

MILPITAS OVERSIGHT BOARD

TO THE RDA SUCCESSOR AGENCY FOR THE CITY OF MILPITAS

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

REGULAR MEETING OF THE MILPITAS OVERSIGHT BOARD

Wednesday, April 8, 2015, at 4:00 PM

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

MEMBERS:

Maribel S Medina, Chair
Emma Karlen
Bruce Knopf
Mike Mendizabal
Mike McInerney
Althea Polanski
Glen Williams

AGENDA

I. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

II. PUBLIC FORUM:

Public comments regarding any subject not on the agenda, limited to three minutes.

III. APPROVAL OF AGENDA

IV. APPROVAL OF MINUTES FOR FEBRUARY 10, 2015, MEETING

V. OLD BUSINESS

- A. Receive Report from Oversight Board Counsel Regarding Efforts To Obtain Successor Agency Signature on Approved Appraisal Agreement. Consider Approval of Resolution 59 Relating To Necessity To Complete Appraisal Process For Disposition of Real Property In Accordance With Approved Long Range Property Management Plan, Expressing Concerns, and Seeking Assistance and Direction From the Department of Finance and State Controller's Office

VI. NEW BUSINESS

- A. Consider Approval of Resolution No. 60 Establishing A Process To Be Utilized For Disposition of Property In Accordance With Long Range Property Management Plan and Selecting a Committee of Board to Oversee the Process.

- B. Presentation by Chair: Matters Regarding Request for Public Records from Milpitas Successor Agency to Oversight Board and Taxing Entities.
- C. Presentation by Successor Agency: Disclosure and Discussion of Oversight Board and Successor Agency Communications Regarding Potential Sale of the Alder Drive and Barber Lane Property (APN 086-02-086) To Either VTA or the State of California.

VII. SET NEXT MEETING DATE

VIII. MEETING ADJOURNMENT

Pursuant to the Brown Act, the public has an opportunity to speak on any matter on the agenda, or to any matter not on the agenda within the subject matter jurisdiction of the agency. Comments are limited to no more than 3 minutes per speaker, unless modified by the Board Chair. By law, no action may be taken on any item raised during public comment on items not on the agenda, although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the agency.

Note: The Board may take action on any matter, however listed on the Agenda, and whether or not listed on this Agenda, to the extent permitted by applicable law.

If requested, this agenda can be made available in appropriate alternative formats to persons with disabilities, as required by Section 202 of the Americans with Disabilities Act of 1990 and the Federal Rules and Regulations adopted in implementation thereof. Persons seeking an alternative format should contact the Oversight Board Clerk for further information. In addition, a person with a disability who requires a modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting, should contact the Board Clerk as soon as possible. The Board Clerk may be reached at barb.crump@gmail.com.

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MEMBERS:

Maribel Medina, Chair
Michael Mendizabal
Althea Polanski
Emma Karlen
Bruce Knopf
Mike McInerney
Glen Williams

ALTERNATES:

Steven McHarris
Jane Corpus Takahashi
Rudy Nasal
Michael Murdter
Alan Minato

Minutes of the February 10, 2015 Meeting

I. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE

Chair Medina called the meeting to order at 4:00 p.m.

ROLL CALL

MEMBERS PRESENT: Maribel Medina, Emma Karlen, Mike McInerney, Mike Murdter, Mike Mendizabal, Althea Polanski and Glen Williams

MEMBERS ABSENT: Bruce Knopf

II. PUBLIC FORUM None

III. APPROVAL OF AGENDA

Moved by Mr. McInerney and seconded by Ms. Polanski, to approve the agenda. The motion passed unanimously.

IV. APPROVAL OF MINUTES FOR December 2, 2014 meeting.

Mr. McInerney asked that the final vote for Item V. A be verified. The draft minutes show that the final vote as **AYES:** Medina, McInerney, Mendizabal, Knopf and Williams; **NOES:** Kalen and Reliford Clerk Crump verified that the vote passed unanimously.

Moved by Mr. McNerney and seconded by Mr. Murdter, to approve the minutes as amended. The motion passed with the following vote: **AYES:** Medina, McNerney, Mendizabal, Karlen, Murdter and Williams; **NOES:** 0 **ABSTAIN:** Polanski

V. OLD BUSINESS

A. Contract with New Oversight Board Counsel

After a brief discussion it was moved by Mr. McNerney and seconded by Mr. Williams to approve the contract with Montoy Law Corporation. The motion passed unanimously.

