

MINUTES OF THE REGULAR MEETING OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY HELD ON WEDNESDAY, SEPTEMBER 11, 2013, AT 6:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. PRELIMINARY MATTERS

A. Call to Order

Chairman Ruh called the meeting to order at 6:00 p.m. and asked that everyone please silence their electronic devices as a courtesy to others while the meeting is in session.

B. Roll Call

Present: Chairman Ruh; Board Members Catlin, Erickson Kulbeck, Richardson, and Stallings; Deputy City Manager/Economic Development Executive Director Staats; Finance Director Parker; Secretary Smith

Absent: Vice Chairperson Johnson (excused)

II. PUBLIC COMMENT - None

III. APPROVAL OF MINUTES

A. Minutes of Regular Oversight Board Meeting of August 14, 2013

Moved by Board Member Richardson and seconded by Board Member Kulbeck to approve the minutes of the Oversight Board regular meeting of August 14, 2013.

Motion carried as follows:

AYES: Stallings, Richardson, Kulbeck, Ruh
NOES: None
ABSTAIN: Erickson, Catlin
ABSENT: Johnson

IV. BUSINESS ITEMS

A. Adoption of Resolution No. 13-08, a Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving a Recognized Obligation Payment Schedule for January 1, 2014, Through June 30, 2014, Pursuant to California Health and Safety Code Section 34179,

Division 24, Part 1.85, and Authorizing Posting and Transmittal Thereof

Board Member Stallings inquired as follows:

1. You stated there is a change [on the subject Recognized Obligation Payment Schedule to claim the full amount on the bond payments?

Finance Director Parker answered, "Yes. Prior to this, I had only claimed the amount that was coming due within the six-month period; whereas, that is not the way the bond issues really should work. The bonds have a first pledge on tax increment, and all tax increment should go to bond payments first. Any amounts that are over and above that would be declared to be excess and would be swept to the taxing entities, so now I am claiming the full bond year debt service."

Board Member Stallings stated, "OK, that makes sense. I concur with what you have done before. I just want to follow up a little bit because I think **Mr. Parker** explained this before, but I am still not clear. Does the law as it stands allow successor agencies to refinance debt?"

Finance Director Parker answered, "They can refinance debt. They are allowed to issue new bonds if those bonds generate no additional proceeds, do not extend the terms of the bond issue, and produce a debt service savings. If any one of those three is missing, then the Department of Finance (DOF) will not approve it."

2. Is that the type of thing that, should the City decide to refinance debt, would come to this group?

Finance Director Parker answered, "Yes. If we were to go through and evaluate that and it made economic sense for us to go forward with it, we would have to have both Oversight Board and DOF approval of the whole process."

Board Member Stallings stated, "I am well aware that the rates are going up, so you are probably not saying it is a great environment in which to refinance, but I am just trying to figure out how this all works."

Finance Director Parker stated, "I am involved in that right now with the Brea Redevelopment Agency, which is doing that right now, and the process is becoming horrendous. Anything you do with DOF is a minimum of four-to-six-month turnarounds on approvals. It used to be, if a redevelopment agency wanted to issue bonds, that the process would be completed in two to

three weeks. Now, you submit initially, the Oversight Board approves it, five months later you get an approval from DOF; then you go back to the documents, get another approval, five months later you get another approval from DOF. By the time they are done, the interest rates may wipe out the whole thing."

Board Member Stallings thanked Finance Director Parker for clarifying the issue. He stated, "I worry about the inefficiency of the system in this respect. All public agencies, I know, have gone through periods of refinancing; and I think the description of how quickly you need to move to take advantage of the market so your taxpayers get the relief that they deserve is accurate. I think the system as it stands now—it is very difficult to see how it could operate on behalf of the taxpayer efficiently. Thank you."

Board Member Catlin inquired as follows:

1. Does Column I on the *Recognized Obligation Payment Schedule (ROPS) 13-14B - ROPS Detail* reflect the total bond debt?

Finance Director Parker answered, "The figures in Column I of that page are the totals remaining on the bond issues. The amounts in Column N are the debt service amounts for the bond year, which would be the amounts due for the first and second payments on those bonds."

2. Would you still show the same numbers for the next six-month period?

Finance Director Parker answered, "What I would do, if these same amounts are available, and they should be—we turn in enough increment to be able to cover these amounts—if we were to get paid these amounts, I would, in turn, take those amounts and send them to the trustee. In the next six-month period I would show '0' for those because they are paid for the bond year, in which case that would mean the full tax increment collected in the second portion would all be available for allocation of the residual to the taxing entities."

