

**SPECIAL MEETING  
OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY  
TO THE ONTARIO REDEVELOPMENT AGENCY**

**AGENDA**

**TUESDAY, DECEMBER 2, 2014 AT 10:00 AM**

**COMMUNITY CONFERENCE ROOMS #1 & #2  
CITY HALL, 303 EAST "B" STREET, ONTARIO, CA, 91764**

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Call to order:

Roll Call

Pledge of Allegiance

Public Comment

1. Approval of Minutes for the Regular Meeting of September 25, 2014  
Approval of Minutes for the Regular Meeting of October 23, 2014  
Approval of Minutes for the Regular Meeting of November 27, 2014
2. A Resolution re-approving a First Amendment to an Owner Participation Agreement between the Successor Agency and TNHYIF REIV India, LLC. and finding that the renegotiated terms are consistent with Health and Safety Code 34181(e)

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY, RE- APPROVING A FIRST AMENDMENT TO AN OWNER PARTICIPATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND TNHYIF REIV INDIA, LLC. AND FINDING THAT THE RENEGOTIATED TERMS ARE CONSISTENT WITH HEALTH AND SAFETY CODE SECTION 34181(e)

Staff Comments

Oversight Board Member Comments

Adjournment

**OVERSIGHT BOARD OF THE SUCCESSOR AGENCY  
TO THE ONTARIO REDEVELOPMENT AGENCY**

**MINUTES**

**THURSDAY, SEPTEMBER 25, 2014**

*(Not Official Until Approved)*

A meeting of the Oversight Board of the Successor Agency to the Ontario Redevelopment Agency was held on Thursday, September 25, 2014, in the Community Conference Rooms at Ontario City Hall, 303 East "B" Street, Ontario, CA.

Notice of said meeting was duly given in the time and manner prescribed by law.

**CALL TO ORDER**

Chairman Brent Schultz called the Oversight Board Meeting to order at 10:01 a.m., and requested the Assistant City Clerk to call the roll.

PRESENT: Board Members: Don Bertucci, Alex Espinoza, Gene Koopman,  
Mary Jane Olhasso, Jamie Richardson,  
Brent Schultz

ABSENT: Board Members: Anita Undercoffer

Also present were: Legal Counsel to the Successor Agency Elizabeth Hull, Redevelopment Manager Charity Hernandez, and Assistant City Clerk Vicki Kasad.

The Pledge of Allegiance was led by Chairman Schultz.

There were no Public Comments.

**1. Approval of Minutes**

Approval of Minutes for the Regular Meetings of February 27, March 27, April 24, May 22, June 26, July 24 and August 28, 2014.

**MOTION:** Moved by Vice Chair Olhasso, seconded by Board Member Bertucci, to approve the minutes as presented. The foregoing motion carried by unanimous vote of those present, with Board Member Undercoffer absent.

**2. A Resolution Approving a Recognized Obligation Payment Schedule for the time period from January 1, 2015 through June 30, 2015.**

Chairman Schultz inquired if this was the regular six month action on the ROPS. Staff confirmed.

**MOTION:** Moved by Board Member Koopman, seconded by Board Member Espinoza, and carried by unanimous vote of those present with Board Member Undercoffer to adopt Resolution No. OOB-023 as presented.

**RESOLUTION NO. OOB-023**

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE DISSOLVED ONTARIO REDEVELOPMENT AGENCY, APPROVING A RECOGNIZED OBLIGATION PAYMENT SCHEDULE FOR THE TIME PERIOD FROM JANUARY 1, 2015 THROUGH JUNE 30, 2015, PURSUANT TO HEALTH AND SAFETY CODE SECTION 34177 (I)

**Oversight Board Staff Comments**

Legal Counsel Hull provided an update on pending litigation with the Department of Finance. She indicated that a Notice of Appeal was filed in August and a Mediation Statement was filed in September indicating that this was not an appropriate case for mediation. She explained that now we are just waiting for a briefing schedule from the Court, but it will probably take a couple of years for the case. Board Member Espinoza questioned the main issues in the case. Legal Counsel Hull clarified that the key issues were bond payments for bonds the City had purchased, payments that had been made between the City and the Agency, and issues of what are Housing Authority assets and what are not. She noted that we had been awarded \$8 million which had been paid back by the County, but that order was stayed, so we will be entering a stipulation with the County and the Department of Finance to hold it so the funds will be available for whatever the outcome is. Chairman Schultz noted that there were several other cases pending on this issue. Legal Counsel Hull confirmed, noting that there are 100 plus and more being filed. She noted that there are a lot of cases with the State Controller's Office right now, specifically with property transfer issues.