1. Approve Resolution Ratifying and Approving Agreement with Montoy Law Corporation for Legal Services to the Oversight Board

After a brief discussion it was moved by Mr. McNerney and seconded by Mr. Williams to adopt a resolution approving and ratifying the agreement with Montoy Law Corporation for legal services to the Oversight Board. The motion passed unanimously.

Discussion: Mr. Ogaz asked for the record, that the contract is not to exceed \$80,000 and that it is clear that the expenditure has not yet been approved. Ms. Karlen said that the upcoming (15-16) 6 months, \$20K was allocated adding that she checked with Ms. Montoy and she thought it would be sufficient for the six (6) month period.

B. Long Range Property Management Plan (LRPMP)

1. Receive Report Regarding Department of Finance Review

Ms. Montoy presented the staff report indicating that DOF requested the LRPMP be amended by adding the following:

1. Items Nos 1 through 5 – please provide the Estimated Current Value and Estimated Current Parcel Value (“acceptable value” are book value, appraise value, agency estimates, and current market estimate.) Specify which “acceptable value” was used for the Agency’s determined.
2. Item No. 5 – Annual estimated income/revenue and if the income/revenues are restricted by a contract.

2. Adopt Resolution Approving Amended LRPMP

Moved by Mr. McNerney and seconded by Mr. Murdter to approve a resolution amending the Long Range Property Management Plan for submission to the Department of Finance. The motion passed with the following vote: **AYES:** Medina, McNerney, Mendizabal, Murdter and Williams; **NOES:** Kalen and Polanski

C. Receive Update on Appraisal Process and Discuss Alternative for Completion of Appraisal Process

Ms. Montoy presented the staff report recommending to receive a report on the status of appraisal process and discuss alternatives for completion of appraisal process for consideration.

Mr. Tom Williams asked for the record to include the City’s objection to the following instructions: The special instructions on Exhibit A of the Scope of Services to the contract specifically “to adhere to the following specific appraisal instructions:

1. For all four parcels the appraisals should determine current fair-market value based upon highest and best use irrespective of current zoning, general plan designation, current use or any other limitation over which the City of Milpitas has discretion.
2. For parcel #2 in addition to the fair-market value as a stand-alone parcel the appraiser has asked to determine whether and by how much the appraised evaluation for the subject parcel per square foot would be different if the subject parcel would be combined with the adjoining similar-sized parcel owned by VTA.

There was considerable discussion on the matter with Board Member Williams giving an explanation of the appraisal language. Chair Medina recommended that Ms. Montoy contact the appraiser and work with Mr. Williams and Mr. Ogaz to

explore potential options for resolution on the issue. Chair Medina also offered to have the ad hoc committee that had previously been approved by the Board available if necessary.

VI. NEW BUSINESS

A. Approve Resolution Appointing Legal Counsel as Oversight Board Contact Person for the Department of Finance

Ms. Montoy presented the staff report to approve a resolution to appoint Hilda Cantu Montoy as Oversight Board Counsel.

Moved by Mr. McInerney and seconded by Mr. Murdter to approve the resolution to appoint legal counsel as Oversight Board contact with request that the last sentence of the Be It Resolved clause to substitute Ms. Montoy's name for Ms. Gore's name so that it's clear who they should be contacting. The motion passed with the following vote: **AYES:** Medina, McInerney, Mendizabal, Murdter and Williams; **NOES:** Karlen and Polanski

Discussion: Ms. Karlen and Mr. Ogaz requested that Successor Agency staff be copied on all communications between Ms. Montoy as the official contact with DOF. The Board agreed Successor Agency staff would be copied on all official communication with DOF. Successor Agency staff agreed to also copy Ms. Montoy on all official communication they have with DOF.

B. Approve Resolution Amending Successor Agency's Administrative Budget for January to June 2015 to Replace Miller and Owen" with "Montoy Law Corporation" as the Designated payee for the Oversight Board Legal Costs.

After a lengthy discussion it was moved by Mr. Mendizabal and seconded by Mr. Williams to approve a resolution amending the Successor Agency's administrative budget for January 1, to June 30, 2015 to add Montoy Law Corporation with Miller and Owen as the designated Payees for Oversight Board Legal Costs. The motion passed unanimously.

