

**Draft MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Meeting of the Milpitas Oversight Board of the Milpitas
Successor Agency
Date: Thursday, October 4, 2012
Time: 5:00 PM
Location: Milpitas City Hall Committee Room
455 E. Calaveras Blvd., Milpitas, CA

CALL TO ORDER

Chair Don Gage called the meeting to order at 5:00 PM.

ROLL CALL

MEMBERS PRESENT: Don Gage, Armando Gomez, Emma Karlen, Mike Mendizabal, Michael Murdter, Bruce Knopf, Phuong Le (alternate to Marsha Grilli), Rebecca Haggerty (alternate to Michael Murdter)

MEMBERS ABSENT: Marsha Grilli. Michael Murdter and Bruce Knopf were absent at roll call and arrived at 5:03 and 5:05 PM, respectively.

PUBLIC FORUM

None.

MEETING MINUTES

Board member Bruce Knopf requested a specific correction to the meeting minutes of August 16, 2012. On page 2, in the last paragraph in parentheses, to read "(under No. 2 of the resolution referring to Exhibit 1) . . ."

Moved by Mr. Knopf and seconded by Mr. Murdter, the meeting minutes of August 16, 2012 were approved, as amended, by unanimous 7-0 vote.

APPROVAL of AGENDA

Moved by Vice Chair Mendizabal and seconded by Mr. Gomez, the agenda was approved unanimously.

UNFINISHED BUSINESS

A. Clarification of Resolution

Board members discussed the previous Resolution No. 2, as adopted at the last meeting. Board member Knopf sought language in the resolution to be changed, as he made in his motion on August 16. He distributed a proposed amended version of the Resolution. He desired to correct the record and did not want the state Department of Finance to believe anything was amiss in the approved ROPS. His request was "Amends" and not "Clarifies" on the draft Resolution, in the last paragraph on page 1.

Bryan Otake (Milpitas Assistant City Attorney) noted that the version in the packet, as distributed, was the one that staff at the City worked with County Counsel to present to the Board. County Counsel and Successor Agency staff worked diligently to come up with the document.

Board members and Successor Agency staff discussed items on the ROPS, and the Letter of No Objection from the County. In part at issue was what was approved by the Board versus a different amount submitted to the state.

Mr. Knopf responded on the version of the Resolution he distributed at the meeting v. the actual ROPS distributed in advance of the previous meeting. Attorneys (Mr. Otake and Mr. James Williams) from both the County of Santa Clara and the Milpitas Successor Agency replied extensively in explanation to the Oversight Board.

Action taken: Boardmember Gomez moved and Vice Chair Mendizabal seconded the adoption of Resolution No. 3, containing one word change, as requested by Mr. Knopf. The motion carried on

a vote of 6 in favor and 1 opposed (Emma Karlen).

B. Hiring of Outside Counsel

Mr. Tom Williams, Milpitas City Manager and Executive Director of the Successor Agency, reported that the City of San Jose had hired legal counsel recently for its Oversight Board. Chairman Gage noted the firm was not yet hired, but found that one firm met qualifications of the Request for Proposals (McDonough Holland).

Mr. Williams remarked that if the Board sought outside counsel, then the Board would have to put the cost onto the ROPS, if necessary. He offered an approach on hiring and funding.

Chairman Gage recommended having Mike Mendizabal and Bruce Knopf serve as a subcommittee on the hiring of counsel, and they could bring back criteria and report back to the Board. Mr. Williams commented that Successor Agency staff should be involved in that process to ensure no conflict of interest.

Mr. Knopf moved, and seconded by Phuong Le, to form a subcommittee including himself, Mr. Mendizabal and Mr. Williams from the City, to meet and work out a recommendation to bring to the next meeting on the agenda. It would include selection criteria, consideration of a contract for outside legal counsel with six months to start, with an option to renew for six months. The motion was approved by unanimous vote.

How attorney costs were to be accounted for, whether within the administrative costs like City of Santa Clara, or another method to be paid from the ROPS was to be determined by the Oversight Board, explained Chairman Gage.

NEW BUSINESS

A. Receive AUP

Chairman Gage noted the report was delayed so this matter should be moved to the next meeting.

B. Receive DDR on Housing Fund & Public Comment

James Williams, an attorney with the County of Santa Clara, reported that three audit reports were coming to all Successor Agencies - first, a County Agreed Upon Procedures to establish assets and liabilities of each former Redevelopment Agency, a comprehensive report due soon. AB 1484 imposed two more audits: the Due Diligence Reviews, one for housing and one for all other funds. The first of these three was on this agenda, and presented to the Board for review.

Ms. Cynthia Pon, partner from the firm MGO, provided a five-page handout to the Board, with a summary of the result of the DDR.

Vice Chair Mendizabal asked questions about the \$6.6 million found in the report, while the Successor Agency disagreed. He wondered how to decide the difference, and Ms. Pon replied it was up to the State Department of Finance ultimately.

