owners and potential developers and that the Agency had no present intention of commencing litigation in eminent domain for one year to allow for a good faith effort by owners to develop the property.[141]

Two days later, the law firm of Oliver, Stoever, Barr & Einboden delivered a refund check in the amount of $4 million from the condemnation case of Hawaiian Gardens CRA V. Cerritos Hospital.[142]

On October 19, 1987, Darwin Pichetto (Pichetto), Executive Director for the Agency, forwarded to Mesereau a list of developers from Shopping Center World Magazine suggesting he contact them to *"start your inquiry of interests on the Moskowitz property."*[143]

On November 2, 1987, both Moskowitz and Maynard Sarvas (Sarvas), an employee of the Hospital Company wrote to acknowledge Pichetto. Sarvas indicated that the development's preliminary sketches would be delivered in 10 days.[144]

On February 22, 1988, in a letter to Pichetto, Mr. Yigal Hirsch (Hirsch), an employee of the Hospital Company, blamed the continued delays on the Agency.

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[140] July 15, 1987 memorandum from acting executive director Dudley Lang to Agency Board of Directors

[141] July 15, 1987 letter from O'Shea to Mesereau

[142] June 17, 1987 letter from Thomas Stoever to Carol Dorfmeyer, City Clerk for City of Hawaiian Gardens

[143] October 19, 1987 letter from Pichetto to Mesereau

"We were projecting to be further along the project, but due to lack of the essential ingredients, such as the Feasibility Report we had no choice but to delay further progress to a later date while keeping interested parties 'alive.'"[145]

Instead of limiting the development to the Hospital Company's parcels, Hirsch proposed a development that would *"include the entire said block as one unified development."* The development would include

"retail shopping of several types of merchandise, entertainment complex that may include clubs, bingo, restaurants, etc., hotel and/or some 'residential' complex."

The development, Hirsch wrote, would

"be a turning point for the re-development of the whole City of Hawaiian Gardens."

Finally, Hirsch expressed relief that the

"City of Hawaiian Gardens will not lift said moratorium to allow new businesses/operators to start up or re-run businesses that may put our development of the entire block in jeopardy." [146] (Note: JLAC believes this refers to the moratorium on Bingo licenses).

The following month, Pichetto informed Hirsch that he had again met with Moskowitz and that he was anticipating the

"preliminary planning report which should offer our City Council and staff a better idea as to the comprehensive development that you desire to undertake on

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144 November 2, 1987 letters to Pichetto from Maynard Sarvas and Moskowitz
145 February 22, 1988 letter from Yigal Hirsch to Darwin Pichetto
146 ibid

the entire northerly portion of Carson Street from your property to Pioneer Boulevard."[147]

By May 27, 1988, Moskowitz's Hospital Company had purchased at least four more parcels of land, totaling approximately four acres, bringing the aggregate acreage owned by Moskowitz and Hospital Company to approximately 12 acres.[148] (The Gateway project area contained a total of 22 acres of which the final project site was 19).

Moskowitz apparently made a public, formal presentation for a *"Gateway Gardens"* development plan in August of 1988, which was the multi-use proposal that Hirsch had previously discussed. The renderings illustrated an extensively landscaped, well-developed shopping area with over a million square feet of improvements. The drawings specifically calling for a restaurant, hotel, entertainment center, three mixed retail areas, two anchor retail areas, a food specialty section, a corner retail section, child care, a bingo hall, an open air market area (" the mercado") and senior housing.[149]

(Note: The JLAC found no correspondence between May 1988 and June 1989, which may indicate no activity until the latter date)

Recognizing the power of Moskowitz's collective landholdings, former mayor Donald Schultze (Schultze) apparently reinitiated communication with Moskowitz in an effort to effectuate redevelopment. In a June 30, 1989 memorandum to his city council members, Schultze wrote,

"Some of you are upset with the recent meeting I had with Dr. Moskowitz concerning the development of the 23-acre parcel at the northeast corner of

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147 March 7, 1988 letter from Pichetto to Hirsch

148 Los Angeles County Tax Assessor and August 3, 1992 letter from Weiner to Agency

149 August 3, 1992 letter letter from Weiner to Agency

Pioneer and Carson, adjacent to a parcel of land owned by the Redevelopment Agency."

Particularly, it appears that the City Council was *"upset"* because Moskowitz wanted to build a card casino on the property, to which Mayor Schultze responded,

"I believe the City/Agency should not be involved in promoting this use for the City and . . . I don't think that we have."[150]

Schultze, however, believed that the City should

"encourage Dr. Moskowitz to develop the property such that we end up with a planned development rather than a 'hodge podge' development" in what appears to be an attempt to wrest control from Moskowitz who already owned a significant portion of the property.[151]

Schultze explained his concerns for possible consequences.

"If the City does not have some sort of written agreement or development direction [prior] to the election, we will be in the following position if he wins . . . It will make no difference what promises are made to the voters as to what the total development will look like. . . Any further development will depend on how fast and eager you are to condemn and purchase the rest of the property and the developer's willingness to follow through on a total development. He can use the excuse that he can't purchase the additional land because no one wants to sell. Result: he's off the hook, and the City is left holding the bag with a partial development."[152]

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[150] June 30, 1989 Memorandum from Mayor Donald Schultze to City Councilmembers

[151] ibid

[152] ibid

On September 11, 1989, Theresa Dobbs, the Agency's project manager reported that a representative from Coldwell Banker called to inquire about an Agency-owned parcel within the redevelopment project area. The Coldwell representative indicated that he was working with Hexagon Development and Moskowitz, who had just purchased another parcel on the site, *"where the tire store is located."*[153]

The Agency-owned property was immediately adjacent to Moskowitz/Hospital Company's property. The Agency was uncertain about a sale, concerned that Moskowitz was simply land-banking.[154]

Mesereau wrote again to Agency members on June 22, 1990, alleging that Moskowitz had worked with city officials to develop the area

> *"consistent with previously submitted plans,"* which included a *"mixed use development . . . a 'mercado' open air shopping center, a parking facility, entertainment center and motel."*

He further alleged that certain unnamed city officials had encouraged Moskowitz to purchase the remainder of the land in the area.[155]

In the following August, the attorney contacted two executives of UNOCAL, which owned of a small parcel of land on the periphery of the site, and tried to persuade the company to participate in the redevelopment. He described the project as

> *"a sophisticated alternative to the kind of 'strip-center' project . . . It is a futuristic, creative, diverse form of development which we believe will make Hawaiian Gardens more financially viable than it has ever been."*[156]

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[153] September 11, 1989 memorandum from Theresa Dobbs to Ronald Downing

[154] Documentation on file

[155] June 22, 1990 letter from Mesereau to Agency

However, Mesereau apparently tried to secure cooperation with the threat of condemnation. He wrote,

> *"Should their owners elect not to utilize Owner Participation Rights and join in such a project, that the Agency may take appropriate action. The Board wants a large development."*[157]

By late 1990, the Agency was apparently financially distressed, facing a stubborn landowner and a continued desire to redevelop this 22-acre plot. Although several Agency members were still concerned about the project's stagnation and feared that selling more land to Moskowitz would strip the Agency further of its remaining bargaining power,[158] they were more concerned about their financial dilemma.

It appears, however, that despite his multi-use "Mercado" proposal, Moskowitz had retracted a previous oral agreement to purchase the land contingent upon developing the entire 22-23 acre site.

Although the Agency had the power of eminent domain, it hesitated to use such power for the Hospital Company parcels – even if Moskowitz continued to prevent a redevelopment -- because of Moskowitz's previous lawsuits against the Agency and individuals associated. And despite a history of Moskowitz's broken promises and inaction, it appears that the Agency chose to enter into a purchase agreement for the sale of the property for three reasons:

1) It needed funds.
2) It felt an obligation to redevelop the land.

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[156] August 8, 1990 letter from Mesereau to Pal Nuarert, of UNOCAL Corporation
[157] ibid

3) It didn't believe it had any other options under the circumstances.

Some members still believed that Moskowitz's earlier multi-use proposal may have been disingenuous and that his intent was a much simpler development, which may have included a casino. The others held out hope that he would make good on his proposal.[159] In the end, the Agency agreed to sell its property to Moskowitz and appears to have completed the transaction in 1991.[160]

By early 1992, Moskowitz or his representatives apparently informed the Agency that a major chain of food and drug stores, Smith's Food & Drugs Centers (Smith's) indicated interest in locating in the redevelopment area.

On August 3, 1992, Weiner requested that the Agency acquire the remaining parcels in the site that were not owned by the Hospital Company/Moskowitz *"on behalf of [Hospital Company/Moskowitz] . . . for the benefit of [the Hospital Company/Moskowitz],"* claiming that all of the property was mandatory for the proposed development.

Weiner reiterated that the development included *" . . . the development of a retail shopping center to be operated by Smith's . . ."* and claimed that the agency would receive the following benefits:

1) *"Continued operation of the Bingo Club, which will provide the City . . . with license tax revenues of about $350,000 coupled with the employment of about 50 residents of the City of Hawaiian Gardens.* (JLAC staff note: Bingo revenues had nothing to do with the development).

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[158] Documentation on file

[159] Documentation on file

2) *New sales tax of between $150,000 and $200,000 annually . . . new employment for 250 employees and . . . millions of dollars of payroll*
3) *Increased assessment . . . by over $4 million, resulting in property tax increment . . . of over $400,000.*
4) *Assessment of the improvements . . . of over $6.4 million, resulting in property tax increment of . . . over $650,000."*

Weiner also detailed his client's own acquisition attempt for the property.

> *"Although [Hospital Company/Moskowitz] has attempted to negotiate for the acquisition of the remaining properties within the Parcel, the owners of those properties have failed and refused to enter into serious negotiations with [Hospital Company/Moskowitz, indeed they have expressed their intention not to sell their properties to [Hospital Company] . . ."*[161]

Note: When Oliva requested a chronology of Moskowitz's negotiations with the property owners, R & M Veady, Inc., Sarvas (Sarvas) of the Hospital Company detailed meetings and negotiations with one of the property owners, R & M Veady, Inc. (Veady) in which he describes his relationship with Veady in the early 80s as open and friendly until *"others . . . in efforts to thwart our development . . . were meeting with them."* Veady then became disinterested in selling the property and discontinued communication with Sarvas.

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[160] Documentation on file

[161] August 3, 1992 letter from Weiner to Agency

The Making of the DDA: One Sided Negotiations

Originally, the basic agency involvement was to assist in acquiring the remaining parcels of property, but as soon as negotiations began, it appears that the Agency allowed itself to gradually take on additional responsibilities.[162]

Negotiations appear to have begun in the fall of 1992, during which time Weiner delivered two letters, on October 8 and 9, a "revised cost/revenue analysis" and a proposed DDA, apparently based upon a meeting.[163] Weiner calculated the total acquisition costs of the parcels not owned by Moskowitz at $11.4 million with relocation costs only reaching $200,000 because *"Plowboys [an existing produce market] can be relocated onto other property within blocks of this project."*[164] Weiner arrived at a net benefit to the City of $3.15 million, including sales tax and tax increment.

On the following day, Weiner calculated the net benefit to the City as reaching $6.4 million and total acquisition to be $9.6 million; improvements were estimated at a value of $18 million and the tax increment value was estimated at $3 million. Sales tax was estimated at $5.5 million.[165]

Agency staff reviewed the proposed DDA, which reportedly contained a series of unacceptable obligations and risks placed on the Agency, such as carrying the acquisition cost for approximately a year. Standard procedures, according to documentation on file,

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[162] Documentation on file

[163] October 8 and 9, 1992 letters from Weiner to Oliva

[164] October 8, 1992 letter from Weiner to Oliva

[165] October 9, 1992 Table I, Preliminary Cost/Revenue Analysis of a two-major tenant Commercial Project, submitted by Weiner to Oliva

were for a redeveloper to pay all of the acquisition costs by providing a letter of credit, which could be drawn upon by the Agency.[166]

The agency would simply provide its power of condemnation.

Oliva rejected the DDA on several counts in a December 21, 1992 letter to Weiner. He wrote,

> *"The transaction as set forth in these documents is one which could not be recommended to the Redevelopment . . . The Agency takes virtually all of the risk and apparently will also be required . . . to substantially subsidize the project by the difference between the Acquisition cost and the Disposition Price."*[167]

Oliva was particularly concerned about the developer's miniscule $25,000 deposit and the Agency's obligation to mitigate toxic contamination. But the transaction was rife with unacceptable terms, he noted, including

- *The agreement allowed the extension of significant credit to a limited partnership without distinguishing the composition or assets of the partnership.*
- *The costs for acquisition were not substantiated.*
- *The Agency was faced with advancing the entire cost*
- *The disposition price was not specified.*
- *The Agency was obligated to carry the acquisition costs for approximately a year.*
- *The Agency was obligated to remove the billboards, which Oliva estimated at $200,000 per billboard.*
- *The Agency was obligated to remove hazardous waste.*
- *The security deposit was only $25,000.*

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[166] Documentation on file

Instead of Weiner's language, Oliva stated that

> *"Our expectation would have been that the developer would agree to pay all of the cost of acquisition of the parcels by providing a letter of credit which could be drawn upon by the Agency, parcel by parcel, as it succeeds in acquiring the parcels. Any further subsidy by the Agency, if any, would be negotiated based upon a pro forma and a financial analysis Agency can afford, and a careful projection as to how long it would take for the Agency to recapture the subsidy and realize a profit by way of property tax and sales tax from the project."* [emphasis added].

Further, Oliva expected Moskowitz/Hospital Company to

> *"accept the risk of hazardous waste and indemnify the Agency from subsequent claims. The Redeveloper has the ability to investigate the soils . . . and since the Agency has not engaged in any action which would cause the soil to be contaminated, it should not be called upon to accept the risk."*[168]

Agency staff also believed that the project would only work if the site being assembled by the agency were to be combined with the additional properties controlled by the redeveloper.[169]

Meanwhile, it appears that the redeveloper had presented a site drawing that contained two major tenants, including the Smith's, at least four strips of "*shops*," a bingo business, an automotive business and "Cousin Jack's" [mattress factory].[170]

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[167] December 21, 1992 letter from Oliva to Weiner
[168] ibid
[169] Documentation on file
[170] Drawing dated November 1992.

However, by January 25, 1993, Weiner eliminated all of his own client's property from the development agreement, leaving only the three parcels of property in the DDA – the three parcels that his client wanted to purchase. Weiner then blamed the project's delays on the lack of cooperation from the owners of those three parcels. And while Weiner ignored all but one of Oliva's litany of concerns, that of concurrent acquisitions – the acquisition by the Agency and the acquisition by the redeveloper -- Weiner concluded,

> *"[The] risk of acquisition of the site with no real security that the Redeveloper would ultimately acquire the site have now been cured."*[171]

Agency staff believed that the DDA was basically as problematic as before.[172]

On March 18, 1993, Weiner warned the Agency that Moskowitz would not begin any development until the Agency agreed to acquire the three parcels, collectively owned by Veady and the Downen Trust (Downen). These parcels, Weiner argued, were "*essential"* to the Moskowitz's proposed development.