3. So you are trying to truly reflect the timing?

Finance Director Parker answered, "Yes. Hopefully, at this point there should be enough tax increment generated in the first six months to cover these and also provide a residual."

Oversight Board Counsel Kotkin stated, "Just by way of a clear and direct legal answer, [Finance Director Parker] has already said this but I want to underscore it to speak to your point, there is a statutory preference for these bonded indebtedness obligations. What he has done is put them up front."

Finance Director Parker concurred.

Board Member Catlin thanked staff for the clarification.

Moved by Board Member Stallings and seconded by Board Member Catlin that Resolution No. 13-08, entitled, "**A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Adopting a Recognized Obligation Payment Schedule for January 1, 2014, Through June 30, 2014, Pursuant to California Health and Safety Code Section 34179, Division 24, Part 1.85, and Authorizing Posting and Transmittal Thereof,**" be read by number and title only, further reading be waived, and it be declared adopted.

The Oversight Board waived the reading of the Resolution.

Resolution No. 13-08 was adopted by the following vote:

AYES: Stallings, Richardson, Kulbeck, Erickson, Catlin, Ruh
NOES: None
ABSTAIN: None
ABSENT: Johnson

B. Adoption of Resolution No.13-09, a Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving the Successor Agency's Proposed Administrative Budget for January 1, 2014, Through June 30, 2014, Pursuant to Health and Safety Code Section 34177(j)

Board Member Stallings noted the insurance costs that are broken down by category (public employee bond, general liability, fire insurance, and earthquake) in the Proposed Administrative Budget for January 1, 2014, Through June 30, 2014, are shown collectively on the Administrative Budget proposed for the next period (July 1 to December 31, 2014).

Finance Director Parker stated, "Yes, actually, I think we decided the City was just going to bear the entire cost of the insurances. The proposed budget for the first six months is just subsidizing a portion of the City insurance."

Board Member Stallings asked, "The \$10,136 amount?"

Finance Director Parker answered, "Yes."

Board Member Stallings noted the following six month insurance total is \$5,000.

Finance Director Parker stated, "I combined all the insurances together."

Board Member Stallings asked, "Is that the one that the City is picking up the entire cost?"

Finance Director Parker stated, "Well, the City is picking up at least \$5,136 of it. The City is sharing more of the cost in the second half of the year."

Deputy City Manager/Economic Development Executive Director Staats stated, "And that also occurs because we believe we will be able to reduce the staff time. Since we are doing the six months in advance, we have no idea how much time it is going to take for [DOF] to review the property management plan and any other issues DOF decides to bring up. That is why it is an estimate—it is difficult to say exactly what the costs will be."

Board Member Stallings concurred. He asked, "Is it possible to revise the proposed Administrative Budgets later?"

Finance Director Parker stated, "Yes, we could come back to the Oversight Board for revisions to them. The problem is going to be that if DOF does lock us in with \$250,000, we will have no room to go over. This agency does not get any income. A lot of agencies will have rents or interest earnings or something similar coming in. We do not; so basically, the only money we have is the money we get from property taxes."

Board Member Richardson asked how the Successor Agency can expect the utility costs to drop so dramatically from the first half to the second half of the year.

Finance Director Parker stated, "OK, we allocate utility costs based upon the amount of direct salaries we allocate, so it is an indirect allocation. As you can see in the budget proposed for the second half of the year, we are dropping the amount of percentage time; and correspondingly, we are also dropping the share of utilities. Some of it we are just estimating and indicating the City is going to pick up more of the costs."

Board Member Richardson thanked Finance Director Parker for the clarification.

Noting his absence at the August 14, 2013 Oversight Board regular meeting, Board Member Catlin stated that he reviewed the minutes of the meeting and noted the lengthy discussion on the administrative allowance cap. He asked if DOF has been allowing the administrative allowance overruns that have been routine through July 1, 2014.

Finance Director Parker stated, "No, [DOF] has not been covering them. The way the law reads is you are only allowed to get 3 percent or \$250,000 from the Redevelopment Property Tax Trust

Fund, whichever is larger. In our case, the \$250,000 would be larger because the percentage is based upon how much you are paid for your obligations. We are limited to \$250,000, but the law also indicates administrative costs can be paid by other resources, in which case that limitation will not apply. We have been using reserves, or moneys we had on hand from the elimination up until this point, to cover the administrative costs. Now, unfortunately—fortunately for you guys, unfortunately for us—we had to pay all our moneys through those due diligence reviews; so our resources have pretty much been eliminated and have trickled down to what we have now. We are not going to be able to do that in the future. We are going to have to be limited to this \$250,000 arbitrary cap because I think they are interpreting the law very narrowly. There is nothing in AB 1484 that I can find and no one can direct me to that indicates administrative costs are limited or capped to a specific amount."

