Meeting of the
Oversight Board for the Successor Agency
to the Redevelopment Agency of the
City of Fresno

Meeting Minutes
October 19, 2016

The Oversight Board for the Successor Agency to the Redevelopment Agency of the City of Fresno met at 1:31 p.m. in Meeting Room 2165 (Meeting Room A), City Hall on October 19, 2016.

Present were:

Larry Hodges, appointed by State Center Community College District
Rene Watahira, appointed by the Mayor of Fresno
Doug Vagim, appointed by Fresno County Board of Supervisors
Alan Hofmann, appointed by the Metropolitan Flood Control District (Special District)
Larry Westerlund, appointed by Mayor of Fresno
Debbie Poochigian, appointed by Fresno County Board of Supervisors
Alan Hofmann, appointed by the Metropolitan Flood Control District (Special District)

Absent were:

Jeff Becker, appointed by Fresno County Superintendent of Schools

I. Call to Order

1. **Roll Call**
2. **Pledge of Allegiance**
3. **Member Comments**

Roll Call/Pledge of Allegiance

The meeting was called to order by Chair Hofmann at 1:31 p.m. and the roll call was taken. Board Member Becker was absent when the roll was called. The pledge of allegiance was recited.

Member Comments

Board Member Westerlund asked if one of the attorneys could address the letters that have been circulating regarding Lot 2 and the parking lease agreement that was never signed by the Tutelian Company, and give a synopsis of where we are now. It was decided that this item would be discussed under item 7.

II. Approval of Agenda

Board Member Westerlund made the motion to withdraw item 8 and continue item 7 to the next meeting. Board member Watahira seconded the motion. There was an amended motion by Vice Chair Vagim to leave item 7 on today's agenda and withdraw

item 8. The motion was seconded by Board Member Poochigian. The motion passed on a vote of 4-2 with Board Members Watahira and Westerlund voting no, and Board Member Becker absent. Approved as amended.

III. Approval of Minutes of September 21, 2016.

Vice Chair Vagim made a motion to approve the minutes of September 21, 2016. Board Member Poochigian seconded the motion. The motion passed on a vote of 6-0 with Board Member Becker absent.

IV. Consider Change to Property Disposition Guidelines to Increase Time Allowed to Successful Bidder to Pay Remaining Balance

Following discussion, Board Member Westerlund made a motion to approve the change from 15 days to 30 days for all purchases. Board Member Hodges seconded the motion. Vice Chair Vagim asked if prior purchases are going to be retroactive. Executive Director Murphey stated that the board can make them retroactive, but this motion covers from today forward. A roll call vote was taken and the vote was 5-1 with Vice Chair Vagim voting no and Board Member Becker absent.

V. Disposition of Agency Property

1. Action pertaining to sale of 4.13 acres of property at 2141 S. Fruit Avenue (APNs 477-111-09ST & -10T) (LRPMP #12), Reserve (Minimum Bid) Price - $118,000
    a. Auction
    b. Adopt a resolution approving the sale of the property

There was one written bid in the amount of $118,000 from Kathy Van and no oral bids. Board Member Poochigian made the motion to approve the sale of 4.13 acres of property at 2141 S. Fruit Avenue (APNs 477-111-09ST & -10T) in the amount of $118,000 to Kathy Van and approve the resolution. Board Member Watahira seconded the motion. The motion passes on a vote of 6-0 with Board Member Becker absent.

2. Action pertaining to sale of 11.00 acres of property at 3000 E. Butler (APN 468-030-04T) (LRPMP #17), Reserve (Minimum Bid) Price - $1,030,000.
    a. Auction
    b. Adopt a resolution approving the sale of the property

Lyons Magnus, Inc. and OK Produce Inc., provided the appropriate minimum deposit of $51,500 and made a joint bid of $900,000 which was under the minimum bid price. Board Member Poochigian made the motion for staff to bring this property back to a future meeting at the appraisal value. Board Member Watahira seconded the motion. The motion passed on a vote of 6-0 with Board Member Becker absent.