> "*The development cannot be completed without these parcels,"* he wrote to Oliva. *"While other parcels within the site will ultimately be necessary to complete the development, the Veady and Downen parcels are required before any further steps are taken to develop this project."*

Weiner asserted that he needed the "City" to use its power of eminent domain because the two property owners, which he called "*recalcitrant,*" refused to sell the property to his client, Moskowitz/Hospital."[173]

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[171] January 25, 1993 letter from Weiner to Oliva

[172] Documentation on File

Weiner then warned the Agency that if the DDA was not finalized for execution within 30 days, *"credibility with Smith's [and] . . . other tenants,"* and "*momentum*" would be lost. Other cities would court the retailers away, he alleged, taking with them the sales tax revenue, property tax increment, jobs and enhancement of business and commerce.

Weiner further complained that over the *"past several months,"* he had *"drafted, circulated and discussed with you the contents of a Disposition and Development Agreement"* pertaining to the three parcels.[174]

By this time, Smith's had expressed a *"definite interest"* and had approved the site plans, [175] which called for additional retail stores.[176]

The following week, Oliva submitted a report to the chair and members of the Agency, informing them of the appraisals and relocation costs for the properties that were to be acquired for the development.[177]

The Agency Board had apparently not decided whether or not to proceed with negotiations of the project, and staff was hesitant to expend further funds for goodwill appraisals at that time. The redeveloper had only offered to pay $1.1 million for the property at this time, which would have left the Agency responsible for approximately $4 million.[178]

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173 March 18, 1993 letter from Beryl Weiner to Nelson Oliva
174 ibid
175 March 10, 1993 letter from Dennis Burt to Moskowitz
176 1991 Smith's Food & drug Site plan, Hawaiian Gardens
177 March 23, 1993 Report from Executive Director to Chairperson and members of the Redevelopment Agency
178 Documentation on file

Oliva and Weiner met on April 1, 1993, and Weiner indicated that the redeveloper would be amenable to

1) *Contributing equally on the costs to acquire with both parties depositing their share of costs into escrow.*
2) *Contributing equally on relocation and goodwill costs using a consultant of the Agency's choice with the redeveloper providing input on selection.*

Weiner was, however, unwilling to address government mandated site costs.[179]

By April 8, 1993, staff concluded that no substantial ground has been covered. Further, the costs such as goodwill/relocation and off and on-site costs were unknown at that time, and the language regarding the escrow account was vague.[180]

Weiner reportedly told staff that he would provide an updated DDA by April 2, 1993; however, he waited until April 9, 1993 to deliver the document to Oliva and until April 12, 1993 to deliver it to Ritchie. The latter day was the same day that Weiner requested Agency execution of the document.

The newly delivered DDA had additional responsibilities and costs to the Agency's burden while continuing to ignore the Agency's requested items, according to documentation on file.[181] As for negotiated items, Weiner and Oliva reportedly made three oral agreements.

1) *Acquisition costs – Agency would contribute 50 percent of total acquisition costs for the properties*

[179] Documentation on file
[180] Documentation on file
[181] Documentation on file

2) *Relocation/Goodwill – Agency would contribute 50 percent of the total costs and would utilize a consultant to evaluate the costs. Developer would review the qualification of consultant. Tentative consultant was Meckey Myers.*
3) *Agency would address costs of mandated requirements for development. Costs such as street lights, landscape, fire flow, those required by governmental agencies or quasi-governmental agencies.*

On April 12, 1993, the day prior to an Agency closed session meeting, Ritchie reported receipt of the Weiner letter and DDA, whereby Weiner indicated his

"expectation that . . agency . . would execute [it] by Monday, April 12, 1993."

Because Agency counsel had not seen the agreement, he did not express an opinion.

However, Agency staff was perplexed at Weiner's sudden rush to execute the DDA, considering the number of years that it had taken to reach the present state.[182]

Staff was also aware that succumbing to Weiner's demand for execution would violate California law, particularly Health and Safety code sections 33431 and 33433, requiring public hearings and proper notification, and the Code of Civil Procedure section 1245.240.[183]

The following day, the Agency entered into closed session to discuss the DDA's progress.

Apparently driven by the desire to remedy the poor esthetics, underutilized property and the need for the tax increment, several Agency members may have abandoned good judgment. It appears that neither the members nor counsel had read the

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[182] documentation on file
[183] ibid

agreement, and the Agency was instead continuing forward with a good faith belief that Moskowitz and his team would make good on their proposals.

Agency member Kathy Navejas was particularly perplexed about the slow pace of negotiations and was aware that the redeveloper had reportedly re-written and continuously changed the deal with significant new costs to the Agency. Staff's efforts to negotiate were met with the response, *"go to hell."*

Cabrera, however, recognized the redeveloper's pattern and feared that the City would lose the few businesses it had and was reticent to continue negotiations. But Navejas believed that the redeveloper would negotiate.[184] She wanted staff to incorporate the Agency's bottom line with assurances that Moskowitz would include the two major tenants, Smith's and Walmart, that he had reportedly claimed to have committed to the project.

Ruggeri, however, didn't believe that Moskowitz had a commitment from Walmart, and another member was concerned that Moskowitz would revisit his desire to build a gambling operation. The majority believed that Moskowitz would complete the retail development, not the card club.

Staff's chief concerns included

1) *The Agency's portion of financial contribution to the project*
2) *Developer's proposed $25,000 deposit*
3) *The responsibility for cleaning up hazardous materials*

The Agency wanted staff to negotiate the following bottom line:

1) *Agency contribution to the project be restricted to a total of $3 million*

[184] documentation on file

2) *If the developer did not proceed with the agreed development, the Agency should retain ownership of the parcels at a total cost of its $3 million contribution. This would require the developer to forfeit its' $3 million contribution.*[185]

After a closed session, Agency counsel Ritchie reported to the public that the Agency considered the development proposal and tentatively concluded to agree in concept with the development agreement subject to the changes recommended by legal counsel and the executive director. They have instructed said parties to continue negotiations. The Agency unanimously agreed.[186]

On April 20, 1993, Weiner repeated his pattern of ignoring the Agency's requested changes while requesting execution on his version of the DDA.[187] The following day, Weiner sent a signed page 28 of the DDA.[188]

The development was again discussed during the Agency's April 27, 1993 closed sessions. The Contents of the meeting were not disclosed, [189] and the audio cassette was omitted from documents supplied to the JLAC.

However, it appears from an April 28, 1993 communication from Oliva to Weiner that the Agency, in frustration at Weiner's on-going practice of ignoring its requests, typed up a DDA inclusive of the changes it desired. This version included the good faith deposit of $3 million, an *"as-is"* transfer and the original performance schedule, among other items.

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185 Documentation on file
186 April 13, 1993 Redevelopment Agency Minutes
187 April 20, 1993 letter from Weiner to Oliva
188 April 21, 1993 letter from Weiner to Oliva
189 April 27, 1993 Redevelopment Agency Minutes

Weiner responded by expressing *"shock"* by the distinctions in the two DDAs in an April 29 letter to Oliva, in which he wrote,

> *"the draft DDA you sent me suggests that the HGRDA has no real desire for CGGHCO to develop this property as we previously agreed."* Weiner concluded, *"This is especially discouraging in view of this redeveloper's proven performance to carry out and fulfill to completion successful developments in Hawaiian Gardens going back more than 25 years, and continuing to this date."*[190]
> (Note: JLAC found no other development aside from building a hospital more than two decades earlier).

The City's draft DDA *"effectively sabotages*" any development of the 22-acre site by the Redeveloper, Weiner wrote. If the City wants the Smith's development, they should sign his version of the DDA, he stated.[191]

Weiner sent a letter the following day, claiming that

> *"the redeveloper has always cooperated with the City of Hawaiian Gardens for the betterment of the citizens . . and expects to continue to do so. . ."*

Weiner again claimed that his client had a

> *"proven performance in not only planning but also in carrying out and fulfilling to completion large and successful developments in the City."*

Weiner called the new DDA unreasonable based upon other agreements that the Agency had with redevelopers.[192]

It appears that the redeveloper expressed his sentiment to the Agency members because the Agency's temperament made a drastic turnaround in less than a week. Six

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[190] April 29, 1993 letter from Weiner to Oliva

[191] ibid

days after Weiner expressed his *"shock"* to Oliva, Agency Chair [Robert Canada] called for a special meeting pertaining to the agreement. Oliva again sent the Agency's DDA to Weiner, alerted him to the special meeting to be held on the following day and requested that he contact Oliva.[193] Oliva simultaneously forwarded the same information to Moskowitz in Florida.[194]

The Special Meeting

The Agency members faced a crucial decision at the May 6, 1993 special meeting. Although both Ritchie and Oliva had proceeded with all expectations that the Agency was considering the staff-prepared, Agency-directed DDA,[195]/[196]upon their arrival, instead, the Weiner-prepared DDA was before the members, according to both Oliva and Ritchie.

Ritchie had just delivered an extensive analysis of Agency-prepared DDA with additional suggestions for clarity,[197] and Oliva introduced the item and proceeded to explain the DDA.

However, shortly after he began his explanation, member Ruggeri interrupted him and requested a closed session. (The minutes note that Canada made the motion; however, the voice on the audio cassette sounded like Ruggeri's voice). Ritchie advised

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[192] April 30, 1993 letter from Weiner to Oliva

[193] May 5, 1993 letter from Oliva to Weiner with Agency-prepared DDA (No. 93-001) attached

[194] May 5, 1993 facsimile from Oliva to Moskowitz

[195] Documentation on file

[196] May 6, 1993 Memorandum from Oliva to Agency

the members that they may not enter a closed session when dealing with the *"substance of a [proposal with a] developer."*

> *"Closed sessions can be held for personnel and acquisition . . . but cannot be held for purpose of considering a contract with a developer . . . . I suggest you do it in an open session. If you are now dealing with the substance of a [proposal with a] developer. . . [it's] proper to hold in . . .open session,"* said Ritchie

Ruggeri asked if the Agency could discuss condemnation in the closed session, and Ritchie said that it could.

"We wanted to get a straw vote on that," Ruggeri said.

Navejas made a motion to enter a closed session to discuss condemnation <u>without staff or counsel</u> in the room and asked if that was permitted.

> Ritchie said that the Agency could do so, but it must
>
> *"record what goes on in these executive sessions"* due to a recent *"rule . . . I assume one of you will operate the machine so you will have a record,"* he said. *"[You can] only discuss condemnation, value of property. . ."* he said. *(*JLAC note: The audio machine appears to have been stopped as the audio cassette of that date was blank).

The Agency's position had drastically shifted between the time that it demanded its terms and the time it emerged from its closed session. When the Agency emerged from its closed session, Ruggeri ostensibly held up the DDAs and made the following motion.

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[197] Documentation on file

"I want to make a motion to accept Moskowitz's agreement as sent to us, not with the changes made by us. Moskowitz's agreement is in this hand. I want that approved as-is."

The four present members of the Agency voted to approve the DDA. (Cabrera was absent, according to the minutes and the audio cassette)[198] The Agency approved the document

"*without discussion or debate,*" according to Ritchie. *"I didn't approve it. There was no further opportunity for me to participate at that meeting, and I had some objections,"* he told the JLAC.

It was not unusual for the redeveloper to contact the Agency members at their homes, former members told the JLAC. And the night before the Agency Board members attended its special meeting to vote on the DDA, Moskowitz reportedly called certain members at their homes, according to member Navejas.

"He wanted [the DDA] the way his attorneys wrote it," Navejas told the JLAC. *"If you want to do the project, it has to be his way. . . It sounded like he was anxious to clean up the property, [and] it had been sitting there for years. We hadn't even read [his version of the DDA] . . . We felt we had no alternative,"* she said.[199]

After the vote, Canada asked,

"I'd like to ask agency attorney and executive director . . . how long do we have to advertise a condemnation? Do we have to hold a public hearing? What is our process in order to do this?"

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[198] May 6, 1993 audio tape of Agency special meeting

"We voted on this in closed session already," Ruggeri said.

"Once you sign the agreement, you will have to determine, you will be financing the entire acquisition," Ritchie informed the Agency. *"You have to be sure you have the money. If you have the money, you will be required to have an appraisal of the property. I think we only have windshield appraisal."*

"What are you talking about?" Canada asked. *"We're financing the whole acquisition?"*

Ritchie explained.

"They put up $25 thousand good faith deposit. You are required in their agreement to acquire the property and tender the property to them. And if they don't want to proceed after you've bought it, they can forfeit the $25 thousand."

"It's a 50/50 split," insisted Navejas.

"The last version I recall, you have to spend the money; you have to buy the property, and you have to tender the title to them," explained Ritchie. *"If they don't want it, they have the privilege of forfeiting the deposit . . . . then you own a couple of pieces of property. I'm not sure what you'd do with them because they're surrounded by their property. But you would own it."*

"We'd like to expedite this without . . . any more loops and hoops . . . We've now stalled this thing to the point where now council is not going to take anymore possible recommendations because we're not getting to our goal . . . by finding all the problems," insisted Navejas. *"We don't want to lose the large retailer. That could be very beneficial to the city. We asked you to expedite this. . . I am very dissatisfied that we can't get this done . . ."*

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[199] JLAC interview with Kathleen Navejas

Another member justified the action.

"On the Home Club, we bought it and we sold it. I don't see anything unusual about it. We took the bite on everything else on contamination that we bought."[200]

Note: Weiner made the following statement to the JLAC about the DDA's approval. *"I'm going to take 3 minutes to tell you that the draft, with the exception of one minor change, the city had at least 30-45 days to approve. There was never any last minute switches. It was approved by Graham Ritchie before it was signed by the agency. I seriously doubt that Mr. Ritchie didn't read it before he approved it."*[201] Ritchie, however, maintains that he hadn't seen the DDA until the day of or the day before the Agency approved the document. Records show that it was Weiner's frequent practice to circumvent Ritchie, either by delaying the delivery of significant legal documents or by avoiding Ritchie altogether. Ritchie did see the DDA after the Agency had approved its contents, which was months prior to the actual signature.

