Legal battle behind NOMPC's woes

Details of loss in court that keeps Planning Coalition broke

By Karen Oberdorfer

During most of the last 25 years, the North of Market Planning Coalition has been a major force in Tenderloin improvement. But today, it's struggling; its coffers are empty, and it has no paid staff. A legal battle that it lost last year drained its remaining resources, making its future uncertain.

Two thick files at Superior Court document this lawsuit, and interviews with many of those involved explain what happened and why.

The most dramatic document in the files is a June 6, 2001, court declaration in which Garrett Jenkins, then NOMPC president, accuses the North of Market Development Corp. of squandering money intended to keep rents low at the Dalt, William Penn, Ritz and Hamlin residential hotels in the Tenderloin.

Worse, NOMDC's alleged mismanagement might have had dire consequences, Jenkins writes: "The neglect has resulted in physical, emotional, and mental harm of some residents. It is believed by some residents that three of the Dalt residents were under great stress prior to their deaths."

There's something almost biblical about Jenkins' accusation — the Planning Coalition had created the Development Corp. out of its own rib 19 years earlier and they shared many of the same members, including Kelly Cullen, now TNDC executive director, and Gordon Chin, now director of Chinatown Community Development Corp.

Jenkins' accusation came near the end of this story, so complex and serpentine that we've provided a Dates and Development sidebar to help keep the entities and events straight.

'81 coup: Hotelier Trust

In the early '80s, the neighborhood was fighting monster developments that threatened to destroy affordable housing. NOMPC et al. couldn't stop all projects, but did win major concessions, including the U.S. Hotelier Trust agreement. In the 1981 pact, the Ramada, Hilton and Holiday Inn [now the Nikko] agreed to give $6 million to mitigate the effects of their new, upscale hotels and the construction of Yerba Buena Center.

A Jan. 29, 1981, City Planning resolution, No. 8844, cited the proposed building projects' "significant adverse impacts on the availability of low-income housing," among other negative effects. The resolution required myriad mitigations by the big hotels, including the rehabilitation of more than 400 rental units for low-income renters.

The agreement called for a Southern California for-profit developer, Goldrich and Kest, to buy the low-rent Dalt, Hamlin, Ritz and William Penn hotels using the Trust's $6 million and local and federal government funds. Goldrich and Kest created the San Francisco Residential Hotels (SFRH) partnership with itself as the controlling general partner in charge of managing and rehabbing the hotels.

Rent subsidy agreement

The four hotels had a total of 465 rooms, half designated for people with very low incomes, the rest earmarked for low-income, as stipulated by HUD. In 1981, that meant rents could be no more than $153 a month for very low-income and $175 a month for low-income. Rents could climb, but gradually, at prescribed rates.

The Ramada Hotel developers agreed to give the community $38,325 each quarter to be paid to the Planning Coalition from the Trust fund to keep rents at the four hotels low. The payments were to run from July 1982 to April 2001.

The agreement obligated the Planning Coalition to create a separate nonprofit entity to disburse the rent subsidies, which would offset the hotels' bills so that rents could be kept low. The North of Market Development Corp. was born.

It didn't take long for bickering to begin.

Management shuffle

Marvis Phillips, current Planning Coalition president, lived in the Ritz Hotel in 1984 as part of a tenant oversight team. "During my year at the Ritz, Goldrich and Kest brought goons up from L.A. to force management wishes," Phillips said. "If you didn't adhere, they'd take the door off your room. They'd steal things."

The complaints escalated.

Two years later the Development Corp., calling itself the "community watchdog," led a community picket against Goldrich and Kest.

"G & K have overcharged rents, failed to correct major code violations and allowed the Hamlin to stand vacant for over three years in the face of the city's desperate housing shortage," the Development Corp. wrote in a Nov. 19, 1986, press release announcing the picket.

The protest involved many neighborhood groups. One participant reminisced, "This was one of NOMPC's shining moments."

The day's commotion eventually led the city to force SFRH to restructure, a process that took five years.

In 1991, a new partnership formed, Tenderloin Hotels LP [Limited Partnership]. The Development Corp. became the controlling general partner, the entity that makes all operational decisions, and SFRH (with Goldrich and Kest the main entity) became the limited partner. The city named Tenderloin Neighborhood Development Corp. and Chinatown Community Development Center (CCDC) the Development Corp. principals.

The partnership was to sunset in 1998, 15 years after the original partnership agreement. At that time, the Penn and Hamlin hotels would be transferred to CCDC, the Ritz to TNDC, and the Dalt would stay with SFRH.

Discontent sets in

Phillips says the Planning Coalition's honeymoon with the Development Corp. was over by the late 1990s. "Everything was fine until one of our presidents asked [NOMPC to confirm] that the funds were going where they were supposed to go," Phillips said.

