

September 21, 2017

**VIA GOLDEN STATE OVERNIGHT**

Chairman and Members of the Oversight Board  
of the Successor Agency to the Industry-Urban  
Development Agency  
15651 Stafford Street  
City of Industry, CA 91744

Re: Demand to Correct Brown Act Violation

Dear Chairman Santos H. Kreimann and Members of the Oversight Board:

Pursuant to Government Code section 54960.1 the City of Diamond Bar ("Diamond Bar") submits this demand that the Oversight Board ("Board") correct violations of the Brown Act and the Redevelopment Dissolution Law that occurred at the Board's August 24, 2017, meeting. Government Code Section 54960.1 provides that any interested person may commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency violated the Brown Act's open meeting laws and is null and void. As a pre-requisite to filing such an action, it is required that Diamond Bar make a demand of the Board to correct its action.

The Brown Act requires that the agenda for the Board's meeting contain a brief general description of the items to be considered. As this was a special meeting, the Brown Act requires that a notice be posted on the Board's website and that it "specify the ... business to be transacted or discussed. No other business shall be considered at these meetings ... The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public."<sup>1</sup> Government Code section 54954.3 provides that during meetings the public must have "an opportunity ... to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of the item." Further, Health and Safety Code section 34181(f) provides that "actions of the successor agency shall be approved by resolution of the oversight board at a public meeting after at least 10 days' notice to the public of the *specific* proposed actions." (Emphasis added.) The general purpose of these laws is to notify the public of the specific actions to be considered by the Board, provide the public with a fair opportunity to participate in the Board's decision making and for the Board to receive such public input in an open forum *prior* to the Board making a final decision.

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<sup>1</sup> Government Code section 54956(a).

With respect to the Board's August 24 Special Meeting, the posted notice and agenda, the accompanying agenda materials and the manner in which the meeting was conducted, did not satisfy: (1) the Brown Act's requirement that the agenda contain a "brief general description" of items to be considered by the Board; (2) the Brown Act's requirement that the public be afforded a fair opportunity to comment on the Board's action prior to it being taken; or (3) the 10-day notice required by Section 34181(f). As stated by one California appellate court, it is a "general principle that agenda drafters must give the public a fair chance to participate in matters of particular or general concern by providing the public with more than mere clues from which they must guess or surmise the essential nature of the business to be considered by a local agency."<sup>2</sup>

As the Board is aware, the notice and agenda provided only that the Board was to consider approval of a fully executed purchase agreement between the City of Industry ("Industry") and the Successor Agency ("Purchase Agreement"). The Purchase Agreement provided that Industry would purchase 2,450 acres of property known as Tres Hermanos for \$100 million and had been approved by Industry's City Council and the Successor Agency Board. The Tres Hermanos Property lies within the municipal boundaries of Diamond Bar and Chino Hills. At the meeting, after all public comments had been taken, the City Manager of Industry, Paul Phillips, who sits on the Board, made a motion to place an unspecified public use/open space deed restriction on the Property and to sell it to Industry for \$41.6 million. The public was given no advanced notice of this proposed course of action and no opportunity whatsoever to comment on Mr. Phillips' motion. The motion passed 4-3, with Industry's City Manager, Mr. Phillips, casting the deciding vote.

The agenda materials unequivocally led the public to believe that the Board was only considering whether to approve the Purchase Agreement and provided no clues as to the Board's ultimate action. The published agenda for the August 24, 2017, meeting was for the Board to consider Resolution OB 2017-05 ("Resolution"). The client memorandum from Varner & Brandt ("Memorandum"), whom I understand acts as general counsel for the Board, notes that an Industry-retained firm had appraised the Property for \$41.6 million, based upon a "non-existent hypothetical condition of open space, public use or preservation use." It further provides that the Board "requested a new appraisal of the Property without the hypothetical condition and aimed at achieving the highest and best use." The Property was subsequently valued at \$100 million and Industry submitted a revised offer to purchase the Property for that amount.

The Memorandum continues that "any Successor Agency actions taken pursuant to an approved LRPMP are subject to the Oversight Boards (*sic*) approval per HSC section 34181(f)." The Memorandum provides that "the City's offer, approved by the Successor Agency, now comes before the Oversight Board for consideration and approval. In evaluating the proposed disposition of the Property to the City, the Oversight Board must keep in mind that they have fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit

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<sup>2</sup> *San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal. App. 5<sup>th</sup> 637, 643.

from distributions of property tax and other revenues (HSC Sections (*sic*) 34179(i)). With that in mind, the disposition of any property must be done expeditiously and in a manner aimed at maximizing value. (HSC Section 34181(a))."

