MILPITAS OVERSIGHT BOARD

TO THE CITY OF MILPITAS ACTING AS THE RDA SUCCESSOR AGENCY

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479
GENERAL INFORMATION: 408-586-3000 www.ci.milpitas.ca.gov

MILPITAS OVERSIGHT BOARD MEETING

Wednesday, December 12, 2012 at 4:00 PM

Milpitas City Hall, Committee Room
455 E. Calaveras Blvd., Milpitas, CA

MEMBERS:
Mike Mendizabal, Chairman
Armando Gomez
Marsha Grilli
Emma Karlen
Bruce Knopf
Michael Murdter
Toby Wong

ALTERNATES:

Felix Reliford
Phuong Le
Jane Corpus Takahashi

Glen Williams

Revised **Minutes**

CALL TO ORDER Chair Mendizabal called the meeting to order at 4:00 pm.

ROLL CALL **MEMBERS PRESENT:** Mike Mendizabal, Marsha Grilli, Emma Karlen, Bruce Knopf, Felix Reliford (alternate to Mr. Gomez), Glen Williams (alternate to Mr. Murdter) and Toby Wong.

MEMBERS ABSENT: Armando Gomez and Michael Murdter

PUBLIC FORUM None.

MEETING MINUTES

Board Member Bruce Knopf requested a correction to the meeting minutes of November 14, 2012. He requested the following addition on page 2, under discussion of Item D following his name to read: "distributed a written report and *clarified questions he had, about the fiduciary responsibility...*" In addition Mr. Knopf expected the report he distributed to the board to be attached to the November 14, 2012, minutes.

Moved by Mr. Knopf and seconded by Ms.Grilli, the meeting minutes of November 14, 2012 were approved, as amended and with the addition of the report, unanimously.

APPROVAL OF AGENDA

Ms. Karlen expressed concerns about the agenda and supporting documents being sent late as it did not give members time to review. Ms. Karlen requested the board agree with her on having agenda items 3 days in advance, and requested reports be attached with the agenda.

Chair Mendizabal commented that some information comes in at the last minute, so resolutions come out at the last minute.

Jennifer Gore, Oversight Board legal counsel, commented that staff does aim to have information in advance. However, there were late developments related to some items. Ms. Gore apologized for the delay in getting documents distributed.

Mr. Ogaz pointed out a written request was submitted by City Manager to continue Items D & E to the next meeting and requested that the Board take action on the request. Chair Mendizabal asked the board for feedback.

Mr. Knopf suggested that the Oversight Board take it up under each item.

Moved by Ms. Grilli and seconded by Mr. Knopf, the agenda was approved unanimously.

ACTION ITEMS

A. Appointments

Chair Mendizabal reported that Don Gage has resigned as Chair as he is the newly elected Mayor of Gilroy. Toby Wong is his replacement. Under the Oversight Board's rules, there are options for voting in a new Chairperson and Vice-chairperson. The Vice Chairperson can either serve as the Chairperson until the Board votes in a new Chairperson in March, or the Board can appoint a new Chairperson and if needed, a Vice chairperson.

Ms. Karlen sought clarification regarding correspondence from the County, dated October 23, 2012, which still listed Don Gage as the primary special district appointee.

Mr. Knopf explained that the correspondence from the County, dated October 23, 2012, pre-dated Mr. Gage's election as Mayor of Gilroy, and was provided to the Oversight Board to refresh the Board's recollection.

Moved my Mr. Knopf and seconded by Mr. Glen Williams to elect Mike Mendizabal as the Chairperson and Marsha Grilli as Vice-Chair. Both will hold those offices until the next election in March 2013, pursuant to the Oversight Board's Rules and Procedures. The motion passed unanimously.

B. No item exists.

C. Appoint Oversight Board contact person for Department of Finance.

Ms. Gore recapped the resolutions that were passed at the November 14, 2012 meeting:

Resolution #6, revised the contract with legal counsel, Miller & Owen.

Resolution #7, substituted contract staff to the Oversight Board and directed it be paid through the administrative budget.

Resolution #8, amended the Board Rules and Procedures.

Resolution #9, requested documents pursuant to Public Records Act.