Board Member Catlin thanked Finance Director Parker for the information.

Moved by Board Member Catlin and seconded by Board Member Kulbeck that Resolution No. 13-09, entitled, "**A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving the Successor Agency's Proposed Administrative Budget for January 1, 2014, Through June 30, 2014, Pursuant to Health and Safety Code Section 34177(j)**," be read by number and title only, further reading be waived, and it be declared adopted.

The Oversight Board waived the reading of the Resolution.

Resolution No. 13-09 was adopted by the following vote:

AYES: Stallings, Richardson, Kulbeck, Erickson, Catlin, Ruh
NOES: None
ABSTAIN: None
ABSENT: Johnson

C. Adoption of Resolution No. 13-10, a Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Directing the Successor Agency to Transfer Housing Functions and Assets to the Montclair Housing Authority

Board Member Richardson inquired as to whom staff provides Oversight Board actions.

Finance Director Parker stated, "We email them to the DOF website, and DOF has five days to decide if they are to be reviewed, at which time a 40-day period commences for the review period. I have never seen one reviewed in 40 days—the process takes more like

60 to 90 days. From what I understand now, almost every Oversight Board Resolution is being pulled for review. In fact, for your information, the last actions the Oversight Board took to approve legal counsel and to hire the appraiser, both were pulled for review, we had to submit all pertinent documentation, and we have heard nothing. They are on a 60- to 90-day clock."

Deputy City Manager/Economic Development Executive Director Staats stated, "We obviously have retained the attorney and the appraiser; however, DOF has not approved them."

Finance Director Parker stated, "We did ask DOF what that means regarding the appraisals, and DOF said, 'Go ahead and do it.'"

Board Member Richardson asked if Deputy City Manager/Economic Development Executive Director Staats was able to get in touch with the contact he gave her at DOF, **Mr. Justin Howard**.

Deputy City Manager/Economic Development Executive Director Staats stated, "We had actually contacted him originally and never heard anything."

Board Member Richardson noted being told by some oversight board members appointed by the County of San Bernardino that they had success in working with **Mr. Howard**, whom he understands is second in command at DOF and all the analysts go to him for final approval.

Finance Director Parker stated, "When DOF originally denied the retroactive Resolution from the State Controller on this item, I prepared a complete discussion of the item, asking if it would be appropriate to transfer housing functions to a successor housing authority, and sent it to DOF Local Government Consultant **Steve Szalay, Mr. Howard**, the reviewer, the Controller's Office, head of audits, and the individual auditors. Not one person has ever responded, and it has been over two months. I contacted a DOF supervisor by telephone and asked when the item would be reviewed, and she indicated she would 'elevate it in the status.' We still have not heard anything after two months. There is no Meet and Confer on a reconsideration for a Resolution."

Board Member Richardson asked Oversight Board Counsel Kotkin if he has had an opportunity to review the matter.

Oversight Board Counsel Kotkin stated, "I actually spoke with Deputy City Manager Staats about this matter [at the last meeting]. I am sorry to say that there is no competent attorney who is telling you the truth who is going to say, 'I can predict with a modicum of certainty how this is going to turn out.' Realistically speaking, this is as good if not a better course as others that could be pursued. You have already visited this issue in the past upon direction from

one arm of the state government. Now you are back because a more powerful arm of the state government with respect to this process has said, 'No.' You are seeking to take action to effectively move it forward as quickly as possible. The only thing I would say as your attorney is we have some obligations on chronology with respect to the Long-Range Property Management Plan. Staff has already advised you with respect to the Recognized Obligation Payment Schedule how that impacts the process. My comment to you is we really need them to get going with respect to issues like this because we cannot present you, that is, your staff from the Successor Agency and your attorney cannot present you with a Long-Range Property Management Plan that we could recommend approval of until we have some direction in this area because of what they are saying, and I want you to extrapolate from what they are saying in terms of your practical understanding of these units. That is why I think it is so important that **Ms. Staats** explain to you what she did. They are saying, 'Take these deed-restricted properties where 300 residents live and value them to go on the chopping block. Think about that. What is the implication—extrapolate from that decision. I do not think anyone in Sacramento has; and unfortunately, as **Mr. Parker** very correctly told you, there is no Meet and Confer option here. Yes, I have reviewed it; and I am as puzzled as **Ms. Staats** and **Mr. Parker** with respect to what is an iron-clad approach. This is as good as any."