The DDA's Distinctions

The DDAs were distinct and the one approved by the Agency, called "Moskowitz's" DDA, favored the redeveloper in most regards. It differed from the Agency's DDA on a number of items, as it

[200] May 6, 1993 audio tape of Special Agency meeting
[201] February 15, 2000 telephone interview with Weiner

1) *Shifted responsibility for soils testing from the redeveloper to the Agency*
2) *Shifted responsibility for hazardous materials from redeveloper to Agency*
3) *Altered the "good faith" deposit from $3 million to $25 thousand.*
4) *Restricted City's ability to impose special assessments on any property owned by the redeveloper*
5) *Eliminated redeveloper's responsibility in sharing the cost of "goodwill" payments*
6) *Shifted responsibility of site improvements from redeveloper to Agency.*
7) *Added assurance that the redeveloper's payments for property would not exceed 50 percent of the property's fair market value at the time of Agency acquisition.*
8) *Restricted City's and Agency's remedies in case of developer default*
9) *Gave the redeveloper additional rights to terminate*
10) *Gave redeveloper an additional six months to begin construction of improvements (total 12 months)*

Post Approval Challenges

The Agency knew that the May 6 action could have dire consequences if the Agency executed the DDA that they had approved prior to taking the necessary steps to adhere to the law.[202]

However, in view of the circumstances – the redeveloper owned most of the land, and the Agency had failed in its previous attempts to either compel a redevelopment or acquire the property –Agency staff acquiesced and continued with the necessities to complete the development despite the apparent problems. Staff believed that it's only solution under the circumstances was to attempt to assemble the balance of the property necessary to complete the project using those limited resources.[203]

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[202] Documentation on file
[203] Documentation on file

And it was clear that the Agency justified entering into a DDA with Moskowitz based on the faith that Moskowitz was going to build the large shopping center that he had proposed in 1988.[204]

Agency staff, however, was still disturbed about a number of Agency obligations, such as a nearly impossible obligation of condemning property and conveying title to the redeveloper within 90 days. The Agency would almost immediately be in default under those conditions, and the redeveloper had reportedly refused to accept a reasonable modification[205]

The Public Hearing

In preparation for the public hearing, Agency staff posted a Summary Report on the DDA and a Notice of Joint Public Hearing, where the Agency intended to approve the DDA. In the Summary Report, Agency Staff described the project as a 79,000 square foot commercial building for the purpose of housing a food and drug store center. The redeveloper

> *"will demolish and clear all structures . . . establishing a total cost to the redeveloper of $2,825,000 [not counting goodwill and relocation].*
>
> *The [Agency's] land write-down of $2,675,500 is expected to be recovered from the increased tax value of this property and other properties currently owned by the redeveloper, which will be part of this development."*[206]

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[204] ibid

[205] Documentation on file

[206] Summary Report on the Proposed DDA

Staff estimated relocation costs and goodwill to reach $875,500 while the Agency's improvement responsibilities would reach $50,000. The project would deliver $250,000 additional annual sales tax revenue and an additional 150-200 permanent jobs, according to the document.[207] The Agency apparently published the notice in a local newspaper, the *Press Telegram* on May 26 and June 2, 1993.[208]

The Report may have been misleading because

1) Although the DDA did not oblige the redeveloper to develop any of the surrounding property, the analysis evidently assumed that the three parcels would be developed in conjunction with the Redeveloper's property, which would generate the tax increment, sales tax increase and jobs.
2) The $250,000 of sales tax did not specifically articulate that it was an increase[209]

And although it appears that the Agency was subsidizing the project on the belief that the redeveloper would develop the entire block, it didn't provide language to assure that end.[210]

Meanwhile, Oliva requested two items from Weiner. The first was a chronology of the redeveloper's attempt to acquire the three parcels from Weiner. (Oliva apparently hadn't received the item because he again requested the chronology on June 22).[211] The second was specific language in the DDA's Scope of Development, which would articulate:

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[207] ibid
[208] Summary Report on Proposed DDA
[209] Documentation on file
[210] Documentation on file

"Responsibility of Redeveloper: Acquisition of the Site from the Agency and commercial development to be constructed on the site and adjacent property, consisting of a major food and drug retail center with a total development of approximately eight acres, including the Site and adjacent land owned 'or acquired' by Redeveloper."[212]

Meanwhile, it became evident that the Agency hadn't read and didn't understand the DDA.

Despite the problems in the contract, the Agency and staff continued as planned while hoping to relieve some concerns prior to executing the DDA.

The Agency opened the public hearing, where several individuals expressed opposition to both the agreement and the loss of the retail business that was presently on the site, particularly the Plowboys Ranch Market, which was apparently highly valued by both the City and nearby communities.

One opponent, however, Joe Cabrera-Zermino (Zermino), believed that Moskowitz's intention was simply to build a card club, not the retail stores that were projected in the report. He said,

"This is a pre-empting strike for a card club casino here. . . What is going to guarantee that Dr. Moskowitz is going to build the 'so-called' Smiths . . . or any other retail outlet? There is no guarantee; look at the rest of the property. It's all empty and . . . all belongs to Dr. Moskowitz . . . The City has bought property and sold it to Dr. Moskowitz strip by strip. . . . The Agency is going to sell off the only

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[211] June 8, 1993 letter from Oliva to Weiner/June 22, 1993 letter from Oliva to Weiner

[212] June 9, 1993, memorandum from Oliva to Weiner

business that is profitable . . . Seven years ago, the redevelopment fund was $28 million; today, it stands about $6 million."[213]

Two council members, Navejas and Canada both reiterated their opposition to gambling in the City while expressing support for the proposed Smith's. Navejas promised that Plowboys would be relocated to *"one of the nicest locations."*[214]

At the end of the joint meeting, the Agency determined that the fair market value for the three parcels was $4.4 million for the two owned by Veady and $455,000 for the one owned by Downen.

Four members voted to authorize Oliva to make those offers to the landowners. Member Cabrera abstained.[215]

Finalizing the DDA

Both property owners agreed to sell their property without the use of condemnation for $5 million and $500 thousand respectively (a total of $5.5 million).[216] Despite the fact that the larger parcel, owned by Veady, had been appraised at $4.4 million, Agency staff believed that the settlement figure of $5 million was reasonable in order to permit acquisition by negotiations rather than forcing owners to litigate.[217]

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213 June 10, 1993 Joint Special Meeting minutes
214 June 10, 1993 Joint Special Meeting minutes
215 ibid
216 Documentation on file
217 Documentation on file

(Note: Weiner complained to the JLAC staff that the Agency had overpaid for the property).

On July 13, 1993, Weiner agreed to specify the redeveloper's "*scope of development*" responsibility to include,

> *"Responsibility of Redeveloper: Acquisition of the Site from the Agency, and Site to be utilized for commercial development which includes a major food and drug retail development."*[218]

However, he included the language,

> *"Responsibility of Agency: Conveyance to Redeveloper of title to the Site shall be completed within three months after the date of this Agreement. On site and Off site improvements on the Site and of other properties located at or near the site and now owned or hereafter acquired by Redeveloper, to be the responsibility of Agency . . ."*[219]

Agency member, Ruggeri, began raising concerns about the DDA, leading staff to realize that the Agency likely did not understand the terms of the DDA.

Staff was still concerned about three terms -- the redeveloper's payment deadline, the meager $25,000 deposit, and the lack of specificity in the project's description.

Although the redeveloper agreed to describe the project as approximately 70,000 square foot of market and related commercial development on approximately eight acres of land, of which two were owned by the redeveloper, the $25,000 deposit and the concerns related to escrow and default cures remained problematic.[220]

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[218] DDA/Documentation on file

[219] July 13, 1993 facsimile from Weiner to Oliva

[220] Documentation on file/DDA # 93-26

Despite concerns, the Agency voted to finalize approval on the DDA and passed Resolution Number 93-26 on July 27, 1993, with the understanding that the agreement became effective only after environmental compliances had been met.[221]

Weiner sent an executed DDA and an agreement to pay half of the acquisition costs with no date by which the developer would pay its share of the acquisition costs.

> *"Notwithstanding the appraisal value of the Veady and Downen properties and the provisions of Section 201 of the DDA, which limit the purchase price to CGGHC to 50% of the fair market value of these properties, both the Redevelopment Agency and CGGHC have agreed to share equally in the purchase price for the Veady and Downen properties, which totals $5,500,000."*[222]

Weiner sent *"alternative"* language to Oliva on July 29, 1993 with a revised page 35 of the DDA indicating the effectiveness of the agreement upon the approval of the Negative Declaration on or after August 10, 1993, and the time for Court Challenges expiring. Further Weiner's language stated,

> *"If the Negative Declaration is challenged in Court and determined to be insufficient, the Agency will use its best efforts to promptly correct any deficiency found by a Court to exist. Until such time, neither party to this Agreement shall have any liability to other."*[223]

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[221] July 27, 1993 Agency meeting minutes

[222] July 27, 1993 letter from Weiner to Oliva

[223] July 29, 1993 letter from Weiner to Oliva with revised page executed by Weiner

On July 30, 1993, Ritchie accepted and signed the July 29, 1993 DDA substitute page 35.[224]

[224] Documentation on file

The Adoption of the Negative Declaration

Because the Agency had not prepared and adopted an Environmental Impact Report when it first created the redevelopment plan in 1973, the gateway project apparently had no initial environmental document from which to draw. The City's Community Development Director, Carl Holm (Holm) appears to have prepared a Negative Declaration for the project as early as May 11, 1993 but revised it after criticism.

Holm's staff report described a two-phased project: Phase I included the removal of 40,000 square feet of mixed commercial uses and replacing them with a 70,000 square foot retail market. Phase II was *"not yet determined."*

Holm found that the planned project, a food and drug store, only had one significant impact -- on the existing transportation system -- [225] and therefore concluded that a Negative Declaration (ND) was appropriate for the project.

The report and the ND were cause for concern to both staff and to Barry Weisz, attorney for Veady. Weisz informed Oliva that the staff report advocating the adoption of a Negative Declaration was erroneous

> *"in all of its basic assumptions upon which the report is based."*[226]

Further, because the DDA did not specify all of the improvements in the project,

> "*it is not possible to accurately assess the environmental impact . . ,"* Weisz wrote. *"Simply put, it is the Veady's contention that the Staff Report is*

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[225] June 9, 1993 Community Development Department staff report to the Planning Commission
[226] June 9, 1993 letter from Weisz to Oliva

premature, misleading, and that the Planning Commission should continue its hearing . . . until . . . the Staff Report correctly identifies the proposed projects and discusses the potential environmental impacts. It is further submitted that until such time as the Hospital Company sets forth in detail its 'Conceptual Plans' pursuant to Section 109 and Attachment 3 of the Agreement, it is not possible for an accurate environmental determination to be properly made."[227]

On June 10, 1993, the Planning Commission approved the Negative Declaration[228] subject to staff addressing three issues: the plan of proposed development attached to the report, the hazardous waste on the site and the proposed truck traffic.[229]

Holm wrote to Weiner, requesting a concept site plan in order to complete the environmental assessment, particularly to illustrate a truck traffic restriction from the rear of the property.[230]

Meanwhile, Holm had only considered the impacts on the 8.2-acre site, while discussing the entire19.1-acre site as the project's entirety, which may have raised the argument that the CEQA analysis should have been done for the entire project, of which the 8.2-acre development was only one phase.[231]

CEQA compliance requires an accurate statement of the 'project,' and requires consideration of the incremental effects of the project with past projects.[232]

Holm sent Weiner a second correspondence, advising him that the project may, in fact, require an Environmental Impact Report (EIR), particularly if the future

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227 ibid

228 Documentation on file

229 June 14, 1993 letter from Carl Holm to Beryl Weiner

230 June 14, 1993 letter from Carl Holm to Weiner

231 Documentation on file.

232 Documentation on file

development entailed more than a 70,000 square foot retail establishment. He repeated his previous information request but now, in order to conduct a thorough analysis and "*prevent possible future delays,"* Holm needed the redeveloper's intent for the *"ultimate development.*" Further, Holm believed that *"showing the ultimate intent could strengthen the . . . Agency's position regarding the need for such a project."*[233]

The revised project description apparently only included a 70,000-sq. ft. retail commercial building, which was met by further criticism by staff who had expected a larger development on the 19.1 acreage.[234]

On July 9, 1993, Holm repeated his earlier requests for pertinent information from Weiner.

> *"On June 14 and June 21, 1993, I sent you letters explaining issues that have been raised regarding the subject project. I requested additional information to try to address these issues. I have not received this information. In order to keep this project moving, Hawaiian Gardens has engaged a consultant to finish the environmental review. The project description will be revised to address the maximum buildout of the 19.1 acres . . . If you would like to submit any information that may be helpful . . ."*[235]

Without the redeveloper's plans for the property, Holm finally revised the project description to address the maximum build-out of the 19.1 acres, raising another problem -- public notice had already been posted, giving the public insufficient notice.[236]

Holm's *"revised negative declaration"* was still troublesome to some members of Agency staff because:

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233 June 21, 1993 letter from Carl Holm to Weiner

234 Documentation on file

235 July 9, 1993 letter from Holm to Weiner

1) The ND with attachments may not have been available to the public at the time notice of public hearing was published.
2) The proposed mitigation for adverse effects may not have satisfied the requirement for no significant adverse effect.
3) The language was vague, broad and sweeping[237]

At the August 10, 1993 public hearing, Holm admitted that he still didn't know the "*exact development.*" In lieu of a plan, Holm conducted a study based on a hypothetical two-phase development. The first phase included a 70,000+ square foot market, while the second was a development of retail office space on the remaining acreage.

In his study, Holm listed impacts to the earth, noise/light, circulation (traffic) and air quality. The Agency and City adopted the Negative Declaration, and nobody objected to the findings. The time to raise objections expired.

Escrow Delays and Tenancy Issues

> *"The Agency agrees to concurrently upon its acquisition of such parcels of real property, to forthwith sell such parcels to Redeveloper, and the Redeveloper agrees to purchase all of such parcels." – Section II, DDA*

The property acquired by the Agency contained 13 tenants, seven of which requested reentry into the development upon completion, according to a memorandum to Weiner from Agency staff.[238]

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[236] July 13, 1993 memorandum from Ritchie to Oliva

[237] Documentation on file

[238] August 31, 1993 letter from Oliva to Weiner/October 15, 1993 memorandum to Weiner from Agency staff

On July 19, 1993, Oliva advised the tenants of their eligibility for relocation and possible goodwill benefits and prepared them for an upcoming 90-day notice-to-vacate. For one tenant, the food market, known as Plowboys, Oliva had already located a new potential site.[239]

However, approximately one month later, on August 17, 1993, Weiner complained to Oliva about the

> "*existing leases with the tenants,*" which he said "*need to be addressed and, more importantly, the proposed escrow instructions . . . are not adequate in their present form*."[240]

Weiner gave no further explanation about the nature his complaint, although subsequent correspondence expressly stated his desire for the tenants to remain in possession of the site. The following week, he allegedly stated that Oliva had assured him that

> "*the escrows [between the Agency and the property owners] would not close until certain matters had been worked out.*"

The "matters" were two-fold. First, Weiner wanted the Agency to leave the tenants

> "*in possession (subject to a 60 or 90 day cancellation clause) until adequate arrangements have been made for their relocation.*"

Secondly, he apparently wanted to delay the escrows until the expiration of the ND's 30-day waiting period.

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[239] July 19, 1993 memorandum from Oliva to Agency

[240] August 18, 1993 letter from Weiner to Oliva

Agency staff believed that at the end of the 30 days, Moskowitz would pay his portion of the purchase price. [That didn't occur for several months]. The only remaining questions dealt with agreement on escrow instructions and tenancies.[241]

The following day, Oliva signed a Certificate of Acceptance for the Downen property grant deed. [242]

The following week, in an effort to properly advise the tenants, Oliva requested the redeveloper's desires pertaining to the tenants' relocation. Particularly, he requested that Weiner identify those businesses being considered for re-entry within the completed project.

