

COPY

MEMORANDUM

TO: Orville Barnes, Council Member
Roberta Greene, Council Member
Jeff Colliton, Council Member
Bill Pupo, City Manager
Mike Adolfae, Director, Community Development
James C. Sloane, City Attorney

FROM: Stanley M. Schwartz, Assistant City Attorney

SUBJECT: February 2, 1998 Conversation with Paul Webster

DATE: February 2, 1998

The following summarizes issues HUD would like resolved prior to making the Section 108 loan:

1. The Developer Must Be Responsible to Pay the Promissory Note. If the promissory note is payable only if there are sufficient revenues, then Mr. Webster considers this a "loophole". To solve this issue, there must be a promise to pay from the developer with the recognition that the City has priority in certain revenue streams.
2. Conditions Precedent to Disbursement of Funds. The loan agreement shall provide before any disbursement of proceeds that the City must be assured, in writing or through documents, that private financing for the project is in place, the parking garage financing is in place and that the connection fees are evidenced by promissory notes from various businesses and entities.
3. Collateral Appraisal. The value of the Nordstrom building, plus the annual CDBG block grant program allocation, plus (presumably) the PDA ground lease payments must equal some amount greater than the principal amount of the loan. If this loan to collateral value coverage is insufficient, the gap will be filled by the developer delivering a letter of credit or other form of security.
4. Assignment. The promissory note may not be assigned without the City's and HUD's approval.
5. Prepayment of Note. The note may not be prepaid and it must be outstanding for ten (10) years. The note can be defeased by the City if the City purchases government obligations which pay interest in an amount equal to the interest rate on the note.

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(If developer wants to prepay, then we should have a prepayment penalty which covers the City's costs and defeasance including investment.)

6. Funding of Loan. For the purposes of funding, we need to inquire of the developer whether the Section 108 is going to be construction or take-out financing.

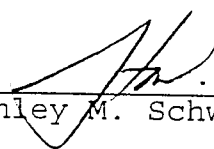
7. Document Mistake. The Assignment of Lease and Cash Collateral must reflect the signature of both Citizens Realty and Lincoln Investment.

8. NEPA. HUD will not release any funds until the RROF is signed by the division office in Seattle. If environmental litigation is pending, the City must opine that there's no litigation affecting the validity of the notes issued by HUD.

(For City purposes, we may want to seek indemnification or some other type of agreement from the developer in the event the litigation affects the issued notes.)

9. Financial Analysis. On page 11, third paragraph of the financial analysis provided by GU, HUD wants to know from Mr. Robideaux what the "sources" of the free parking program are.

The above reflects my notes and the issues raised by Mr. Webster.



Stanley M. Schwartz

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