Chairman Ruh stated, "For those of you who may be unfamiliar with the properties we are referencing, most of the units are inhabited (for lack of a better word) by very low-income and low-income individuals and families. It is not as if we are dealing with persons who are paying \$10,000 per month for a penthouse. We are talking about people who are probably making it day by day in most cases. There is no real value there, and that is why the units are deed-restricted for 55 years. Most of the units are inhabited by very low-income persons."

Oversight Board Counsel Kotkin stated, "Practically speaking, the covenants referenced by staff are not something that can be played around with. They are as much a part of the property as the title is. The covenants run with the land. For an investor to think about this property as an acquisition, that investor would have to take a 55-year outlook."

Board Member Catlin asked if DOF is expecting a Long-Range Property Management Plan from the Successor Agency pursuant to Health and Safety Code Section 34191.5(b) as indicated in its correspondence dated May 15, 2013 attached to this item.

Finance Director Parker answered, "Their direction was to include a Long-Range Property Management Plan; however, the law specifically states that if dwelling units are low- to moderate-income housing property, they should transfer to a successor

housing authority. By doing this, it is going to specifically put them on notice to tell us exactly what is required. As I did point out, there is no Meet and Confer on a Resolution. The retroactive Resolution is dead because we were unable to elicit a response from DOF. At least this Resolution will open discussions again, and we can go from there with it."

Board Member Catlin noted the DOF letter indicates "the [State] Controller did not comment on whether the Oversight Board Action is correct" related to the Oversight Board's action to retroactively approve the housing asset transfer to the Montclair Housing Corporation.

Finance Director Parker stated, "That is actually wrong because the Controller in its report did state 'We have reviewed the Oversight Board's action that was taken, and we find that no further action is required.' That was specifically stated in the Controller's audit. When I responded to DOF, I specifically pointed that out. I think what you have here right now is a debate between the Controller's Office and DOF. We, unfortunately, seem to be struck in the middle."

Board Member Catlin asked if the Oversight Board could reconsider the action.

Finance Director Parker stated, "The Oversight Board could advise DOF, 'We have reconsidered it. Tough luck. Here is the same thing again.' I would assume [DOF] would just bounce it again. We are attempting to take the simplest course of action by telling DOF, 'You don't like the transfer to the Montclair Housing Corporation. Fine, the [affordable housing units] belong with the successor housing authority as long as that transfer is allowed. We just do not want the units in the Long-Range Property Management Plan because every time we have dealt with DOF related to low- to moderate-income housing, DOF has bounced it with no explanation. In addition, as I told DOF on the phone, as far as I am concerned, if we come up with a value [for the units] and DOF says, 'Sell those properties,' they better come down here with a court order and a state marshal because there is no way that I am going to do it. We will just have the state come down to do it."

Oversight Board Counsel Kotkin stated, "**Mr. Catlin**, the elegance of this approach as opposed to just doing it over again the way it was previously done is that we can point very clearly, and without any real potential counterargument, to the statutory direction which we have as a legislative body to take these types of properties and assign them, put them in the hands of the successor housing agency. That is statutory and goes back to the original bill, not just AB 1484. You are dancing more to the tune of the statute in that respect, and you are doing it sooner rather than later. You are trying to, anyway."

Moved by Board Member Catlin and seconded by Board Member Richardson that Resolution No. 13-10, entitled, "**A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Directing the Successor Agency Transfer Certain Housing Functions and Assets to the Montclair Housing Authority,**" be read by number and title only, further reading be waived, and it be declared adopted.

The Oversight Board waived the reading of the Resolution.

Resolution No. 13-10 was adopted by the following vote:

AYES: Stallings, Richardson, Kulbeck, Erickson, Catlin, Ruh
NOES: None
ABSTAIN: None
ABSENT: Johnson

V. COMMUNICATIONS

A. Staff - None

B. Chairman and Members

1. Chairman Ruh He noted his attendance yesterday at the opening for the International Baccalaureate School **Ray Wiltsey Middle School**, Ontario.

Board Member Stallings stated, "Mr. Chairman, we were honored by your attendance. We greatly appreciate it. I know how busy you are. Thank you very much."

Chairman Ruh stated, "Thank you for inviting all of us."

VI. ADJOURNMENT

At 6:39 p.m., Chairman Ruh adjourned the Oversight Board of Directors.

Submitted for Oversight Board approval,

Yvonne L. Smith
Secretary