C. Approve Resolution Approving successor Agency's Administrative Budget for July to December 2015 (FY 15-16)

Moved by Mr. Williams and seconded by Mr. McInerney to approve the Administrative Budget for the ROPS with the caveat that the amount designated for staff is subject to adjustment by this Board, if the ministerial functions that this Board has by its action, assigned to staff are not completed by June 30, 2015. The motion passed with the following vote: **AYES:** Medina, McInerney, Murdter & Williams; **NOES:** Karlen, Mendizabal and Polanski

D. Approve Resolution approving Recognized Obligation Payment Schedule (ROPS 15-16A) for the July 1 to December 31, 2015 Period.

Ms. Karlen presented the staff report indicating that a letter of Notice of No Objection to the ROPS was received from the County.

Moved by Mr. Williams and seconded by Ms. Polanski to approve the ROPS 15-16A. The motion passed unanimously.

VII. SET NEXT MEETING DATE

It was agreed that the next meeting will be held Wednesday, April 8, 2015, at 4:00 p.m.

VIII. MEETING ADJOURNMENT

Moved by Mr. Mendizabal and seconded by Ms. Polanski, Chair Medina adjourned the meeting at 5:34 p.m.

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

Approved on April 8, 2015:

Maribel Medina
Oversight Board Chair

Barbara Crump
Oversight Board Secretary

OVERSIGHT BOARD STAFF REPORT

MEETING DATE: April 8, 2015

ITEM V.A: Update on Efforts to Obtain Successor Agency Signature on Approved Appraisal Agreement and Approval of Resolution 59 Relating to Necessity to Complete Appraisal Process for Disposition of Real Property In Accordance with Approved Long Range Management Property Plan, Expressing Concerns, and Seeking Assistance and Direction from the Department of Finance and State Controller's Office

RECOMMENDED ACTION:

Consider the Report and Adopt Resolution 59 Relating to Necessity to Complete Appraisal Process for Disposition of Real Property In Accordance with Approved Long Range Management Property Plan, Expressing Concerns, and Seeking Assistance and Direction from the Department of Finance and State Controller's Office

BACKGROUND AND DISCUSSION:

On December 2, 2014, the Oversight Board approved an agreement with Valbridge Property Advisors for appraisal services. The agreement has been approved by DOF. The Oversight Board discussed this matter at its February 10, 2015, meeting. The Oversight Board Special Counsel was directed to contact the Appraiser, work with the City Attorney and City Manager to explore potential options for resolution, and to work with the Ad Hoc Board Committee.

Special Counsel and the City Attorney developed language approved by the Successor Agency and the Ad Hoc Committee. The Agreement was sent to the City Attorney for signature. After multiple requests for a copy of the signed Appraisal Contract, the City Attorney sent an email to Special Counsel providing in pertinent part: "I have no time line for execution of the contract." Telephone calls between Special Counsel and the City Attorney followed with no change in the Successor Agency's position.

The attached resolution provides a detailed background and summary regarding the Successor Agency's continued failure to execute the Appraisal Contract. Because the Oversight Board has very limited powers under the Dissolution Law, the resolution seeks direction and authority from the Department of Finance and State Controller's Office.

RESOLUTION NO. 59

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY RELATING TO NECESSITY TO COMPLETE APPRAISAL PROCESS FOR DISPOSITION OF REAL PROPERTY IN ACCORDANCE WITH APPROVED LONG RANGE PROPERTY MANAGEMENT PLAN, EXPRESSING CONCERNS, AND SEEKING ASSISTANCE AND DIRECTION FROM THE DEPARTMENT OF FINANCE AND STATE CONTROLLER'S OFFICE

WHEREAS, on October 17, 2014, a Request for Qualifications (RFQ) for appraisers to perform appraisals on four of five properties listed in Long Range Property Management Plan (LRPMP) was distributed.

WHEREAS, the Long Range Property Management Plan was approved by the California Department of Finance (DOF) by way of letter dated March 9, 2015, which letter provides in part as follows:

“Pursuant to HSC section 34191.3 the approved LRPMP shall govern, and supersede all other provisions relating to, the disposition and use of all the real property assets of the former redevelopment agency.”

