

A G E N D A

REGULAR MEETING OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE CITY OF SUISUN CITY REDEVELOPMENT AGENCY FRIDAY, NOVEMBER 21, 2014

4:00 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

TELECONFERENCE NOTICE

Pursuant to Government Code Section 54953, Subdivision (b), the following Oversight Board meeting will include teleconference participation by Board member Rosemary Thurston from: 437 Southport Way, Vallejo 94591. This Notice and Agenda will be posted at the teleconference locations.

Next Board Res. No. OB2014 – __

ROLL CALL

Board Members

PUBLIC COMMENT

(Requests by citizens to discuss any matter under our jurisdiction other than an item posted on this agenda per California Government Code §54954.3 allowing 3 minutes to each speaker).

CONSENT CALENDAR

Consent calendar items requiring little or no discussion may be acted upon with one motion.

- 1) Board Approval of the Minutes of the Regular Meetings of the Oversight Board held on October 15, 2014. – (Hobson)

GENERAL BUSINESS

- 2) Discussion and Direction on the Successor Agency's Equity Participation in the One Harbor Center Office Building

REPORTS: *(Informational items only.)*

- 3) Chair/Boardmembers
- 4) Staff

ADJOURNMENT

A complete packet of information containing Staff Reports and exhibits related to each item is available for public review at least 72 hours prior to a Board Meeting or, in the event that it is delivered to the Boardmembers less than 72 hours prior to a Board Meeting, as soon as it is so delivered. The packet is available for review in the Suisun City Manager's Office during normal business hours, and online at www.suisun.com/Oversight-Board.html.

MINUTES

REGULAR MEETING OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE CITY OF SUISUN CITY REDEVELOPMENT AGENCY

WEDNESDAY, OCTOBER 15, 2014

4:00 P.M.

SUISUN CITY COUNCIL CHAMBERS -- 701 CIVIC CENTER BOULEVARD -- SUISUN CITY, CALIFORNIA

TELECONFERENCE NOTICE

Pursuant to Government Code Section 54953, Subdivision (b), the following Oversight Board meeting will include teleconference participation by Board member Pete Sanchez from Double Tree by Hilton at 222 North Vineyard Avenue, Ontario 91764, and possibly Board member Rosemary Thurston from: 437 Southport Way, Vallejo 94591. This Notice and Agenda will be posted at the teleconference locations.

ROLL CALL

Chairman Spring called the meeting to order at 4:00 PM with Board Members Kearns, Sheldon, Sanchez, and Spring present. Absent: Board Member Thurston

PUBLIC COMMENT **None**

(Requests by citizens to discuss any matter under our jurisdiction other than an item posted on this agenda per California Government Code §54954.3 allowing 3 minutes to each speaker).

CONSENT CALENDAR

Consent calendar items requiring little or no discussion may be acted upon with one motion.

- 1) Board Approval of the Minutes of the Regular Meetings of the Oversight Board held on June 12, 2014, June 27, 2014, August 13, 2014, August 25, 2014, and September 19, 2014. – (Hobson).

Motioned by Board Member Sheldon and seconded by Board Member Kearns to approve the Consent Calendar. Motion carried by the following roll call vote:

AYES: **Board Members: Kearns, Sanchez, Sheldon, Spring**
NOES: **Board Members: None**
ABSENT: **Board Members: Thurston**

Board Member Thurston joined the meeting via teleconference at 4:03 p.m.

GENERAL BUSINESS

- 2) PUBLIC HEARING (Continued from 2 p.m. Meeting of October 9, 2014) – Main Street West Disposition and Development Agreement (Garben)
 - a) Adoption of Oversight Board Resolution No. OB2014 - 11: Authorizing the Executive Director to Extend the Term of the Main Street West Disposition and Development Agreement (DDA); and

- b) Adoption of Oversight Board Resolution No. OB2014 - 12: Approving and Authorizing the Execution of the Fourth Amendment to the Disposition and Development Agreement (DDA) with Main Street West Partners, LLC.

Economic Development Director Garben gave a presentation and responded to questions from the Oversight Board.

Chairman Spring Opened the Public Hearing

No one spoke

Chairman Spring Closed the Public Hearing

Motioned by Board Member Kearns and seconded by Board Member Sheldon to adopt Resolution OB 2014-11. Motion carried by the following roll call vote:

AYES: Board Members: Kearns, Sanchez, Sheldon, Thurston, Spring
NOES: Board Members: None
ABSENT: Board Members: None

Motioned by Board Member Sheldon and seconded by Board Member Kearns to adopt Resolution OB 2014-12. Motion carried by the following roll call vote:

AYES: Board Members: Kearns, Sanchez, Sheldon, Thurston, Spring
NOES: Board Members: None
ABSENT: Board Members: None

REPORTS: *(Informational items only.)*

- 3) Chair/Boardmembers
- 4) Staff: Economic Development Director Garben announced the next meeting of the Oversight Board is November 21, 2014.