> "*This information,*" he emphasized, "*is needed as soon as possible so that the relocation process may continue without major delays,*" wrote Oliva.[243]

The Agency grew concerned about the delays. Although it was obligated to deliver the property "*free and clear*" of the tenants' possession, the redeveloper was now dissatisfied with that arrangement. Further, the Agency was quickly completing the escrow with the property-owners, and it appeared that the redeveloper was hesitant to pay the disposition price "*concurrently*" as the parties had agreed. Members of the Agency requested a meeting with Weiner and Ritchie in order to

> "*address any misunderstandings and to provide clarification . . . to review the status of this development.*"[244]

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241 documentation on file

242 Certificate of Acceptance for Escrow No. 93-12776-M, grant deed for Downen Property

243 August 31, 1993 letter from Oliva to Weiner

244 September 1, 1993 memorandum from Oliva to Navejas, Ruggeri, Ritchie and Weiner

Two days later, the Agency completed its acquisition of all three parcels and closed the related escrows by September 3, 1993, according to escrow documents.[245]/[246]

Days went by, and Oliva grew impatient. While Weiner still hadn't responded to his information request regarding tenant relocation and potential re-entry, Weiner told Oliva that he wanted the tenants on the site until they are under construction or when construction is almost completed. Further, Weiner indicated that there may be a way to construct the project without interference to the current tenants."[247]

Oliva had reminded Weiner that during negotiations he had insisted on taking ownership of the properties clear of tenants, which contrasted from this new request. However, Oliva could not see a reason to delay the disposition escrow, particularly as the redeveloper had expressed a sense of urgency. Oliva was particularly perplexed about the notion that there were unresolved issues. Oliva waited for Weiner to clarify his wishes pertaining to tenant displacement prior to issuing 90-day notices to vacate.[248]

The following week, Weiner apparently stated that he would not be able to close escrows as indicated in the instructions, despite Agency staff's urging and reminder of the developer's previous desire to expedite.[249]

Weiner met with the Agency's ad hoc committee on September 13, 1993.[250] Now, the redeveloper apparently wanted to leave the tenants on the property even during

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[245] September 3, 1993 Buyer's Closing Statement, World Title Company
[246] Escrow Documents dated August 2, 1993 World Title Company
[247] Documentation on file
[248] ibid
[249] Documentation on file
[250] September 28, 1993 memorandum from Oliva to Weiner

construction. Agency staff was perplexed and concerned about whether it was necessary to acquire or condemn the properties.[251]

Further, because Moskowitz still had no clear plans pertaining to the final development, Agency staff was unsure of appropriate action pertaining to the tenants. The leases automatically terminated upon acquisition of the property by the public agency for a public purpose.[252]

Meanwhile, the Agency attempted to open the disposition escrow with the bank chosen by Weiner, but were

> *"unable to obtain any cooperation from the bank . . . [Weiner's] office was contacted for assistance. We were notified that [Weiner was] in court and not available."*[253]

On October 1, 1993, Oliva made a written request to open escrow to the First Los Angeles Bank[254] and sent requests to both Weiner and Moskowitz on the following October 4. In the interim, Agency staff, Lydia Jewell (Jewell), made attempts to contact Weiner by telephone. Weiner was unavailable.

Meanwhile, the Agency began relocating tenants despite having no information from the redeveloper.[255]

Oliva urged Weiner to expedite the redeveloper's relocation plans for the remaining tenants.

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[251] Documentation on file
[252] Documentation on file
[253] September 28, 1993 memorandum from Oliva to Weiner
[254] October 1, 1993 letter from Oliva to Pat Albers of First Los Angeles Bank
[255] October 12, 1993 Redevelopment Agency minutes

"As indicated in previous correspondence, this information is needed as soon as possible so that all avenues of relocation and goodwill costs can be addressed."[256]

On October 21, 1993, Oliva continued his attempt to open escrow. He forwarded additional information to the bank, including a closing deadline of October 29, 1993.[257]

Two weeks later, Weiner forwarded several leases with rider agreements to Oliva with an apparent expectation that Oliva would obtain the tenants' signatures for the benefit of Moskowitz.[258]

Oliva promptly forwarded the material to ad hoc committee members, Navejas and Ruggeri, for review with the attached note:

"These are the documents promised by Mr. Weiner over four weeks ago . . . I am somewhat surprised that this took so long . . ."[259]

Agency staff grew concerned about the redeveloper's nonpayment, the delay of escrow and doubted that tenants would be willing to execute the rider agreements that had been apparently requested by Weiner.[260]

On November 21, 1993, Weiner met with the tenants to encourage them to remain on the premises for roughly a year, according to a letter from relocation consultant Al Kalian. He still, however, refused to disclose his plans for any possible re-entry.[261]

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256 October 15, 1993 letter from Oliva to Weiner
257 October 21, 1993 memorandum from Oliva to Albers
258 November 3, 1993 letter from Weiner to Oliva with attached leases and riders
259 November 8, 1993 memorandum from Oliva to Navejas and Ruggeri
260 Documentation on file
261 December 21, 1993 letter from Kalian to Oliva

Two weeks later, on December 7, 1993, Weiner sent nine leases to Oliva and specifically requested that Oliva obtain the tenants' signatures on Weiner's behalf. Weiner alleged in his letter that the leases

> "*maintain largely the same rental rates and terms as the leases previously entered into by these tenants. All provide for termination upon six months' written notice . . . , so that there will be no interference or delay in the construction or completion of the development of the Property.*"[262]

The following day, Weiner reportedly stated that Moskowitz would not take title until they either obtained signed leases or cleared the property of tenants.[263] And by the end of December, Weiner insisted that the lease agreements were "*necessary prior to the close of escrow*" in a December 27, 1993 letter to Oliva.[264]

Weiner's claims were false, said Oliva, in a memorandum to Navejas and Ruggeri. He wrote,

> "*I do not recall the closing of escrow or disposition of properties to the redeveloper requiring the execution of agreements or the Agency addressing this matter. As you may recall, the original intent was to acquire the properties and relocate the tenants. Now the redeveloper has prepared agreements that provide expiration dates of 6/94, 7/94, 12/94, 12/96; 2/00; and 6/01 . . . I fail to see the relation of the sale of the property and what rental or lease agreements the redeveloper wants to enter into with the tenants.*"[265] [emphasis added]

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[262] December 7, 1993 letter from Weiner to Oliva

[263] Documentation on file

[264] December 27, 1993 letter from Weiner to Oliva

[265] December 28, 1993 memorandum from Oliva to Navejas and Ruggeri

When the New Year arrived, escrow still hadn't closed, and because the Agency had advanced the entire $5.5 million, its members grew increasingly concerned and confused about the developer's conditions pertaining to the disposition of the property.[266]

On January 10, 1994, Weiner clarified his intent and conditions.

> *" . . . interests of both the Agency and the redeveloper would be best served by allowing the tenants currently in possession . . to remain as tenants . . for as long as is reasonably possible without delaying the progress of construction. In this way, there would be no need to pay relocation and/or goodwill fees to tenants at the present time, and further, the additional time would enable the redeveloper to attempt to formulate plans to allow some (but possibly not all) of the existing tenants to remain on the site after construction is completed, thereby eliminating the need altogether to pay relocation and/or goodwill fees . . .The Redeveloper . . . would prefer to have the tenants in possession . . . "*[267]

However, because the redeveloper hadn't yet paid his share of the costs, he had little incentive to pursue this issue, according to Agency documents, leaving the Agency in a precarious position.

By now, the Agency faced a quandary. Under the conditions of the DDA, it was to deliver title *"free and clear"* within 90 days; it still had no tenant reentry information, which compromised its ability to relocate tenants, and now the redeveloper was demanding that the Agency obtain leases from the tenants.

Meanwhile more tenants had relocated,[268] and the remaining tenants, according to Oliva, were disinterested in leasing from Moskowitz, a notion Weiner called *"curious."*

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[266] Documentation on file

[267] January 10, 1994 letter from Weiner to Ritchie

[268] January 11, 1994 Agency minutes

Some tenants, Weiner said, had expressed interest in remaining on the premises. Weiner, instead, accused Oliva of not forwarding the leases to tenants, which Weiner alleged were intended *"to reduce relocation and goodwill expenses*."[269]

On March 11, 1994, Ritchie notified Plowboys' attorney that while the City wished to retain that business, the redeveloper wished

> *"to proceed with the redevelopment of the property and has requested the redevelopment agency take the necessary steps to provide us title free of any adverse possession."*

He warned that without making arrangements [likely with the redeveloper], the Agency would be forced to evict Plowboys.[270]

Many of the tenants reportedly didn't want to relocate, and despite the Agency's efforts to obtain the redeveloper's plans for possible re-entry, Agency staff felt it was at an impasse. Now, however, the redeveloper was even willing to take the existing leases between the Agency and the tenants and consider that to be the Agency's commitment.

While Ruggeri wished to heed to Moskowitz's desires and have tenants sign leases with Moskowitz, and avoid notices to vacate, Oliva believed that the 90-day notices were mandatory even with the signed leases.

Oliva sent the notices to vacate, and Weiner reiterated Moskowitz's preference to obtain the property <u>with tenants</u>, <u>not</u> free and clear per the DDA. If the Agency was unwilling to obtain signed leases for Moskowitz, however, Weiner had apparently expressed a willingness to take the property and pay the disposition costs, accepting the

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[269] January 28, 1994 letter from Weiner to Ritchie

[270] March 11, 1994 letter from Ritchie to Del Guercio

tenants with their present status, with or without leases, and assuming the burden of evicting them.[271]

If unlawful detainer actions became necessary, however, Weiner expected to be Indemnified for costs incurred in getting the tenants off the property.

Further, the redeveloper now apparently desired an additional six months prior to taking possession and indicated that the tenants would be part of a parking lot and could therefore stay during construction.[272]

Two days later, Oliva served the tenants with notices to vacate by June 23, 1994.[273]

Three of the tenants had already expressed displeasure. While the Plowboys wanted to extend the 90-day deadline, the Lakewood Suzuki dealership and the Downen Garden Center were dissatisfied with settlement offers ($118,000 plus four months free rent and $85,335, respectively).[274]/[275]

Ritchie requested to Weiner that he

> "*follow-up as soon as possible with these businesses . . . in view of the pendency of the notices."*

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[271] documentation on file

[272] documentation on file

[273] January 31, 2000 copy of Court of Appeal, Case B128553

[274] April 12, 1994 staff report to Agency

[275] documentation on file

Because Moskowitz expressed the desire to make "*interim arrangements*" with the tenants, to negotiate for lease extensions and settlements and to *"retain"* some of the tenants in the *"new project,"*[276] Ritchie requested that Weiner

> "*discuss the situation . . . and the possibility of mitigating any damages by extending their occupation of the property and possibly finding a way to incorporate their business into the new center."*[277]

Despite the fact that escrow still hadn't closed and that the redeveloper had failed to meet his obligation to acquire the property concurrent with the Agency's purchase, Weiner requested an amendment to the DDA. He appears to have delayed the escrow on the condition of the DDA's amendment and obtaining the leases.

As soon as the Agency agreed to amend the DDA and turn over the property with the existing leases, escrow was set for closure.[278]

Shortly thereafter, on May 18, 1994, Weiner returned to the tenants and told them they could ignore the 90-day notices and remain in possession unless they failed to execute Moskowitz's leases.[279]/[280] At that time, it appears that seven tenants -- Club Cheers, Just Havin Fun, Bartha's Donuts, Plowboys, Bi-Rite Meat, Lakewood Suzuki and Downen's Garden Center -- remained on the property, paying monthly rent ranging from $690.51 for Bartha's Donuts to $12,331.42 for Plowboys market.[281]

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[276] April 14, 1994 letter from Ritchie to Weiner
[277] ibid
[278] May 9, 1994 Bank of America Transaction Record
[279] May 18, 1994 letter from Weiner to tenants
[280] January 31, 2000, Copy of official court records, court of Appeal, Case No. B128553
[281] Agency Rental Statement dated May 3, 1994

On June 7, 1994, Oliva notified Ritchie that the owners of the Lakewood Suzuki (the Downen family or Downens) were unhappy. Both Mrs. Downen and Oliva, himself, had unsuccessfully attempted to contact Weiner by telephone to discuss the matter. Disinterested in leasing any longer from the redeveloper, the Downens wished to simply settle on a reasonable relocation, Oliva reported.[282]

William Weinberger (Weinberger) of Selvin & Weiner & Weinberger informed the tenants that Moskowitz would be depositing checks received into a trust account and that *"upon receipt of an executed lease . . . the moneys will be credited toward rent due and owing."*[283]

Although the Plowboys Market, which also housed the Bi-Rite meat department, apparently stayed at its location until October 15, 1995,[284] it appears that the City ultimately lost 12 businesses, including seven which appeared to have been a source of sales tax, leaving the City without the income. No tenants have been permitted to reenter the site.

Making matters worse for the Agency, it appears that five of the tenants filed civil complaints against the Agency, at least four of which were complaints in inverse condemnation, resulting in over $2 million in judgments against the Agency. The redeveloper refused to pay for 50 percent of the costs because

> *"The Agency was required under the terms of the original DDA to remove all tenants and sub-tenants from the property prior to the close of escrow. Since the Agency failed to deliver possession of the property with Bi-Rite removed before*

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[282] Documentation on file

[283] December 16, 1994 letter from Weinberger to tenants (Plowboys, Downen Garden Center, Just Havin Fun)

[284] January 31, 2000 copy of Court of Appeal, Case B128553

the escrow was closed, the Agency unconditionally agreed to indemnify Dr. Moskowitz from Bi-Rite's claims."[285]

Moskowitz had apparently filed suit against the Agency for express indemnification [JLAC note: This is the third legal action that Moskowitz and/or the Hospital Company filed against the Agency]. However, Weiner proposed that the complaint be "deferred" to avoid

"having the same jury which is hearing testimony about the Agency's violation of Bi-Rite's civil rights also hear testimony about more breaches or defaults by the Agency."[286]

[285] November 16, 1998 letter from Weiner to Anthony Lopez

[286] November 16, 1998 letter from Weiner to Lopez

The First Amendment to the DDA

Weiner first requested an amendment to the DDA in early 1994, during the Agency's attempt to collect the redeveloper's acquisition payment.

During negotiations for the Amendment, Weiner displayed similar patterns as during the negotiations for the DDA. He prepared the amendment and circumvented Ritchie while insisting on immediate execution.

After initial review, Ritchie sent correspondence to Weiner urging dialogue. Weiner did not return the call until the end of the day on the April 21, 1994. The following morning, Ritchie again telephoned Weiner but never received a callback, Ritchie told the Agency.[287]

In fact, as of 1:00 p.m. on the day before the Agency was scheduled to consider the item, Weiner apparently hadn't even sent the language to Oliva.[288] When he did send the item to Oliva, he marked the letter *"cc: Graham Ritchie,"* leading Oliva to believe that Ritchie had also received the item.[289] Ritchie, however, never received it, and Oliva later realized that

> *"[Ritchie] was not provided with a copy of the amendment by the Redeveloper's legal counsel, as noted on Mr. Wiener's April 25, 1994 correspondence."*[290]

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[287] April 26, 1994 Redevelopment Agency minutes
[288] April 25, 1994 facsimile memorandum from Oliva to Weiner
[289] April 26, 1994 Agency minutes
[290] April 26, 1994 memorandum from Oliva to Agency

Despite the fact that the item hadn't been discussed or negotiated, Weiner sent the amendment executed, along with notification that he had instructed the escrow holder to proceed with closure.[291]

Upon receipt of the language, staff reported its interpretation.