WHEREAS, a Subcommittee comprised of three Oversight Board Members evaluated the proposals received and made a recommendation to the Oversight Board on November 3, 2014.

WHEREAS, on November 3, 2014, the Oversight Board approved the Subcommittee's selection of appraisers and directed the Subcommittee to negotiate and approve contracts with the best qualified appraisers to complete each of the four appraisals.

WHEREAS, on December 2, 2014, the Oversight Board considered the Subcommittee's recommended contract with Valbridge Property Advisors and considered the comments from the Successor Agency representative on the Subcommittee and from Successor Agency staff objecting to certain language regarding the methodology to be used by the appraiser.

WHEREAS, on December 2, 2014, the Oversight Board also took into account, language in the Section 3 of the Settlement Agreement of June 17, 2014, (between the City of Milpitas, Successor Agency, Milpitas Housing Authority, Milpitas EDC and the County of Santa Clara, the Santa Clara County Office of Education, the State Controller, the California Department of Finance) which provides that the real properties listed on Schedule 4 of the Settlement Agreement (3 of the 4 to be appraised) shall be “designated for sale under Health and Safety Code section 34191.5 (c) (2)(B), to be liquidated in a manner that maximizes the financial returns to the affected taxing entities on account of such liquidations.”

WHEREAS, on December 2, 2014, after extensive discussion the Oversight Board approved Resolution No. 52 approving an Appraisal Contract with Valbridge Property Advisors Including Appraisal Instructions.

WHEREAS, on February 10, 2015, the Oversight Board received an update from the Oversight Board Special Counsel that the Successor Agency was refusing to execute the Appraisal Contract.

WHEREAS, at the February 10, 2015, Oversight Board meeting, Successor Agency staff expressed its continued objections to the appraisal instructions.

WHEREAS, on February 10, 2015, it was decided by the Oversight Board that their Special Counsel contact the appraiser and work with the Milpitas City Manager, Milpitas City Attorney, and the Ad Hoc Board Committee, if necessary, to explore potential options.

WHEREAS, thereafter, the Oversight Board's Special Counsel worked with the Milpitas City Attorney and endeavored to reach compromise language and thereby allow the appraisal process to move forward.

WHEREAS, the Oversight Board's Special Counsel also discussed compromise language with the Ad Hoc Board Committee and with the Appraiser.

WHEREAS, after various wordsmithing and discussions between the Milpitas City Attorney and Board's Special Counsel, the City Attorney sent an email dated February 26, 2015, stating as follows: "I have client acceptance of the contract terms and instructions. Let me know what your client says."

WHEREAS, after getting acceptance of the language from the Valbridge and from the Ad Hoc Committee, Board's Special Counsel advised the City Attorney that she had client approval via email dated March 2, 2015, to which the City Attorney responded that same date: "Very Good. I await the document to get signatures."

WHEREAS, on March 2, 2015, the full revised agreement was submitted to the City Attorney as set forth in Exhibit A.

WHEREAS, on March 17, 2015, Board's Special Counsel sent an email to the City Attorney asking for a copy of the signed agreement to which the City Attorney responded on March 20, 2015, "The agreement is still in the Manager's Office and he will be out until Monday."

WHEREAS, on Monday, March 23, 2015, Board Counsel sent an email to the City Attorney as follows: "May I get it today? Also, do you know status of the appraisals? Thank you."

WHEREAS, on Monday March 24, 2015, the City Attorney sent the Oversight Board's Special Counsel an email as follows:

“Hello Hilda, The contract is not yet signed. We are concerned with the language in the LRPMP which indicates that the State has expressed interest in the site as a Highway Patrol facility. Such an interest should have been communicated to the Successor Agency, but instead has been communicated to unidentified members of the Oversight Board without discussion or consideration or notice to the Successor Agency. This follows neither the language nor spirit of the Dissolution Law. This language was injected into the LRPMP at the last minute and shows a lack of good faith or simple arrogance on behalf of the County controlled members of the Oversight Board. **I have no time line for execution of the appraisal contract.**” (emphasis added)

WHEREAS, Board's Special Counsel spoke to the City Attorney on March 30th and March 31, 2015, and on both occasions, the Successor Agency's position remained unchanged.

WHEREAS, the Successor Agency's failure and refusal to execute the Appraisal Contract after formal action by the Oversight Board at a duly noticed meeting, and after reaching compromise language is thwarting the appraisals and disposition of real property as required by the Dissolution Law, the LRPMP, and the Settlement Agreement.

