

2017-2018 GRAND JURY REPORT

City of Norco SilverLakes Equestrian and Sports Complex

Background

The city of Norco (Norco) was incorporated as a general law city on December 28, 1964. A general law city is a municipality that is limited to governmental structures and powers specifically granted by state law. Norco covers an area of approximately fifteen square miles and the current population is approximately 27,000. Norco is an equestrian-oriented community which promotes itself as “Horsetown USA”.

Norco operates under the Council-Manager form of government. Under a Council-Manager government, policy-making and legislative authority are vested in the Norco City Council (City Council). The five member City Council is responsible for, but not limited to: passing ordinances, adopting the budget, appointing committees or commissions, and hiring both the City Manager and the City Attorney.

The Norco City Manager (City Manager) is responsible for carrying out the policies and ordinances of the City Council, overseeing day-to-day operations and appointing the heads of various departments. The City Manager works with the Norco Chamber of Commerce to address the business needs of the community and to attract economic development to Norco. One of these developments is the SilverLakes Equestrian and Sports Complex (SilverLakes), located at 5555 Hamner Avenue on 121.71 acres of property (Property) owned by Norco. The acquisition of this Property and subsequent actions regarding the development of this Property is a subject of controversy.

Introduction

Prior to 1998, an investment company (Investment Company) owned the Property. On May 29, 2002, the Property was conveyed by the U.S. District Court into receivership after the U.S. Securities and Exchange Commission (SEC) sued the Investment Company alleging unethical practices. A judgment concluded that Norco residents, some of whom invested - and lost - their life savings in a Ponzi scheme connected with this Property, had been defrauded. The presiding District Court Judge issued a Quit Claim Deed on June 13, 2002, which included a covenant restricting the future use and development of the Property once it was sold. The Covenant Restriction states:

...said covenant also being an affirmative condition restricting the use of the Property, a restriction on the use of the Property, and an equitable servitude for the benefit of the Receiver and the owners of the "Dominant Tenement" described below, and in each case providing as follows: No portion of the Property described in this quitclaim deed shall be used by the City, or by any successor in interest to the City, or any other public agency or private party, for any purpose other than for public park, recreational and open space purposes, save and except for the construction of a public road way which is to be permitted across the extreme northernmost boundary of the Property, encroaching no more than 100' into said Property at any location. The Property shall not be used for residential purposes (other than public camp grounds) or for commercial purposes (other than for common park related concession operation to serve park users which are commonly granted by cities in California...) [sic]

The City Council accepted the terms of the Quit Claim Deed (including the Covenant Restriction) and acquired the Property for \$5.5 million with funds borrowed from the then Norco Redevelopment Agency (RDA). In 2004, Norco declared they were unable to repay the loan and the RDA assumed ownership of the Property to satisfy the debt. The City Council and Norco RDA worked together to issue a Request for Proposal to develop the Property as a community park. They considered several proposals before selecting one from an established developer (Developer) of equestrian parks. The Developer's proposed plan was inconsistent with the restrictions of the Quit Claim Deed, so Norco petitioned the U.S. District Court to remove or modify the Covenant Restriction. The petition was denied on November 2, 2004. The City Council accepted the Developer's proposal despite the District Court ruling. The property sat undeveloped pending decisions on how to move forward with an acceptable development plan.

In 2008, a Memorandum of Understanding (MOU) between Norco, the RDA and the Developer was signed. The MOU proposed:

...that the redevelopment of the Property will be a joint private/public purpose development which integrates certain uses to accomplish the fulfillment of the Agency's objectives, and which incorporates such integrated uses include equestrian recreational activities and events, youth sports activities and events, camping, and equestrian staging and picnic areas, and related parking...[sic]

Again, the Property lay dormant except for demolition of some derelict buildings and periodic weed abatement.