Those resolutions were signed by Chair Gage and forwarded to Department of Finance (DOF). Given the change in the administrative staff pursuant to Resolution #7, Ms. Gore suggested the Oversight Board appoint a new contact for DOF. Under Section 34179(h) of the Dissolution Law, the Oversight Board is required to designate an official to whom the DOF may make a request to, for review of any Oversight Board action. That official would also transmit documents to the DOF in particular, resolutions passed by board.

Chair Mendizabal asked if in the past was that handled by the City Clerk. Ms. Gore responded that she could not find documentation showing anyone who was formally appointed in the past however, someone from the City's finance department was communicating with the state DOF.

Ms Karlen indicated that in the past she was the person who submitted documents to DOF, as well as County Auditor. But, with the new requirement of submitting resolutions, and since she does not prepare resolutions, Ms. Karlen agreed that a new contact be appointed.

Mr. Knopf inquired as to who prepared the final resolutions from our last meeting and obtained the Chair's signature and forwarded them to DOF. Ms. Gore indicated that Miller and Owen finalized the resolutions based on changes made during the meeting and they were forwarded to Mary Lavelle, who then obtained Chair Gage's signature. However, the resolutions were not transmitted to DOF until recently, which is what prompted this item.

Moved by Mr. Knopf and seconded by Mr. Glen Williams that legal counsel to the Oversight Board be designated as the Oversight Board's contact person for the Department of Finance. Motion passed unanimously.

D. Successor Agency staff to provide a report of the year-to-date expenditures under the current administrative budget, as directed in Resolution 7.

Chair Mendizabal indicated there was a request by the City Manager to continue this item until the next meeting and invited comments.

Mr. Knopf indicated this was a request for an accounting of the expenditures-to-date for administrative functions of the Successor Agency and, that as it is a report and not subject to a great amount of discussion, he suggested the Oversight Board take up its discussion. Mr. Wong concurred with Mr. Knopf.

Chair Mendizabal indicated that the Successor Agency had not provided a report. Mr. Knopf commented that legal counsel has prepared a resolution that recognizes that and recommends a process for moving forward to obtain that information.

Ms. Gore indicated that a resolution was prepared but recommended certain non-essential recitals in the resolution be removed given the City's stated objection to them.

Mr. Ogaz, the City Attorney, concurred with the removal of the recitals, believing several to be defamatory and untrue. Mr. Ogaz also suggested that he and Ms. Karlen could resolve this issue if the Oversight Board would agree to a brief recess. The meeting recessed at 4:24 p.m. Meeting was back in session at 4:25 pm. Ms. Karlen requested that the Board proceed with Item E and come back to this item once her staff could retrieve the information from her staff. The Chair agreed that the Item could be held while the information was retrieved and Item E was heard.

Prior to moving on to Item E, however, Mr. Knopf commented that while the the City Manager did threaten to cancel the November 14th meeting, and that if any of the recitals in the draft resolution were to be retained for any purpose, it would have been accurate to modify the wording to say "Successor Agency staff's threatened cancellation of the November 14th meeting." He also indicated that he is looking forward to a time when some of these items can be addressed without the so much emotion. Returning to this item following the presentation of Item E, Ms. Karlen distributed to the Oversight Board a table showing the Successor Agency's current administrative costs. Ms. Karlen also indicated that, based on the Oversight Board's direction in Resolution number 7, the budget had been revised. Ms. Karlen distributed the revised budget and discussed its contents.

Ms. Gore indicated that she had communicated again with the DOF, however, DOF had not changed its position that Oversight Board legal expenses must be paid from the Successor Agency's administrative cost allowance. Ms. Gore indicated that while the administrative budget had been revised as directed, this still left question of whether the Successor Agency would pay the Oversight Board's legal and administrative support costs. Ms. Gore suggested that the Oversight Board consider the portion of the proposed resolution which directed the Successor Agency to prioritize the payment of the Oversight Board's legal and administrative costs under the administrative budget.

Mr. Ogaz suggested that the Oversight Board did not need to take up the resolution presented by legal counsel, as the Successor Agency would agree to pay the Oversight Board's legal and administrative costs under protest. Mr. Ogaz indicated that this procedure would allow for the

repayment of those funds in the future should the DOF reconsider its position, or in the event of a court order.

