

URBAN FUTURES INCORPORATED

Finance · Redevelopment · Implementation · Planning

MEMORANDUM

TO: Anna Vega, City Manager
City of Greenfield

FROM: Richard Tillberg
Urban Futures, Inc.

DATE: May 14, 2004

SUBJECT: Issues Relating to Development Phasing for Yanks Museum

The Agency and Mr. Nichols have been working together to secure an airplane museum and ancillary structures in County unincorporated territory since at least 1988. During this time a great deal has been accomplished; however, there have been a number of setbacks as well. Regardless, both parties are still engaged and both parties state they remain committed to the development of the museum.

MAJOR ISSUE TO RESOLVE: WILL THE MUSEUM (AND HOTEL) ULTIMATELY BE BUILT?

The major remaining issue, and the reason for the meeting on Monday, relates to what assurances, if any, the Agency needs from the Yanks team that it will, in fact, actually construct the museum and, to a lesser extent, the hotel/motel. This issue has arisen because the Yanks team has consistently been unwilling to "guarantee" construction of anything subsequent to the first phase of the project, and the museum is in the second phase, and the hotel/motel in a later phase, of development.

Reasons Why the Museum and Hotel Might Not be Built

At the outset it is important to note that no one on the Agency side has any reason to believe the Yanks team will not ultimately construct the museum; however, neither do we have any enforceable guarantee that they will. While no one wants to focus on the "negatives", and everyone understands that Mr. Nichols *wants* to construct the museum (and the hotel/motel and retail structures), it remains that he would not be able to built at least the museum if he were unable to secure sufficient construction funds (whether by donations or more traditional financing sources). This might happen if, for instance, Mr. Nichols himself elected not to proceed due to personal reasons, or if he were unable to proceed because the project were uneconomic and therefore he could not secure financing. While no one can discern personal commitment to any project, one can make comments on whether a project is economically viable or not.

If a project is economically viable, then presumably it would be completed regardless of the personal commitment of any one person. In other words, if the museum were shown to be economically viable, and Mr. Nichols elected not to pursue its development himself but were

Crestview Corporate Center - 3111 N. Tustin Avenue, Suite 230, Orange, CA 92865-1753
Tel: (714) 283-9334 Fax: (714) 283-9319 e-mail: planning@urbanfuturesinc.com

willing to make reasonable efforts to provide for its successful completion, a third party whose primary interest was only financial could be induced to complete the project instead of Mr. Nichols. However if the project is a "labor of love" it is not likely it will survive the principal's loss of interest, and, regardless of the principal's continuing interest, it may not receive sufficient financing. Therefore, it becomes important for the Agency to "test" whether the museum is an economic project or a labor of love if the Agency wishes to be reasonably assured the museum will be built.

The same holds true, to a lesser extent, for the hotel/motel. While it is not likely that a hotel would ever be a "labor of love" it is also not at all likely that the hotel would be built if the museum were not built. Therefore, promises of a hotel are only as good as the actual development of the museum.¹

Attempts to Resolve the Issue

Market Study to Show that a Museum Would be "Economically Viable"

Urban Futures, Inc. (UFI) first became involved in the transaction in mid 2001, leading to a seven-page memorandum to then City Manager Randy Anstine dated September 19, 2001. While that memo discussed a number of items, one salient issue revolved around the need for "an adequate market analysis" for not just the museum but the entire project, including the proposed hotel/motel. Although not stated in the memo, the reason for this request was to test whether or not there was a market for the museum. At a meeting held at City Hall on July 8, 2003, the Yanks team stated they would not complete a market analysis. However, UFI reiterated its belief that a market study was necessary by memorandum to the then Interim City Manager, John Alves dated July 31, 2003 (Recommendation No. 5).

The Yanks teams has categorically stated it is not willing to complete a market study for the museum; therefore, this concept is "off the table".

