

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.

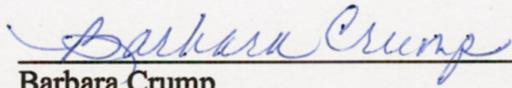
Section 4. Through the transmittal of this resolution to affected taxing entities, the Oversight Board requests their assistance in getting appraisals performed.

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: Medina, Knopf, Mendizabal, McInerney, Williams
NOES: Karlen, Polanski
ABSENT:
ABSTAIN:

ATTEST:



Barbara Crump
Oversight Board Secretary

APPROVED:



Maribel S. Medina
Oversight Board Chair