

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

THE VILLAGE AREA PROPERTY-BASED BUSINESS IMPROVEMENT DISTRICT (PBID)

Summary Statement:

In the latter part of 1999, the Village Merchants' Association (VMA) and Town officials began discussions regarding the revitalization of the Village area. These discussions quickly centered on the feasibility of whether or not a Business Improvement District (BID) could be successfully established in the Village area. At the time, it was thought that a BID could anchor the revitalization efforts of the VMA and that, as appropriate, certain redevelopment and Community Development Block Grant (CDBG) efforts could aid in this endeavor as well.

For 6+ years (September 2000 to May 2007), the VMA and designated Town officials (former Town Manager Bruce Williams, Assistant Director of Economic Development & Housing, Emily Wong, and Economic Development Specialist, Orlando Acevedo; also Council PBID Committee members, Mayor Pro-Tem Nassif and Council Member Sagona)

Recommended Action:

- (A) That the Town Council reject the allegations submitted by dissenting members of the Village PBID Association. Further, that the Town Council authorize and direct the Town Manager to work with the Village PBID Association board of directors for the purpose of making the PBID organization a more viable and functional organization; OR,
- (B) That the Town Council, with the cooperation and support of the Village PBID Association, authorize and direct the Town Manager to develop and issue a Request for Proposals (RFP) for the purpose of identifying and selecting a forensic accountant/auditor to investigate the allegations made by dissenting members of the Village PBID Association and report back to the Town Council within 90 calendar days of this action.

Proposed by: Ken Henderson, Assistant Town Manager Item Number _____

T. M. Approval: _____ Budgeted Item Yes No N/A

Statement - Continued

THE VILLAGE AREA PROPERTY-BASED BUSINESS IMPROVEMENT DISTRICT (PBID)

Page 2

labored to bring about the successful formation of a Property-Based Business Improvement District (PBID). The proponents of the PBID engaged in various activities, including surveying members of the VMA and the larger Village community, conducted a Phase I Feasibility Analysis, surveyed prospective PBID members after the Feasibility Analysis was completed and the results disseminated and prepared preliminary conceptual renderings (through RRM Design Group) that would effectively implement the "Vision" approved and adopted by the VMA.

Once the renderings were available for viewing, and the survey work completed, the VMA petitioned the Council for its support in implementing Phase II of the PBID program (the Council had previously established the Village as Goal #10 of Vision 2010 adopted in February 2006). Phase II involved specific activities related to the actual **formation** of the PBID, including preparation of the PBID Management District Plan, establishing boundaries and related property data, identifying Base Level Services, preparation of the PBID budget, assessment formula and development of the PBID's Government/Management Structure. Ultimately, the actions taken resulted in the Town Council conducting an election on behalf of the VMA and, on July 10, 2007, a formal election was held resulting in the successful formation of the PBID.

Discussion:

After the PBID was approved by the Town Council, actions were taken to establish its 501C (4) status, elect a board of directors and adopt articles of incorporation and by-laws. It is noted that the PBID was formed at the height of the last economic cycle and most interested parties were optimistic about its future. Unfortunately, the PBID was overtaken by economic events beyond its control, with the national economy entering into an official recession in December 2007. Indeed, most economic experts describe the current recession as the worst in recent memory and the worst since the Great Depression of the 1930s. As a result of the current economic climate, some PBID members have sought relief from the annual assessments levied against their properties as a result of the successful PBID formation. The differences of opinion between those supporting the status quo and those desirous of assessment relief are stark, and these differences have devolved to actions, statements and activities that have called into question the very viability of the Village PBID Association.

It appears the law is fairly clear regarding the dissolution of a properly established PBID. It is not easy to legally dissolve a PBID. As some of the dissenting members and members supportive of the status quo have come to realize this, the efforts to maintain the status quo, dissolve the PBID, or to gain relief from the annual assessments, have become increasingly strident and acrimonious. Such efforts have caused some organizational dysfunction and have resulted in bi-weekly appeals to the Town Council by certain dissenting members. These appeals usually involve a request of the Town Council to involve itself in the affairs of the PBID and to assist such members in reaching their goal of assessment relief or dissolution of the PBID.