1) Moskowitz is added as co-redeveloper
2) The redeveloper's share of acquisition cost is $2.75 million
3) The escrow will close on or before April 29, 1994
4) The Agency indemnifies the redeveloper for costs related to hazardous substances, as per the current DDA
5) The Agency/City acknowledges that it has not made any offers to third parties to remain on the site
6) The Agency and City will continue to assist the Redeveloper to obtain exclusive "*free and clear*" possession of the site[292]

At the April 26, 1994 Agency meeting, Ritchie recommended continuing the item as he felt the terms were unacceptable.[293] Some of the problems of the amendment included elimination of the redeveloper's obligation to pay its share of goodwill and relocation assistance costs that had previously been agreed in the DDA and a provision that permitted the redeveloper to remove tenants whenever it chose, thereby exposing the Agency to additional financial liability. [294]

However, despite the fact that neither Ritchie nor she, herself, had reviewed the item, Navejas declined to continue the item.

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[291] April 25, 1994 letter from Weiner to Oliva
[292] Staff report dated April 26, 1994
[293] ibid
[294] Documentation on file

"A meeting was held with Beryl Weiner," and *"this was to be completely handled for this evening so we [can] go forward with this development."*[295]

As instructed, Ritchie modified the amendments during the session, and the Agency voted to approve,

1) The addition of Irving Moskowitz, M.D. as a redeveloper
2) The permission for the redeveloper to hire his own counsel to obtain exclusive possession of the property.
3) Indemnification of reasonable legal fees related to obtaining exclusive possession of the property.
4) The redeveloper's disposition cost of $2.75 million plus one-half costs for relocation and goodwill.
5) The escrow closure of May 6, 1994.
6) The Agency's assumption of costs associated with removal of hazardous substances
7) Holding the redeveloper harmless for delays in the development that occurred as a result of entities or persons who claim right to possession or interfere with the redeveloper's rights to the site.[296]

With reference to the redeveloper's obtaining exclusive possession of the site, the Agency approved the following language.

"With respect to Redeveloper obtaining exclusive possession of the site, redeveloper shall have the right to employ such attorneys as it may select to prosecute such action or actions and if the hourly fees of such attorneys are acceptable to Agency, it shall indemnify redeveloper for such fees and costs. In the event Agency does not approve such fees, Agency shall retain and compensate counsel of its choice to prosecute such action."[297]

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295 April 26, 1994 Agency minutes

296 May 3, 1994 executed Amendment to the DDA

297 April 26, 1994 Agency minutes

The language actually inserted into the DDA, however, was slightly different. It read:

> *"Redeveloper shall have the right to cause action(s) to be filed, defend such action(s) as are filed against it, and take other reasonable steps in connection with claims of current at-will tenants of the Site, including obtaining exclusive possession of the Site; and Redeveloper shall have the right to employ such attorneys as it may select to prosecute and/or defend such action(s) or to take other reasonable steps in connection therewith, provided the hourly fees of such attorneys are reasonable and agreed to by Agency, which agreement shall not be unreasonably withheld. Agency hereby consents to the Redeveloper's selection of Beryl Weiner, Esq. And the law firm of Selvin & Weiner & Weinberger, a partnership of professional corporations ('Law Firm'), as the attorneys retained in order to obtain exclusive possession of the Site. The Law Firm's current regular hourly rates are $300 [per hour] . . . , which fees are deemed reasonable and which are hereby agreed to by Agency. Any future adjustment by the Law Firm in their fees shall be subject to the consent of Agency, which consent shall not be unreasonably withheld. Agency shall indemnify Redeveloper for all such fees and costs."*[298]

Although the additional language, acknowledging the firm and fees of Selvin & Weiner & Weinberger, was not approved by the Agency Board, without returning to the Agency for a vote, Mayor Robert Prida and Ritchie executed the document.

The next day, April 28, 1994, Lydia Jewell (Jewell) of the Agency staff forwarded the grant deeds, by facsimile to Weiner.[299]

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[298] Amendment to DDA 93-26

[299] April 28, 1994 facsimile from Jewell to Weiner

Escrow closed on May 5, 1994, just days after the Agency signed the amendment, and the Agency received a wire money transfer on May 6, 1994.[300]

(Note: Apparently, several parties, including Weiner, misconstrued or mischaracterized the meaning of the amendment. While the amendment technically allows the redeveloper to select its/his own attorney to evict tenants, and requires the Agency to indemnify the redeveloper for what it deems as reasonable attorney fees, the amendment was interpreted as if Weiner and his firm were retained as Agency counsel, which was untrue.

The Lawsuits

In addition to common eminent domain expenses, such as damages in goodwill, leaseholder interest and relocation costs, the Agency was exposed to additional complaints. When the Agency allowed the redeveloper to leave tenants in occupancy of the site after transfer of ownership and the redeveloper failed to initiate a redevelopment, the Agency was vulnerable to complaints in inverse condemnation.

The owners of the Downen's Garden Center, the Duski family (Duski), brought the first complaint against the Agency. Dissatisfied with the $85,335 settlement offer made by the Agency, Duski filed a complaint for goodwill damages.[301]

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[300] May 5, 1994 First Los Angeles Bank Seller's Closing Statement/May 6, 1994 facsimile note from City to First Los Angeles Bank/May 6, 1994 Bank of America Money Transfer Notificiation

[301] Documentation on file

It appears that the Agency did not give formal authorization to Ritchie to respond to the Duski lawsuit; however, Ritchie asked the redeveloper's counsel to

> *"discuss the situation [with Duski]. . . and the possibility of mitigating any damages by extending their occupation of the property and possibly finding a way to incorporate their business into the new center."*

Ritchie's basis for this the request was the fact that the Duski lawsuit was filed while Moskowitz was allegedly negotiating lease extensions, *"interim arrangements*" and settlements with tenants."[302]

Further, because the Duski litigation *"would be closely tied to the negotiations which your client will be conducting,"* Ritchie inquired about the possibility of Weiner substituting as special counsel to the Agency for the case. Ritchie indicated, however, that he needed to discuss the matter with the Agency.[303]

However, while it appears that approval was needed in order to close escrow, JLAC has found no record of discussion of the matter with the Agency board.[304]

Two weeks later, without explanation, Oliva mentioned the matter in a brief memo to two-member ad hoc committee comprised of Navejas and Ruggeri. However, in his memorandum, Oliva's noted that Weiner had inquired about defending the Agency in the *"Duski suit."*

> *"Ritchie has no opposition to this request and feels it may 'assist' in having the developer engage in the issue of current tenant relocations. Unless the committee*

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302 April 14, 1994 letter from Ritchie to Weiner

303 ibid

304 Documentation on file

has a concern on this, I will contact Mr. Ritchie and advise him to move forth with Mr. Weiner's request,"[305] Oliva wrote.

While the JLAC has no record of a committee discussion on the matter, both committee members, Ruggeri and Navejas, denied having retained Weiner and couldn't recall ever discussing the matter.

"I don't know how it came about that Beryl Weiner became agency counsel all of a sudden. It didn't make sense to me," Ruggeri told the JLAC. *"I don't remember voting on this."*[306]

Apparently without any official Agency action or authorization, on May 24, 1994, both Ritchie and Oliva signed the Substitution of Attorneys, which was filed in Court for the Duski case.[307]

(Note: The JLAC staff has found no evidence that the Agency board, itself, has approved such substitution. Three of five former Agency members all stated that they did not consent to Weiner or his firm to substitute as special counsel to the Agency.[308] *The JLAC has requested any and all retainer agreements between the Agency and Weiner or his firm from both Weiner and the Agency. Neither party has produced a retainer agreement, leading the JLAC to believe that none exists.)*

In ensuing years, it appears that at least four other tenants filed complaints in inverse condemnation against the Agency.

Ritchie forwarded one such case to Weinberger on September 28, 1994.

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[305] May 17, 1994 memorandum from Oliva to Navejas and Ruggeri

[306] JLAC interview with Ruggeri

[307] May 24, 1994 Substitution of Attorney, Superior Court of California

"Pursuant to the agreement . . . it appears to me that [Lakewood Suzuki, Downen's et al vs. Agency] . . . should be handled on behalf of the agency by your firm since it involves issues of relocation, inverse condemnation and the like, arising out of . . . resale to Dr. Moskowitz . . ,"[309] Ritchie wrote.

In addition to the Duski and Suzuki cases, Weiner apparently litigated at least two additional cases on behalf of the Agency. However, the JLAC has only found one Substitution of Attorneys filed with the Court (Duski). Weiner's firm has billed the Agency over $900,000 to date.

Conflicts of Interest

Ethical conduct of California attorneys is controlled by the Rules of Professional Conduct of the State Bar (Rules). Rule 3-310 of the Rules provides

"A member shall not accept or continue representation of a client without providing written disclosure to the client where

1) The member has a legal, business, financial, professional or personal relationship with a party or witness in the same matter or

2) The member knows or reasonably knows that (a) the member previously had a legal, business, financial, professional or personal relationship with a party or witness in the same matter and (b) the previous relationship would substantially affect the member's representation or

3) The member has or had a legal, business, financial, professional or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the mater or

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[308] JLAC interviews with former councilmembers

4) *The member has or had a legal, business, financial or professional interest in the subject matter of the representation.*

Further, the State Bar Rules of Professional Conduct provide that a member *"shall not, without the informed written consent of each client*

1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict
2) Accept or continue representation of more than one client in a mater in which the interests of the clients actually conflict
3) *Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter."*

The State Bar Rule is intended to insure undivided loyalty to a client, and the Courts have ruled in Flatt V. Superior Court that there is a mandatory rule of disqualification, even if the client's matters are unrelated, in order to prevent *"serving two masters."*[310]

Since at least 1982 into the present day, Weiner has served and continues to serve as counsel and advocate for Moskowitz and his various entities in the City. His activities included negotiating, lobbying and litigating matters adverse to the City and the Agency for the benefit of his client, Moskowitz [Note: Moskowitz, the Hospital Company and/or the Hawaiian Gardens Card Club have sued the Agency on three occasions]

In 1994, Ritchie substituted Weiner's firm as special counsel to the Agency. However, rather than disclosing any actual or potential conflicts of interest, on May 20,

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[309] September 28, 1994 letter from Ritchie to Weinberger

1994, Weiner's partner, William Weinberger (Weinberger), asserted that *"no conflict of interest existed"* if his firm, which represented the redeveloper, also represented the Agency in the case, Duski vs. City of Hawaiian Gardens Redevelopment Agency. He wrote,

> *" . . . there would be no conflict in our taking on the CRA's defense in this action, because the CRA's and Dr. Moskowitz' interests are parallel. Since they are sharing 50-50 in any liability or obligations to the plaintiff in connection with its relocation, Dr. Moskowitz and the City have parallel interests in minimizing such liabilities. We also discussed that the only potential conflict that might in the future arise between the interests of the CRA and the interests of Dr. Moskowitz would occur if there were an alleged violation or breach of the Disposition and Development Agreement No. 93-26 as amended by Amendment No. 1 ("DDA") and an effort were made by either Dr. Moskowitz or the CRA to recover one from the other for such violation or breach,"*[311]

The assertion that *"no conflict"* existed was misleading and did not constitute full disclosure. It is arguably a violation of the State Bar Rules of Professional Conduct.

In fact, the basis for such a conflict had already been created as a result of the insistence of the redeveloper, contrary to the terms of the DDA, in keeping the tenants in possession following transfer of the property from the Agency to the redeveloper. Further, the DDA had arguably already been breached when the redeveloper failed to purchase the property from the Agency concurrent with the Agency's acquisition from the original property owners, per the terms of the DDA.[312]

Moreover, Weinberger requested acknowledgement that

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[310] Flatt V. Superior Court (1994) 9 Cal. 4th 275

[311] May 20, 1994 letter from William Weinberger to Ritchie

"*if such conflict were to arise, then the CRA would waive any conflict that might occur in this firm or any of its attorneys continuing to represent Dr. Moskowitz or any entity in which he is involved . . .*"[313]

Oliva, unilaterally, signed a prepared acknowledgement, which stated,

"The City . . . and Agency . . . acknowledges notice of the potential conflict . . . and in the event such conflict ever arises, it will waive such conflict and permit Beryl Weiner and [the firm] . . . to continue to represent Irving Moskowitz . . ."[314]

First, the acknowledgement does not appear to automatically waive any actual conflict. Rather, Oliva appears to have agreed that upon being further informed explicitly of an actual conflict, he would review the matter and execute an informed waiver. The JLAC staff has no evidence of any such notification, despite the potential conflict noted.

Additionally, the Agency Board, itself, does not appear to have been notified of either an actual or potential conflict and having no disclosure, never took action. Furthermore, JLAC has no evidence that Oliva, as a staff member to the Agency, was ever granted authority to take any action as serious as waiving a conflict of interest. In fact, it appeared that staff authority was intentionally limited, requiring staff members, including Oliva, to seek an Agency vote for less significant actions than waiving a conflict of interest. For example, the Agency frequently voted to authorize Oliva to communicate with property owners or the redeveloper on matters of importance.[315]

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312 DDA

313 ibid

314 ibid

315 Documents and minutes obtained from the City and Agency

In another incident where subsequent Executive Director, Chaidez, signed a letter agreement without bringing the matter before the Agency board, the Agency formally rescinded the item, stating that Chaidez was acting without authority.[316]

Even if a case is made that Weiner and his firm proceeded with dual representation on the belief that Oliva had the authority to waive a conflict of interest, clearly the document only applies to one of the four cases that Weiner and his firm litigated on behalf of the Agency.

Meanwhile, while Weiner and his firm represented the Agency, he continued to represent and advocate for the redeveloper on numerous matters adverse to the Agency. Further, Weiner marked his correspondence with the Agency "privileged and confidential" in an apparent effort to exploit his special counsel status on those matters where he was advocating for the redeveloper adverse to the Agency.[317] Those documents are normally public record.

Further, the JLAC staff found instances where the beneficiary of Weiner's representation was unclear. For example, Weinberger expressed pleasure to the Agency in a legal action that resulted in the failure of Lakewood Suzuki in its attempt to add Moskowitz as a party.[318]

Meanwhile, Weiner's firm simultaneously represented the Agency in lawsuits and refused, on behalf of the redeveloper, to pay the 50 percent of the costs incurred from those lawsuits. Further, while representing the Agency, Weiner instructed Chaidez,

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316 Documents on file

317 Documents on file

318 Documentation on file

during a deposition, to refuse answers to simple questions pertaining to the redevelopment. Questions included,

1) *"Does the Agency have a current redevelopment project?*
2) *Does the Agency have a plan, an implementation plan for the redevelopment project which encompasses the subject property?"*[319]

Although Weiner and his firm represented the Agency in four cases over approximately two years, he never discussed the conflict again. When prompted by incoming Agency counsel on or about March 4, 1996, Weiner again claimed that the Oliva-executed "waiver" applied to *"any and all other inverse condemnation cases that might be brought against the Agency."*[320]

Because there was no written full disclosure of real or potential conflict of interest to the Agency board and no informed written consent from the Agency Board, Selvin and Weiner and Weinberger may have violated the State Bar Rules of Professional Conduct, which would have required the firm and Weiner to avoid the dual representation.

