

**DRAFT MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of the Milpitas Redevelopment Agency
(Including Joint Meeting with the City Council)
Date: Tuesday, March 18, 2008
Time: 7:00 PM
Location: Milpitas City Hall Council Chambers, 455 E. Calaveras Blvd.

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA 1. CALL TO ORDER Mayor/Agency Chairman Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7: 16 PM.

RA 2. ROLL CALL **PRESENT:** Mayor/Chair Esteves, Vice Mayor/Vice Chair Livengood, Agency/Councilmembers Giordano, Gomez and Polanski

ABSENT: None

RA 3. MEETING MINUTES Motion: to approve the Redevelopment Agency minutes of March 4, 2008, including joint meeting with the City Council, as submitted

Motion/Second: Agency/Councilmember Polanski / Vice Chair/Vice Mayor Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

RA 4. Approval of Agenda and Consent Calendar Motion: to approve the agenda and Agency consent calendar (items with asterisk*)

There were requests to remove Item No. RA5 and RA8, from audience members.

Motion/Second: Agency/Councilmember Gomez/ Agency/Councilmember Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

RA 5. Request for Waiver of Conflict of Interest City Attorney Mike Ogaz addressed this matter explaining the request that the City had received from its former contracted City Attorney. The item was requested to be removed from consent by the representative of Piercey Toyota dealership.

Mayor Esteves allowed speakers from the audience at this time.

Mr. Kai Giffin, of Independent Processing Services on behalf of Piercey Toyota, asked that the item be discussed, with regard to future advertising signs at the 880 freeway. Piercey desired that the law firm of Meyers, Nave be granted a waiver by the City, in order for the firm to represent the dealership in matters relating to negotiation with the City of Milpitas on a new advertising sign.

Mr. Rob Means, Milpitas resident, called this a “classic conundrum” about helping a corporation do its business with the local government.

Vice Mayor Livengood next asked the City Attorney about the issues he was concerned with from the beginning in regards to Meyers Nave and Piercey. Mr. Ogaz explained that his recommendation to deny the waiver was based on the knowledge about the sign issue from the City's perspective that the law firm had. He was uncertain about the "ethical wall" that Meyers Nave would build to shield it from an inside point of view.

Councilmember Giordano asked if there was a policy that would preclude Meyers Nave from representing the client. Staff reported no, and she did not see any conflict here, unless such a policy existed.

Councilmember Polanski asked staff if the law firm still did some work on select projects for the City. Mr. Ogaz replied yes, on three litigation matters.

Councilmember Gomez noted there was a revolving door ordinance in this City and other cities, to prevent, for example, the planning director not going to developer.

Vice Mayor Livengood was not concerned with one issue raised by Mr. Giffin, about money the company already spent (on legal and other efforts on the sign) which would be lost, if the waiver was not granted. He believed the law firm could represent Piercey in this matter with the ethical wall existing. This was a straightforward matter, with a new sign to be negotiated on, in the future. He could support the requested waiver.

Councilmember Polanski would second a motion, based on the Vice Mayor's comments. She also supported researching what Mr. Gomez brought up, for the City's upper management staff and to consider it at a future Council meeting.

Mayor Esteves asked if Meyers Nave would foresee a conflict? City Attorney Ogaz replied yes, there was the potential for it. What benefit would the City get, if the waiver was granted, asked the Mayor. Mr. Ogaz said there was no benefit to the City. With a blank check, it could be a liability, the Mayor felt. He was very scared about this unknown, granting a waiver when he did not know everything about the consequences.

The Mayor allowed for public speaker at this time.

Isaac Hughes, Milpitas resident, had seven points to make. The state FPPC covered this subject, he read statutes on this, including Government Code and court cases in California. It could be confirmed with website information and with the state's Attorney General. Staff should have debriefed persons about what Meyers Nave would/would not work on when those attorneys left the City. Contracted employees should not return to do additional work. Council must define an "ethical wall" for the public. He asked, when has an attorney been worried about saving someone some money, and that Meyers Nave was not concerned about saving money. Others did care about morality and ethics. Contract employees were not supposed to come back.

Councilmember Polanski next asked questions of the City Attorney about the liability of the previous contracted attorneys. The City did need a policy for what occurred when contract employees depart employment with the City. With that, she made a motion as staff recommended, and added to return to Council with a policy about restricting those employees.

Councilmember Giordano repeated that she did not see a conflict. Whose obligation was it, to clear the conflict and accept the interaction between these parties? The City Attorney responded that it was the client's choice, and it resided with Council.

(1) Motion: to decline the request to waive conflict of interest for the Meyers Nave, Riback Silver and Wilson law firm; and, to ask staff to return to Council/Agency with a policy about revolving door for senior management staff

Motion/Second: Agency/Councilmember Polanski /Mayor/Chair Esteves

Motion failed by a vote of: AYES: 2 (Esteves, Polanski)
NOES: 3

(2) Motion: to approve the request to waive conflict of interest for the Meyers Nave, Riback Silver and Wilson law firm

Motion/Second: Agency/Councilmember Giordano / Vice Chair/Vice Mayor Livengood

Motion carried by a vote of: AYES: 3
NOES: 2 (Esteves, Polanski)

***RA 6.** Award Construction Contract for Phone Install at new Parking Garage

Rejected the lowest bid from Summer & Sons Electric; and, awarded a construction contract to Design Electric, in the amount of \$49,040 for installation of twelve emergency phone stations within the Midtown East Parking Garage, Project No. 8161, and approved the standardization of the Talk-A-Phone emergency phone system.

***RA 7.** Amendment for Kimley Horn on Project No. 4202

Approved Amendment No. 2 to the Agreement with Kimley Horn and Associates for Calaveras Blvd. Bridge Widening, Project No. 4202, in the amount of \$73,834, subject to approval as to form by the City Attorney.

RA 8. Subordinate Agency Loan to The Crossings at Montague

This item was removed from the consent calendar at the request of one citizen.

City Attorney Mike Ogaz was asked to explain this request and he replied on the financing mechanism employed by the developer of The Crossings at Montague. The Agency had loaned money to the developer, and the project was undergoing refinancing at this time. There is security for the loan, due to increased equity in the property since the time it was acquired by the owner.

Mayor Esteves allowed public speakers at this time.

Speaker:

Rob Means, Milpitas resident, commented now with seven years gone by, there had been plenty of time for the property owner/developer to hold onto the City/RDA's money, and the City should now get it back. Such funding could be applied to the City's budget to address the structural deficit.

Motion: authorize the Agency Executive Director to execute Subordination Agreements, subordinating the Redevelopment Agency loan to refinancing of The Crossings at Montague property in the approximate amount of \$67 million

Motion/Second: Agency/Councilmember Gomez / Agency/Councilmember Livengood

Motion carried by a vote of: AYES: 5
NOES: 0

RA 9. ADJOURNMENT

Chair/Mayor Esteves adjourned the Redevelopment Agency meeting at 7:51 PM.

*Meeting minutes respectfully submitted by
Mary Lavelle, Agency Secretary*