

**REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

04 SEP -1 PM 5:04

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: September 14, 2004

RE: **RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND APPROVE TRANSFER OF FEE INTEREST IN 2150 FRANKLIN STREET, OAKLAND (FORMER SITE OF THE BERMUDA BUILDING) AND TRANSFER EXISTING DISPOSITION AND DEVELOPMENT AGREEMENT FROM OAKLAND BERMUDA, LLC TO PRENTISS PROPERTIES ACQUISITION PARTNERS, LP**

SUMMARY

The purpose of this report is to request that the Redevelopment Agency approve a resolution authorizing the Agency Administrator to negotiate a transfer of Oakland Bermuda, LLC's ("OBL") fee interest in 2150 Franklin Street, Oakland (the "Property") to Prentiss Properties Acquisition Partners, LP ("Prentiss"), and also transfer the Agency's Disposition and Development Agreement ("DDA") with OBL to Prentiss. The Property is the site formerly occupied by the Bermuda Building. The terms of the DDA permit a transfer of the Property to qualified third parties subject to Agency approval, which may not be unreasonably withheld. Charles Pankow, who effectively owned OBL, passed away some months ago and his estate is liquidating much of his holdings, including OBL.

FISCAL IMPACT

There is no direct fiscal impact to the Agency associated with approval of this resolution. However, approval of the proposed transfers will facilitate development of an unutilized vacant property which is expected to generate property tax revenues for the Redevelopment Agency and the City of Oakland. Completion of the proposed development is also expected to have a positive economic impact on the surrounding neighborhood and encourage further development activity.

BACKGROUND

The Agency acquired the Property at 2150 Franklin Street by eminent domain. The Property was occupied by the earthquake-damaged Bermuda Building, which represented a significant health and safety hazard to the surrounding neighborhood. In August of 2001, the Agency entered into a DDA with OBL that provided OBL with a leasehold interest in the Property (because the Agency had not completed the eminent domain process and did not yet have full title to the Property). OBL paid \$3.6 million for the Property. The DDA required OBL to demolish the existing structure on the Property and make all reasonable efforts to develop a 12-story office

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building by December 31, 2005. OBL demolished the Bermuda Building on schedule, but was unable to obtain financing to initiate construction of the required office building because of the severe economic downturn in the region's office market. The DDA also permitted OBL to take full title to the Property after the Agency completed its eminent domain litigation and obtained absolute ownership. The Agency acquired full title to the Property in March 2004 and transferred title to OBL as specified in the DDA on July 29, 2004.

OBL is a limited liability corporation (LLC) that was owned and controlled by Charles J. Pankow. Mr. Pankow also presided over Charles Pankow Builders, Ltd. ("Pankow"), a major general contractor in the Bay Area and California. Ellis Partners (Ellis) was to coordinate the development process and act as asset manager for OBL. Another legal entity, Webster Street Partners LP, which is also controlled by an affiliate of Pankow, owns the 20-story building at 2101 Webster, which is immediately adjacent to the Property and part of the proposed sales transaction.

The DDA also stipulated that if OBL was unable to complete construction of the new Class A office building by December 2005, then they would have to make liquidated damages payments to the Agency. These payments would be in an amount of \$300,000 per year with total payments not to exceed \$1.2 million, as illustrated in Table 1 below:

Table 1.
Schedule of Payments to Agency

Year New Building is Not Completed	Required Payment to Agency
2005	\$300,000
2006	\$300,000
2007	\$300,000
2008	\$300,000
2009 and afterwards	No additional payments

This "liquidated damages" requirement would still be effective upon the sale of the Property to Prentiss. However, the DDA also stipulates that the developer may request an extension of the required date on which construction is to be completed by invoking certain Force Majeure (unavoidable delay) provisions in the DDA, which include the general unavailability of construction or permanent financing for projects similar to the building anticipated at the Property.