Moved by Mr. Knopf and seconded by Ms. Grilli, that the Oversight Board direct the Successor Agency staff to prioritize payment of administrative related invoices (pursuant to contracted administrative services from the County and services performed by Oversight Board Legal Counsel), and that at any future time if there's a change in the California Department of Finance position, that the item be revisited. The Oversight Board understood that the Successor Agency would implement this under protest.

E. Address Milpitas EDC documents provided at November meeting, and Outstanding Public Records Act request.

Chair Mendizabal indicated the City Manager requested this item be continued to the next meeting and invited comments.

Moved by Ms. Karlen and seconded by Mr. Reliford to continue this item. There was a discussion; the motion did not carry. Ayes: 2 (Karlen & Reliford) Noes: 5

Ms. Gore then presented the staff report provided with the agenda, recapping each item and the City's response to those items.

There was a discussion by the Oversight Board about the staff report. Mr. Ogaz also suggested that if the Oversight Board could narrow the scope of the request, the MEDC would produce more documents voluntarily and suggested that the proposed resolution be tabled, and that he work with the Oversight Board's legal counsel to narrow or better define the scope of the request.

Mr. Knopf and Ms. Karlen were appointed to serve as an ad hoc committee, along with legal counsel, to work with City Attorney to clarify the Oversight Board's Public Records Act request to the MEDC.

Moved by Mr. Knopf and seconded by Mr. Williams. The motion passed unanimously.

F. Consider Proposed Standstill Agreement between Oversight Board and Milpitas EDC and the City of Milpitas.

Ms. Gore presented the staff report and proposed Resolution provided along with an e-mail from City Attorney outlining the MEDC's proposed terms of the agreement.

After discussion of the item, it was determined that an ad hoc committee should be appointed to negotiate a standstill agreement.

Mr. Knopf moved adoption of the proposed resolution, as amended, to appoint an ad hoc committee consisting of Emma Karlen, Bruce Knopf and Marsha Grilli, to work with the Oversight Board's legal counsel and the City Attorney to negotiate a standstill agreement with MEDC, whereby MEDC agrees to preserve the assets transferred from the former Redevelopment Agency and/or the City, consistent with the following principles:

1. MEDC will not enter into any new contract effective immediately.

2. The MEDC will incur no new financial obligations of any sort while the standstill agreement is in place, effective immediately.

3. Future expenses of the EDC on existing liabilities, up to $447,230 will be paid by the City of Milpitas.

The Resolution was further amended to direct the ad hoc committee to bring a proposed standstill agreement back to the Oversight Board at its January meeting for approval. (Resolution #15)

Seconded by Mr. Williams; the motion passed unanimously.

G. **No item exists.**

H. **Schedule Public Hearing on Non-Housing Due Diligence Review.**

John Guthrie from County of Santa Clara County reported the following:

1. The City provided a settlement on the housing Due Diligence Review which was distributed to local agencies.
2. Calls were placed daily to the audit firm to check status and today, at 1:00 p.m., the partner has received a first draft, but it has not been reviewed by the County or the City. It is the hope that the draft will be sent to all simultaneously.
3. The Saturday, December 15, 2012, deadline has been delayed to Monday, December 17, 2012. The final date for approval of the Due Diligence Review remains Tuesday, January 15, 2013.

Discussion continued about meeting date of January 7, 2013, with a follow-up meeting on January 14, 2013. Moved by Ms. Grilli and seconded by Mr. Knopf, to set the Public Hearing on the Non-Housing Due Diligence Review for January 7, 2013, at 4pm. Motion passed unanimously.

I. **No item exists.**

J. **Next meeting date**

Moved by Ms. Grilli and seconded by Mr. Knopf the next Oversight Board meeting be for January 14, 2013, at 4:00 pm. Motion passed unanimously.

CLOSED SESSION

It was determined that a closed session was not necessary for the scheduled item.

ADJOURNMENT

Chair Mendizabal adjourned the meeting at 5:56 pm.

Meeting minutes drafted and submitted by
Barbara Crump, Board Secretary

Approved on January 14, 2013:

Mike Mendizabel
Oversight Board Chair

Barbara Crump
Oversight Board Secretary