

MINUTES OF A REGULAR MEETING OF THE
OVERSIGHT BOARD TO THE SUCCESSOR AGENCY
TO THE DISSOLVED CYPRESS REDEVELOPMENT AGENCY

HELD

January 8, 2013

A regular meeting of the Oversight Board to the Successor Agency to the Dissolved Cypress Redevelopment Agency was called to order at 4:00 p.m. by Board Vice Chair Mills in the Executive Board Room, 5275 Orange Avenue, Cypress, California.

Board Members present:

Board Vice Chair Leroy Mills
Board Member Charles Mealey
Board Member Matt Burton
Board Member Bruce Saltz
Board Member Fred Williams
Board Member Mariellen Yarc

Board Members absent:

Board Chair Doug Bailey

Staff present:

City Manager John Bahorski (Successor Agency)
Successor Agency Counsel Dan Slater
Redevelopment Project Manager Steve Clarke (Successor Agency)
City Clerk/Secretary Denise Basham (Successor Agency)

ORAL COMMUNICATIONS:

None.

NEW BUSINESS:

Item No. 1: APPROVAL OF MINUTES – MEETING OF DECEMBER 18, 2012.

It was moved by Board Member Yarc and seconded by Board Member Williams, to adopt Resolution No. OB-13 approving the meeting minutes of December 18, 2012.

The motion was carried by the following vote:

AYES: 6 BOARD MEMBERS: Burton, Mealey, Saltz, Williams, Yarc, and Mills
NOES: 0 BOARD MEMBERS: None
ABSENT: 1 BOARD MEMBERS: Bailey

OVERSIGHT BOARD RESOLUTION NO. OB-13

A RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY
TO THE DISSOLVED CYPRESS REDEVELOPMENT AGENCY
APPROVING THE MINUTES OF THE OVERSIGHT BOARD
MEETING OF DECEMBER 18, 2012

Item No. 2: APPROVAL OF A RESOLUTION REGARDING THE BOARD'S DETERMINATION ON THE DUE DILIGENCE REVIEW FOR ALL OTHER FUNDS.

The City Manager stated that the Due Diligence Review is a requirement of Assembly Bill 1484. He stated that Board Member Williams found a calculation error in the payment amount on the Agenda Report and that the correct amount should be \$347,666.43. He indicated that the Resolution has been amended to reflect the correct amount.

Board Vice Chair Mills asked about the Successor Agency not having sufficient cash balances to make the full November 2012 payment and having to illegally borrow monies from the City of Cypress in order to pay the County Auditor-Controller the full amount of Low and Moderate Income Housing Fund monies.

Successor Agency Counsel stated that the ability of the Successor Agency to borrow money from the City is limited and that borrowing money to make the Due Diligence Review payment would

not be covered by the law that allows the Successor Agency to borrow money from the City for limited purposes.

Board Member Yarc asked if a penalty would be imposed if the payment is not made.

The City Manager responded in the affirmative.

Board Member Williams indicated that the City of Brea sued and recently reached an agreement to make small payments without any penalty.

Successor Agency Counsel stated that in order to reach a settlement or stipulated judgment with the Department of Finance, cities are forced to sue the Department of Finance before the Department of Finance will engage in settlement discussions through the Attorney General's Office.

Board Vice Chair Mills asked if information is shared with other cities when a precedent is set.

Successor Agency Counsel responded in the affirmative, and indicated that the shared information is e-mailed between the respective City Attorneys.

Board Member Williams asked if the double-payment issue would be resolved with this Resolution.

Successor Agency Counsel commented that if the County Auditor-Controller agrees that it has received all of the money that it needs to meet the payment, the matter should be resolved. He stated that the Due Diligence Review Resolution would be sent to the Department of Finance who has until April 1, 2013 to issue a final determination.

The City Manager stated that the Department of Finance stated that it does not have the statutory authority to handle the overpayment issue and that the matter must go through the County Auditor-Controller.

Board Member Yarc asked for clarification on the property ownership and if the 13 acre site is owned by the State or the City.

Successor Agency Counsel stated that the City owns the property but that because the transfer took place in March 2011, the State Controller may assert authority to reverse the property back to the Successor Agency. He commented that if that occurs, the property would most likely become part of the property management plan for disposition. He commented that problems with the clawback provision include the question of whether or not the State Legislature has the authority to enact a law that retroactively impairs a lawful contract (March 2011) and that it is unclear if fair market value transactions would be subject to the clawback.

Successor Agency Counsel stated that the payment for the property was the reduction of the note and that the note has been rejected as an enforceable obligation. He indicated that there is a question as to whether the State has the authority to retroactively reject or invalidate the note. He stated that Cypress is a Charter City which derives its authority from the Constitution, not the State Legislature, which gives the City an additional argument that the State may not retroactively void the note.

Board Member Yarc asked if it is worth the cost of attorney fees to fight the issue, and if the property could be sold and what title insurance company would insure it.

Successor Agency Counsel responded that title insurance companies have taken the position that they want asset transfers approved by Oversight Boards. He indicated, as an example, that housing land automatically transferred to the housing successor under the law but that nonetheless some title companies refused to issue title policies showing the property vested in the housing successor. He stated that with respect to non-housing land, it appears title companies are looking for approved property management plans. He stated that if the 13 acre site went back to the Successor Agency and became part of the property management plan, the property management plan likely to come before the Oversight Board for approval would show the disposition of the 13 acre site in the same configuration as the City as the current owner would sell the property. He stated that it is unclear as to what would happen to the sale proceeds when the property is sold.

Successor Agency Counsel stated that if the Department of Finance rejects the Due Diligence Review Resolution, a meet and confer process would be held again. He indicated that the

Successor Agency in Closed Session would discuss the value of moving forward with any litigation.

Board Member Williams asked if the City has a good case to continue.

Successor Agency Counsel responded that the City has a good argument and is made more powerful because Cypress is a Charter City.

Successor Agency Counsel expressed concern with there not being a limitations period of the State Controller's clawback provision in that it could take years for a determination.

Board Member Mealey commented that the State will have its hands full with organizations who relinquished property.

The City Manager stated that it was for the best benefit of the community to not use the property tax increment to purchase the property.

It was moved by Board Member Williams and seconded by Board Member Yarc, that the Oversight Board adopt the Resolution making its determination on the Due Diligence Review for All Other Funds, as amended, to make the calculation correction noted by Board Member Williams.

The motion was unanimously carried by the following vote:

AYES: 6 BOARD MEMBERS: Burton, Mealey, Saltz, Williams, Yarc, and Mills
NOES: 0 BOARD MEMBERS: None
ABSENT: 1 BOARD MEMBERS: Bailey

OVERSIGHT BOARD RESOLUTION NO. OB-14

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY
TO THE FORMER CYPRESS REDEVELOPMENT AGENCY
MAKING ITS DETERMINATION ON THE DUE DILIGENCE REVIEW
FOR ALL OTHER FUNDS

OVERSIGHT BOARD INFORMATIONAL ITEMS & ANNOUNCEMENTS:

The City Manager announced that the Department of Finance has scheduled a meet and confer on the housing asset transfer form with him and the Redevelopment Project Manager, and that the Oversight Board would be notified of the determination.

ADJOURNMENT: Board Vice Chair Mills adjourned the meeting at 4:29 p.m. to Tuesday, January 15, 2013, beginning at 5:30 p.m. in the Executive Board Room.



OVERSIGHT BOARD CHAIR

ATTEST:



CITY CLERK AS SECRETARY
TO THE OVERSIGHT BOARD