

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

Monday, January 07, 2013, 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

Minutes

- CALL TO ORDER** Chair Mendizabal called the meeting to order at 4:01 pm.
- ROLL CALL** **MEMBERS PRESENT:** Mike Mendizabal, Marsha Grilli, Bruce Knopf, Michael Murdter, Glen Williams (alternate to Mr. Wong). Emma Karlan arrived at 4:07.
- MEMBERS ABSENT:** Armando Gomez, Toby Wong
- PUBLIC FORUM** None.
- MEETING MINUTES** Mr. Ogaz expressed concerns about the process of passing resolutions (Resolutions 12, 13, 14, 15) as shown on December 12, 2012 meeting minutes. Mr. Ogaz said he only received Resolution #13 in the packet. It is his understanding that resolutions were not actually passed, only motions were made and though they may be similar to resolutions in body, resolutions were not presented. Mr. Ogaz feels it is inappropriate to show they were passed by the board as there was never a motion adopted by the board to pass as a resolution.
- Ms. Gore explained that under the Dissolution law, all actions by the Oversight Board have to be taken by resolution. The resolutions prepared are simply a written reflection of the motions made for the purpose of complying with the Dissolution law.
- Mr. James Williams added that resolutions can be made orally under Roberts Rules of Order, and that the practice in San Jose was that staff prepares resolutions based on actions taken by the Oversight Board then transmits to Department of Finance.
- After additional discussion between the Board members, Successor Agency staff, and legal counsel, Ms. Gore suggested that the Oversight Board revise the minutes to eliminate the references to the Resolutions, and bring back an administrative clean-up item to deal with this

issue at the next meeting. She also suggested that the substance of Resolution number 13 be incorporated in Item VI.A on the current agenda.
Moved by Mr. Murdter and seconded by Mr. Knopf, that the minutes of December 12, 2012, be approved as amended. The motion passed unanimously.

APPROVAL OF AGENDA

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

NEW BUSINESS

- A. Receive Due Diligence Review for All Other Funds, Excluding Low and Moderate Income Housing Funds and hold a Public Hearing, and Provide Direction to Staff.**

Moved by Ms. Grilli and seconded by Mr. Knopf, to open the Public Hearing, which passed unanimously.

Mr. James Williams of the County of Santa Clara distributed the Due Diligence Review (“DDR”) and introduced Mr. David Bullock of Macias, Gini & O’Connell, LLP (“MGO”) (retained under contract by the Santa Clara County Finance Agency), who summarized the DDR.

Mr. Bullock presented the DDR, attached hereto, focusing on Attachment B, which follows page 7 of the DDR. The first 2 items were accounting for assets at June 30, 2012, of \$119,333,195, that represent assets on Successor Agency books at June 30, 2012. The State Controller’s Office completed their asset transfer audit and ordered back about \$147,000,000 in assets, some of which have already been transferred back. The reconciliation in Attachment C notes the assets in the State Controller’s audit that were transferred back as part of \$119,333,195 at June 30, 2012. Mr. Bullock explained that the following items are assets not available for distribution to taxing entities:

- \$4,007,648 represents unspent Bond Proceeds and restricted by bond covenants.
- Physical assets (non-liquid) which include capital assets, property held for re-sale, and advances to the City for a total of \$206,912,113, as itemized in Attachment I.
- \$10,000,000 needed to pay for ROPS period of July 1, 2012, thru December 31, 2012. Cash held at June 30, 2012, paying for the 6 months following for enforceable obligations.

A total of \$31,830,764 is to be remitted back to taxing entities.

Mr. James Williams noted that there are three receivables due from the City as loans made from RDA funds to the City and are treated as non-liquid. The loans are either due at the end of a 20 year period with 5% simple interest or payable on demand with 30 days notice. The Oversight Board will have to decide how to treat this either by demand or to leave on the books to be paid at the end of the 20 year period. These are delineated in Attachment I to the DDR.

Ms. Karlen objected to the inclusion of the loans in the DDR process, and requested that the Oversight Board consider these loans separately.

Ms. Karlen also distributed a report dated January 7, 2013, attached hereto, referring to City of Milpitas Successor Agency Agreed Upon Procedures and Findings and on behalf of the Successor Agency, City of Milpitas and Milpitas Economic Development Corporation (MEDC) collectively referred to as the “Milpitas Entities,” stating their objections and requested that this report be included with the DDR.

The Milpitas Entities object to Findings 2 & 3, asserting that the MEDC is an independent, private entity and therefore the City has no legal authority to force MEDC to return assets that were transferred in accordance with laws in existence at the time of transfer. The Milpitas Entities also object to Finding 10, pointing out that the amount identified in the DDR as Attachment B is incorrect. The cash and cash-equivalent assets were transferred to MEDC before dissolution of the RDA and before enactment of AB1484.

In addition, nearly \$28,000,000 in MEDC assets were contractually committed to third parties prior to the State Controller's report.

Ms. Karlan further stated that the loan of \$2,550,000 was improperly classified. Line 10 of Attachment C should have included the \$2,550,000 transferred to MEDC and therefore the cash would have been reduced by the \$2,550,000 instead of the \$31,877,000.

Mr. Knopf asked Mr. Bullock of MGO why this loan was considered as cash as opposed to a loan.

Mr. Bullock responded that it was due to timing. The documentation showed it was approved in August of 2010 but the actual transfer of funds did not occur through a journal entry until the closing of the books in September of 2011. The loan was not a part of the State Controller's audit, which identified the 3 loans funded at the time, which constitutes the \$6,000,000 put back on the books. It was a matter of interpretation, and MGO could not verify based on the timing of the transaction, but it was funded out of the MEDC.