The Resolution itself, included in the agenda packet, provided for the sale of the Property to Industry for \$100 million and repeats many of the same statements made by the Board's own general counsel. A memo from Industry's City Attorney, James Casso, which was also part of the agenda packet states, "The City will purchase the Property from the Agency for the appraised value as open space of \$100,000,000.00...The City has agreed to pay the appraised market value of \$100,000,000.00." The Purchase Agreement was included in the agenda packet. Another memo dated August 22, 2017, from Industry's City Attorney claims the "Oversight Board is required to approve the sale of the Tres Hermanos Property to the City" for the \$100 million.

While it appears that the notice required by Health and Safety Code section 34181(f) was posted on the Board's website 10 days prior to the action, it was buried on the Board's website under a folder entitled "Other Documents", making it extremely difficult to find. Second, the "specific proposed action" to be considered, as stated in the notice, was the "Purchase Agreement for the sale and disposition of real property known as Tres Hermanos property." The notice does not state who is the proposed buyer and certainly did not disclose the action actually taken by the Board – to purportedly approve a sale other than that contemplated by the Purchase Agreement. Indeed, the Oversight Board lacked the authority to approve a sale that had not been approved by the Successor Agency or the City of Industry.

Pointedly in no place do the agenda materials or the notice reference any authority for the Board to consider some alternative purchase, let alone to impose a deed restriction on property it does not own and to directly contradict its own general counsel's admonition that the Board has a fiduciary duty to the taxing entities and is required to sell the Property in manner to maximize its value. It was not until the public finished with its comments that Mr. Phillips made his motion. Members of the public, save and except Mr. Casso, were given no opportunity to comment on this sudden turn of events. While Mr. Casso was able to address the Board at will during the entirety of the meeting, other members of the public, including speakers from Diamond Bar and the City of Chino Hills, were limited to five minutes. Leaving the public in the dark about the Board's true intentions appears to have been no accident.

The manner in which the meeting was run also violated substantive and procedural due process. Diamond Bar, among others, are taxing entities which would derive revenue from the sale and thus, had a property interest in ensuring that the Property was sold in accordance with the Long Range Management Plan and State law, which requires the Board to maximize its value. The Board did just the opposite, i.e., it minimized its value and afforded the taxing entities no opportunity to comment on that action, which resulted in Diamond Bar, among other taxing entities, being deprived of revenue from the sale. Mr. Phillips was not a fair and impartial decision-maker and should not have been voting on the matter at the expense of those to whom he owed a fiduciary duty. The deed restriction he proposed for the Property is meaningless as to

September 21, 2017

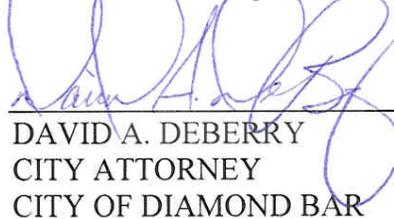
Page 4

the Property's value to Industry, which by State law may only purchase property outside its city limits for a public use in any event. It is quite apparent that Mr. Phillips knew this when he made the motion and he and Mr. Casso, duped the Board into believing that this deed restriction somehow decreased the value of the Property to Industry. Whatever ability the Redevelopment Dissolution Law provides for Mr. Phillips to sit on the Board, those laws cannot trump State and federal constitutional due process requirements.

Pursuant to Government Code section 54960.1, the Board has 30 days from receipt of this letter to cure the violations. If no action is taken during the 30-day period or the Board provides written notice that it does not intend to cure, Diamond Bar will be required to file a legal action. If the Board determines to cure the violations, please notify me prior to the running of the 30-day period.

Sincerely,

WOODRUFF, SPRADLIN & SMART  
A Professional Corporation



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DAVID A. DEBERRY  
CITY ATTORNEY  
CITY OF DIAMOND BAR

cc: Jackie Lacey, Los Angeles County District Attorney  
Chikako Takagi-Galamba, Manager, California Department of Finance  
Bruce D. Varner, Oversight Board General Counsel  
Mr. Dan Fox, City Manager, City of Diamond Bar  
Honorable Members of the City Council, City of Diamond Bar  
Jack Rubens, Esq.