Pursuit of a Second Amendment

A year and six months had passed since the signing of the DDA, and the redeveloper still had not initiated action toward a redevelopment.

Meanwhile, on February 27, 1995, Weiner sent a letter marked *"privileged and confidential"* to Oliva, claiming that

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[319] April 16, 1996 deposition of Leonard Chaidez
[320] March 4, 1996 letter from Weiner to Sylva

"delays caused by events beyond the control of the Redeveloper . . . continue to date, thereby preventing the redeveloper from obtaining exclusive possession of the property."

Weiner blamed the Agency, due to another development, for "*exacerbating*" his relocation efforts with the tenant, Plowboys, and urged the Agency to "*reconsider"* the other redevelopment. He further claimed that a development in the adjacent City of Long Beach was negatively impacting his client's development.[321] Moreover, although the redeveloper had requested continued possession by the tenants, Weiner apparently blamed the Agency.

By June 22, 1995, Weiner proposed additional amendments to the DDA:

1) Extending the deadline for the redeveloper
2) Adding five more parcels of land into the site
3) Obligating the Agency to use its power of eminent domain to acquire the additional parcels upon notification by the redeveloper. The redeveloper would pay all of the acquisition costs.[322]
4) Eliminated the redeveloper's obligation to provide a food and drug establishment to that of simply providing *"a commercial development*."[323]

Agency staff could find no justification for the proposed changes and believed that Agency action on the proposal could violate the Community Redevelopment Law because it substantially changed the consideration that formed the justification for

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[321] February 27, 1995 letter from Weiner to Oliva

[322] Amendment No. 2 faxed from Selvin & Weiner to Oliva

[323] Amendment No. 2 to DDA No. 93-26 marked by fax stamp 6/22/95 16:07 from Weiner

approving the DDA. The Agency had subsidized the agreement based on the belief that the redeveloper was going to deliver a "food and drug" retail establishment.

1) The amendment proposed to delete all obligations of the redeveloper to provide a Smith's Food King or equal and to provide a commercial tenant of approximately 65,000 square feet and only required the redeveloper to build commercial uses consistent with the zoning ordinance.
2) The proposed amendment allowed for the redeveloper to delay delivering the site and elevation plan until months after several additional parcels to be designated by redeveloper was conveyed to the redeveloper. It allowed the redeveloper to decide when the last parcel was to be acquired and provided no deadline.
3) The public purpose for invoking the power of eminent domain appeared to be for the benefit of the redeveloper and didn't set forth the public purpose for which it was being acquired
4) The Agency had not undergone the mandated process, including a resolution of necessity and public hearing process, per Health and Safety Codes section 33430 et seq.
5) The Agency did not have the funds to purchase additional property and the amendment had not specified the redeveloper's responsibility clearly enough.
6) The amendment was premature, as there had been no discussion or notice pertaining to acquisition of those parcels.[324]

In conclusion, Ritchie opined during a public meeting that the appropriate action would be to file the request and obtain staff analyses.[325]

At the June 27, 1995 Agency meeting, the Agency requested justification for the amendments, particularly the addition of more property into the site and the continued delays.

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[324] Various Agency documents

[325] Agency meeting minutes

There, Weiner mischaracterized the project and made patently false statements while continuing to blame outside circumstances for his client's failure to perform.

Member Robert Prida asked,

> "*Why would you want the gas station and the other property? What does it have to do with this development if it was going?"*

Weiner responded,

> "*It may or may not. What we're trying to do is assemble the entire parcel . . and [we don't] have the parcels of properties in between [the development] . . .that would make it difficult to a comprehensive development."*[326] [JLAC editorial: The properties were not *"in between"* the development but on the periphery of the "site"][327]

Prida continued,

> "*Why wasn't this brought to us on the first one instead of now? Why are you making the changes now . . . instead of . . . starting on the first one?"*

Weiner answered,

> "*Originally, the scope . . . we were going to put in a Smith's Food King on the site. Because of the changes that have occurred in the economy during the last year and a half, changes that have occurred in the Smith's plan . . . . More importantly, the impacted proposed power center in Long Beach has changed Smith's plans and made it more difficult to attract a food and drug center to this property."*

Prida stated,

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[326] June 27, 1995 audio tape of CRA public hearing

[327] Assessor's map provided by Los Angeles County Assessor to the JLAC

"I get the funny feeling . . I don't know -- that something isn't right about this. I can't explain it. It's just a gut feeling. I just have a bad feeling. It seems to me, all of a sudden, everything is . . . something isn't right. Either you know something that we don't know -- in the pages between the lines."

Weiner responded,

"Mr. Prida, with all due respect, there's nothing in between the lines. The proposal is that the redeveloper would pay 100% of all the costs for acquiring any of these properties. Clearly, for example, the Carey property, which is right in the middle of the development." [JLAC editorial: This is untrue] *"It would be very difficult to develop this parcel with one parcel standing there. We're trying to do is have optimal flexibility so we can assemble a complete commercial development for the entire site. We're not happy about the fact that the economy turned, and we're certainly not happy about the impact of . . . Long Beach. . .. beyond the control of the redeveloper. Nobody wants to make a long-term commitment. We're trying to make it as attractive as possible for large commercial tenants that will generate tax revenues for the city, which understand the City needs."*

Prida asked,

"How long have you been working on this particular property, about a year?"

Weiner answered.

"*Yes. A bit longer . . . We've all been affected adversely. It doesn't do us any good to be delayed in developing this property. We want to develop it as quickly as we can with a project that will generate the maximum revenue for the City . . . Changes in the economy . . . Long Beach. . . [There has been] this black cloud. [There is] Nothing that any one . . . developer can overcome."*

Prida responded,

"*I don't think Moskowitz is too worried. He's got the cash*."

Weiner repeated the idea that,

"*I want to reassure you there's nothing in between the lines here. [We want to develop] what would be beneficial for the developer and the City, [the] short term and long term concerns and needs of the City. . . [as a] collaborative effort. We consult with staff on a regular basis. . . . We'd all like to see it developed."*

Another member noted,

"It's been idle for so long. I don't see anything happening. And now you want to do this. It don't make no sense to me at all. To me, it's just like Prida says. 'He's holding out for something, and I don't understand it myself. He should have jumped on it a long time ago. . instead of . . idle. . . He could have done it. I know Smith's isn't coming here. You want more land, [but] I don't see why you can't start [developing] right now."

Rather than addressing the concerns, Weiner asserted,

"*We've been working to acquire this property. A lot has been acquired independently -- Cooper, 'Big O' property. [The] Mattress Factory was acquired from the city . . . not as part of the development plan. Over years, we've been working to assemble the properties, and it's not easy. It requires cooperation . . . as much as we're anxious to develop it."*

Weiner then told the Agency that the additional parcels were necessary because superstores such as Kmart, needed more acreage.

"We've spoken to companies such as Kmart. They would want to have 10-15 acres just for their store and for parking," said Weiner. [JLAC note: Moskowitz already had 19 available acres in the site] "*We can't say [to Kmart], 'we'll give*

you seven acres here and . . .[this much] over here].' We have to assemble one contiguous piece of land in order to provide that." [JLAC note: The 19 acres was contiguous]. *"We're trying to put together a development with many components, not simply one tenant. . . . While I understand and [am] sympathetic your frustration, we're equally frustrated because it costs us money to maintain, carry and hold this property with no return."*

The member repeated the notion that

"It's been idle too long. Something should have happened a long time ago."

Weiner continued,

"There's nothing we can do about the past. We're here in the present and working to make this happen in the present. When a large tenant such as Kmart comes to us and says 'we need X number of acres,' we can't provide them with assurance that we can deliver that. Unless we can provide them with assurance that we can deliver that, then we're stuck. Similarly with the limitation of having a food and drug retailer -- Kmart is not a food and drug retailer. I'm not even sure at this stage the city would want another food and drug retailer. . . It doesn't generate the kind of sales tax revenue that the City would be looking for. Kmart wouldn't qualify as an example as a food and drug retailer. <u>That's why we're requesting this</u>. So we can proceed as expeditiously as possible. We were pushing a Smith's. . . . While negotiations were going well, there were factors that had nothing to do with us that resulted in their simply changing their mind."

Ritchie articulated a number of concerns, including,

"Their obligation is reduced from Smiths or equal . . . to only come up with . . . commercial uses. . . It could be small; [it] could be anything. . . . The developer could delay that indefinitely. He could wait 10 years. The next most troublesome provision is the one that says that they will be relieved of their obligation[to provide a specific food and drug facility] . . . [The] problem is when you made the original agreement, you agreed to put approximately $3 million into that project.

You assembled, to date, the parcel, of $6 million in value, of which the Agency has paid three plus your half of the relocation. In exchange for that promise, the Agency [thought] the developer would produce these kinds of commercial uses. Now the developer says he can't do that any longer. If you simply delete those things, you've in effect, sold a $6 million parcel to the developer for $3 million, and it's subject only according to the zoning ordinance, which is commercial. Some may think that's a waste of public funds."

Prida added,

"I agree with that."

Ritchie recommended an alternative,

"Really look into it carefully and determine what is holding up the developer and . . . consider some kind of agreement [to] postpone his obligation to perform but maintain your hold over the developer's . . . commitment to produce [what] you want. Negotiate and see if you can come up with something that you all agree with. You have to make some pretty good findings [about] why the consideration that you bargained for originally is now gone. Giving the redeveloper the property free and clear of any obligation, . . . it would be better to keep your leverage . . . until you can negotiate something satisfactory."

Weiner continued trying to persuade the Agency. He said,

"First of all, we're not asking the Agency to advance one dime for the acquisition of these properties. Number two, there's no question that in doing the development that some or all of these properties may be necessary. All we're asking for agency is we're given an opportunity to designate those parcels that would be included in the development. It may be all of them . . . It may be that we don't need all of them. We're simply asking the agency for the flexibility. Thirdly, and perhaps more importantly, we're not asking for an indefinite delay in anything, [or] anything open ended, 10 years or anything like that. We're asking that the DDA be modified to enable us to attract the kind of development that the

City wants . . . We're not simply assembling together a small group of stores [or] anything that the city doesn't want and need and wouldn't be beneficial for the city, and I frankly take issue at the suggestion [that] the developer [will] hold it for 10 years. We have a very large investment in this property. It's larger than the $3 million has in this property. And we're intent on creating a development that the city wants as well."

Navejas had another concern.

"*What is the possibility of developing Plowboys at that location?"*

"*It's a possibility,"* Weiner answered. *"We've been involved in negotiations. There have been no commitments or agreements on the part of plowboys at this time,"* he said. *"[It's] in the works. "*

Navejas asked about the condemnation.

"*Why do you want that clause in there?"*

Weiner answered,

"The City has the ability to acquire the property and sell it to the redeveloper. We don't have the ability of forcing any of these people . . . to sell the property to us."

Ritchie explained that the Agency may expose itself to additional inverse condemnation lawsuits. He said,

"*You can't decide today if you're going to condemn somebody's property a year from now, or among other things, you've committed inverse condemnation, destroyed the value of their property. Nobody will buy it because you made a public announcement that you're going to take it and you don't take it. They're entitled to sue you for damages for the public not wanting to touch it. This agreement wouldn't protect [the Agency]. Then there are the other questions."*

Weiner explained that

> *"the original DDA, provides that the redeveloper acquires the property when the agency would acquire the properties."*

But he made the false representation that

> *"That's what occurred in the acquisition of the prior properties. That would occur here. It's expressly set out in the original DDA."* [JLAC note: The redeveloper waited seven months after the Agency made the original acquisition to purchase the property from the Agency, leaving them extending the additional $2.75 million for that period of time]

Navejas concluded her thoughts.

> *"The council members have voted in good faith in trying to develop this as expeditiously as possible. But because of all the circumstances that none of us had control of . . . I would request that we would amend some of these items on the agreement. Could everybody work together to get these moving in a positive direction instead of leaving the land completely undeveloped?"*

But Chair Robert Canada [Canada] was still concerned about the lack of a deadline.

Weiner said, *"Mr. Canada, we're not asking for anything open ended."*

Another Member replied, *"To me this is open ended*."

Weiner responded,

> *"We're willing to be more specific if it's the desire of the agency to be more specific. Certainly we aren't asking the agency to expose itself to any economic liability."*

Canada continued,

> *"I voted for Dr. Moskowitz to acquire this property. [But] I thought that by this time that this property would be under development. I really did."*
>
> *"It would have been had these factors that I indicated not occurred that are totally beyond Dr. Moskowitz's control,"* Weiner said.

Canada insisted having *"the property [as it is now] developed*."

The Agency directed its staff and a two-member ad hoc committee to negotiate and better define terms and conditions for the second amendment.[328]

The following day, Oliva requested that the committee members contact the staff quickly as the issue was *"extremely important*."[329]

By the next Agency meeting, the committee had not been *"available to meet, and staff has not been able to contact . . . the redeveloper or his representative,"* according to a memorandum from Oliva to the Agency. If the redeveloper was not *"understanding,"* [of the agency's desire to consider the item], Oliva recommended that the Agency simply place the item on the agenda in order to give its staff additional input. He suggested a *"temporary resolution"* -- to reasonably *"extend the timeline of the . . . Performance Schedule."*

The redeveloper agreed to eliminate from the amendment the requirement that the Agency acquire three out of five of the proposed additional parcels from the amendment. The amendment, however, continued to require a public hearing and

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[328] June 27, 1995 audio tape of CRA public hearing

[329] June 28, 1995 memorandum from Oliva to Rene Flores and Kathy Navejas

1) Created an ongoing obligation that could create exposure for inverse condemnation suits, and
2) Eliminated an obligation to acquire the property if the redeveloper advised the Agency to defer, delay or eliminate acquisition.

Agency staff prepared a summary report, stating that the redeveloper had requested the change due to his inability to provide the food and drug retail development. The amendment, according to the report, would have no additional cost to the Agency.[330]

Weiner attempted to dissuade the Agency from holding the required public hearing, arguing that it was unnecessary because *no further tax increment funds* would be spent. He further attempted to relax opposition by adding an April 1, 1996 deadline for the Redeveloper's delivery of *"architectural renderings for the overall development."*[331] (JLAC staff note: This was also the deadline to receive consideration for grandfather status under the Isenberg bill, Health and Safety Code section 33426.5. It is unclear if the redeveloper chose that date as an attempt to beat that "grandfather" deadline while still maintaining that the development was a retail facility).

Weiner further argued that the change in scope was better for the City.

> *"Because of the City's current economic problems, it is no longer either feasible or desirable for the development to be a food and drug retail development. Even if the redeveloper were to build such a project, such a development simply does not generate the amount of sales tax revenue or tax increment that the City now needs."*

Moreover, Weiner claimed that

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330 Summary Report to proposed amendment No. 2 to the DDA
331 July 17, 1995 letter from Weiner to Ritchie

> *"Moskowitz has always more than fully complied with all of his commitments to the City and to the Agency . . . His projects have not been underdeveloped nor have they been poorly planned!"*

And finally to address the fear that Moskowitz would build a *"five and dime store,"* Weiner responded,

> *"That suggestion is simply absurd . . . Why in the world would any sophisticated developer (such as Dr. Moskowitz) spend the multi-millions of dollars that the Redeveloper has already spent on this project simply to build either one or a string of five and dime stores?"*[332]

Ritchie's concerned weren't appeased, Oliva reported. However, Moskowitz, himself, would appear before the Agency in order to respond to questions, he wrote.[333]

A notice of public hearing was ostensibly posted for publication on July 27 and August 10, 1995.[334] Meanwhile, on August 9, 1995, the Agency terminated Oliva's employment.