3. Action pertaining to sale of 2.67 acres of property at 310 W. West Avenue (APN 480-0606-25T & -14T) (LRPMP #23), Reserve (Minimum Bid) Price -$349,000
    a. Auction
    b. Adopt a resolution approving the sale of the property

No written bidders and no oral bidders. It was noted that this is the first time the property has been up for auction (Method C) and was before the board in June 2016 using open

solicitation (Method A). Board Member Westerlund made a motion for staff to bring this property back to a future meeting at a reduced price of 25% since it has been before the board twice. Board Member Poochigian seconded the motion. The motion passed on a vote of 6-0 with Board Member Becker absent. Staff will bring this property to a future meeting at the price of $261,750.

4. Action pertaining to sale of 1.19 acres of property at 4898 E. Shields Avenue (APNs 494-081-13T) (LRPMP #23), Reserve (Minimum Bid) Price $167,000
    a. Auction
    b. Adopt a resolution approving the sale of the property

No written bidders and no oral bidders. It was noted that this is the second time the property has been up for auction. Board Poochigian made a motion to bring the property back at a future meeting at a 25% reduction for a beginning price of $125,250. Board Member Wataria seconded the motion. The motion passed on a vote of 6-0 with Board Member Becker absent.

5. Action pertaining to sale of 0.69 acres of property at 1300 H Street (APN 466-206-54T) (LRPMP #34) Reserve Minimum Bid) Price - $330,000

There was one written bid on this property and no oral bids. The written bid was from Easterly Government Properties with an appropriate deposit amount of $16,500 and a bid of $330,000. Board Member Poochigian made the motion to sale .69 acres of property at 1300 H Street in the amount of $330,000 to Easterly Government Property and approve the resolution. Board Member Westerlund seconded the motion. The motion passed with a vote of 6-0 with Board Member Becker absent.

6. Action pertaining to sale of .23 acres of property at 1931 Mariposa (APN 466-212-13T) (LRPMP #35), Reserve (Minimum Bid) Price - $70,000
    a. Auction
    b. Adopt a resolution approving the sale of the property

There were three written bids on this property. The highest written bid was for $71,000 and the deposit amount was $3550. Oral bids began at 5% over the highest written bid at $74,550. There was a total of five bidders for this property. The winning bidder was Mr. Khatchadourian in the amount of $125,000. There was a motion by Board Member Westerlund to sell the property at 1931 Mariposa in the amount to $125,000 to Mr. Katchadourian, and approve the resolution. Board Member Hodges seconded the motion. The motion passed on a vote of 6-0 with Board Member Becker absent.

VI. Consider Request for the Return of Deposit for 2115 Monterey (APN 468-271-09T)

Executive Director Murphey reviewed a letter of September 28, 2016 by Manuchehr Shahrokhi, PhD. requesting the return of his deposit in the amount of $5,500 for the purchase of 2115 Monterey and gave further background. He was not able to buy three nearby properties at auction, and the Monterey property is not large enough for building and parking needs. It was noted one of the properties he was interested in is now back on the market and he will be contacted. Executive Director Murphey responded to a question that the LoopNet notice and the Fresno Bee notice links back to the Disposition Guidelines that state that the deposit is not refundable. After some discussion, Board Member Westerlund made a motion to deny the request for a refund. The motion was

seconded by Board Member Poochigian. The motion passed on a vote of 6-0 with Board Member Becker absent.

VII. Discuss and Consider Change to Method of Disposition for Parking Lot 2, 1900 Tuolumme/1911 Merced (APNs 466-206-50T & 466-206-51T)

Vice Chair Vagim stated that this is the same item that was briefly discussed at the last meeting and this item can also come back as an agenda item in the future to move away from the auction process. Executive Director Murphey clarified that this property has not been removed from the auction process, but an auction date has not been noticed. Vice Chair Vagim stated that the council has passed a resolution as Successor Agency that recommends this go out under the processes in our guidelines rather than auction. Further, there is an issue about a defacto agreement so what we have is an obligation to an adjacent property owner.

Upon question Mr. Behrens stated Lot 2 is not up for action today, only discussion. The only thing for discussion today is Mr. Reid's October 3, 2016 letter requesting written assurances of the existence of the arrangement with The Grand 1401, LLC in support of the tenancy of Tutor Perini/Zachry/Parsons, will be disclosed to all potential buyers for the entire period of notice required under the Disposition Guidelines by supplementing the marketing materials presently being distributed to the public. Nothing is signed, the issue is disclosure.