**Oversight Board Member Comments.**

Chairman Schultz noted that Senate Bill 628 regarding enhanced infrastructure financing districts, which was currently on the Governor's Desk for signature, was an interesting bill to watch. He suggested that if signed it would get redevelopment going again.

## **Adjournment**

Moved by Vice Chair Olhasso, seconded by Board Member Bertucci and carried by unanimous vote of those present to adjourn the Oversight Board meeting at 10:10 a.m. to the next regularly scheduled meeting on October 24, 2014.

Respectfully submitted:

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OVERSIGHT BOARD SECRETARY

APPROVED:

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BRENT SCHULTZ, CHAIRMAN  
ONTARIO OVERSIGHT BOARD

**OVERSIGHT BOARD OF THE SUCCESSOR AGENCY  
TO THE ONTARIO REDEVELOPMENT AGENCY**

**MINUTES**

**THURSDAY, OCTOBER 23, 2014**

*(Not Official Until Approved)*

The Regular Meeting scheduled for October 23, 2014, was cancelled due to lack of pressing business. The next regular meeting is scheduled for Thursday, November 27, 2014, in the Ontario City Hall Community Conference Rooms, 303 East B Street, Ontario, California.

Respectfully submitted:

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OVERSIGHT BOARD SECRETARY

APPROVED:

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BRENT SCHULTZ, CHAIRMAN  
ONTARIO OVERSIGHT BOARD

**OVERSIGHT BOARD OF THE SUCCESSOR AGENCY  
TO THE ONTARIO REDEVELOPMENT AGENCY**

**MINUTES**

**THURSDAY, NOVEMBER 27, 2014**

*(Not Official Until Approved)*

The Regular Meeting scheduled for November 27, 2014, was cancelled due to lack of pressing business. The next regular meeting is scheduled for Thursday, December 25, 2014, in the Ontario City Hall Community Conference Rooms, 303 East B Street, Ontario, California.

Respectfully submitted:

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OVERSIGHT BOARD SECRETARY

APPROVED:

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BRENT SCHULTZ, CHAIRMAN  
ONTARIO OVERSIGHT BOARD

**OVERSIGHT BOARD  
FOR THE SUCCESSOR AGENCY  
TO THE ONTARIO REDEVELOPMENT AGENCY**

*STAFF REPORT  
AGENDA ITEM 2*

Meeting Date: December 2, 2014

Subject: Approval of a Resolution of the Oversight Board of the Successor Agency to the Ontario Redevelopment Agency re-approving of a First Amendment to an Owner Participation Agreement between the Successor Agency to the Ontario Redevelopment Agency and Ontario Airport Tower, LLC and finding that the renegotiated terms are consistent with Health and Safety Code Section 34181(e).

Recommended Action:

That the Oversight Board of the Successor Agency to the Ontario Redevelopment Agency adopt a Resolution re-approving an amendment to an Owner Participation Agreement (“OPA”) between the Successor Agency to the Ontario Redevelopment Agency and Ontario Airport Tower, LLC and finding that the renegotiated terms are consistent with Health and Safety Code Section 34181(e).

Background

On February 27, 2014 the Oversight Board (“OB”) approved the First Amendment to the Owner Participation Agreement between the Successor Agency to the Ontario Redevelopment Agency (“SA”) and Ontario Airport Tower, LLC (“Amendment”). The purpose of that Amendment was to revise the Schedule of Performance and substitute in the new owner of the Property.

Due to delays outside the control of the previous owner and the new owner related to the foreclosure proceedings on the property in 2011/2012 and the subsequent transfer of the property to the new owner, the Schedule of Performance was unavoidably delayed and pursuant to Section 9.10 the schedule was automatically extended. Then in 2011 with the demise of redevelopment additional delays occurred.

In 2013, after ABX1 26 and AB 1484 had been implemented and the SA had determined that the OPA was in fact an enforceable obligation, the SA and new owner began drafting the Amendment to document the changes to ownership and the extension to the Schedule of Performance. Further, because the CFD (“Community Facilities District”) called for in the Agreement had never been created, the Amendment revised the OPA to remove all references to the CFD. The Amendment was approved by the SA and the OB in February 2014. The OB resolution was submitted to the DOF (“Department of Finance”) in September 2014.

In an OB Action Letter dated November 14, 2014, the DOF rejected the Amendment. DOF has determined that the Amendment to the OPA is inconsistent with the dissolution of the Redevelopment Agency for the following reasons:

1. The term is extended by 10 years.
2. DOF acknowledge that the OB does have the authority HSC 34181(e) to renegotiate agreements to reduce liability and increase net revenues to the taxing entities. However, the DOF asserts that although the statute allows the OB to approve any amendment if it finds that the amendment would be in the best interest of the taxing entities, DOF concludes that the Amendment does not reduce liability and increase net revenues to the taxing entities and therefore is invalid.

When the DOF rejects an action of the OB, the SA and OB must either accept that determination or reconsider their previous action.

Staff recommends that the OB adopt the resolution re-approving the Amendment and finding that the renegotiated agreement reduces liabilities of the SA, increases new revenues to the taxing entities, and is in the best interest of the taxing entities. These findings and determinations are based upon the following facts:

1. The first phase of the development has been completed. It is unclear that without the Amendment the property owner will complete the additional phases of development. The failure to complete the additional phases in development will result in a loss of property tax revenues to the taxing entities. Additionally, the completion of the project will create additional economic development opportunities in the immediately surrounding area generating increased property taxes and, potentially, sales taxes which will benefit the taxing entities.
2. Without the First Amendment, the property will not be positioned to facilitate the marketing and pre-development of Phase II which could result in the underutilization of the property and potentially another foreclosure on the property. The failure of the project will result in a direct loss of revenue to the taxing entities through a loss of property taxes.
3. Because this Amendment merely documents the automatic changes that occurred as a result of the foreclosure and the force majeure provisions, it is in the best interests of the SA, the OB, the taxing entities and the community. A failure to comply with the OPA will result in a breach of contract and cause the SA to incur substantial legal fees. Consequently, the Amendment positions the SA to avoid potentially costly litigation and thereby reduces liabilities consistent with HSC 34181.
4. As provided for in the 2007 Owner Participation Agreement and subsequent First Amendment to the OPA, and the corresponding multi-phase scope of development, ensuring that the yearly tax increment payment is made to the Owner is critical to facilitating additional investment in the development of the future phases of the

project and a corresponding increase in net revenues to the taxing agencies. The funds that the taxing entities are anticipated to receive through increased property taxes and sales taxes are expected to exceed the funds they will use by the diversion of resources to implement the OPA as amended

Fiscal Impact

The re-approval of the Amendment creates no fiscal obligation beyond that which already exists and is in place in the existing agreement.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY, RE- APPROVING A FIRST AMENDMENT TO AN OWNER PARTICIPATION AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND TNHYIF REIV INDIA, LLC. AND FINDING THAT THE RENEGOTIATED TERMS ARE CONSISTENT WITH HEALTH AND SAFETY CODE SECTION 34181(e)**

**WHEREAS**, pursuant to Health and Safety Code Section 34173, the City of Ontario (“Successor Agency”) is the Successor Agency to the dissolved Ontario Redevelopment Agency (“Agency”); and

**WHEREAS**, pursuant to Health and Safety Code section 34179(a), the Oversight Board is the Successor Agency’s oversight board; and

**WHEREAS**, well in advance of its dissolution, the Agency and Ontario Airport Towers, LLC (“Prior Owner”) entered into that certain Owner Participation Agreement (Ontario Airport Towers), dated September 4, 2007 (“Agreement”), which set forth the terms and conditions by which the Prior Owner agreed to develop and operate Private Works of Improvement, as further defined in the Agreement (“PWI”), on that certain real property located in the City of Ontario, California and consisting of approximately 21.462 acres, as further described in the Agreement (“Property”), for the completion of public improvements necessary for the development of the PWI, and to provide for the Agency to pay to Owner an amount as further specified and defined in the Agreement as the “Agency’s Yearly Tax Increment Payment” as reimbursement for certain related costs; and

**WHEREAS**, in 2012, TNHYIF REIV India, LLC (“Owner”) acquired the Property from the Prior Owner; and

**WHEREAS**, in February 2014 the Oversight Board approved the First Amendment to the Agreement; and

**WHEREAS**, the Department of Finance has rejected the Oversight Board action and sent the matter back for reconsideration; and

**WHEREAS**, the Oversight Board has reconsidered the item and the comments from the Department of Finance and desires to re-approve the First Amendment based upon the information provided at the February 2014 meeting, the December 2, 2014 meeting and the associated agenda reports.

**NOW, THEREFORE, THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE ONTARIO REDEVELOPMENT AGENCY DOES HEREBY RESOLVE AND FIND AS FOLLOWS:**

**Section 1. Recitals.** The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

**Section 2. CEQA Compliance.** The re-approval of the First Amendment does not commit the Oversight Board to any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act. The City Clerk of the City of Ontario, acting on behalf of the Oversight Board, is authorized and directed to file a Notice of Exemption with the appropriate official of the County of San Bernardino, California, within five (5) days following the date of adoption of this Resolution.

**Section 3. Findings.** The Oversight Board finds that the First Amendment is consistent with the dissolution of the redevelopment agency by renegotiating the Agreement pursuant to Health and Safety Code Section 34181(e) to reduce liabilities and increase net revenues to the taxing entities. This is based upon the following:

A. The first phase of the development has been completed. It is unclear that without the Amendment the property owner will complete the additional phases of development. The failure to complete the additional phases in development will result in a loss of property tax revenues to the taxing entities. Additionally, the completion of the project will create additional economic development opportunities in the immediately surrounding area generating increased property taxes and, potentially, sales taxes which will benefit the taxing entities.

B. Without the First Amendment, the property will not be positioned to facilitate the marketing and pre-development of Phase II which could result in the underutilization of the property and potentially another foreclosure on the property. The failure of the project will result in a direct loss of revenue to the taxing entities through a loss of property taxes.

C. Because this Amendment merely documents the automatic changes that occurred as a result of the foreclosure and the force majeure provisions, it is in the best interests of the SA, the OB, the taxing entities and the community. A failure to comply with the OPA will result in a breach of contract and cause the SA to incur substantial legal fees. Consequently, the Amendment positions the SA to avoid potentially costly litigation and thereby reduces liabilities consistent with HSC 34181.

**Section 4. Approval of the Agreement.** The Oversight Board hereby approves the First Amendment and any non-substantive revisions, which may be needed.

**Section 5. Implementation.** The City Manager, acting on behalf of the Successor Agency, is hereby authorized and directed to take any action necessary to carry out the purposes of this Resolution and comply with applicable laws, including to execute the First Amendment on behalf of the Oversight Board and make any non-substantive revisions to the First Amendment, as needed.

**Section 6. Severability.** If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The Oversight Board declares that the Oversight Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

**Section 7.**     **Certification.** The City Clerk of the City of Ontario, acting on behalf of the Oversight Board as its Secretary, shall certify to the adoption of this Resolution.

**Section 8.**     **Effective Date.** This Resolution shall be effective upon its adoption.

**PASSED AND ADOPTED** at a regular meeting of the Oversight Board of the Successor Agency to the dissolved Ontario Redevelopment Agency, on the \_\_\_ day of December, 2014, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Oversight Board

\_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Oversight Board Secretary