In 2010, the Santa Ana River overflowed, causing serious erosion damage to the area, adding delays to the project since the soil required replacement. In March 2011, Norco requested an appraisal of the Property, which was completed by a brokerage company (Broker) associated with the Developer. The *Broker's Opinion of Value* for this proposed use states:

The Proposed Use of the Property is for a public park with recreation uses including an equestrian facility, soccer fields and other sports and related amenities. Improvements to the Property are anticipated to include the following...Sewer, gas, electrical, irrigation, water improvements and associated infrastructure, portable and permanent bathrooms...

The Broker's appraisal report gave the Property a negative value on paper, meaning the cost to rehabilitate the land from the flood damage was greater than the value of the land. On July 6, 2011, the City Council approved a series of agreements by and between Norco and the Developer. A ground lease (Lease) for thirty years with an option to extend the Lease for up to ninety-nine years was adopted. Norco became the Landlord and the Developer the Lessee. Norco no longer controlled how the Property (SilverLakes) was to be developed. As part of the agreement, the Developer accepted financial responsibility for all construction which included entrances, exits, street improvements, storm drains, water pipeline, water reservoir, well and sewer system improvements.

Through Assembly Bill (AB) X1 26, the California State Legislature dissolved all RDAs on February 1, 2012. The City Council voted to serve as Successor Agency, taking over the responsibilities of the former RDA. Because the aforementioned appraisal report gave SilverLakes a negative value, Norco was allowed to repurchase SilverLakes from the RDA for \$1, and again assumed legal ownership of SilverLakes. The original Quit Claim Deed Covenant Restriction still applied, but Norco no longer owed the original loan amount.

Norco then consulted with its City Attorney to create and submit to the Riverside Superior Court a Validation Action. The Court was asked to review the proposed plans for construction of SilverLakes Sports and Equestrian Park and then render an approval of the project. In 2012, the Riverside Superior Court decreed "the City of Norco SilverLakes Project is consistent with the Property Deed Restriction". However, the plans submitted to the judge in the Validation Action were substantially different than the SilverLakes of today (Attachment).

In 2013, the Developer began construction of SilverLakes Equestrian and Sports Park and in September 2015, it opened for operations. Their website notes that the complex has:

...24 full-size soccer fields, 4 LED Lit Synthetic Fields, 5 equestrian arenas, 1,500 horse stall capacity, a 12,000 Square Foot Outdoor Café, a 10,000-person Concert Facility called The BackYard, and a 150 seat restaurant called The FieldHouse, which has a private banquet facility for 200 people called The FieldHouse Terrace...

There is a \$10 fee for vehicle parking and a \$50 fee for busses. RV parking is allowed at \$25 per day. Individuals are charged a walk-in fee of \$8 per person; cash or credit cards are accepted. Property use rules prohibit bringing in food, barbeque, pets, bikes or unauthorized flying devices including, but not limited to drones (Frisbees?). Future planned developments include an illuminated stadium field with a 5,000 seat capacity and an indoor sports facility. According to the official SilverLakes website:

The primary use of this property will be for sporting events. Secondary use will be for concerts, conferences, corporate events and other outdoor gatherings. The mission of SilverLakes is to create the highest level "Wimbledon - experience" for tournament activities and give participants and their families an amazing experience.

Methodology

The 2017-2018 Riverside County Grand Jury (Grand Jury) conducted its inquiry using the following methods:

- Sworn testimony of Norco City Manager
- Sworn testimony of former Norco elected officials
- Sworn testimony of concerned Norco residents

Reviewed the following documents:

- U.S. District Court Orders Case No. 00-SACV-960-DOCs, October 5, 2000, through November 2, 2004, (SEC v. [Investment Company], et al.)
- Quit Claim Deed for the Property, Riverside County Document #2002-328613, June 13, 2002
- Order Denying Motion for Interpretation, Modification and/or Elimination of Restrictive Covenant on 121.71 Plus or Minus Acres of Undeveloped Land Located in Norco, November 2, 2004
- Memorandum of Understanding (MOU), between Norco, RDA and Developer, January 16, 2008
- Norco Financing Authority Enterprise Revenue Refunding Bond issue, 2009
- AB X1 26, dissolving all California Redevelopment Agencies, July, 2011