WHEREAS, the Oversight Board has limited powers under the Dissolution Law and is not a party the Settlement Agreement referenced above.

NOW, THEREFORE, the Oversight Board of the former Milpitas Redevelopment Agency resolves as follows:

Section 1. The recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. The Oversight Board expresses its serious concerns with respect to the Successor Agency's failure and refusal to execute the Appraisal Contract.

Section 3. The Oversight Board seeks assistance, direction, and authority from the California Department of Finance (DOF) and State Controller's Office (SCO) to prompt and cause the Successor Agency to execute the Appraisal Contract and/or for any assistance, direction, and authority to allow the appraisal process to proceed.

Section 4. Through the transmittal of this resolution to affected taxing entities, the Oversight Board requests their assistance in getting appraisals performed.

Section 5. The Oversight Board Chair and Oversight Board Special Counsel are authorized to communicate with DOF, the SCO, and taxing entities regarding the resolution of this matter.

PASSED AND ADOPTED this 8th day of April 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Barbara Crump
Oversight Board Secretary

Maribel S. Medina
Oversight Board Chair

RESOLUTION NO. 60

RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER MILPITAS REDEVELOPMENT AGENCY ESTABLISHING A PROCESS TO BE UTILIZED FOR DISPOSITION OF PROPERTY IN ACCORDANCE WITH LONG RANGE PROPERTY MANAGEMENT AND SELECTING A BOARD COMMITTEE TO OVERSEE THE PROCESS

WHEREAS, the Oversight Board to the RDA Successor Agency for the City of Milpitas (“Oversight Board”) has been established to direct the RDA Successor Agency for the City of Milpitas (“Successor Agency”) to take certain actions to wind down the affairs of the Redevelopment Agency in accordance with the California Health and Safety Code; and

WHEREAS, among the duties of successor agencies under the Dissolution Act is the preparation of a long-range property management plan that addresses the disposition and use of the real properties of the former redevelopment agency for consideration by a local oversight board and California Department of Finance (“DOF”); and

WHEREAS, the Long Range Property Management Plan for the Successor Agency was approved by the Oversight Board on February 10, 2015, and by DOF on March 9, 2015; and

WHEREAS, the Long-Range Property Management Plan identified properties as assets of the Successor Agency that the Successor Agency is to sell; and

WHEREAS, the Oversight Board approved an Appraisal Contract with Valbridge Property Advisors on December 2, 2014, which provides for appraisal of the following properties:

1. 86 N. Main Street, vacant land, APN 028-24-025
2. Alder Drive and Barber Lane, vacant land, APN 086-02-086
3. 230 N. Main Street, vacant land, APNs 028-34-001 through 094
4. 540 S. Main Street, community center, APN 086-10-025; and

WHEREAS, the Oversight Board desires to utilize a Request for Proposals (“RFP”) process to solicit offers for the disposition of the properties; and

WHEREAS, the Oversight Board desires to have Special Counsel work with the Successor Agency on the preparation of an RFP for each property; and

WHEREAS, the Oversight Board desires to designate an ad hoc committee of the Oversight Board to oversee the process and present the RFPs to the Oversight Board for approval at the next Oversight Board meeting.

NOW, THEREFORE, the Oversight Board of the former Milpitas Redevelopment Agency resolves as follows:

Section 1. The recitals set forth above are true and correct and are incorporated herein by reference.

Section 2. In order to proceed with selling the real properties identified for sale in the LRPMP, the Oversight Board wishes to utilize a Request for Proposals process.

Section 3. The Oversight Board hereby approves a Request for Proposals process for the sale of the properties identified above. Special Counsel is directed to work with Successor Agency staff in the preparation of an RFP for each of the properties.

Section 4. The Oversight Board selects Oversight Board Members _____ and _____ to serve as an Ad Hoc Committee to oversee the RFP process and to present the RFPs to the Oversight Board for consideration and approval at the next Oversight Board meeting.

PASSED AND ADOPTED this 8th day of April 2015, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Barbara Crump
Oversight Board Secretary

Maribel S. Medina
Oversight Board Chair

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ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Barbara Crump
Oversight Board Secretary

Maribel S. Medina
Oversight Board Chair