

**Oversight Board
(to the Successor Agency of the Pinole Redevelopment Agency)
Minutes
May 2, 2012**

1. Call to Order

Chair Long called the meeting of the Oversight Board of the Successor Agency of the Pinole ("Oversight Board") to order at 4:10 p.m. in the Pinole City Council Chambers, 2131 Pear Street, Pinole CA. Board Member Dotson led the Pledge of Allegiance.

2. Roll Call

Members Present:

Debbie Long, Chair
Mary Drazba
Norma Martinez Rubin
Maureen Toms, Vice-Chair
Whitney Dotson

Members Absent:

Peter Murray
John Marquez
The voting record reflects their absence.

Staff present included: City Manager Belinda Espinosa, Assistant City Manager Michelle Fitzer, Assistant City Attorney Stephanie Downs, Finance Director Richard Loomis, and City Clerk Patricia Athenour

City Clerk Athenour announced that the meeting was posted on March 29, 2012 at 4 PM and all legally required notice was provided. Board member Drazba announced a conflict with obligations # 34 and 35 on the ROPS list (Item 5A), where she was named as a recipient.

3. Public Comment

No speakers addressed the Oversight Board.

4. Consent Calendar – Minutes of April 4, 2012

Board Member Martinez Rubin noted that the agenda should reference her as an appointee of the "Office of County Superintendent of Schools."

ACTION: Motion by Board Members Toms / Dotson, the Oversight Board unanimously approved the Minutes of April 4, 2012.

5. Matters for Consideration

Item 5A – Recognized Obligation Payment Schedule /July – December 2012

Finance Director Richard Loomis presented the staff report into the record and distributed a handout to the Board, explaining that the obligations will retain the same numbering on future reports to show the balance remaining, until fully paid. Caporicci and Larsen have been retained as the auditor firm. A preliminary conference has been scheduled on May 8, 2012 with Carmen Wilson, the assigned auditor. The next regularly scheduled meeting would be in October and a report would be available for review.

Loomis announced that Item 34 required separate motion without Board Member Drazba. HE said these were the same contracts that were included in the January-June 2012 ROPS. Noting that he had received a list of questions from one of the board members, he and Assistant City Attorney Downs were prepared to respond verbally to the questions.

Assistant City Attorney Downs addressed the questions raised prior to the meeting by Board Member Drazba on pending litigation. She said that Items 1-4 were related to AB 1585 and were not in place in ABx26 and she would defer comment until the bill passes. Items 17-20 pertained to certain sources of income and the question was whether it could be used to offset the amount against the ROPS and Ms. Downs said no; each year the controller will do a true up.

Mr. Loomis responded to the following items listed in the questions from Ms. Drazba:

- # 9 (Soccer field) – the contract contemplates payment made in arrears after finalization of the improvement.

Board Member Drazba questioned presenting this contract to the controller since it is not an Agency contract. Mr. Loomis responded that both have been approved by the Department of Finance. He said there is a dispute regarding the Restoration Design contract and it is the same situation where the contract is between city and vendor, but there are documents to demonstrate it was a clerical error, utilizing the wrong contract template.

Board Member Drazba said that the Wildan contract was also written as a City contract with an Agency resolution, and questioned whether it would hold up.

- # 10 - Wildan

There were three payments totaling \$2,204 in January through March period and no current outstanding invoices. Mr. Loomis said the work would be completed by October 2012.

- Collins House

Ms. Downs addressed the relationship of the debts from the housing program from future pledged property tax increment and State has said to keep putting on the ROPS.

- # 18 Land Lease Pacific Bell

Loomis said it was an annual payment and last paid on December 31, 2011.

Board Member Drazba asked a procedural question regarding what would happen to the money for bills that are not paid. Loomis said it was a topic for a future discussion.

- #19 Dale Moore Construction

There is no time limit in the contract document.

- #22 Thomas York

This is the auditing service contract for financial review for the two shopping centers. Escrow for Pinole Valley will close tomorrow and Pinole Vista on June 5th. It is on as a contingency item; if the sales are not completed it would not continue to carry as a funded obligation

- #25 & #26 Carryovers

Payment should only occur in the month of November.