Board Member Westerlund noted that Mr. Reid's letter states if we are going to sell this property we have to sell it with certain encumbrances upon it or disclosure that there is potentially this contract to lease the property related to Tutelian and Company. Mr. Westerlund stated that the contract was never signed and that any contract above a certain size must go before the public body for ratification. He asked whether or not this is an enforceable contract or not. Mr. Behrens stated his opinion that there is no promissory estoppel against public agencies and in real property transactions, there has to be a written agreement. Board Member Westerlund stated the issue is whether we change what we've been doing over the last few of months and go to an RFP process as opposed to an auction process. He further noted that some adjacent property owners have won auctions and some have lost auctions and stated that at this point it will be fundamentally unfair to change the process for this or any other property. Further, the City administration recommends it go to auction.

There was discussion regarding whether or not the board would get $100,000 above appraisal if they auctioned the property. Mr. Behrens stated that they are not taking any action and that if a change is made as to how you dispose of the property that will be done at the next meeting. He also reminded the board of the letters that were received from people who are interested in having an auction for the Parking Lot #2.

Vice Chairman Vagim stated the City was okay to sell the Merchants Lot to High Speed Rail and asked if its recommendation was going to come to this body. After discussion Ms. Murphey clarified that Vice Chair Vagim was evidently referring to the "box car lot" which is not owned by the Successor Agency.

Board Member Hodges asked what would be the impact on the marketability that the sale of the property if we did a disclosure that there is an agreement for this organization

to have 100 parking spots for as long as they are working on this particular project in question.

Laurie Avendisian said the city's position is they intend to sell the lot. It was the city's intention to terminate the parking. That agreement has not been signed. The city's position is there is not an ongoing right to the use of those parking spaces. The city attempted at one point to negotiate an agreement, but that agreement was never signed or finalized. That agreement would have required Tutelian to pay for those parking spaces. No payments have been made to the city. So the city's position is that it's a use that's being permitted for now, but the city's intention is to sell its property. Ms. Murphey added the City was careful to point out in the agreement that the City did not control the agency owned pieces.

Board Member Westerlund opined that selling to one individual doesn't mean obtaining best price; it would be opposite of how we have been selling the property and; the last piece of property that sold went for 80% above the asking price. The buyer is the owner of the Helm Building who needed the adjacent property to make the Helm Building workable.

Chair Hofmann stated that this board made a decision on all of the original offers. We said no we haven't advertised them and made a decision that we were not accepting any of those offers. Those were null and void and we were going to follow a process that met our disposition guidelines. To the question of will we have an offer, should we accept it, aren't we going against this board's direction.

There was more discussion regarding how some of the past property was sold. Chair Hofmann stated that we used disposition Process A, and those properties were advertised, noticed and sold. Board Member Hodges said there is no encumbrance on this particular property. We have a disposition policy in place which we think is fair and will generate maximum of value to the taxing agency. That process has been working. My colleague said do we want to take a firm $520K offer or go with the process we have in place and possibly get less am I correct? I am of the opinion that the process is public, the process is fair, the process has worked, there are no encumbrances on the property, go ahead and let the process work, that's my position.

Public Comment:

Riadh Khairalla – I am an interested party in this lot. I found the following things puzzling, does the lease exist or not? I have purchased properties that have been leased before. The leases belong with the property and they are considered encumbrances. I don't buy a property and then kick all the tenants out because according to the lease they stay there. If the city has that kind of requirement, it can be communicated. You just make it known to the buyers and let them decide if it's too cumbersome or not. I suggest that you continue with the process you have used so far.

Kenneth Price – Counsel to the Fresno Housing Authority. We sent a letter to the Oversight Board yesterday articulating that the Housing Authority through the guidance of the CEO of the Housing Authority has requested that the property be placed into auction. As you know the Housing Authority has property adjacent as well to the subject parcel immediately to the East. We believe that the Authority there's going to have substantial interest in the property by the Authority. In fact, next Tuesday the Housing