Statement - Continued

THE VILLAGE AREA PROPERTY-BASED BUSINESS IMPROVEMENT DISTRICT (PBID)

Page 3

In attempting to respond to the Council's request that this matter be placed on its agenda for formal discussion and action, as appropriate, it is important to note that staff has not attempted to establish the veracity, or invalidity, of the charges summarized below. In considering this matter, staff believes the Council first has to make a determination as to whether it will involve itself in the resolution of these matters. Assuming the Council elects to do so, two form motions are offered for Council consideration. Prior to considering these form motions, the Council should be aware of the complaints brought forward by dissenting members of the Village PBID Association, as follows (list not meant to be all-inclusive):

- A. Whether or not the PBID Chairman has received appropriate board approval for certain executive actions;
- B. Compliance with generally accepted public procurement standards and policies;
- C. Disposition of the Village entry way sign insurance proceeds (\$25,000);
- D. Resolution of the PBID board of directors intention to install lighting on and/or around the Village sign and the related procurement;
- E. The removal of one of the dissenting members from the PBID's Landscape Committee and the PBID board of directors;
- F. Brown Act compliance;
- G. Enhanced security services provided by the Apple Valley Police Department and the approvals pertaining thereto;
- H. The alleged loss of portions of the PBID data base potentially resulting in some members of the PBID and interested parties not receiving agendas, minutes, notifications and other communications; and,
- I. Questions regarding the integrity of the PBID formation election process.

In requesting this matter be placed on a future Town Council agenda, it was also requested that a list of payments made by the Town on behalf of the PBID, or directly to the PBID, be included in the staff report. Assistant Town Manager Pattison has provided a summary of payments made on behalf of the PBID, or directly to the PBID, by the Town. These payments are summarized below:

Invoices From:

- RRM Design Group: FY 2003/04: \$10,000
- Ed Henning: FY 2004/05: \$14,750
- Charles Abbott Associates: FY2008/09: \$960.25
- Hall & Foreman: FY 2008/09: \$29,247.54
- BB&K: FY 2008/09: \$1399.94
- Ed Henning & Associates: FY 2008/09: \$2,000

Payments Made to the PBID:

Advance from TOAV for Administration Start up:

Village PBID Association: 7/8/08: \$10,000

Statement - Continued

THE VILLAGE AREA PROPERTY-BASED BUSINESS IMPROVEMENT DISTRICT (PBID)

Page 4

Insurance Proceeds for Village sign:

Conco Construction: 11/2008: \$8,500
Village PBID Association: 12/23/08: \$15,050
Village PBID Association: 4/23/09: \$1,450

Total: \$25,000

Village PBID Assessment Revenue Payment:

Village PBID: 12/15/08: \$60,400

From the outset, Town staff has provided technical assistance to the VMA and the PBID board of directors. Prior to incorporation, and the adoption of articles of incorporation and by-laws, staff assistance was provided in much the same manner as was assistance provided to other Town Committees and Commissions, such as the Equestrian Advisory Committee, Planning Commission and Community Development Citizen Advisory Committee. Staff assistance was provided in keeping with the direction of former Town Manager Williams and the Town Council establishing the Village as one of its ten Vision 2010 goals. Once the PBID became operational, and retained legal counsel to assist with the subject of this staff report and other matters, the time required to provide staff liaison activities began to lessen. Unfortunately, with the schism between the PBID board of directors and certain dissenting members, both sides have availed themselves of staff, which has required an increase in staff time and the recognition by staff of the sensitivity of its position vis-à-vis the PBID board of directors and certain dissenting members.

Because of the sensitivity of staff's position as noted above, and because staff is not equipped to investigate the above referenced allegations as requested by the dissenting PBID members, two form motions are offered for Council consideration. (It is noted that, even if staff possessed the required skills and competencies to conduct an investigation of the above allegations, it would not be advisable due to the fact the Town, as a PBID property owner, would not be considered an objective, disinterested, third party in this regard.) As such, and based upon the foregoing, staff recommends the Town Council adopt form motion "A" or form motion "B".