

**SPECIAL JOINT MEETING OF THE COSTA MESA
REDEVELOPMENT AGENCY AND THE CITY COUNCIL**

May 10, 2011

The Costa Mesa Redevelopment Agency and City Council met in a Special Joint Meeting held on Tuesday, May 10, 2011, in the Council Chambers of City Hall, 77 Fair Drive, Costa Mesa. Agency Chair Righeimer called the meeting to order at 6:30 p.m.

I. PLEDGE OF ALLEGIANCE – led by Agency/Council Member Wendy Leece

II. ROLL CALL

Members Present: Agency Chair/Mayor Pro Tem Jim Righeimer
Agency/Council Member Eric Bever
Agency/Council Member Wendy Leece
Agency Vice Chair/Council Member Stephen Mensinger

Members Absent: Agency Member/Mayor Gary Monahan

Officials Present: Kimberly Brandt, Executive/Development Services Director
Tom Duarte, Agency/City Attorney
Muriel Ullman, Neighborhood Improvement Manager
Alma Penalosa, Management Analyst
Celeste Brady, Special Agency Counsel
Kathe Head, Managing Principal / Keyser-Marston
Helen Brown, Civic Center Barrio Executive Director
Anthony Bozanich, CPA / Civic Center Barrio
Julie Folcik, City Clerk

III. CLERK'S STATEMENT

The Special Joint Redevelopment Agency/City Council Meeting Agenda and Notice and Call were posted at the City Council Chambers, Adams Postal Office, Headquarters Police Department, the Neighborhood Community Center and the Mesa Verde Public Library on Thursday, May 5, 2011.

IV. MINUTES

Special Joint Meeting of March 8, 2011 and Special Meeting of March 25, 2011

MOTION: Approve. Moved by Agency Chair/Mayor Pro Tem Jim Righeimer, and seconded by Agency Vice Chair/Council Member Stephen Mensinger

The motion carried by the following roll call vote:

Ayes: Agency Chair/Mayor Pro Tem Jim Righeimer, Agency Vice Chair/Council Member Stephen Mensinger, Agency/Council Member Eric Bever, Agency/Council Member Wendy Leece

Noes: None.

Absent: Agency Member/Mayor Gary Monahan

V. PUBLIC COMMENTS – None

VI. AGENCY/COUNCIL MEMBERS' COMMENTS AND SUGGESTIONS

Agency Vice Chair/Council Member Mensinger requested an update on the Lions Sports Field improvements and his request to Mr. Naghavi to look at the fencing. Ms. Brandt reported that Redevelopment Agency funds were being used to upgrade the lighting at the Davis field. Staff was researching additional sources to improve the fencing and would return for an appropriate budget adjustment. Materials had been ordered with construction anticipated to begin in July.

VII. WARRANT RESOLUTION

MOTION: Ratify CMRA-405; approve CMRA-406. Moved by Agency Chair / Mayor Pro Tem Jim Righeimer, seconded by Agency/Council Member Eric Bever.

The motion carried by the following roll call vote:

Ayes: Agency Chair/Mayor Pro Tem Jim Righeimer, Agency Vice Chair/Council Member Stephen Mensinger, Agency/Council Member Eric Bever, Agency/Council Member Wency Leece

Noes: None.

Absent: Agency Member/Mayor Gary Monahan

VIII. OLD BUSINESS

1. First Amendment to the Affordable Housing Agreement for Civic Center Barrio Properties

Management Analyst Alma Penalosa presented the staff report.

Agency Chair/Mayor Pro Tem Righeimer requested an explanation of the residual receipts owed by Civic Center Barrio. Ms. Penalosa deferred to Managing Principal Kathe Head who explained that the Agency's assistance was needed to fill a financial gap that was generated when the projects were first acquired and rehabilitated. As was common in affordable housing transactions, the money was provided as a "soft loan" or a residual receipts loan, repaid to the extent that positive cash flow was being generated by the project. As long as the project generated negative cash flow or broke even, money would not be repaid on the loan until the covenants expired. The loans would become due when the covenants expired.

Agency Chair/Mayor Pro Tem Righeimer asked why residual receipts were owed if dollars were spent on capital improvements. Ms. Head said residual receipts were owed because capital repairs were done from cash outside of the project. When the project ran out of cash and repairs were needed, Civic Center Barrio wrote a check from another account to pay for the repairs on the Costa Mesa account. There were no provisions in the current agreement that allowed the negative cash flow to be carried over to the following year. The following year, when no capital repairs were needed, the project would have generated positive cash flow, which would have generated a residuals receipt requirement.

Agency/Council Member Leece requested an explanation for simplifying the process so the situation would not repeat itself and asked if the Agency opted to go with Alternative #4 if the process would be included. Ms. Penalosa explained the process would be included in the portion that stated to "standardize" the agreement. The projects were built between 1993 to 2003 - each had slightly different requirements, making it difficult for Civic Center Barrio to provide accurate information and for staff to evaluate the information. Alternative #4 would standardize (stabilize) the agreements (same percentages, same caps, yearly negative cash flow, etc.). Agency/Council Member Leece asked when the covenants expired. Ms. Head stated covenants were for 55 years and depending on when the projects opened, each of the covenants would expire at different points in time.

Agency/Council Member Bever stated Civic Center Barrio had been brought to the attention of the Agency two years ago because they were in approximately \$60,000 of contractual debt. He was astounded at staff for proposing that Civic Center Barrio be rewarded by using money owed to the City/Agency to pay legal fees and putting \$31,600 of the City's money into Civic Center Barrio's reserve account for repairs to their project. He addressed several problems and stated the provisions were benefiting Civic Center Barrio instead of the City/Agency who had an outstanding debt with them. He was shocked at staff's casual approach to the contractual agreement that was not being met by Civic Center Barrio and felt staff's suggestions were rewarding Civic Center Barrio. He asked for the differences between Alternatives #1 and #2. Ms. Head mentioned Civic Center Barrio was making the annual reserve deposits in a timely fashion as required by the agreement. Staff had addressed the reserve deposits for capital repairs because in the current agreement the reserves could be used for operating losses or capital repairs (negative cash flow deposited into reserve account and then withdrawn as an operating loss). Staff was suggesting the reserves be used

only for capital repairs and not for operating losses. In addition, Civic Center Barrio, who was only obligated to use cash flow money from the project, had spent \$22,000 of their own money for capital repairs (Ms. Head felt this had been a good faith effort). The last couple of years, the residual receipts payment had not been made due to talks about renegotiating the agreement for a significant amount of time. Ms. Head stated that Alternatives #1 and #2 were effectively the same thing. Staff had been asked to explain what would happen if they defaulted Civic Center Barrio and instead of suggesting an option, staff opted to explain why defaulting Civic Center Barrio would not serve a public purpose to the City/Agency. Alternative #2 was a legitimate option—the City/Agency could ask Civic Center Barrio to pay back the loan.

Agency Chair/Mayor Pro Tem Righeimer commented that residual receipts owed through 2010 totaled \$56,030. Since no Alternative #5, stating Civic Center Barrio would have to pay the \$56,030 and \$24,400 had been given, he asked if the City/Agency, under the current agreement, had the ability for extraordinary expenses. Special Agency Counsel Brady reported that each of the four agreements contained attorney fee clauses that would require litigation and the prevailing party would prevail (third party cost provisions were not included in small acquisition rehabilitation projects). Agency Chair/Mayor Pro Tem Righeimer asked if third party cost provisions were included in the amendments. Special Agency Counsel Brady advised that third party cost provisions were not included in the amendments but provisions could be included upon direction from the City/Agency.

Agency/Council Member Bever pointed out a zero balance in the reserves and said staff's understanding of the status was different than what the City/Agency had been told. He agreed that reserves should be used for capital improvements and felt the City/Agency should be taking the \$22,000 into consideration because there were too many things they did not have knowledge on regarding the added costs. He asked if there was a shortfall in the reserving and why the City/Agency was not approaching this in a business-like manner by increasing the reserve requirement to 7% in order to have a sufficient reserve. He interpreted staff's suggestions to mean that staff and consultants did not believe the contract itself was of importance and value, and that perhaps the relationship was the primary importance. As an Agency Member, he relied on the contract; he was not familiar with the relationship with Civic Center Barrio and stated he was upset with what had been presented.

MOTION: Adopt Alternative #3—City and Redevelopment Agency modify the Agreements to standardize the administrative and operational requirements, and require Civic Center Barrio to make the \$56,030 outstanding residual receipts debt service payment to the City and Redevelopment Agency immediately. Motion to exclude #2 under “Terms of the Attached First Amendments” (to reallocate the currently outstanding residual receipts debt service obligation to the replenishment to the reserve accounts). Moved by Agency/Council Member Eric Bever, seconded by Agency/Council Member Wendy Leece for discussion.

Agency Chair/Mayor Pro Tem Righeimer asked what other debts were on the Civic Center Barrio property besides the City/Agency loan. Ms. Head reported Civic Center Barrio had a traditional conventional, long-term mortgage. Mr. Anthony Bozanich, Certified Public Accountant for Civic Center Barrio, reported that Civic Center Barrio's debt, including accrued interest, totaled \$2.7 million for the five James Street properties. Regarding the good faith effort on behalf of Civic Center Barrio, Mr. Bozanich stated that in the past two years, \$35,000 of Civic Center Barrio's money had been deposited into the reserve accounts. In the last years (2008 and 2009), the five properties had operated at a loss of \$30,000 per year. Civic Center Barrio had not increased the rents because community members could not afford it. Civic Center Barrio had been funding the \$30,000 loss from their general fund and only emergency repairs had been made.

Agency Chair/Mayor Pro Tem Righeimer reiterated and asked for Civic Center Barrio's debt amounts, as well as, rent amounts for the units. Mr. Bozanich provided a breakdown totaling \$1 million (aside from the \$1.5 million owed to the City/Agency) and said \$168,000 in rents per year, after vacancies, were received on the five properties .

Agency Chair/Mayor Pro Tem Righeimer asked what amount Civic Center Barrio was allowed to charge for rents and if maximum rents were being charged. Ms. Head stated rent amounts fluctuated from unit to unit due to various restrictions

based on unit type (low, very low and extremely low), She advised that Civic Center Barrio was charging less than the maximum rent allowed.

Agency Chair/Mayor Pro Tem Righeimer commented Civic Center Barrio was not charging the maximum rents. Mr. Bozanich added the Executive Director was charging the maximum rent she thought community members could afford. Agency Chair/Mayor Pro Tem Righeimer stated there were County and Federal Government agreements that mandated rental rates. Civic Center Barrio was not charging the maximum allowed rents because someone (Executive Director) had decided not to charge what the Federal Government formula said should be charged. Agency Chair/Mayor Pro Tem Righeimer asked if staff had an idea of the magnitude of dollars that had not been charged. Ms. Head proceeded to calculate the amount.

Agency Chair/Mayor Pro Tem Righeimer asked for Agency/Council comments. There were no comments from Agency/Council members.

Agency Chair/Mayor Pro Tem Righeimer further stated that agreements had been made to subsidize projects based on the expected generated revenue. He was having difficulty grasping the notion that people who could not afford the monthly rents were paying less, when there were people willing to pay the amount that the Federal Government's formula mandated. Ms. Head stated an argument that keeping stable tenants at rents they could afford was a better business model than displacing tenants that were unable to afford the increased rents. There would be more of a turnover because tenants who could afford the increased rents would move in. Agency Chair/Mayor Pro Tem Righeimer spoke about soft loans and the numbers calculated at the time of the loan.

Agency Chair/Mayor Pro Tem Righeimer opened the session for public comment for the motion that was on the floor. There being none, he closed the public comment session. Executive Director Brandt requested clarification (Agency/City) on the motion due to it being a Joint Meeting.