- #32 Huen

This is the second time on the list because unsure whether payment of \$1,800 had been made on February 22. It will not need to be on the list for August

- #36 Restoration Design Group

Mr. Loomis discussed the deficiency in the current funding and provided an analysis attached to the notification letter that demonstrated the amount of money to be released to Successor Agency was \$1.5 million less than the enforceable obligations the Board was reviewing. He said it was not unique and would be a recurring theme and different agencies would have a different approach in dealing with this problem. The cash flow deficiency will manifest in Pinole in this funding cycle. After the truing up process, there should be sufficient tax money to fund the ROPS going forward. He said there was a residual in housing set-aside and \$800,000 in project accounts and suggested the residual carryover be used to provide the cash flow necessary to meet the payment obligations. The funding shortfall is responsibility of Successor Agency (City), and that is why the Board is not proposing any corrective action.

Board Member Toms referred to Ch 3, Section 34-177 (j) (l) 1 and identifies funding sources on the ROPS, stating there is an order established to pay bills and it does not appear that the sources of funds identifies the difference from reserves or trust fund.

Mr. Loomis responded that he has been struggling with the code section that states it is a responsibility of successor agency to turn over any residual funds to the County auditor. The code references encumbered funds and he said it was

unclear what encumbered funds are. Discussion ensued between Mr. Loomis and Board Member Toms, about the best attempt to try to deal with a “fuzzy” issue

Board Member Martinez-Rubin requested clarity on the order of payment by type.

Mr. Loomis responded that the intent of the law, if there is a funding shortfall and no other funds than the pledged tax revenues, the order would be as follows:

1. Reimbursable costs by county auditor and state controller
2. Unsubordinated pass through agreements
3. Bond debt
4. Subordinated pass through agreements
5. All other contractual agreements
6. Administrative cost reimbursements to the Successor Agency

Board Member Martinez-Rubin asked about the basis for denial and the time period to pay. She stressed to make sure this type of clerical error does not happen again.

Mr. Loomis confirmed it was five years and explained the Pinole Creek Demonstration Project funding and that Phase 2nd that has not been funded yet. He discussed the Wildan contract for the bridge removal and the purpose of Restoration Design Group was for geometrics monitoring to review how the project impacted the hydrology and aquatic life of the creek. The problem occurred when there was a transfer of responsibility from the Agency to Public Works and the contract was executed as a City contract instead of an Agency contract. He believed there was a defensible legal position for funding because preparation of other documents by the Agency clearly show it was the intent of the Agency to fund this work.

Chair Long asked if the Agency was overleveraged, what position does that put them in or are they in better position to collect more of the money?

Mr. Loomis responded that overleveraging can never result in a good outcome. Each bond issue for each Agency stands on its own. He provided further clarification; stating that there was no indication of which would get paid first; pass thru or bond holders. For Pinole, the pledged revenue was \$8.25 Million and pass-through was only \$350,000. Hercules' position is totally different.

Chair Long raised the following questions:

1. Can a Successor Agency declare bankruptcy separate from the City?

Mr. Loomis said a Successor Agency is a trust account and has pledged revenue; it is not clear under what mechanism that revenue can be securitized for debt refunding. He said it would not apply in Pinole.

Ms. Downs responded that the purpose of bankruptcy was to restructure debts and to the extent the Agency did not have sufficient revenues, they would try to work with creditors rather than declare bankruptcy.

2. Requested clarification on the education and special district pass through payments (\$67,268) and asked Loomis to provide the specific information offline.

Mr. Loomis responded that approximately \$27,000 is Pinole's and the balance is the special districts. Debbie asked Loomis to provide the specific information off line.

Board Member Drazba asked if there was excess funds in reserves from the \$1.6 Million and whether he thought the County would challenge holding that cash. Mr. Loomis said there was and referred to it as "residual cash" and said there would be a true up.

Maria Alegria, Pinole citizen, addressed the Oversight Board and asked if a column could be added to the ROPS spreadsheet to include amounts that have been paid. She also asked the amount of the severance package for the Redevelopment Agency employee, requested a copy of the agreement, and also asked if Item 34 was an employment claim.

Mr. Loomis said there would be a "true up" at conclusion of each six-month period and the format has not been distributed by the County or the State yet. In October, the spreadsheet would include payments authorized during the period Jan-June 2012. He said he would email a copy of the severance agreement requested. The claim she referenced was the amount of unemployment insurance claims that may be filed by former employees of the Redevelopment. He said he would provide the figure to Ms. Alegria, as well as the agreement.

Ms. Alegria also asked the status of the City's collateralized investment agreement and asked if it was a recognized obligation and questioned why it wasn't on the ROPS.

Chair Long said it is an obligation of the City, not the former Redevelopment Agency. Mr. Loomis said it was an asset of the Successor Agency. The total amount of the receivable is in excess of \$2.5 Million and extends for thirteen years. The first payment on the collateralized agreement is due in FY 2013/14 in the amount of \$263,000.