ADJOURNMENT

There being no further business, Chairman Spring adjourned the Oversight Board at 4:26 p.m.

Donna Pock, CMC
Deputy City Clerk

AGENDA TRANSMITTAL

MEETING DATE: November 18, 2014

OVERSIGHT BOARD AGENDA ITEM: Discussion and Direction on the Successor Agency's Equity Participation in the One Harbor Center Office Building.

FISCAL IMPACT: The Equity Participation in the ownership of the One Harbor Center office building entitles the Successor Agency to receive the greater of Five Hundred Thousand Dollars (\$500,000) or ten percent (10%) of the "Total Cumulative Gross Proceeds. These funds are to be remitted to the County for distribution consistent with redevelopment dissolution law upon receipt by the Successor Agency.

IMPACT ON PASS THROUGHGS TO OTHER TAXING ENTITIES: This item has no impact on the existing pass-through payments to the other affected taxing entities.

BACKGROUND: The former Redevelopment Agency of the City of Suisun City and One Harbor Center, a California Limited Partnership ("Developer") entered into a Disposition and Development Agreement dated September 19, 2000 (the "DDA") for the purposes of Developer's acquiring and developing the One Harbor Center Office building. Pursuant to Article IV of the DDA the Agency received an Equity Participation in exchange for the sale of the site and the Agency's contributions to site improvements and payment of development fees. Article IV of the DDA provides the Agency may exercise a "Call Option" to demand payment of the Equity Participation within thirty (30) days after the 13th, 15th, 17th, and 19th anniversary date of the issuance of the Certificate of Occupancy (which was issued on December 14, 2001). Therefore, the Agency may exercise the call option for payment of the Equity Participation on or before January 13, 2015 ("First Call Option"). If the Call Option is not exercised on any of the aforementioned anniversary dates, the Equity Participation shall become due and payable as of the 20th anniversary date of the issuance of the Certificate of Occupancy.

The redevelopment dissolution laws have significantly altered how business can be conducted with respect to assets of the former redevelopment agency. Pursuant to California Health and Safety Code Section 34181, the Successor Agency is obligated to dispose of all assets and properties of the former redevelopment agency *expeditiously and in a manner aimed at maximizing value.*

STAFF REPORT: As previously mentioned, the Equity Participation in the ownership of the One Harbor Center office building entitles the Agency to receive the greater of Five Hundred Thousand Dollars (\$500,000) or ten percent (10%) of the "Total Cumulative Gross Proceeds." The Total Cumulative Gross Proceeds is essentially defined as 10% of the annual cash revenues after all expenses generated by the operation of the building, plus any cash reserves and equity in the building based on a sale or appraised value reduced by sale costs of 7%, repayments of loans secured by the development, and tenant's security deposits.

PREPARED BY:

Jason Garben, Economic Development Director

REVIEWED/APPROVED BY:

Suzanne Bragdon, City Manager

In the absence of a sale, the Equity Participation becomes payable through the exercise of a Call Option or expiration of the 20 year term, the “appraised value” as mentioned above, shall be determined by the following process:

- a) One Harbor Center delivers to Agency its written “statement” of the fair market value of the development within 90 days after the exercise of the Call Option or expiration of the 20 year period.
- b) Agency has 30 days to respond to One Harbor Center’s written statement of fair market value by accepting or providing its own “response” with an opinion of a fair market value.
- c) The parties would then have ten days thereafter to meet and confer in good faith effort to reach an agreement. If no agreement is made, the matter is submitted to an arbitration process.
- d) The arbitrator would be an MAI appraiser with at least 5-years experience who is familiar with the Fairfield-Suisun Area agreed upon by both parties. If the parties are unable to agree upon an appraiser within 30 days, either party has the right to apply for the appointment of a duly qualified person to act as arbitrator to the Presiding Judge of the Solano County Superior Court. In making a decision, the arbitrator is to determine whether the Developer’s “statement” or the Agency’s “response” most closely conforms to the arbitrator’s opinion of the fair market value.
- e) The arbitration process is final and binding, and the each party is required to pay one half of the fees and costs of the arbitrator and all its own costs and attorneys’ fees in connection with the arbitration.

A complete copy of Article IV from the DDA is attached hereto and provides the complete provisions of the Agency’s Equity Participation.