Authority will consider an item to abide the Commissioners to determine their interest in this parcel to take action, to authorize potentially their executives to bid on the lot if they are given the opportunity. So there is substantial interest in the property and the one question that I have, in looking at the procedural guidelines I presumed under the disposition policies we are talking about "B"? Correct? We are talking about the request for offer to purchase including proposed development is that the disposition we're talking about or is it A? Ms. Murphey responded, we are presently using "C", auction. Mr. Price asked, alternatively it would be under which? Chair Hofmann said that's the question at hand. Mr. Price stated if you have the board make the determination to enter into a contract with one specific party, the way I read your alternatives is there would need to be some kind of RFP process by multiple developers for the project that it doesn't have to be limited to one specific developer. I'm here to articulate to you that my client has expressed interest. I think we will be able to firm that interest up next week with respect to the parcel. I have with me here today Michael Duarte, Director of Real Property Development for Fresno Housing Authority. Michael is here to tell you that he believes that your appraisal for the property is low and we believe that the property is worth more than the $440,000 appraisal that you have before you. We are simply asking for an opportunity to whether it is through an RFP process or better yet through an auction process. . One other thing that I wanted to mention is that I sent this letter yesterday and Mr. Reid who is Mr. Tutelian's counsel had taken issue. In my letter I mentioned that a third party might be interested in the property. All I meant with the letter is that you do not know which potential buyers are out in the hopper it could be substantially more than the Housing Authority and Mr. Tutelian it could be others. All we are asking is that you act consistent with your State Statute, to try to maximize the value of the property and move forward from that vantage point.

Michael Duarte – Director of Real Property Development for Fresno Housing Authority. Mr. Duarte spoke and said I am not aware of any limitations on paying above appraised value.

Cliff Tutelian – The owner of 1401 Fulton Street and other downtown properties. Mr. Tutelian stated that, Mr. Behrens is correct; the statute of frauds requires an agreement for longer than one year that relates to real property to be in writing. However there is significant and specific case law that once you establish a course of conduct, the binding effect on that oral agreement can be overcome with respect with the statue of frauds. Mr. Westerlund pointed out that there was no signed agreement, and I did not sign it. I am here in good faith; I'm here because I have a significant investment in a building. We've been using a parking lot and without that parking lot, and on top of it, as indicated in my previous correspondence to folks, we must develop it into a significant parking garage in order to fill the building, not to mention our community mindedness of supporting the area. This isn't about $100,000, this isn't about a government entity, this isn't about the interest of another gentleman who doesn't live in Fresno, and doesn't already own and is burdened by the actions taken in this community because they happened to own a half a million square feet down here. I didn't sign the written agreement; let me give you the facts. They are well documented. It was rumored that Tutor Perini the contractor for phase I of the High Speed Rail project was going to locate at Marks and Herndon. The rate was $1.60 a square foot including parking. I understand that at the request of the Mayor, the Vice Chair of the High Speed Rail Authority, called Mr. Tutor and said we want you downtown. Craig Scharton who was then the Director of the Development Revitalization of Downtown, call me personally and said we want Tutor and Perini downtown. We know your building is available, we want

to show your building, let's make a deal. On June 26th that meeting was attended by representatives of Tutor Perini, High Speed Rail, the EDC and two real estate brokers, some of my staff, and Mr. Scharton. Not being personally acquainted with any of the folks at Tutor Perini, I can tell you coming from a big construction company they can be quite heavy handed. They said we're not coming downtown unless you give us parking and we're not paying for it, period. If you want us downtown you give us parking. I will be able to prove in writing that Mr. Scharton said you will not be charged for parking and pointed out the window, that lot City Lot 2, you can use it for the duration of your occupancy in this building for this project. Now that's an oral agreement. In accordance with the Statues of Fraud, Mr. Behrens will confirm that there is no agreement. But you were led to believe that there was no agreement because the inference was that I would not sign it. In turn because it had to move very quickly. I said the meeting was on June 26th, by mid-August we had a lease negotiated, sold, and they were in the building and I will tell you that we renovated 10,000 square feet in 13 days, that's how quickly everything moved. Not for my benefits folks, for all the accolades, awards you hear and see and you know about, let's call it for the benefit of downtown. In my commitment and my honor. And I like your considerations to reciprocate with a little bit of that honor. That agreement didn't get signed Mr. Rudd, City Manager called me up and said I've got an agreement, let's talk about it. It was at the sum of $20 a month, per stall, 100 stalls, $2,000 per month. I have a 100,000 foot building I have 12 million dollars invested let me ask you all a question, if you had 12 million dollars invested in a building and you had a New York Life Insurance Company as your lender and you are feeding that building throughout the down turn in the market to the tune of between $200,000 and $300,000 a year out of your pocket to keep from going into foreclosure and Mr. Scharton sat in front of your tenant and you realized your detriment you can use city lot 2. For $2,000 a month, what would you do? Say oh, no problem? We had a city representative with the apparent authority, the ostensible authority who made a specific commitment under which the tenant and the landlord relied to their detriment. They agreed to remove the barricades to make the parking available. They added barricades at the south end of the lot so the city's agreement with the County on the County owned lot would be preserved and respected. And we counted up 100 stalls. They issued parking passes as recent as last September, they issued a 2016/2017 permit for one year. I can tell you that Mr. Vagim's instincts were correct. These folks here with their legal background should easily agree with me. I don't expect them to, it's not their job right now. When we get right down to it in light of honesty, integrity and financial responsibility there is an agreement and I will be left with no choice to make sure that the agreement is honored. I don't want you to take this as a threat but it should be as real to you as it is as real to me. That we could lose that parking and I could wind up with a huge problem with my tenant who is very very powerful. Big enough to take on all of us and the city.