- *Broker's Opinion of Value* pertaining to the Property now known as SilverLakes, March 22, 2011
- *Memorandum of Ground Lease* between Norco and the Developer, Document #2002-328613, Riverside County, July 6, 2011
- *Development Agreement* between Norco and the Developer, July 6, 2011
- *Norco SilverLakes Shared Use Agreement* by and between the City of Norco (Landlord) and a Management Group (Tenant), approved by action of the City Council, July 6, 2011
- *Validation Action Pursuant to Code of Civil Procedure*, § 860, Riverside County Superior Court, case # RIC 1112463 pertaining to property use restriction, February 28, 2012
- Subpoenaed court orders, filed legal documents records, memos, Norco City Staff reports, City Council minutes, photographs and confidential e-mails provided by the Norco City Clerk's Office

Visited:

- SilverLakes Equestrian and Sports Complex – Norco
- Norco City Hall
- SilverLakes Official Website - <http://www.SilverLakespark.com/>

Findings

1. The original Federal District Court Quit Claim Deed Covenant Restriction issued on June 13, 2002, has never been legally modified, amended, or rescinded. Norco recognized that they were restricted from building this commercial venture and filed a motion in Federal Court for interpretation, modification and/or elimination of the restrictive covenant. The motion was unequivocally denied on November 2, 2004, in the following:

...The receiver in this action sold the property at issue on the condition that the deed contain a covenant running with the land restricting the use of the property to park in open space purposes, which was intended for the benefit of the public. The covenant clearly precludes the mixed use project proposed by the City of Norco. Thus, the Court will not construe the covenant as permitting the mixed-use project. Given that the beneficiaries of the covenant include members of the public, the Court will not eliminate the covenant. [sic]

2. The SilverLakes Equestrian and Sports Complex is not a public park as presented in the 2002 Quit Claim Deed including the Covenant Restriction. The concept plans submitted in 2012 to Riverside County Superior Court for validation gave the impression that there would be limited

commercial or money making activities at this property. However, the plans were substantially different from what was actually constructed. The extent of commercial development in the plans submitted to Riverside Superior Court was minimized. For example, the exhibit plans had no reference to constructing a full service commercial restaurant and bar.

3. After reviewing official correspondence, sworn testimony and memos, the Grand Jury discovered that pursuant to the Council's prior authorization, approximately \$1.8 million had been provided to the Developer for water and sewer improvements. However, no loan documentation or legal contracts to support this transfer of funds have been found or provided to the Grand Jury despite subpoenaed requests. The money for the loan was drawn from an existing \$39 million Enterprise Revenue Refunding Bond. Although the Bond was not designated for this specific instance, there is a clause in its description which allows Norco to finance up to \$6 million for improvements to the City's Water and Sewer Systems.

Recommendations

Riverside County District Attorney Norco City Council

1.
 - a. Riverside County District Attorney's office investigate the Norco City officials (past and present) for purposefully accepting a bid from a Developer whose intent was to construct a commercial endeavor contrary to the restrictions of a Federal Court order.
 - b. Riverside County District Attorney investigate the Norco City officials (past and present) for presenting misleading documents to the Riverside County Superior Court, thereby obtaining favorable judicial approval for a commercial sports park rather than a genuine public park.
2.
 - a. Norco and/or the Developer adds to the SilverLakes actual recreational assets and amenities such as shade trees, picnic areas, family play areas, park benches, barbeque grills, basketball courts, tennis courts, bike trails, etc. as intended in the original Quit Claim Deed Covenant definition of a public park. The Developer maintain the Park facilities at no cost to Norco.
 - b. Desist in charging entry fees to Norco residents for entering and using what should be a public park facility.
3. Norco publicly disclose a full financial accounting history of monies truly expended for this project. The financial disclosure should

include the initial purchase of the property and all loan documentation from 2002 through the current fiscal year.

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