On August 15, 1995, the Agency and City held a public hearing and upon finding that the Amendment is of *"overall benefit to the redevelopment of Project Area No. 1"* (the entire city), simultaneously passed parallel resolutions, approving the second amendment to the DDA on August 15, 1995. They authorized the amendment at the following August 22 meeting.[335]

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[332] July 17, 1995 letter from Weiner to Ritchie

[333] July 18, 1995 memorandum from Oliva to Agency

[334] Notice of Public Hearing dated July 24, 1995

The Evolution of a Card Club: a City in Disarray

Two days after the signing of the second amendment, authorizing *a "general commercial"* development in place of a specific food and drug retail outlet and just weeks after Weiner stood before the Agency claiming he needed more land in order to solicit a Kmart, Chaidez informed the Mayor, Council and Charles Gomez (Gomez), acting City Administrator and acting Executive Director, of a *"matter of paramount concern to staff."*

> *"The City of Hawaiian Gardens has been notified that a measure to approve the establishment of a Casino operation within the City limits is currently being acted upon,"* Chaidez wrote. *"Staff is seeking direction from council to prepare for the measure and the possible approval from the electorate."*

Chaidez recommended that Council move to

> *"prepare staff for a measure or special election that would call to question the establishment of a casino operation within the City limits."*[336]

Chaidez had apparently prepared a resolution No. 128-95, which stated,

1) More than 15 percent of registered voters submitted a proposed initiative measure to approve card clubs.
2) The City Council had not voted in favor of the adoption of the ordinance
3) The City Council is authorized and directed by statute to submit the proposed measure to the voters.[337]

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[335] Resolutions No. 95-024 and 119A-95/August 24, 1995 letter from Gomez to Weiner
[336] August 24, 1995 memorandum to Mayor, council and Charles Gomez
[337] Resolution No. 128-95, August 24, 1995

Two weeks later, on September 14, 1995, Gomez submitted the ordinance to be placed on the ballot on November 21, 1995.[338]

The following day, Superintendent of the ABC Unified School District wrote to Mayor Robert Canada out of concern for the "*bad elements*" of a poker parlor and the effect the elements may have on the middle school students who attended the Ferris Fedde Junior High School, which was adjacent to the proposed "*overlay district*" as well as "*surrounding elementary schools and the Artesia High School.*"[339]

> *"The questions are concerned primarily with the safety and security of our students and the control of the streets and areas surrounding the proposed casino."*[340]

(The school district apparently later filed suit against the City on the matter.)

On or about October 10, 1995, the Committee Against Card Club Associations (CACCA or Committee) filed a complaint in the Los Angeles Superior Court against the City, Agency and redeveloper to prevent the construction of the card club, claiming, among other things, invalidity of the ordinance, violations of CEQA, the Political Reform Act and the DDA. The lawsuit

> *"attempts to put a stop to the illegal conduct of the developer and the bare majority of the Hawaiian Gardens City council that supports his efforts and seeks to restore a measure of fiscal and legal order to the city. Without the court's immediate intervention, the citizens and taxpayers of Hawaiian Gardens will be irreparably harmed as property owners and now designated card club licensee*

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338 September 14, 1995 memorandum from Gomez to "all department heads."
339 September 15, 1995 letter from Superintendent Thomas Riley to Mayor Canada
340 ibid

completes his scheme and proceeds with the construction of the massive facility, in flagrant violation of the law."[341]

The lawsuit alleged *"greed, corruption and collusion"* violations of the state and federal Constitutions, CEQA, the Elections Code, the Community Redevelopment Law, the Brown Act and the Political Reform act. The *"tale,"* according to the complaint, begins with

"the decades long scheming of a wealthy developer to establish a lucrative card club casino in the tiny City of Hawaiian Gardens . . . and ends with the developer's hand picked junta of city officials granting him an unlawful monopoly to build and operate a multi million dollar club."[342]

In sworn testimony during her deposition by Weiner, Navejas, a member of the Committee, called behavior by signature gatherers *"unprofessional.*" Further, the City Clerk, she said tried to

"stop the committee or proponents of opposition [from filing] papers of opposition. The city clerk [refused] to give public information without having to."[343]

When asked who behaved unprofessionally, Navejas responded,

"Yourself, Beryl Weiner."

"Who else?" he asked.

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341 First Amended Verified Petition and Complaint, Case No. BC136790, Superior Court, California

342 ibid

343 October 18, 1995 sworn deposition of Kathleen Mello-Navejas

"*Doctor Irving Moskowitz,*" she responded, and added, City employees Freddy Licon, former mayor Donald Schultze and city clerk/former city councilmember Dominic Ruggeri. Navejas elaborated on her assertion.

> *"The involvement of Al Lazar, the involvement of Bingo employees and the initiative gathering process [who were not] registered voters, the manipulation of city council members and city staff, the threats of de-funding to local nonprofit organizations if they did not support measure A, promises of funding to organizations that were in favor of Measure A. . . .*
>
> *"We felt Freddy Licon was being used by yourself and Dr. Moskowitz as a local resident and employee and a very aggressive young man, to do a lot of what I consider improper procedures on behalf of Measure A . . . Freddy's involvement while working for the City of Hawaiian Gardens and working on Measure A at the same time. . . We received complaints concerning fear tactics that Freddy was telling people we no longer would have a city or a police department and that the senior citizens on 226th Street would lose their housing. There would be no more housing for seniors, there would be no more police department, there would be no more City. I think Freddy was the voice piece on behalf of yourself in getting seniors, fearing the lack of services . . . And the other problem we had was that he was doing this while he was a city employee . . . We understood that he was instructed by you to sign the initiatives even though he did not actually circulate them. We were also told that they told residents that this was an entertainment center which had ten movie theaters and a restaurant and a hotel, and that is all they were told as they signed the initiative."*[344]

City employee and former mayor Donald Schultze, Navejas testified, was

> *"working on Measure A while working at the taxpayers' expense. I happen to be at some local businesses when he was calling people from City Hall."*

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[344] ibid

Similarly, the City Clerk was also

> *"working on Measure A while conducting city business and being paid by the City,"* she testified.

Further, the city withheld public information and coached city employees on permissible dialogue, according to Navejas's sworn testimony.

During the deposition, Weiner also asked Navejas about meetings she allegedly had with himself and Oliva, to which Navejas responded:

> *"I remember Dr. Moskowitz asking me to come to a meeting . . . Dr. Moskowitz asked me to come to those meetings.*[345]

He asked if she had encouraged gaming. She replied, *"no."*[346]

On November 21, 1995, with 57 percent of the City's approximately 6,000 voters, the City passed Initiative Ordinance No. 430 or Measure A, authorizing gambling.[347]/[348]/[349] Ultimately, Moskowitz and the Hospital Company spent $540,124 on the campaign, according to campaign disclosure statements. The majority of the funds were apparently spent employing or otherwise paying a number of City voters.[350]

On July 19, 1996, the Hawaiian Gardens Card Club, (for which Moskowitz is evidently the sole shareholder, officer and director), filed a cross complaint against

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345 ibid

346 ibid

347 November 21, 1995 Initiative Ordinance No. 430

348 First Amended Verified Petition and Complaint Case No. BC136790, Superior Court California

349 December 16, 1996 Los Angeles Times

350 February 5, 1996 Campaign Disclosure Statement for Ballot Measure Committee, United Citizens to Save Hawaiian Gardens, Yes on A, Sponsored by Cerritos Gardens General Hospital Company

CACCA and associated individuals and organizations, alleging, among other things, conspiracy, violations of RICO and the Political Reform Act, unfair competition and "*conducting a vicious campaign to dishonestly, illegally and improperly interfere with the rights of the citizens of the City to pass Measure A.*"[351]

Weiner attached several campaign pieces to the cross-complaint, including some that stated the following:

1) *"City Officials at Hawaiian Gardens City Hall confirm a report made by Chief of Police Walter McKinney that Casino Promoter Irving Moskwitz Casino Committee has hired 'known' members of the Mexican Mafia to harass intimidate and threaten residents to vote yes on Measure A."*[352]
2) *"Casino Promoter Irving Moskowitz Connected with Israeli Terrorists . . . According to the world renowned Israel paper "Forward," Irving Moskowitz has been funneling money from his bingo Club operation . . . into "terrorist activities in Israel by the right wing zealots opposing peace in Israel with the P.L.O."*
3) *"City Hall is full of Liars, Liars ad Liars. After years of mismanagement, Hawaiian Gardens city officials are crying wolf. They want voters to believe that unless they vote in favor of a casino, police services will be cut."*
4) *"Irving Moskowitz has hired a goon squad to harass, intimidate, threaten and shake down Hawaiian Gardens residents, business owners and church leaders. Moskowitz even has off duty Hawaiian Gardens police officials and three Hawaiian Gardens City Councilmembers on his payroll – Selling us out."*[353]

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[351] July 19, 1996 verified Cross-Complaint

[352] Attachment to Card Club cross complaint against Association titled "Hawaiian Gardens City Bulletin, Voting Publication for Special Municipal Election November 21, 1995

[353] ibid

Because the individuals in the Committee could not afford to defend the Card Club counter suit, they agreed to settle the lawsuit, they agreed to settle their disputes, which included dropping the challenge to Measure A.[354]

(Note: Weiner told the JLAC that Oliva had requested that Weiner change the scope of the development from a food and drug facility to a gambling operation. However, in sworn depositions, both Oliva and Navejas denied such allegations)

Disputes, Delays and Nonpayment

Throughout 1996, it appears that the redeveloper failed to initiate any redevelopment activity. Meanwhile, the Agency incurred a number of additional charges due to the inverse condemnation litigation by tenants against the Agency, and the redeveloper apparently refused to pay 50 percent of those costs. Meanwhile, Weiner's firm simultaneously represented the Agency in the lawsuits and refused, on behalf of the redeveloper, to pay the Agency its 50 percent.

Both Chaidez and Sylva sought to obtain the 50 percent of the costs incurred through communication with Weiner. But the Selvin & Weiner & Weinberger (SWW) attorneys, instead, requested payments from the Agency. For example, on May 7, 1996, Weinberger requested that Chaidez pay the entire bill for appraisals related to tenant, Lakewood Suzuki,[355] and on August 16, 1996, David De Castro (De Castro) of SWW

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[354] Documents on file

[355] May 7, 1996 letter from Weinberger to Chaidez

requested that the Agency assume costs related to fixtures that had belonged to Plowboys.[356]

Chaidez responded on September 25, 1996 that the redeveloper owed half of the expenses and informed Weiner that the Agency did not have the financial resources to fund the entire amounts requested by his firm.[357] Chaidez also attempted to collect the other funds due it from the redeveloper. He wrote,

> *"Your firm is delaying the submission of deposit by not acting on a process or a way to submit 50 percent of the redeveloper's portion of the settlement and offer . . . I have discussed this matter with you in the past because of my concern that delay in submitting these monies by the Redeveloper who is also represented by your firm, would compel the Agency to pay the entire 100% of any settlement, amounts which would seriously effect our already precarious cash flow situation. This is entirely unfair to the Agency and benefits the Redeveloper whom you also represent."*[358]

Weiner responded that the goodwill was under significant dispute.[359]

On November 22, 1996, Agency Counsel Julia Sylva (Sylva) filed Substitution of Attorneys, replacing Weiner's firm with her own firm in the litigation matters.

By December 16, 1996, Weiner claimed in a "*confidential*" communication to Chaidez that the CACCA litigation extended the time of performance by both the redeveloper and the Agency. However, the redeveloper intended to "*renovate*" the existing Plowboys Market to house a 60-table card club and casino, he wrote.[360]

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356 August 16, 1996 letter from David De Castro to Chaidez
357 September 25, 1996 letter from Chaidez to Weiner
358 October 30, 1996 letter from Chaidez to David De Castro
359 October 30, 1996 letter from Weiner to Leroy Anderson
360 December 16, 1996 letter from Weiner to Chaidez

In response, Sylva *"set the record straight,"* stating because the CACCA suit did not seek to prevent the use of the site, the time of performance had not been extended.[361] The CACCA only requested judgment preventing the operation of a card club casino within Hawaiian Gardens, she said. The delay, in fact, may constitute a "breach" of the DDA, Sylva wrote. Furthermore, the Plowboys renovation was not permitted under the terms of the DDA and *"can not be approved*." Rather, the redeveloper was to develop the site according to

> *"basic . . . plans, drawings and related documents approved by the Agency, in writing. The construction plans that the Redevelopers have submitted . . . are completely different,"* she wrote.[362]

On January 16, 1997, Leonard Chaidez again requested the developer's 50 percent share of costs resulting from the four judgments, which cumulatively totaled $2,261,864.95, according to a Chaidez's letter to Weiner. The developer's share, Chaidez wrote, amounted to $1,130,932.48.[363] At that time, the redeveloper had apparently only paid $60,000.[364]

In the following March, Weiner explained that *"Moskowitz has previously paid sums in connection with such costs,* though he did not specify an amount.[365]

By April, the dispute rose to new heights. Judgments were expected to reach $3 million, and the Agency had understood that the redeveloper would pay 50 percent of

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361 December 16, 1996 letter from Sylva to Weiner
362 December 18, 1996 letter from Sylva to Weiner
363 January 16, 1997 letter from Chaidez to Weiner
364 Documentation on file
365 March 3, 1997 letter from Weiner to Sylva

"all costs associated with relocation and goodwill." Sylva suggested arbitration or mediation to resolve any *"ambiguous and uncertain"* matters.[366]

> *"In past administrations the Board of Directors appear to have been uninformed and misinformed regarding material information. The process used in voting on material matters also appears to be lacking in full disclosure and understanding. . . We are now attempting to rectify this situation,"* she wrote.

The 1993 DDA, she opined, appeared to be

> "*An incongruous and hastily drafted documented. It was amended three times and still appears to be materially lacking in clarity and understanding between the parties."*[367]

In a bizarre reversal, after declaring that the redeveloper had breached the DDA and that the redeveloper owed the Agency over $1 million, Chaidez signed a letter agreement on July 8, 1997, which claimed among other things that

1) *"There exists no breach or default of the DDA by any party.*
2) *Total owed by Redeveloper: $87,042.21 . . . The redeveloper is indebted to the Agency in the sum of $19,486.05.*
3) *The DDA contains the entire agreement between the City and the Agency . . . and the Redeveloper . . . , regarding the subject matter of the DDA, that are not set forth in writing in the DDA.*
4) *The DDA has not been further modified or amended.*
5) *The DDA is valid and in full force and effect, is not ambiguous, nebulous uncertain or lacking in clarity or understanding and was duly adopted, agreed to and approved by the Agency, agreed to and approved by the Agency, after*

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366 April 21, 1997 letter from Sylva to Weiner

367 ibid

full disclosure of all material facts to the Agency and consultation by the Agency with its counsel.