ACTION Motion by Drazba/Toms, the Board Adopted Resolution 2012-03, approving the July – December 2012 ROPS, Items 1-36, excluding Item 32 and removing 34 and 35 for separate vote,

Vote: Passed 5-0-2; Marquez and Murray absent.

Board Member Drazba left the Chamber.

ACTION: Motion by Members Toms/ Dotson, the Board Adopted the July – December 2012 ROPS, Item 34 & 35.

Vote: Passed 4-0-3; Drazba, Marquez and Murray absent

Board Member Drazba rejoined the meeting.

Item 5B – Adoption of the FY 2012-13 Budget

Richard Loomis, Finance Director, presented the staff report into the record for a budget period spanning eleven months (Feb-Dec 2012). Loomis anticipates the next budget cycle, Jan – June 2013, to be reviewed in October and henceforth would be on a 6-month cycle thereafter. He said he had made a determination that the close out work can be completed for \$125,000 or less every six months. Loomis explained the duties of each staff member, and the monies that have been divided accordingly and staff is keeping an accounting for their time. After six months, he would have a better feel of the time invested, and the allocations may change. Funds are also needed for attorney support required to oversee recordkeeping and FPPC filings, money set aside for video recording at \$500 per meeting, and office supplies and the web updates. Loomis explained that absent guidance provided by a superior governmental agency, he developed the budget format working with the Finance Director from San Pablo.

Questions and discussion followed. Board Member Martinez-Rubin asked for clarification on portions of Attachment C.

Board Member Toms noted a correction, stating that the statutory maximum allowed in FY 2011-12 should be 5 instead of 7. Mr. Loomis confirmed her statement. She further stated that she understood for FY 2012/13 all cities would receive the minimum \$250,000 for the whole fiscal year and if any additional was owed, it would be provided in December. She further noted that some tasks Mr. Loomis has noted are over and above the standard requirements, and some jurisdictions are putting those outside of this calculation.

Mr. Loomis said that is the reason for the timekeeping. He said the preparation of the HCD report is much less challenging in Pinole than a large city and thought it could fit into the minimum allowance, but cannot say with any certainty until we have more experiences.

Board Member Martinez-Rubin asked if there was any definition of administrative costs, and wanted to make sure the most current list was being used, as she had learned in a seminar that there were two lists. Board Member Toms responded. Loomis discussed other cities with projects to administer, which fall outside of the cost allowance.

Maria Alegria, Pinole citizen, stated the following observations and concerns to insure that the budget is not being used to backfill the redevelopment expenses, and her opinion that it was excessive to pay both the City Manager and Assistant City Manager for oversight. Alegria asked if benefits were tracked separately, so they are not coming out of the General Fund.

ACTION: Motion by Board Members Martinez-Rubin / Drazba, the Oversight Board adopted Resolution 2012-04, approving the Initial Administrative Budget for 11 Months Beginning February 2012 and ending December 2012.

Vote: Passed 5-0-2; Absent Murray & Marquez

Item 5C – Discussion Regarding State Controller Communications

Assistant City Attorney Downs updated the Board on the letter received from the State Controller John Chiang demanding that any assets be transferred back to the Successor Agency of the relevant Redevelopment Agency. Pinole received the letter via Contra Costa County Auditor Controller Robert Campbell. She said her office would review the letter and make a recommendation. The City validated the actions when they transferred the properties and Ms. Downs said they intend to stand on the validation action.

Board Member Drazba asked whether there would be a determination and Ms. Downs said that they were still reviewing all aspects of the law. Board Member Drazba confirmed if they found the action invalid, it would be the city's decision to fight that action and the cost would be borne by City not the Oversight Board. Ms. Downs confirmed that was a correct statement.

Board Member Toms reported that the Board of Supervisors, when taking action on County ROPS, provided additional direction to authorize the auditor to convene a meeting of all County successor agencies to determine if there was interest to meet and review issues. She surveyed this board to determine the level of interest.

Chair Long said the Board may want to call a special meeting and reconvene.

Board Member Drazba requested that a legislative update section be added to the Agenda.

Chair Long said she would look to the City Manager and the Finance Director to determine if there was a need to call a June meeting.

ADJOURNMENT

At 5:45 p.m., Chair Long adjourned the meeting to the next meeting of October 3, 2012.

Submitted by:

Patricia Athenour, MMC
Pinole City Clerk

APPROVED BY OVERSIGHT BOARD: