

MINUTES OF THE SPECIAL JOINT CITY COUNCIL,  
ALAMEDA REUSE AND REDEVELOPMENT AUTHORITY (ARRA),  
AND COMMUNITY IMPROVEMENT COMMISSION (CIC) MEETING  
TUESDAY- -JUNE 4, 2008- -7:01 P.M.

Mayor/Chair Johnson convened the Special Joint Meeting at 7:22 p.m.

ROLL CALL - Present: Councilmembers / Board Members /  
Commissioners deHaan, Gilmore, Matarrese,  
Tam and Mayor/Chair Johnson - 5.

Absent: None.

AGENDA ITEM

(08-252 CC/ARRA/08-035 CIC) Authorize the City Manager/Executive Director to execute a Transfer of the Exclusive Negotiation Agreement with SSC Alameda Point LLC to a new entity with D.E. Shaw or a transfer of an ownership interest in the Master Developer entity, SCC Alameda Point LLC to D.E. Shaw, pursuant to specific terms and Conditions.

The Assistant City Manager stated SunCal requested that the matter be held over for two week in order to allow representatives from D.E. Shaw to be present to answer questions.

Councilmember/Board Member/Commissioner Gilmore thanked the consultant for coming through and hitting important points that the City needs to have to protect itself; that she has a problem with eventually approving a document or agreement that she has not seen or read; Councilmembers were elected to make decisions on behalf of the citizens; if she approves the recommendation and things later go south, the citizens are not going to want to hear that she relied on a consultant when she made the decision; essentially, the consultant is framing the discussion about the issues; Councilmembers/Board Members/Commissioners might have additional items that the consultant has not flagged or that should be discussed in public; it is really important for Councilmembers/Board Members/Commissioners to be able to see and discuss the Agreement; if SunCal feels strongly about the confidentiality, the Agreement could be disclosed in Closed Session; that she would be open to signing a confidentiality agreement; it is really important that the Council/Board/Commission sees underlying documents; that she does not want to see SunCal and D.E. Shaw in two weeks if the Operating Agreement is not complete; suggested that the matter not return until the Operating Agreement is executed, the Council/Board/Commission has copies of the term sheet and Operating Agreement and the Council/Board/Commission has

had an opportunity to review and discuss the matter before voting; D.E. Shaw is asking to become the City's partner; if D.E. Shaw does not trust the Council/Board/Commission to keep the matter confidential, it does not speak well for the beginning of the partnership.

Councilmember/Board Member/Commissioner Matarrese stated D.E. Shaw is entering into an agreement with the taxpayers; that he would not be willing to sign a confidentiality agreement; the matter is in the public realm; the background document should be presented to and discussed in front of the public.

Councilmember/Board Member/Commissioner deHaan inquired how there could be an open discussion.

The Assistant City Manager responded staff has discussed the matter; the confidentiality issues are D.E. Shaw's issues; staff would discuss the matter with D.E. Shaw's management tomorrow; staff has indicated that the issue would be a problem for the Council/Board/Commission; D.E. Shaw is relying on a section of the Exclusive Negotiation Agreement (ENA) that allows confidentiality.

Vice Mayor/Board Member/Commissioner Tam stated that she appreciates the concerns; there is an obligation under Section 10 of the ENA that keeps some of the information between SunCal and D.E. Shaw proprietary; inquired what the Council's/Board's/Commission's role was when Catellus merged with Palmtree; stated the venture is a multi-party partnership and is a business relationship; the City changes financing partners when doing tax increment funding or refinancing bonds; the developer has been able to secure a financing partner unlike the prior developer.

The Assistant City Manager stated the documents were reviewed when Catellus assigned part of its agreement to Palmtree; the CIC had issues and there were concessions; ARRA approved the Operating Agreement between Alameda Point Community Partners and Morgan Stanley; the financials have always been confidential, but the Operating Agreement generally has not been confidential.

The Base Reuse and Community Development Division Manager stated SunCal has indicated the Operating Agreement would not be ready for sixty days; staff thought bringing a term sheet first could be helpful to provide direction to SunCal and D.E. Shaw in negotiating the Operating Agreement; initial direction from the Council/Board/Commission would allow them to focus on issues of key concern; the Operating Agreement would reflect the intent of the

Council/Board/Commission; the Council/Board/Commission might want to give direction regarding the key issues to allow the negotiation process to be a more efficient.

Councilmember/Board Member/Commissioner Gilmore stated said recommendation would be fine as long as it is understood that she would not vote for or against the Operating Agreement until she sees it; the Council/Board/Commission should see the document.

The Base Reuse and Community Development Division Manager stated staff understands that the Council/Board/Commission wants to see both the executed Operating Agreement and term sheet and ensure that the key points outlined in the term sheet are carried over into the Operating Agreement; staff's recommendation is that direction only be given regarding the term sheet; the Operating Agreement would have to be entirely consistent with the points raised in the term sheet.

The Assistant City Attorney stated that she informed SunCal's Counsel that the Council/Board/Commission would want to know all the details; the confidentiality provision of the ENA covers the issue sufficiently; if a third party wants to get a document, it would be on SunCal's shoulders; in the event of a legal dispute about whether or not something is discloseable under the Public Records Act, SunCal would have the burden of taking on the dispute.

Councilmember/Board Member/Commissioner deHaan stated that he wants to hear from SunCal about progress being made; the term sheet and Operating Agreement should not curtail or slow operations.

The Assistant City Manager stated quite a bit of engineering work has been done; money is being spent.

Bill Smith, Alameda, discussed consultants.

#### ADJOURNMENT

There being no further business, Mayor/Chair Johnson adjourned the Special Joint Meeting at 7:36 p.m.

Respectfully submitted,

Lara Weisiger, City Clerk  
Secretary, CIC

The agenda for this meeting was posted in accordance with the Brown

Act.