

## The anatomy of a "smoke and mirrors" Redevelopment deal

by Pat Flannery • November 1, 2006

I am still waiting for the Cost of Issuance for the October 2005 \$152 million refinance of a BofA loan made in 2004. All I got from the City so far is this. It refers to the original \$152 million BofA loan, not the one that was refinanced, after only one year, in October 2005. It shows \$412,253.65 issuance costs for that 2004 loan. But it does not include any brokerage fees, even though I know both deals were arranged by a brokerage firm.

In the meantime, let's take a look at a typical smoke and mirrors deal in Poway. It involves the Poinsettia Mobile Home Park and has more twists to it than a crime novel.

The City of Poway purchased this mobile home park in 1988, when they issued this \$10,650,000 Bond (in the form of a "Certificate of Participation" or COP). How much actually went to the seller and how much for costs was never disclosed. Then they refinanced it with another Bond of \$12,640,000 in 1992. They love refinance deals - they generate lots of big fat fees for their friends in the financial services industry.

In 2003 Poway Redevelopment Agency (RDA) sold Poinsettia Mobile Home Park to Poway Manufactured Communities LLC, a 501C3 subsidiary of Wakeland Housing LLC, also a 501C3, owned by a guy named Kenneth Sauder. Here is the Grant Deed. Click and read the "post-it" notes I have attached to it.

Here is a piece in the San Diego Daily Transcript on Ken Sauder, dated August 3, 2006. Sauder is a strong advocate of any source of public funds for affordable housing. That's his business. As chair of the San Diego Housing Federation he wrote this piece in the U-T on June 22, 2006 urging passage of State Prop. 1C on the November ballot. Poway RDA is pushing affordable homes because it has a huge tax "diversion".

Mr. Sauder (Poway Manufactured Communities LLC) signed a Note and Trust Deed to the City of Poway for \$10,615,000. The City of Poway then issued a \$10,615,000 Housing Revenue Bond, pledging future revenue from the mobile home park and secured by Sauder's Trust Deed on the property. Mr. Sauder put no money into the deal. He got 100% financing and paid no closing costs.

A companion "Regulatory Agreement" imposed an obligation on Mr. Sauder to provide housing for "persons of very low income". That gave the Revenue Bond tax-free status.

From here on it is all smoke and mirrors.

The issue terms of the \$10,615,000 Bond stipulated that the proceeds were to be used for the following purposes:

- (1) to "fund" the purchase by Mr. Sauder (i.e. pay off the existing \$12,640,000 bond);
- (2) to "finance certain facilities, replacements and improvements" in the Park;
- (3) to "fund a Debt-service Reserve Fund" and a "Repair and Replacement Fund";
- (4) to "pay certain costs of issuance".

As the Bond issue undertook to "prepay and defease" this underlying \$12,640,000 loan, some additional money was needed. The \$10,615,000 Bond was not enough.

Mr. Sauder was not putting in anything so the only source of cash was the City Treasury. Sauder was asked to sign a concurrent 2nd Trust Deed for \$5,112,230. The old "silent 2nd" trick. It is fraud on a senior lender if not disclosed (it rarely is).

Did the Poway City Council disclose this additional financing to the Bond purchasers when they signed their "Official Statement"? For Poway's sake I hope they did.

The odd amount on this 2nd TD of \$5,112,230, suggests to me that it was a "catch-all", designed to sop up all the costs and loose ends of the entire transaction. Effectively it was the feeding trough for all the "service" people involved. Typically the City Treasurer opens a disbursement account from which he/she pays off all-comers.

Here are my questions to the Poway City Treasurer:

- (1) Was the old Bond, \$12,640,000, fully redeemed?
- (2) What was the Cost of Issuance of the new Bond?
- (3) Only an additional \$2,025,000 from the 2nd TD was needed to redeem the old Bond, which left \$3,087,230. That is a lot of "closing costs". Almost 30% of the sale price. How much was put into reserves? What happened to the rest of it?

But the most amazing thing about the 2nd Trust Deed is that it gives an unlimited, open-ended, line of credit to Mr. Sauder!

Read the parts I have underlined. Any addition to the original amount of the Note does not have to be recorded at the County Recorder. For all we know that Note could now be triple the original amount. The Trust Deed, as originally recorded, covers it all.

Finally, apart from the financing questions, another huge issue arises:

In the Grant Deed to Sauder, the City of Poway clearly and unambiguously gave itself the power to change the covenants, conditions and restrictions that "run with the land", any time it pleases and in any way it pleases. In other words it can "approve" a Sauder sale to a developer like McMillan any time it wants.

Even more amazingly Sauder is free of the restrictions whenever he pays off his loans of \$10,615,000 and \$5,112,230! He could do that any day by selling to a developer. He wouldn't even need City Council approval. All he has to do is pay them back.

Now they want to do the exact same deal with the exact same person with another mobile home park called Poway Royal. Where will all this end? How do we start putting it right? I do love San Diego County but I don't want to live in a bankrupt city. These city officials are totally out of control. A way has to be found to reign them in.

**ABOUT PAT FLANNERY:** Originally from Ireland, Pat Flannery was educated at London University and London School of Economics. He is a member of THE BRITISH AND IRISH ASSOCIATION OF CERTIFIED AND CORPORATE ACCOUNTANTS. Pat moved to San Diego in 1976 and has lived in Mira Mesa and Clairemont. He had a lengthy and successful career as an independent Realtor and Mortgage Broker and is now semi-retired. A San Diego community activist, Pat has worked for many years against "heavy-handed government". In addition to his blog, for which he does extensive research on local government issues, Pat writes frequently on local real estate topics. He also writes for several Irish-American publications. For further information, link to Pat's blog at: <http://patflannery.com/SanDiegoToday.htm>