

Performance Audit of READ – Asset Acquisition

Fiscal Year 2021 Audit Work Plan

TITLE: Interview with Stacey LoMedico

PURPOSE: To understand the City's acquisition of 101 Ash and the Housing Navigation Center

DATE/TIME: 4/29/2012; 2 p.m.

LOCATION: MS Teams

PROGRAM PERSONNEL: Stacey LoMedico, former Assistant Chief Operating Officer

AUDIT PERSONNEL: Andy Hanau, City Auditor
Kyle Elser, Assistant City Auditor
Megan Jaffery, Senior Performance Auditor
Carissa Nash, Performance Auditor

CONCLUSIONS:

- Note: the interview summary was reviewed by Stacey. Her edits are in red. The conclusions were added after the fact by the team.
- Since 101 Ash was an acquisition intended to house multiple City departments, there was no one specific client department. The client department was the City in general.
- The ultimate decisionmaker on the 101 Ash transaction in terms of approving the acquisition, due diligence, and funding structure was the Mayor. Staff gather the information, review the pros and cons, and present the best option to the Mayor for the Mayor's decision.
- READ was responsible for conducting and overseeing due diligence, with advice from and in consultation with the City Attorney's Office.
- Jason Hughes did not have a contract with the City. After the acquisition, Jason thought he would get contracts with the City.

SUMMARY:

Client Department for 101 Ash

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- Typically, READ facilitates acquisitions based on the client department's needs. However, since 101 Ash was an acquisition intended to house multiple City departments, there was no one specific client department. The client department was the City in general, although it would specifically impact any department housed at the City Operations Building.
 - R1** - The ultimate decisionmaker on the transaction in terms of approving the acquisition, due diligence, and funding structure was the Mayor. Staff gather the information, review the pros and cons, and present the best option to the Mayor for the Mayor's decision.

- This is typical of a “policy decision”
- The team overseeing the acquisition was Cybele Thompson, Ron Villa, Lakshmi Kommi, Mary Lewis, and Scott Chadwick. Stephen Puetz was the main contact from the Mayor’s Office involved, although I believe Mike Hansen was the main contact at the end.
- Prior to 101 Ash, the City had acquired CCP in a similar lease-to-own deal. The IBA (Andrea Tevlin) felt that deal was too rushed and did not give their office enough time to analyze it properly.

101 Ash Acquisition – How it Unfolded

- Before the acquisition of 101 Ash, Development Services Department (DSD) was hiring more employees and needed space to house the employees. Although there was staff discussion of housing some employees outside of downtown, such as in Kearny Mesa, the Mayor made the policy decision to keep staff downtown.
- DSD wanted a one-stop-shop for its services. Jason Hughes was helping the City find space for DSD downtown. The City was looking at (likely) 110 A Street initially.
- In 2014/2015, Sandy Shapery, the owner of 101 Ash, approached the City to entice the City into leasing the building. He wanted to lease the building but not sell the building at the time. Shapery wanted a laughably high price if he sold the building, something like \$100 million or \$125 million.
- Initially the plan was to buy the building outright, either with bonds or with cash. Purchasing the building with bonds was the best option, because the bond rates were low. The Mayor had concerns about buying the building from Manchester due to the political optics and concerns about using bonds to finance the purchase.
- The City wanted to buy 101 Ash because rents were rising and owning the building would be cheaper than continuing to pay rent.
- Jason Hughes got involved in the acquisition process (he likely involved himself) and Cisterra got involved, Stacey isn’t sure how. Cisterra signed a purchase and sale agreement (PSA) with Shapery.
- Through the summer and the fall before the acquisition, Lakshmi Kommi was working on ensuring the City could get the bonds to acquire the building. Going into the fall, the bonds were all said and done.
- However, while the Mayor had been leaning against using bonds for the reasons described above, before the Mayor made the decision on using the bonds or not, the City Attorney’s Office determined that language in the PSA between Cisterra and Shapery was vague. From the City Attorney’s perspective, the vague language in the PSA meant Shapery could sue Cisterra and the City if the City purchased the building and did not use the lease-to-own structure. This determination made the Mayor’s decision about whether or not to use bonds moot. Shapery would not sign off on clarifying the language in the PSA. Since Shapery was unwilling to sign off, there was a risk Shapery would sue.

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Due Diligence

- READ was responsible for conducting and overseeing due diligence, with advice from and in consultation with the City Attorney’s Office.
- To ensure we could get bonds, Lakshmi Kommi’s team would have done some due diligence as well.
- The City team knew 101 Ash had asbestos; the building was built in the 1960s and all of the spec documents said to assume the building had asbestos. All City Administration Building remodels involve asbestos handling. The Executive Complex building had asbestos and had a successful remodel (this building was not City owned and the remodel was not done by the City).

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City Attorney’s Office Role

- The City Attorney's Office was very involved in the acquisition. Deb Bevier at the City Attorney's Office was in lock step with Ron Villa and Cybele Thompson throughout the acquisition and negotiations.

Jason Hughes' Role

- Jason Hughes did not have a contract with the City.
- Jason assisted the City because he has a lot of experience with commercial real estate leases and sales downtown. Jason has been involved with the City's real estate transactions downtown since Mayor Filner.
- Stacey did not have any concerns about his involvement at the time, although looking back on it she does.
- After the acquisition, Jason thought he would get contracts with the City. For example, there was potentially an as-needed contract for assisting READ either citywide or downtown, and he did not get it – although he potentially did not apply for it.
- In a second example, Jason wanted to be the construction manager for the 101 Ash tenant improvement renovations. However, he didn't apply for the as-needed contract for the City's construction project managers. Additionally, Jason would have been 1090'd out of consideration for the contract so he could not have been the construction manager regardless.
 - o 1090 issues are evaluated by the state. The contractor would request an analysis done by the state, and the state would determine if there was a conflict of interest under Government Code 1090.
 - o Stacey is not sure if Jason asked for a formal 1090 determination, or if the City Attorney's Office potentially told Jason based on previous state determinations it's likely you would be considered to have a conflict of interest, given that Jason had such a role in the acquisition of 101 Ash.

Housing Navigation Center

- The Housing Navigation Center acquisition was run by Kris Michell, who (took out thinks – she was) was a DCOO at the time.
- David Malcolm was always around surrounding this acquisition and additionally was advocating with Bob McElroy (head of Alpha Project) that the City acquire the property at 20th and B street to develop it for homelessness services.
- If the City had a Homelessness Department at the time, that department would have been the client department for the Housing Navigation Center. However, we did not have one so the DCOO was largely the client.
- Stacey did not know the City had bought the Skydiving Center until the State of the City speech itself; the acquisition announcement was not in the drafts of the speech.

Policy Decisions

- READ, and department directors in general, do not make policy decisions.
- Policy decisions are made by the DCOO, ACOO, and COO, but ultimately the policy decisions are made by the Mayor.
- The Mayor's Office staff would not be involved in the nitty-gritty details of the 101 Ash transaction, they would expect the team and City Attorney's Office to have conducted the due diligence. However, the Mayor's Office staff were involved in policy decisions such as the buying the building, using bonds to buy the building, or leasing to own the building, and would be informed on those decisions.

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Stacey was not contacted by Hugo Parker or the other investigators reviewing the 101 Ash transaction and remodel.