Yanks to Provide Guarantees for Museum Development

A second method of resolving the issue would be for an agreement to provide for some financial penalty if the museum were not completed, for any reason. This concept was generally proposed to Yanks at a meeting held at City Hall, and specifically proposed to Yanks' consultant by UFI staff. The Yanks team has rejected this concept. Yanks' reasoning is that Yanks is only requesting a Development Agreement which, correctly, traditionally does not provide for penalties for non-performance. However, the intent of a traditional DA is to protect the developer of a multi-phase project from future changes to City land use regulations or to provide for the orderly payment of development fees. To the extent a project is not completed there would be no need for fees because there would be no impact. The Yanks transaction, however, is predicated upon development of the museum; which, if not built, will allow the development of rural land with urban uses which would never be allowed were it not for the museum. Also, of course, the City has an obligation to EDA which would not be complied with were the museum not built.

¹ It should be noted that the museum might not support a hotel in any event.
Crestview Corporate Center - 3111 N. Tustin Avenue, Suite 230, Orange, CA 92865-1753
Tel: (714) 283-9334 Fax: (714) 283-9319 e-mail: planning@urbanfuturesinc.com

The Yanks teams has stated, through its consultant, it is not willing to provide for any financial penalty; therefore, this concept is "off the table".

Re-Phasing

A third method of resolving the issue is to re-phase the project so that the museum is in the first phase. It is obvious why this would guarantee development of the museum. The idea was first broached at a meeting with County staff in mid-February, 2004.

It is important to note City staff understands that Yanks has consistently shown the museum in Phase II (see letter to County from Yanks' consultant dated October 29, 1997 for the earliest example of this in UFI files) and any attempt by the City to modify this phasing is not seen by UFI staff (or, for that matter, by City staff) as a "best solution". However, Yanks has rejected all other solutions provided by the City and, after repeated requests, has not provided a solution itself.

Yanks has reluctantly provided the City with a re-phased development plan by letter to Anna Vega dated April 23, 2004. The revised plan calls for development of the entire project over a nine year period--the original plan provided for a seven year period.

REVIEW OF RE-PHASING PLAN

The re-phasing plan provides for "at least five (5) phases over a nine-year period". These phases are discussed below.

Phase I - Air Museum \$ Site Development (2004-2009)

The timing of this phase appears to be off by approximately nine months. Yanks assumes the County will provide its extension by June, 2004. IT IS IMPORTANT TO MEET THIS DATE. Upon approval, Yanks will concurrently commence five planning actions: i) Airport Land Use Plan Amendment, ii) County CUP, iii) Subdivision activities, iv) FAA approvals, and v) PSR.² The last of these planning activities to be completed takes 18 months; therefore, all planning activities should be completed by December, 2005. The PSR is to be completed within 12 months (July, 2005) and CalTrans Improvements Plans could be completed 24 months thereafter; by July, 2007. Museum plans are to be commenced upon approval of the CalTrans Improvements Plans and will take 12 months, to July, 2008. Finally, museum construction will consume 18 months, leading to a grand opening by December 2009 rather than September 2010 provided for on page 3 of the re-phased plan.

It is interesting to note that Yanks states "final design and construction plans for the museum and the hotel/motel will not be initiated until the site constraints have been fully identified..." While this appears to be a prudent course of action, it does not appear to square with Yanks' current phasing process where the museum would be constructed prior to initiation of the PSR whose results will dictate those very design and construction plans.

Yanks states that "this Phasing Plan [the re-phased plan] will substantially extend the initiation of construction of any part of the proposed project..." While this is true, it does not indicate that the "initiation of construction" is primarily the RV park; a development to which

² This memo assumes that work on the PSR will being immediately.
Crestview Corporate Center - 3111 N. Tustin Avenue, Suite 230, Orange, CA 92865-1753
Tel: (714) 283-9334 Fax: (714) 283-9319 e-mail: planning@urbanfuturesinc.com

neither the City nor the County attach much real value. The original phasing plan provides for the museum to be completed by December, 2008. Using Yanks' time periods and UFI re-stated dates based upon those time periods, the re-phased plan extends the completion of the museum exactly one year from December 2008 to December 2009.