Mr.Tutelian proceeded to cover the material in his presentation and asked the Board to honor the resolution from the Successor Agency to sell Parking lot 2 to him. He stated that he had a renewed agreement that he would give to Ms. Murphey. Board Member Vaigm asked for a copy of the agreement and Mr. Tutelian said he would make the document available to the board for the record.

Vice Chair Vagim made a motion to give Ms. Murphey exclusive authority to culminate these deals to action to the Successor Agency or independently. The motion was seconded by Board Member Poochigian. There was a lot of discussion regarding the motion. Mr. Behrens stated that the Oversight Board cannot delegate staff to dispose of property because that is the

Oversight Board's job. He also noted that there is no action item today except to pick the disposition method for the next meeting. (There was discussion about rejecting the unsolicited offers in the past.) After more discussion, Mr. Behrens suggested that action on this item is delayed until the next meeting in order to make sure the Brown Act is complied with, Ms. Avendisian concurred.

Board Member Westerlund made a motion to continue this item to the next meeting and have the attorneys look at the potential encumbrance. Mr. Behrens also suggested that they include all of the methods in the notice (A, B, C, and sole source). Board Member Watahira seconded the motion. Vice Chair Vagim requested that this property not be included in a legal notice for an auction until the disposition method is resolved. Ms. Murphey stated that she would not notice this property; however it will still appear on LoopNet as an auction item until the board officially changes the disposition.

Public Comment:

Riadh Khairalla – Asked for clarification about how the property would be disposed. Chair Hofmann clarified that the board would decide how to dispose of the property at a subsequent meeting. Mr. Khairalla asked if this only applied to Parking Lot 2. He said Mr. Khatchadourian could have made the same argument as Mr. Tutelian. Why did he have to pay $75,000 more, can he come back and say give me my money back? There are several others like that. If this property has things attached to it, I want to see it. Chair Hofmann stated that at an upcoming meeting the board will decide on what process will be used for this property. All other property will continue to be auctioned. Parking Lot 2 will not be disposed of at that meeting, the board will only decide how the board will dispose of the property but the property will not be disposed of that day.

Chair Hofmann asked for a roll call vote on the motion on the table. The motion passed on a 6-0 vote with Board Member Becker absent.

VIII. Consider Sale of Property (APN 467-310-12T) Pursuant to Disposition and Development Agreement

Withdrawn from the agenda.

IX. Action Pertaining to a Lease of Space by the Successor Agency

Executive Director Murphey gave an overview of the current office lease and a proposed lease for less space and a reduction in rent at another location.

Board Member Westerlund made a motion to approve the new lease. The motion was seconded by Board Member Poochigian. The motion passed on a 6-0 vote with Board Member Becker absent.

X. Public Comment:

None.

XI. Adjournment

Adjourned at 5:20 p.m. by consensus.

The minutes of October 19, 2016 were approved at the November 16, 2016 meeting as amended by Vice Chair Vagim to correct the word "cumulate" to "culminate" in the last paragraph on page 7, on a motion by Board Member Watahira and a second by Board Member Hodges. The motion passed on a vote of 6-0, with Board Member Becker abstaining.