Actually, according to Jenkins, the query was motivated by complaints from residents that the Development Corp. was mismanaging the hotels, especially the Dalt.

Jenkins, who lives in the Dalt, said in an interview that he'd witnessed what the residents were talking about: stopped-up plumbing, electrical failures, insects and rodents, privacy violations, negative attitudes.

"Three NOMPC members — Susan Phillips, President Bill Ng and I — decided to withhold the quarterly payments starting the third quarter of 1998," said Jenkins, then vice president. NOMPC opened a bank account, and withheld the rent subsidy for a year, the money sitting quietly while a storm brewed.

As evidence of the Development Corp.'s misuse of the rent subsidies, Jenkins cited a 1999 letter he received from the housing directors of TNDC and CCDC. Jenkins then was president of the Coalition.

"Chinatown CDC and TNDC plan to hold as much of the [rent subsidy] funds as possible in reserve for the hotels to make capital improvements, fund operating deficits, and provide rental subsidies in the future," the letter said.

In other words, Jenkins explained, the Development Corp. would not dole out the money to the hotels quarterly, but save it for later, when money was tight — in April 2001, after the subsidy payments stopped coming, and in 2002 when Section 8 contracts expired — a prudent move from an accountant's POV, but, as Jenkins saw it, improper.

During the year the Coalition withheld the subsidies, rents stayed low at all four hotels, Cullen told *The Extra*, but without the quarterly payments it was difficult to manage the properties. He also said, "We spent a lot of time responding to Garrett's requests for information and he was never satisfied."

The Planning Coalition didn't believe "what we said, the courts said, and the city said," Cullen added. "I wish they had talked to us and worked things out because court was not the desirable route."

The hotels didn't get equal subsidies, Cullen conceded. "We didn't put a lot of money into the Dalt because it was going to [the for-profit] Goldrich and Kest in a few

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Major dates and developments

1981: Jan. 29, City Planning Commission passes Resolution 8844, approving the Ramada Hotel project to mitigate the loss of low-rent hotel rooms by developers. Soon after, the Holiday Inn (now the Nikko), the Ramada and the Hilton establish the U.S. Hotelier Trust to funnel money into the neighborhood to subsidize rents. This triggers formation of San Francisco Residential Hotels (SFRH).

• May 11, SFRH buys the Dalt, Hamlin, Ritz and William Penn residential hotels with mitigation money from U.S. Hotelier Trust and $4.9 million in federal and local government funds. SFRH would rehabilitate and operate the hotels for low-income residents. General partner for-profit Goldrich and Kest has decision-making and management control of the hotels; various limited partners.

• Aug. 1, U.S. Hotelier Trust associates, Planning Coalition, SFRH and the City and County of San Francisco sign Rent Subsidy and Lien Agreement.

1982: Nov. 1, Planning Coalition, which is to receive the quarterly payments, sets up the North of Market Development Corp. to disburse the rent subsidies to the hotels.

1983: July 1, North of Market Development Corp. pays out the first quarterly rent subsidy—$38,325.

1986: Nov. 19, Development Corp. files foreclosure proceedings against Goldrich and Kest, announces noon picket in front of Hamlin Hotel.

1988: Development Corp. takes over responsibilities of Goldrich and Kest. SFRH restructuring begins.

1991: Restructure complete: Tenderloin Hotels LP becomes new owner of the four hotels, SFRH a limited partner, with Development Corp. the general partner. The partnership was scheduled to end in 1998.

1998: Tenderloin Hotels LP dissolves. Four separate partnerships created with Goldrich and Kest as limited partner of each and Chinatown Community Development Corp. or TNDC as general partner of each.

•Based on residents' complaints, Planning Coalition asks Development Corp. to document how rent subsidies were spent. Dissatisfied with documentation, the Coalition places subsidies in bank account from October 1998 to August 1999 and refuses to release them to Development Corp.

1999: June 9, Development Corp. attorneys send letter to Wells Fargo, holder of the rent subsidy Hotelier Trust account, demanding that the bank release subsidies to Development Corp.

• Aug. 11, Planning Coalition pays Development Corp. back rent subsidies, $153,000.

2000: Wells Fargo asks Superior Court to determine who should get rent subsidies.

2001: March–June, Planning Coalition withholds rent subsidy money again.

• Aug. 21, Judge John Dearman orders the Planning Coalition to pay Development Corp. $149,537 back subsidies, $29,321 damages, $28,986 legal fees and the $4,525 left in its account.

2002: Planning Coalition given until April 12 to find lawyer willing to take on case and appeal ruling.

• April 19, with no lawyer, Planning Coalition denied chance to appeal and ruling stands.

• As of mid-October, Planning Coalition still owes about $70,000, according to President Marvis Phillips.

— Karen Oberdorfer