

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

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 of the January 14, 2013, Meeting

CALL TO ORDER Chair Mendizabal called the meeting to order at 4:01 pm.

ROLL CALL **MEMBERS PRESENT:** Mike Mendizabal, Armando Gomez, Marsha Grilli, Emma Karlan, Bruce Knopf, Mike Murdter & Toby Wong

MEMBERS ABSENT: None

PUBLIC FORUM None.

MEETING MINUTES

Consider approval of Meeting Minutes of January 7, 2013, and revised Minutes of December 12, 2012.

Ms. Karlen requested the following change to the January 7, 2013, Draft Minutes: under New Business, Item A, page 2, the last paragraph beginning with "Ms Karlen also distributed" should be revised to state "and on behalf of the *Successor Agency, City of Milpitas and Milpitas Economic Development Corporation (MEDC) collectively referred to as the "Milpitas Entities."*

Moved by Mr. Gomez and seconded by Mr. Murdter the draft minutes from January 7, 2013 (as amended) and the revised minutes of December 12, 2012 were approved unanimously.

APPROVAL OF AGENDA

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

NEW BUSINESS

A. Administrative Clean-Up to Adopt Resolutions 10, 11, 12 and 14, Reflecting Motions Made at the December 12, 2012, Meeting.

Ms. Jennifer Gore, legal counsel to the Oversight Board, presented the staff report and the revised Resolutions 10, 11, 12, and 14. Moved by Mr. Murdter and seconded by Ms Grilli, to approve the four resolutions, which passed unanimously.

B. Due Diligence Review

B.1. Consider Loans to City of Milpitas Identified through the Due Diligence Review for All Other Funds, Excluding Low and Moderate Income Housing Funds.

Ms. Gore presented the staff report. Following an extensive discussion by the Oversight Board, legal counsel, and staff to the Successor Agency, Mr. Knopf moved that the Oversight Board approve the proposed Resolution directing the Successor Agency for the former RDA to call the loan from the City totaling \$6,988,206, with the following amendment: add a third recital on the first page of the Resolution stating "Whereas pursuant to Health & Safety code 34179.5 (b) (1), payables on demand shall be treated as cash equivalents." The motion was seconded by Director Murdter.

After a lengthy opportunity for public comment and further discussion by the Oversight Board, the Resolution failed by the following vote: Ayes: Knopf, Wong, Murdter Noes: Grilli, Karlen, Gomez and Mendizabal.

B.2. Consider Approval of Due Diligence Review for All Other Funds, Excluding Low and Moderate Income Housing Funds, for Successor Agency to former Milpitas RDA

Ms. Gore presented the staff report and explained that since the staff report was prepared, an addendum to the DDR had been supplied by the County Finance Agency, which provided a new Attachment B revising that the amount to be remitted to the Auditor-Controller for distribution to taxing entities from \$31,877,702 to \$38,875,908. In addition, the County Finance Agency also provided a response to the Milpitas Entities objections to the DDR.

Ms. Karlen made a motion, seconded by Mr. Gomez, to adopt a resolution to drop the \$6,998,206 from the \$38,875,908 to make it \$31,877,702.

Ms. Karlen then made a Second motion, seconded by Mr. Gomez, to adopt a resolution to postpone this report for one week in order to sit down with the County Controller-Auditor to understand these issues. Ms. Karlen withdrew her first motion.

The Oversight Board discussed the proposal to postpone action on this item by one week. Mr. Murdter asked Ms. Gore when the DDR was due and if there is a penalty for being late due to postponement. Ms. Gore responded that it was due January 15, 2013, and added that she believes there are no penalties associated with a late approval.

After additional discussion, the motion to postpone action on this item failed by the following vote: Ayes: Karlen, Gomez, Grilli Noes: Wong, Murdter Knopf and Mendizabal.

The Oversight Board resumed its discussion of the DDR, the Addendum, and the response letter provided by the County Finance Agency.

After an extensive discussion by the Oversight Board, legal counsel, County staff, and Successor Agency staff, Mr. Knopf suggested that the Board incorporate a new recital in the proposed Resolution requesting that DOF consider how to handle non-monetary assets that may be represented in the DDR, and also that they consider an installment payment plan.

Following additional discussion, Ms. Gore also suggested revising the proposed Resolution at the bottom of page 2 to strike the following language: "(1) adjusts the Un-obligated Cash Balance as reported on the non-housing Due Diligence Review from \$31,877,702 to \$38,875,908," and renumbering the subsections of the paragraph accordingly.

Mr. Murdter moved to approve Resolution as revised with the changes discussed. Mr. Knopf offered a second, with a friendly amendment to add a paragraph requesting that DOF consider non-monetary assets as they are represented in the DDR, and consider an installment payment plan. Mr. Murdter accepted Mr. Knopf's amendment to the

Resolution. After additional discussion, the motion passed by the following vote: Ayes: Mendizabal, Knopf, Murdter, Wong. Noes: Gomez, Grilli, Karlen.