James Williams further discussed various funds and how those were spent. Board member Knopf noted the housing fund had \$6.58 million on January 1, and with obligations the Successor Agency had to meet for the ROPS 1, it borrowed money from the low/moderate housing fund. His view was that now there was an "IOU" for that inter-fund borrow.

James Williams provided further explanation of process for the Agency, the County and the State agencies involved.

No action was needed on this item, except to receive the report. On the next agenda, the Board would need to approve the numbers and forward the DDR to the state Department of Finance.

Tom Williams stated the Successor Agency had had only limited time to review this material yet. He disagreed and needed more time for review. He wanted to continue public comment to the next meeting. He stated objection to the finding.

Public Comment period: Chairman Gage asked if there were any public comments from the audience, and none were heard. This item would go to the next meeting for review and continue

the public comment period.

Board member Armando Gomez departed the meeting at 5:45 PM.

C. Presentation on TASP and developments

This topic was moved to the next agenda, as Tom Williams needed to depart the meeting.

D. Unencumbered Funds

Board member and City Finance Director Emma Karlen asked the Board to remove this as a regular agenda item, with the Due Diligence Review and audit coming. Those would include that information, so she asked to remove it as a standing item.

Mr. Knopf replied that one obligation after reviewing every ROPS was to make a determination that there were no available other funds (assets of Successor Agency) to apply to pay for the ROPS. He asked directed questions and gave comments about actions in Milpitas of funds and assets moved into the Milpitas Economic Development Corporation.

Several members commented about actions of, and funds moved into, the Milpitas Economic Development Corporation. Chairman Gage stated this matter could be put on the next agenda. Funds continue to be spent, and it was going to be up to the City how to pay that money back.

Mr. Tom Williams remarked that was why there was a ROPS and payments would be on it.

Board member Knopf made a request for information related to the Milpitas EDC. He requested a copy of the incorporation of EDC, a summary of contracts the EDC entered into, and how much was expended to date. The Board could evaluate then. To the extent those funds were returned, the funds were available to the Oversight Board for payments due. He distributed a memo to the Board with some meeting minutes of the EDC attached.

On the next agenda, he requested a discussion and to consider the Oversight Board seeking an injunction from keeping the EDC from continuing any spending.

Mr. Tom Williams reacted to the request, noting the EDC was a separate legal entity, separate from this Oversight Board and he could bring the agenda item to the EDC Board.

Mr. Knopf moved, and Mr. Murdter seconded, to place on the agenda the item he requested regarding the Milpitas Economic Development Corporation on an upcoming agenda of the Oversight Board.

City of Milpitas Mike Ogaz responded verbally from the audience, regarding the appropriateness of such action.

Chairman Gage called for a vote and the motion was adopted on a vote of 5 in favor, 1 opposed (Emma Karlen) and 1 absent (Armando Gomez).

Board member Murdter asked how would the Chair handle the request for documents to the Board of the Milpitas Economic Development Corporation?

If the requested items were a matter of public record, the documents would be disclosed, replied Tom Williams.

Vice Chair Mendizabal moved, and Phuong Le seconded, to make a request for the documents of the Milpitas Economic Development Corporation, as identified by Mr. Knopf. The motion was adopted on a vote of 5 in favor, 1 opposed (Emma Karlen) and 1 absent (Armando Gomez).

E. County Auditor Report

Attorney James Williams of the County reported that the AUP was due soon. The County was preparing tax distribution estimates based on ROPS 3, and it would be sent to officials of entities affected.

Ray Ruiz, deputy County Counsel, commented on hiring of outside counsel. There was a conflict of interest between the City Attorney and Assistant City Attorney, representing the City entities and the Successor Agency. Litigation was being discussed, while office of County Counsel took a position. Milpitas City Attorney remarked this item was not on the agenda and any comments were inappropriate.

Board member Karlen noted the topic of hiring counsel was already voted upon by the Board.

Mr. Tom Williams referred to treatment of City staff by county staff, toward the Executive Management of the City. Chairman Gage responded that that issue would need to be discussed at the County. City Attorney Ogaz spoke and referred to potential conflicts of interest.

Chairman Gage would take the objective of the law, and represented the Water District as an elected official with objectives in mind. He must follow the law and remain on the record. The State would decide ultimately on issues before this Board.

F. Set Next Meeting

The next meeting date was scheduled in one week on Thursday, October 11, 2012 at 5:00 PM.

The agenda would include a report from the subcommittee on outside counsel, the Agreed Upon Procedures review, with a public hearing further on the housing Due Diligence Review, followed by a vote. Essentially, from this meeting's agenda, the Chair directed the Secretary to move items VI. A, B, C, and D to the next meeting.

ADJOURNMENT

Chair Gage adjourned the meeting at 6:25 PM.

*Meeting minutes drafted and submitted by
Mary Lavelle, Board Secretary*