The Successor Agency is expected to provide staff with direction at its November 18 meeting. Any additional information or direction provided to staff by the Successor Agency Board will be transmitted to the Oversight Board in a supplemental packet as soon as it is available.

RECOMMENDATION: It is recommended that the Oversight receive the presentation and provide staff with direction regarding the upcoming Call Option.

ATTACHMENTS:

1. Location Map/Photo One Harbor Center
2. Article IV of DDA – Equity Participation.

One Harbor Center Location Map & Photo



Front of building from Lotz Way



One Harbor Center is located at corner of Main Street and Lotz Way



As seen from Waterfront

ARTICLE IV EQUITY PARTICIPATION

4.1 Equity Participation. Agency shall receive the Equity Participation in the ownership of the Site, Buildings and Improvements as consideration for the sale of the Site and Agency's contribution to Site improvement and for payment of a portion of the development fees. The Equity Participation shall entitle Agency to receive the greater of Five Hundred Thousand Dollars (\$500,000) or ten percent (10%) of the "Total Cumulative Gross Proceeds" (as hereinafter defined) of the Development up to and including proceeds of sale of the Development, after repayment of loans secured by encumbrance upon the Development. The Equity Participation shall be paid upon sale of the Development. If the Equity Participation has not been paid to Agency prior to the twentieth (20th) anniversary date of issuance of the Certificate of Occupancy with respect to the Building, it shall become due and payable as of that date and shall be paid in the manner provided below.

4.2 Form Of Equity Participation. The form of the Equity Participation shall be determined by the parties prior to close of escrow. It may consist of a separate, recorded property interest in the Development or an interest in a "single purpose entity" formed for the purposes of taking title to the Site, developing and constructing the Building and Improvements and managing and leasing the same for profit, or other form acceptable to both parties.

4.3 Definitions. For purposes hereof, the following terms shall be defined as follows:

(a) "Total Cumulative Gross Proceeds" ("TCGP") shall mean: the cumulative total of all "Annual Net Proceeds" for the period beginning on the date of issuance of the certificate of occupancy with respect to the Building through the date of calculation, and shall include the sum of: (i) all remaining cash reserves, and (ii) the sales price of the Development as determined by sale or appraisal; reduced by: (x) real estate commissions and other expenses of sale (actual in the case of sale and 7% of appraised value if the value of the Equity Participation is to be determined by appraisal); (y) repayment of all loans secured by the Development; and (z) tenant's security deposits. If the sales proceeds include a note or notes and/or other property in addition to cash, the face amount of the note or notes and the value of the other property shall be included in TCGP and distributed accordingly.

(b) "Annual Net Proceeds" shall mean the excess of: (i) all Project revenues, including, but not limited to, (1) collected rents, (2) interest earned on cash reserves, and (3) reimbursements of expenses and tenant improvements collected from tenants; over (ii) all Project expenditures, including, but not limited to: (1) operating expenses, (2) payments of principal and interest on loan secured by the Project, (3) expenditures for tenant improvements and other capital improvements, (4) leasing commissions and other capitalized expenses, (5) costs of obtaining new loans, (6) annual increases in cash operating, replacement and other reserves as may be required by the Projects Lender(s) and (7) any other cash expenditures related to the

Project; all calculated on a cash basis. Security deposits received from tenants shall not be included in Project revenues.

(c) "Single Purpose Entity" shall mean a corporation, limited partnership or limited liability company organized solely for the purpose of the owning the Site, developing and constructing the Building and Improvements and leasing and managing the same for the production of income, which said entity shall not seek to dissolve or reorganize prior to fulfillment of its purpose, shall conduct business with its own funds and employees, shall maintain adequate financial resources to pay its debts as they fall due and shall not undertake to own, manage, operate or become a participant in any other properties or entities than as expressly herein provided.

4.4 Option to Demand Payment of Equity Participation Prior To Sale Of Development.

(a) If the Development has not been sold on or before the thirteenth (13th) anniversary date of the issuance of the Certificate of Occupancy for the Building, Agency shall have the right to require payment of the Equity Participation (the "Call Option") by giving written notice to Developer not later than thirty (30) days after expiration of the thirteenth (13th) anniversary.

(b) If the Call Option is not exercised in the manner above provided within thirty (30) days after the thirteenth (13th) anniversary date, Agency shall again have a Call Option arising and to be exercised in writing within thirty (30) days after the fifteenth (15th) seventeenth (17th) and nineteenth (19th) anniversary dates of the issuance of the Certificate of Occupancy for the Building. The Call Option may only be exercised by written notice given within the time windows expressly provided for herein. If a Call Option is exercised, the Equity Participation shall be paid on the earlier of (I) consummation of sale of the Development, or (II) one hundred eighty (180) days after exercise of the Call Option.