Mr. Murdter requested that the County finance agency and the auditor to prepare a response to the City's objections for consideration at the January 14th meeting. Mr. Murdter also inquired as to what options the City has to handle repayment should the City be in a financially precarious situation.

Mr. James Williams responded that he was not aware of any formal guidance on this issue, however, the Dissolution law allows DOF to work out a repayment schedule with Successor Agencies if there is insufficient cash to remit in April.

Mr. Knopf commented that he met with the City Attorney today to focus on the efforts of the City and Successor Agency and the MEDC to respond to the PRA request. In reading the last paragraph of the City's objections, stating that MEDC lawfully expended \$1,496,293 on goods and services and owes a balance of \$447,000, Mr. Knopf commented that it is his understanding that the documents that would support that those expenditures were lawful do not exist

Moved by Mr. Murdter and seconded by Mr. Knopf, to close the Public Hearing which passed unanimously.

OLD BUSINESS

- A. Resolution Directing Successor Agency to Reserve a portion of the Administrative Cost Allowance for Payment of Oversight Board Administrative & Legal Cost and to pay such Invoices Immediately.

Ms. Gore presented the staff report and proposed Resolution, which reflected that at the November meeting, the Board adopted Resolution #7, directing the Successor Agency staff to make the Oversight Board staffing changes, and to reflect these changes in the administrative cost budget. At the December 12, 2012 meeting, Ms. Karlan provided a report on the current administrative budget and a copy of the revised administrative budget reflecting the changes directed by the Oversight Board. Because Ms. Karlan presented the revised budget, and based on a statement by the Successor Agency's legal counsel indicating that the Successor agency would pay the Oversight Board's legal and administrative support costs under protest, the Oversight Board did not to adopt the resolution presented at the meeting. Although the City Attorney thought the Successor Agency could pay these costs under protest, it is now apparent that this is not the case.

The proposed Resolution #16 asks that the Successor Agency reserve a portion of the allocation received on January 2, 2013, to pay for these expenses. Furthermore, given the Successor Agency's earlier objection to the minutes, Ms. Gore proposed that the Resolution be revised to incorporate the essence of the former Resolution #13 into the proposed Resolution #16.

In response to a request for clarification from Mr. Ogaz, Ms. Gore confirmed that she was proposing that the Board void Resolution #13 and adopt the essence of Resolution #13 into Resolution #16.

Mr. Knopf requested of Ms. Gore point out the recitals to be eliminated from Resolution #16, and asked if they were factually incorrect.

Ms. Gore indicated that recitals four through six would be eliminated and added that she did not believe they were factually incorrect. Mr. Tom Williams commented that he believes the recitals were factually incorrect.

Ms. Gore recommended that the Oversight Board adopt the attached Resolution to supersede the decision of the Successor Agency staff not to pay the Oversight Board's legal and administrative support cost, and to direct the Successor Agency to set aside \$130,000 of the administrative cost allowance transmitted to it by the County Auditor-Controller on January 2, 2013, for the payment of the Oversight Board legal and administrative support cost. She reiterated that recitals four through six in the draft resolution would be eliminated, that the third recital on the third page of the proposed resolution would be revised to remove the reference to the former Resolution #13, and to instead refer to the December 12, 2012, minutes, and that the direction from the former Resolution #13 would be incorporated into the statements of resolve beginning on the same page.

Mr. Murdter moved adoption of the proposed Resolution #16 and seconded by Mr. Glen Williams, to adopt the resolution with the changes outlined by counsel. The motion passed with Ayes (5) and Noes (1) (Ms. Karlan.)

B. Receive Progress Report from Ad Hoc Committee on Status of Standstill Agreement between Milpitas Economic Development Corporation, City of Milpitas, & Successor Agency.

Ms. Gore presented the staff report. At the December 12, 2012, meeting, an Ad Hoc Committee was appointed to negotiate an agreement, and negotiations are continuing. The Committee anticipates that the Oversight Board should have a draft to consider at the January 14, 2013, meeting.

C. Receive Ad Hoc Committee Report regarding status of the Public Records Act request to Milpitas Economic Development Corporation and Provide Direction to Staff.

Mr. Knopf invited Mr. Ogaz to provide the update. Mr. Ogaz reported that the MEDC has produced documents requested, except for signed Resolution #RA4-13 which will be produced if it is located. Mr. Ogaz indicated confidence that all issues should be resolved by January 14, 2013.

Mr. Knopf indicated that after having met, the parties understood mutually what was being requested and most of the documents have been provided; however there are some documents that do not exist. Mr. Ogaz indicated that the MEDC will respond with an additional response that indicates that there are no further documents in that area.

CLOSED SESSION

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

AGENDA ITEMS FOR NEXT MEETING

The Board directed that the following items be placed on the January 14, 2013, agenda:

1. Consider Due Diligence Review.
2. Consider loans listed in report as part of DDR.
3. Consider Standstill Agreement.
4. Discuss Public Records Act Request.
5. Clean up language on Resolutions 10, 11, 12, 14, 15.
6. Discuss status of payment to legal counsel and administrative costs.
7. Closed session.
8. Discuss certain day of the week be selected for future meetings.

Mr. James Williams pointed out that the next ROPS is due March 14, 2013.

SET NEXT MEETING DATE

Meeting is set for Monday, January 14, 2013

ADJOURNMENT Chair Mendizabal adjourned the meeting at 5:04 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