MOTION: Voting as the City Council, adopt Alternative #3—City and Redevelopment Agency modify the Agreements to standardize the administrative and operational requirements, and require Civic Center Barrio to make the \$56,030 outstanding residual receipts debt service payment to the City and Redevelopment Agency immediately. Motion to exclude #2 under “Terms of the Attached First Amendments” (to reallocate the currently outstanding residual receipts debt service obligation to the replenishment to the reserve accounts). Moved by Council Member Eric Bever, seconded by Council Member Wendy Leece.

The motion carried by the following roll call vote:

Ayes: Mayor Pro Tem Jim Righeimer, Council Member Stephen Mensinger,
Council Member Eric Bever, Council Member Wendy Leece

Noes: None.

Absent: Mayor Gary Monahan

MOTION: Voting as the Redevelopment Agency, adopt Alternative #3—City and Redevelopment Agency modify the Agreements to standardize the administrative and operational requirements, and require Civic Center Barrio to make the \$56,030 outstanding residual receipts debt service payment to the City and Redevelopment Agency immediately. Motion to exclude #2 under “Terms of the Attached First Amendments” (to reallocate the currently outstanding residual receipts debt service obligation to the replenishment to the reserve accounts). Moved by Agency Member Eric Bever, seconded by Agency Member Wendy Leece

The motion carried by the following roll call vote:

Ayes: Agency Chair Jim Righeimer, Agency Vice-Chair Stephen Mensinger,
Agency Member Eric Bever, Agency Member Wendy Leece

Noes: None.

Absent: Agency Member Gary Monahan

IX. NEW BUSINESS - None

X. REPORTS

1. Agency Attorney - None
2. Executive Director – Update on Pending State Legislation

Executive Director Brandt provided an overview regarding Senate Bill 77 and Assembly Bill 101. Both bills proposed abolishing Redevelopment Agencies and had retroactive provisions. Although both bills were still active, an alternative pro-active bill (Senate Bill 286) had been set forth for consideration. A summary was attached for review and staff would keep the Agency apprised. With the Agency due to sunset in 2016, if a new bill, without retroactive provisions, was put forward, it would not affect the operations of the Agency as the Agency continued to retire its debts and phase out active projects.

Agency/Council Member Bever asked how the Agency's long-term housing projects would function with the Agency sun setting in 2016. Ms. Brandt stated the projects would continue and the Agency would continue collecting tax increments for outstanding debt obligations. The Agency, however, would not be able to enter into new debts or take on new projects beyond 2016. The Agency would continue to take the collected tax increment to pay off the City's loan.

Agency/Council Member Bever stated the 2016 sunset was similar to the 1997 sunset when the Agency phased-out its Redevelopment powers--it was a change but the Agency, as an entity, continued to exist and conducted business as usual. Special Agency Counsel Brady reported that the effectiveness of the Agency's plan would end and the debt obligations would continue to remain in effect. She provided a detailed explanation to Agency/Council Member Bever's statement.

Agency/Council Member Bever commented the Agency would still exist in terms of having Board meetings. Ms. Brady clarified that other than carrying out existing contractual obligations, the Agency would not have the power to do anything; therefore, Board meetings would not be held because action would not be taken on any new business.

Agency/Council Member Bever asked what would be practical if in 2017 the Agency ran into a similar situation (friction with a housing partner). Ms. Brady said the case law was not good as to whether or not the Agency would be able to amend the agreement in order to spend money. Legally, the Agency would not be able to amend an agreement to spend money unless it was the result of a litigation but the Agency would have the ability to amend documents for administrative implementation purposes.

Agency/Council Member Bever asked how the Agency would recuperate money owed from a housing partner if it ceased to exist. Ms. Brady stated the Agency would be a contractual partner as an entity. The Agency would not be eliminated in the contexts of the proposed bills that would require a Successor Agency to carry out and enforce Agency contracts. The Agency would continue to exist for purposes of said contracts but holding meetings to do business would not occur.

IX. ADJOURN

Agency Chair/Mayor Pro Tem Righeimer adjourned to the next Redevelopment Agency meeting on June 14, 2011 and the City Council meeting on May 17, 2011.