Phases II through V

The original phasing plan provides for the bulk of the planning and regulatory approval activities to be completed in Phase II (they are completed in Phase I in the re-phased plan). While this is probably prudent for Yanks, it could have placed the City and County in an awkward position; i.e., development of the project would already have commenced and there would have been a great deal of pressure to approve the plans as submitted by Yanks.

Phase III is the same in both phasing plans. Phase IV in the original phasing plan calls for development of the hotel/motel and accessory facilities. These facilities will have already been built in Phase II of the re-phased plan. Phase IV in the re-phased plan is the same as Phase V in the original phasing plan; both take one year to complete. Phase V in the re-phased plan is the same as Phase VI in the original plan. While both take one year to complete and appear to have precisely the same descriptions, Phase V in the re-phased plan begins the same year as Phase IV is completed, while Phase VI in the original phasing plan begins the same year as does Phase V. It is not clear why this must be so, but if Phase V in the re-phased plan were to begin one year earlier, the difference between the two phasing plans would be only one year.

MISCELLANEOUS ITEMS

Issue of EDA Jobs

The re-phased plan states that: "Mr. Nichols is concerned that his ability to provide the jobs required by the EDA Grant for the sewer and water will not be made available within the required time frame if the County adopts this Phasing Plan". If, as Yanks has asserted several times, the Yanks project only must provide for 24 jobs, it is highly probable that it will provide its required number of jobs within required time limits by development of the museum. If, as the City and County have asserted, the Yanks development is responsible for approximately 270 jobs, then it is likely the City will not be able to strictly comply with the terms of the EDA Grant. However, the City will be able to show progress to EDA as the deadline looms near, which should mitigate any deleterious results. On the other hand, if the museum is never built, there will be no hotel, retail uses or airport and the City will not be able to show progress to EDA.

Issue of PSR

A PSR has been required since certification of the EIR over fifteen years ago. While Yanks is now starting work on the PSR it is not clear why they did not do so sooner since the results of the PSR could be a fatal stumbling block to development of the hotel/motel and retail facilities. The original phasing plan really did not resolve this issue and, in all likelihood, would have had to be re-phased whether or not the City requested re-phasing as one method of resolving the museum issue. The re-phased plan calls for completion of the PSR in a more appropriate sequence and will allow all parties to resolve what appears to be at least a \$1 million dollar issue before any party has irrevocably committed itself.

DISCUSSION

Issue 1: Might the Yanks Team Cease Activities?

In discussions with Yanks' consultant, UFI staff has been told a number of times that Mr. Nichols might not be willing to continue the project if it cannot be continued without re-phasing. The cover letter provided with the re-phased plan discusses "yet another revised Phasing Plan" and "...unnecessary delay concerns Mr. Nichols as it negatively impacts his ability to create the jobs promised to EDA". The City must balance the risk that a re-phasing plan would cause Mr. Nichols to forget the project against the possibility that the City might end up with an RV park and no museum.

Issue 2: Would a Development without a Museum Be a "Bad Thing"?

The cover letter makes the point that the City "will be made whole when Mr. Nichols connects to the new sewer and makes his impact payment of \$180,000" and that "the new realigned Livingston Road will be dedicated for public use." These are benefits to the City and should not be discounted. The issue, however, is are these benefits sufficient if there is no museum?

Issue 3: If Yanks Ceases Activities What Would Happen to the EDA Grant?

If Yanks does not build, the City will not be able to return the EDA funds since it has already expended them on the sewer and water line. Therefore the City would have to scramble to generate development on land within its limits and renegotiate with the County to allow urban development on land currently owned by Mr. Nichols. Presumably, Mr. Nichols would be willing to cooperate in this endeavor.