Lastly, the DDA also gives the Agency the right to repurchase the Property commencing in 2006 and ending in 2009, if OBL or, if approved, Prentiss does not complete development within the stipulated time. In the event that the Agency opts to exercise its right to repurchase the Property, it would have to pay the purchase price of \$3.6 million less any accrued yearly payments of \$300,000 that have not been made to the Agency. If OBL makes all payments, Agency must also pay OBL's cost of demolishing the Bermuda Building, to a maximum of \$2.5 million, in

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order for the Agency to exercise its option. This repurchase provision would remain in the DDA after a transfer of the Property to Prentiss.

KEY ISSUES AND IMPACTS

The issue is whether to approve a transfer of the Property and the DDA from OBL to Prentiss. The DDA with OBL provides in relevant part at Section 11.3:

In approving Transfers, Agency shall not unreasonably withhold consent. Agency's basis for approving a Transfer is related to whether or not the Transfer is being made to an entity or individual that meets or exceeds the standards of expertise and financial capability of Developer.

Prentiss and OBL have an agreement to purchase the Property and the adjacent 20-story office building at 2101 Webster Street. The purchases of the two properties are each contingent upon the other. Prentiss advises that it is looking at plans to develop the Property into an office building to complement the 2101 Webster Street property. OBL and Prentiss represented that their purchase and sales agreement requires the transaction to close by October 1, 2004.

Staff reviewed financial and other materials presented by Prentiss including:

- financial reports and tax returns
- a company profile
- entity formation documents
- materials on Prentiss' principals

Staff has found Prentiss to be more than capable in terms of their financial capacity and expertise to develop and operate a commercial building on the Property.

Prentiss' parent, Prentiss Properties Trust ("Prentiss Properties"), is a major United States real estate investment trust and developer. It is self-managed in that it provides all the management and maintenance services required by its properties through its own property managers, leasing professionals and engineers. Prentiss Properties owns, manages, leases and develops primarily office properties throughout the United States and is publicly traded on the New York Stock Exchange.

Prentiss Properties and affiliates currently own 136 properties containing approximately 18.5 million square feet: 16.2 million of office properties and 2.3 million of industrial properties, with a focus on six core markets, including Northern California. Prentiss Properties was worth \$2.9 billion as of March 31, 2004.

Prentiss Properties is committed to the Oakland market, and currently owns several of Oakland's signature Class A office buildings: Lake Merritt Tower at 155 Grand Avenue, the Ordway Building at 1 Kaiser Plaza, and the World Savings Center at 1901 Harrison.

Prentiss Properties operates principally through its operations partnerships with Prentiss Properties Acquisition Partners, L.P. and two management service companies, Prentiss Properties Resources, Inc. and Prentiss Properties Management L.P., and their respective subsidiaries. Through its management subsidiaries, Prentiss Properties manages approximately 29.3 million square feet of office and industrial properties owned by Prentiss or third parties. Prentiss Properties has won a number of awards, including the CEL-BOMA Customer Service Excellence Award for seven years in a row.

Unlike many of the entities that seek to develop Agency-owned property, Prentiss Properties Acquisition Partners, L.P. is not a single-purpose entity. Prentiss represents that this entity owns the majority of Prentiss Properties' real estate holdings—including the Ordway Building, the World Savings Building, and Lake Merritt Towers in Oakland.

Although OBL was a single purpose entity, the Agency did not require additional security or financial commitments from Pankow or Ellis because both Pankow and Ellis were financially stable, locally based, and already active in Oakland. Further, OBL's purchase of the Property at \$3.6 million was at least its market value and OBL's commitment to remediate all hazardous materials and demolish the Bermuda Building at a cost of approximately \$4.5 million saved the Agency significant funds if it had to demolish the blighted structure on its own. Hence, the Agency achieved one of its principal objectives without requiring additional security or other financial commitments from Pankow or Ellis.

Because of Prentiss' financial strength, reputation and current holdings in Oakland, staff does not believe that any changes to the DDA to require additional security or financial commitments from Prentiss are necessary for the Agency to approve the transfer of the Property and the DDA. Staff believes it is in the Agency's best interest to have Prentiss take over the Property. Staff does not want to complicate the contemplated transfer in light of Prentiss' substantial real estate development and management experience and commitment to Oakland. OBL is no longer a viable entity and cannot pursue the development of the Property.