6) *The Redeveloper is required to pay one-half of the sums . . . not to exceed 50 percent of the fair market value . . . and the Agency is responsible to pay any additional sums (i.e. inverse condemnation damages . . .) . . . Redeveloper is entitled to . . .$60,000 for payment on account made . . . to Lakewood Suzuki. . . . $8,194 for costs . . . in removal of hazardous materials . . . $41,628.20 for legal fees incurred by Redeveloper in gaining possession of the parcels . . . [totaling] $109,822."*[368]

Similarly, after twice expressing concerns about the conflicts of interest involving Weiner and his firm,[369] in a second letter of the same date, Chaidez signed a letter acknowledging fees, expenses and interest owed to Weiner totaling $674,376.77.[370]

While the original author of the Chaidez-executed July 8, 1997 letter has still not been determined, the JLAC staff has in its possession, near identical drafts of both letters that were transmitted from the Selvin & Weiner & Weinberger facsimile. The JLAC has found no explanation for Chaidez's reversed position. However, the Agency board formally rescinded Chaidez's July 8, 1997 letter and terminated his employment shortly thereafter. (Chaidez is currently the Mayor of the City and the Chair of the Agency).

Weiner, however, maintained that the Agency had approved Chaidez's July 8, 1997 letters. He enclosed a check amounting to approximately $19,480 as the balance of funds

[368] July 8, 1997 letter from Chaidez to Moskowitz

[369] November 7, 1996 letter from Weinberger to Chaidez

[370] July 8, 1997 letter from Chaidez to Weiner

due from Moskowitz and requested that incoming Executive Director, Jack Simpson, obtain Sylva's signature as acknowledgement.[371]

On September 5, 1997, Simpson informed Moskowitz that the Agency rescinded the July 8, 1997 Chaidez letter. The letter, he wrote, was signed and transmitted without the knowledge or authorization by the Agency Board.[372]

Weiner responded to Simpson's letter, claiming that

> *"The Agency Letter confirmed certain facts and understandings relating to the obligations of the parties under the DDA. The Agency Letter also requested that, if Dr. Moskowitz agreed with the understandings as set forth in the Agency Letter, he was to countersign the Letter and forward a check payable to the Agency in the amount of $19,486.05. Dr. Moskowitz countersigned the letter and forwarded a check…which…was deposited during the day on August 26 by the Agency before the Agency purported to "rescind" the agreement, which, by the way, purported to take place the evening of August 26, 1997. The check itself contains a notation that it was 'deposited pursuant to Agency Counsel advice… 'Accordingly, there is nothing which, at this point may be rescinded. There is no 'going back.' Moreover, the July 8, 1997 letter agreement is consistent with, and merely confirms actual rights and obligations under the DDA."*[373]

On August 3, 1998, Moskowitz approached Mayor/Chair Ralph Cesena (Cesena), and the Agency, requesting that the Agency re-ratify the rescinded July 8, 1997 letter agreement.[374] He reportedly appeared in person and told Cesena that the Agency was bound to pay the entire costs associated with the inverse condemnation lawsuits.[375]

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371 August 7, 1997 letter from Weiner to Jack Simpson

372 September 5, 1997 letter from Simpson to Moskowitz.

373 September 18, 1997 letter from Weiner to Simpson

374 August 3, 1998 memorandum from Moskowitz to Cesena and Agency

375 October 21, 1998 letter from Sylva to Weiner

On October 21, 1998, Sylva responded, explaining that the July 8, 1997 Chaidez letter

> *"makes certain legal conclusions that are not in accord with the office of Agency Counsel . . . It appears that the Redeveloper is proposing to amend the DDA."*[376]

Sylva advised Weiner that she had found at least three potential breaches of the DDA and a number of potentially unlawful aspects of the project, including violations of redevelopment law.

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376 ibid

The Loan Agreement

On March 8, 1999, City Administrator Anthony Lopez (Lopez) and Agency Chairman Ralph Cesena (Cesena) reportedly met with Moskowitz's representatives, Hirsch and Oren Ben-Ezra (Ezra). Hirsch and Ezra apparently alerted the Agency that

> "*construction cannot proceed in an orderly and efficient manner without the due, timely immediate performance by the Agency of the Agency's Responsibilities* (on and off-site improvements), according to a letter from Moskowitz to Lopez. "*Mr. Hirsch and Mr. Ben-Ezra requested that the Agency advise the redeveloper as to when and how the Agency plans to discharge its obligations under the DDA so that further delays in construction of the GGP and Card Club Facilities can be avoided. My representatives were informed . . . the Agency does not have the resources and funds to meet its obligations . . . and requested that I will help.*"[377]

A few days later, Moskowitz wrote to Lopez, acknowledging the meeting between the officials and his representatives. He noted that official and formal notice had not been received from the Agency of its

> "*current inability to timely perform its Agency's Responsibilities,*" However, "*due to the urgency of the situation, the fact that the Project is now being delayed as a result of the inability of the Agency . . . I feel compelled to immediately undertake a review of the facts,*" Moskowitz wrote.
>
> Moskowitz requested a meeting with the entire Agency and its senior staff.[378]

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[377] March 12, 1999 letter from Moskowitz to Lopez

[378] March 12, 1999 letter from Moskowitz to Lopez

Lopez alerted the Agency of the circumstances, enumerated the responsibilities of the Agency and recommended that the Agency authorize staff to advertise for bids and that the Board establish a two-member subcommittee to discuss financing options and scope of work.[379]

On March 31, 1999, Lopez wrote to Moskowitz, acknowledging Moskowitz's requirement of

> *"flexibility and need to enter into various business relationships with individuals or entities that are owned or controlled by you or members of your immediate family to foster and implement the design, construction and financing."*[380]

Meanwhile, Lopez informed Moskowitz that the Agency approved and consented to the following:

1) Moskowitz may assign a portion of his rights and interest in the site and the DDA to any corporation or entity that Moskowitz or his family (collectively a "permitted party") retain a controlling interest.
2) Moskowitz may lease a portion of the property to a permitted party.agreement to amend and or modify certain lease agreements;
3) Moskowitz may lease equipment for a temporary membrane.
4) Any permitted party may or lessee may "for any reasonable purpose necessary" to "implement or foster the project or any portion thereof."

On July 30, 1999, Myron Meyers (Meyers), attorney for Moskowitz transmitted a revised formula for the loan agreement between Moskowitz's Card Club and the City and Agency. Allegedly, the Mayor and Mayor Pro Tem had already agreed to the terms during a meeting with Meyers. The formula stated that until monthly gaming revenue

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[379] March 17, 1999 staff report from Lopez to Agency

reach $4 million, the Card Club will receive an "offset" of 15 percent of the monthly license fee in excess of $200,000. Once the revenues exceeded $4 million in a month, the Card club would receive an offset of 17.5 percent of the monthly license fee in excess of $200,000.[381]

On September 2, 1999, the City passed Resolution No. 92-99, approving the financing agreement between the City and Dr. Moskowitz, whereby Moskowitz loan will loan the City $3.5 million for the Agency to pay for on-site and off-site improvements. This copy has tracked changes in it. The agreement recites that

> *"Under the DDA and in order to induce and encourage the Developer's further investment in the Development, Agency has the obligation…to provide and pay for on-site and off-site improvements…. public improvements…which the City will own and which will be of widespread benefit to the city and the residents and visitors to the City. Completion and operation of the Development will benefit the City, by, among other things, generating employment and license fee revenues to the City."*

Anticipated cost for on-site work is $2.3 million. Anticipated off-site work costs $1.2 million.

Pattern and Practice of Developer's Representative/Attorney

The redeveloper's attorney, Weiner, has repeatedly misled the City and Agency about his clients' intent and has mischaracterized a number of facts to the benefit of his clients. As illustrated in this report, the JLAC staff has discovered quite a number of

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[380] March 31, 1999 letter from Lopez to Moskowitz

[381] July 30, 1999 letter from Myron Myers to Agency

statements made by Weiner that were in contradiction to the facts or the true intentions of his clients. Weiner made patently false statements to the Agency, the City, and the JLAC.

Concerning a theft of personal property belonging to a former tenant of real property that had been acquired by Moskowitz in the "Gateway Project" of Hawaiian Gardens, Weiner even made contradictory statements to the Los Angeles District Attorney (DA) and the Superior Court. Weiner told the DA that the persons who removed the property

> "*had permission from the owner of the items (Dr. Moskowitz) to remove the items they took from the property."* -- January 16, 1997, Weiner to District Attorney:

However, on August 12, 1998, Weiner told a Superior Court Judge,

> "*With respect to the property that was removed by Mr. Licon . . . there is no evidence that Dr. Moskowitz directed, authorized, sanctioned or permitted anyone to remove anything."* August 12, 1998, Superior Court, Reporter's Transcript of Proceedings

Finally, Moskowitz, himself, declared under penalty of perjury in a January 28, 1998 declaration,

> "*At no time did I, nor anyone on my behalf, authorize or consent to anyone removing anything from the Plowboys building."*

Similar patterns emerged throughout the dealings with the public agencies in Hawaiian Gardens and the JLAC.

Interaction of Redeveloper and his Counsel with the JLAC

The JLAC staff began a preliminary inquiry into the "Gateway Gardens" redevelopment in the City of Hawaiian Gardens on October 28, 1999. On or about February 15, 2000, a governmental advocate for the redeveloper, Irving Moskowitz, contacted legislative staff of the JLAC Chairman Scott Wildman (Wildman) and inquired about the investigation. On the same day, the redeveloper's attorney, Weiner contacted a JLAC committee consultant (staff). At that time Weiner insisted upon a meeting with the staff, falsely accused the staff of releasing investigative materials to advocacy groups opposed to Moskowitz' gambling operations in the City and insinuated that Chairman Wildman was promoting their agenda.

Staff invited Weiner at that time to submit a written chronology of the relevant events and supporting documents, but Weiner offered instead an oral chronology and declined to allow recording of the telephone conversation. Although staff informed Weiner that the inquiry was still in preliminary stages, Weiner's request for an immediate meeting was honored and took place on February 25, 2000, in Wildman's Glendale District Office. Prior to the meeting Weiner provided a letter of opinion and select documents, including one document from 1989 and the remainder from 1992 and 1993.

At the meeting of February 25, 2000, Weiner sought internal information pertaining to the investigation's direction and findings and the identities of informants. Weiner's interview was recorded and he also requested a copy of the audio cassette, which staff agreed to provide him.

On April 4, 2000, the JLAC sent a written request to Weiner for both a written chronology of events and documents pertaining to Weiner's simultaneous legal representation of the Agency and redeveloper. Weiner responded with a written acknowledgement and a commitment to respond to the JLAC after May 8, 2000. In the same letter, Weiner complained that the JLAC staff had not yet supplied him with a copy of the audio cassette of his February 25 interview.

The documents that Weiner had committed to provide by May 8 were never provided to the JLAC. On May 8, 2000, the JLAC sent another request to Weiner provide the information previously requested in the April 4 letter and to respond to seven questions concerning the "Gateway Gardens" redevelopment and his dual legal representation of the Agency and the redeveloper. The JLAC simultaneously sent a letter to the redeveloper, Irving Moskowitz, requesting an interview and included a copy of its correspondence with his attorney Weiner.[382]

On May 15, 2000, Moskowitz replied,

> *"I would appreciate that, as you have done in the past, all requests in connection with Hawaiian Gardens Card Club, Inc., Cerritos Gardens General Hospital Company, The Irving I. Moskowitz Foundation, or myself, be sent directly to Mr. Wiener . . . I am advised that Mr. Weiner . . . requested . . . a copy of the tape recording of his meeting . . . Weiner did not receive any response . . . and . . . he still has not been provided with a copy of the tape."*[383]

On the same day, Weiner wrote,

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[382] April 4, 2000 letter from Wildman to Weiner

[383] May 15, 2000 letter from Moskowitz to Wildman

"I regard cooperation as a two way street. In that regard, I have fully cooperated with the JLAC . . . Because the JLAC has failed to keep its commitments to me, I will not be responding to any further communications or requests from the JLAC. Should the JLAC decide to keep is promise, I will reconsider my position."[384]

On May 17, 2000, the JLAC chair responded,

"Please be advised that the Joint Legislative Audit Committee (JLAC) will be releasing a set of findings pertaining to the development on Carson and Pioneer in the City of Hawaiian Gardens on or about June 23, 2000. We are still awaiting your response to our inquiry and materials requested on April 4 and May 8, 2000 and are disappointed that your client, Mr. Moskowitz, has declined to answer questions directly. Per your request for interview materials, please be advised that the JLAC will provide the appropriate interview materials at the conclusion of the investigation."[385]

On May 18, 2000, Weiner sent an E-mail to the City's and Agency's executive staff, informing him that he had sent "two" letters to the JLAC. He stated,

"At this point, Scott Wildman, who purports to be the 'chair' of the JLAC has no idea what the 'rogue' investigator, former newspaper reporter Maria Armoudian (25-30 year old 'kid' – not trained as a lawyer) is doing. She is sending these letter out herself, not Wildman, although the letter contain a 'signature of S Wildman . . ."[386]

On May 25, 2000, Weiner sent a five-page letter to Wildman, stating,

"There is nothing further for me to do in responding to your requests until you provide me, as your staff promised, with a copy of the tape recording . . . On March 14, 2000 . . . Ms. Armoudian could not tell me when she would be

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384 May 15, 2000 letter from Weiner to Wildman

385 March 17, 2000 letter from Wildman to Weiner

386 May 18, 2000 email from Weiner to Lopez

providing me with a copy of the tape recording . . . When you choose to respond to my letters, and provide me with the tape recording . . . I will respond substantively to the requests you have made of me. It is regrettable that the preliminary report of the JLAC's investigation will be published on June 23rd without the benefit of all of the relevant facts and documents, information that the JLAC does not now have, and that we would have been willing to provide to the JLAC. Had you availed the JLAC of that opportunity, it would have resulted in a more accurate and complete report of the facts and circumstances reflecting the reasonableness and appropriateness of the actions taken by the Agency in connection with its agreements with the Redeveloper."[387]

[387] May 25, 2000 letter from Weiner to Wildman

Conclusion

While limited in scope to the Hawaiian Gardens redevelopment project now known as the Gateway Gardens Project, this report of the Joint Legislative Audit Committee illustrates a gross abuse of redevelopment for the benefit of a single private interest. It demonstrates how a cash-strapped redevelopment agency with the hopes of eradicating blight in its impoverished small town fell victim to an aggressive and litigious redeveloper and his attorney.

Although the JLAC is still calculating inappropriately allocated public tax dollars, the total public funds allocated for the project appear to have exceeded $12 million, including improvements that the Agency intends to subsidize.

Because this redevelopment appears to be in violation of a number of laws, the JLAC believes that the entire subsidy, including all legal fees, should revert back to the Agency from the Redeveloper. In light of the violation, the Agency has no authority to commit further redevelopment subsidy to the project.

The Hawaiian Gardens redevelopment illustrates a need for rigorous redevelopment reform and oversight in order to protect the health and welfare of Californians.

Note: This report of the Joint Legislative Audit Committee is primarily an investigation of the issues surrounding the development agreement. Other issues that have been mentioned in this report may still be under review by the JLAC.