OLD BUSINESS

A. Resolution Approving Standstill Agreement between Milpitas Economic Development Corporation, City of Milpitas, and Successor Agency

Ms. Gore requested that this item be discussed in closed session in order to present a draft agreement to the Oversight Board.

Mr. Ogaz commented that the standstill agreement has one provision that the City objects to because it has to do with the payment of the legal and administration fees. The City does not feel this should be part of the Standstill Agreement which is a separate issue. The Standstill Agreement without that provision is something the City Council might find agreeable but with that provision, it is objectionable.

Moved by Mr. Knopf and seconded by Mr. Murdter to adopt a resolution to continue discussion of Item A to closed session which passed unanimously.

B. Receive Progress Report from Ad Hoc Committee on Status of Public Records Act Request to Milpitas Economic Development Corporation and Provide Direction to Staff, if Necessary.

Ms. Gore presented the staff report.

Mr. Ogaz commented that the MEDC has complied with the PRA request indicating that requested documents have been produced and that the MEDC is now in compliance. Mr. Ogaz added that the City maintains the position that MEDC is not subject to the PRA and that these documents are being produced voluntarily.

Ms. Gore indicated that she had not received the final documents. Mr. Ogaz indicated that he believed they had been sent via e-mail. Ms. Gore and Mr. Ogaz suggested the item be continued to the next meeting to give staff an opportunity to discuss the status of the item further.

Moved by Mr. Knopf and seconded by Ms. Grilli to adopt a resolution to continue this item to the next meeting which passed unanimously.

Mr. Knopf reiterated that the Oversight Board disagrees with the MEDC's position that it is not subject to the PRA and pointed to the City's open government ordinance which states that any private entity provided properties and funds by the City with a member of the City Council sitting on its governing body is subject to the Brown Act and Public Records Act.

C. Receive Update on Status of Payment for Oversight Board's Administrative Expenses, including Administrative Support and Legal Services.

Chair Mendizabal said that as of this date, Mr. Tom Williams has refused to pay for invoices submitted for Legal and Administrative services until more detail is provided. Chair Mendizabal added that it is an intrusion on the Board's right to have legal counsel and administrative support, and that invoices submitted are reviewed and approved by the Chair.

Mr. Tom Williams added that he is asking that more detail be outlined on the invoice, including what work was provided, as well as the hourly rate. Once that is received, he will consider paying the invoice.

Mr. Murdter added that it is the role of Oversight Board to approve the counsel's invoice and submit to the Successor Agency for payment.

Mr. Ogaz added that when reviewing invoices, staff always wants some details, and providing redacted copies with itemized listings is appropriate.

After additional discussion, Mr. Murdter moved to continue this item to Closed Session. The motion was seconded by Mr. Wong, and passed by the following vote: Ayes: Gomez, Grilli, Knopf, Mendizabal, Murdter & Wong Noes: Karlen.

D. Establish a Regular Monthly Meeting Date.

The Oversight Board discussed whether a regular meeting date would be helpful. Ms. Gore stated that under the Brown Act, a regular meeting date should be scheduled.

After additional discussion, Ms. Grilli moved to resolve that a regular meeting be held quarterly on the fourth Monday of March, June, September, and December, at 4 p.m. The motion was seconded by Mr. Gomez, and passed unanimously.

AGENDA ITEMS FOR NEXT MEETING

The Oversight Board discussed including the following items on the next agenda: Closed session, Review of the ROPS, Update on Status of PRA, and Update on Payment of Administrative and Legal Expenses.

SET NEXT MEETING DATE

The next meeting date was set for Monday, February 25, 2013.

CLOSED SESSION – ANTICIPATED LITIGATION: CONFERENCE WITH LEGAL COUNSEL-POTENTIAL LITIGATION (Gov. Code section 54956.9 (c).)

Chair Mendizabal adjourned the meeting to closed session at 6:21 pm. The Board returned to open session at 7:00 pm. The Chair reported that in closed session, the Board provided counsel with direction on the Standstill Agreement as well as the payment of legal and administrative support services. The Chair also indicated that he would report out the same information at the beginning of the next Oversight Board meeting.

Moved by Mr. Knopf and seconded by Mr. Gomez, that Ms. Gore serve as the temporary Board Clerk for the remainder of the meeting. Motion passed unanimously.

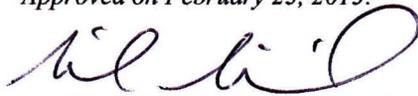
Moved by Mr. Gomez, seconded by Ms. Grilli to approve the Resolution, as amended in closed session, to forward the Standstill Agreement presented in closed session to the MEDC, City of Milpitas, and Successor Agency (“Milpitas Entities”) for consideration, and to authorize the Chair to sign the Agreement if approved by the Milpitas Entities. The Resolution passed unanimously.

ADJOURNMENT

The meeting was adjourned at 7:03 pm.

*Meeting minutes drafted and submitted by
Barbara Crump, Board Secretary*

Approved on February 25, 2013:



Michael Mendizabal
Oversight Board Chair



Barbara Crump
Oversight Board Secretary