(c) If the Development has not been sold and no Call Option has been exercised, then the Equity Participation shall become due and payable as of the twentieth (20th) anniversary date of the issuance of the Certificate of Occupancy and shall be paid on the earlier of (I) consummation of sale of the Development, or (II) one hundred eighty days after the twentieth (20th) anniversary date of the issuance of the Certificate of Occupancy for the Building.

4.5 Determination Of Value In The Absence Of Sale. If the Equity Participation becomes payable through exercise of a Call Option or expiration of the twenty (20) year term, and the Development has not been sold to a bona fide third party at an arms-length sale, the value for purposes of determining the Equity Participation shall be the fair market value of the Development and shall be determined as follows:

(a) Not later than ninety (90) days after exercise of a Call Option or expiration of the twenty- (20) year period, Developer shall deliver to Agency its written statement (the "Statement") of the fair market value of the Development.

(b) Agency shall have thirty (30) days thereafter within which to respond either by accepting the Statement or by providing its own opinion of fair market value of the Development (the "Response").

(c) The parties shall have ten (10) days thereafter within which to meet and confer in a good faith effort to reach agreement. If they are unable to do so, the matter shall be submitted to arbitration in accordance with the following procedures:

(i) Such arbitration shall be final and binding between the parties, and the order of the arbitrator may be enforced in the manner provided for enforcement of a judgment of a court of law pursuant to the applicable provisions of the California Code of Civil Procedure.

(ii) The issue shall be submitted to the arbitrator (to be selected in the manner provided below) based solely on the Statement and the Response. The arbitrator shall be a person familiar with the Fairfield/Suisun Area with at least five- (5) years experience in real estate appraisal and with an MAI qualification. If the parties are unable to agree on the selection of a single person to serve as arbitrator for the resolution of the dispute within thirty (30) days after the date of the Response, then either party shall have the right to apply for the appointment of a duly qualified person to act as arbitrator to the Presiding Judge of the Superior Court of the County of Solano, State of California, and neither party shall have any right to object to the qualifications of said Judge to make such appointment. If the arbitrator resigns or refused to serve, then a new arbitrator shall be appointed as herein provided.

(iii) As soon as convenient after appointment, the arbitrator shall meet with the parties to hear evidence and argument on their Statement or Response. The arbitrator shall not be bound by the Rules of Evidence in the conduct of such proceeding although the arbitrator shall take account of said rules in considering the weight of the evidence. The decision of the arbitrator shall conform to law and the arbitrator shall be entitled to retain an independent attorney to advise him as to such questions of law that may arise during the proceeding. In making a decision, the sole function of the arbitrator shall be to determine whether (i) the Statement, or (ii) the Response most closely conforms to the arbitrator's opinion of fair market value of the Development.

(iv) Each party shall pay one-half (1/2) of the fees and costs of the arbitrator and all of its own costs and attorneys' fees in connection with the arbitration.

(v) The arbitrator shall have no right to award costs or attorneys' fees to either party unless the arbitrator determines that the Statement or the Response is based on a position totally lacking in merit or was asserted for purposes solely of delay, in which case the arbitrator shall have the right to award costs and attorneys' fees to the prevailing party.

4.6 Accounting For Annual Net Proceeds.

(a) Annual Accounting. Not later than ninety (90) days after the end of each calendar year, Developer shall provide to Agency an accounting for the Annual Net Proceeds for that year, broken down in detail as to the items of income and expense. For each year after the

first such year, the annual accounting shall include a schedule of Annual Net Proceeds for the preceding years to show the cumulative total of Annual Net Proceeds.

(b) Audit. Agency shall have one (1) year after the date of receipt of any such statement of Annual Net Proceeds within which to cause the same to be audited by a certified public accountant of its selection who shall not be retained on a contingent fee basis. Developer shall provide Agency's auditor with access to the complete books and records maintained with respect to the Building that are used by Developer to account for Annual Net Proceeds upon reasonable notice. Agency shall provide to Developer a copy of the report of its auditor promptly after the same has been prepared. If any such audit discloses discrepancies in the in the accounting for Annual Net Proceeds that is the subject of the audit, then Annual Net Proceeds shall be adjusted accordingly. Agency shall bear the costs of any such audit; provided, however, that if an audit discloses an understatement of Annual Net Proceeds in an amount equal to five percent (5%) or more, then Developer shall reimburse Agency for the cost of the audit upon demand supported by an invoice therefor from Agency's accountant.