Prentiss has brought up the subject of amendments to the DDA, but staff discouraged Prentiss from further pursuing such amendments at this time. They are not before the Agency in this transfer approval. Nevertheless, Prentiss may decide to pursue such amendments in the future, which would be subject to Agency approval at that time.

SUSTAINABLE OPPORTUNITIES

Economic

There are no sustainable economic opportunities that apply to this particular action.

Environmental

There are no sustainable environmental opportunities that apply to this particular action. However, the DDA requires that the developer incorporate as many "environmental

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sustainability” features into the design and construction of the project as are practical and financially feasible.

Social Equity

There are no social equity opportunities related to the proposed Council action.

DISABILITY AND SENIOR CITIZEN ACCESS

The DDA requires that any development on the Project site comply with all applicable local, state and federal regulations including those pertaining to disabled and senior citizen access.

RECOMMENDATION (S) AND RATIONALE

Staff recommends that the Agency adopt the attached resolution approving the transfer of the Property and the DDA to Prentiss without any new conditions. Staff believes the transfer would be a substantial benefit to the Agency by putting a competent, stronger developer in ownership of the Property, thus increasing the likelihood of it being developed sooner.

ACTION REQUESTED OF THE REDEVELOPMENT AGENCY

Staff recommends that the Redevelopment Agency approve the attached resolution.

Respectfully submitted,

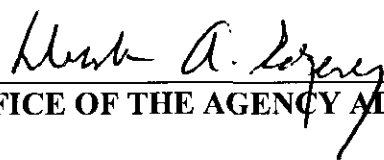


Dan Vanderpriem
Director Redevelopment, Economic
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APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:


OFFICE OF THE AGENCY ADMINISTRATOR

FILED
OFFICE OF THE CITY CLERK
OAKLAND
APPROVED AS TO FORM AND LEGALITY:
04 SEP 01 PM 5:04
Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND APPROVE TRANSFER OF FEE INTEREST IN 2150 FRANKLIN STREET, OAKLAND (FORMER SITE OF THE BERMUDA BUILDING) AND TRANSFER EXISTING DISPOSITION AND DEVELOPMENT AGREEMENT FROM OAKLAND BERMUDA, LLC TO PRENTISS PROPERTIES ACQUISITION PARTNERS, LP

WHEREAS, the Redevelopment Agency of the City of Oakland ("Agency") acquired the real property at 2150 Franklin Street, Oakland ("Property") by eminent domain. This is the site of the former Bermuda Building. The Bermuda Building was severely damaged in the 1989 Loma Prieta earthquake and remained in a structurally perilous condition;

WHEREAS, on August 7, 2001, Agency entered into a Disposition and Development Agreement ("DDA") with Oakland Bermuda, LLC ("OBL"). The DDA provided for OBL to pay \$3.6 million for the Property, demolish the structures, and eventually construct a new office building;

WHEREAS, OBL wishes to transfer the DDA and OBL's interest in the Property to Prentiss Properties Acquisition Partners Acquisition Partners, LP ("Prentiss");

WHEREAS, as the DDA permits OBL to transfer the Property to another developer with Agency's consent;


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WHEREAS, Prentiss is a major commercial property owner in the United States and owns several large commercial properties in Oakland;

WHEREAS, Prentiss financial and development capacity is at least equal to OBL's; now be it therefore

RESOLVED, that Agency approves transfer of the DDA and the Property from OBL to Prentiss;

FURTHER, that the Agency Administrator is authorized to negotiate and execute documents and agreements necessary and on such terms as are appropriate for the transfer of the DDA and the Property to Prentiss.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND
CHAIRPERSON DE LA FUENTE,

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
CEDA FLOYD
SECRETARY OF THE REDEVELOPMENT
AGENCY
OF THE CITY OF OAKLAND

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