

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY OF FRESNO**

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**Oversight Board to the
Successor Agency to the Redevelopment Agency
of the City of Fresno**

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AGENCY BRIEFING REPORT

Date: February 25, 2016
To: Oversight Board Members
From: Andrew Sanchez
Through: Marlene Murphey
Subject: Agenda Item IV. – 20.

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Discussion and direction regarding 1189 Martin Avenue, currently occupied by Fresno EOC.

Attachment: Jerome M. Behrens Opinion 1189 Martin Avenue



7404 N. Spalding Avenue, Fresno, California 93720-3370
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MEMORANDUM

DATE: January 14, 2016
TO: Fresno Oversight Board
CC: Katie Doerr, Ex Officio Attorney for the Successor Agency
FROM: Jerome M. Behrens, General Counsel
RE: Opinion Request re EOC Head Start Lease Agreement at 1189 Martin Avenue, Fresno

CLIENT/MATTER:
1864-01

The property located at 1189 Martin Avenue is identified as item 42 on the Long Range Property Management Plan (Plan) and has been used as a Head Start Center by the Fresno Economic Opportunities Commission (EOC) since September 1, 1990. The Lease Agreement (attached) is automatically renewed annually unless the Lessor (identified as the Redevelopment Agency of Fresno) or the Lessee (EOC) exercises the right to terminate by June 1 of the subsequent year. The EOC is a 501(c)(3) California nonprofit public benefit corporation and is not a governmental entity. Pursuant to the Lease terms, the EOC pays for all utilities, taxes, assessments, all maintenance and provides liability insurance and indemnity to the Lessor, now the Successor Agency. The Lease also requires the EOC to assume all of the liabilities associated with use of the Lease and requires a flat annual rental dollar amount of \$12.00. An "In-Kind Contribution Statement" in the Lease identifies a "value", as of September 1, 1990, of \$198,037 as the Redevelopment Agency's contribution for the Head Start Program operated by the EOC at the former Franklin School (the Property).

According to the Plan prepared by the Successor Agency and presented to the Oversight Board, the estimated market value, for the proposed sale of the Property, was \$1,850,000 as of August 3, 2014. It should be noted, however, that there is a significant right of way acquisition planned for the Property in accordance with the General Plan. Fresno Street will be realigned to curve south and connect to the California/South Walnut intersection, nearly bisecting the Property. Attached is a diagram entitled, "Official Plan Lines" and an aerial photo showing the proposed realignment in yellow outline. Any proposed or future sale would, in all likelihood, be contingent upon dedication of the right of way, substantially impairing the value of this Property. I do not know if the appraiser took into account this Plan Line and probable dedication for development in his estimated market value analysis. Construction of the new street alignment is currently scheduled for 2021. It may also impair any future use, after construction, by the EOC.

Currently, the Plan is for the sale of the Property as a "permissible use" pursuant to Health & Safety Code section 34191.5(c)(2). (All statutory references are attached and refer to the Health & Safety Code.)

Section 34191.5(c)(2) states, in relevant part, that the Plan shall:

"Address the use or disposition of all of the properties in the trust. Permissible uses include the retention of the property for governmental use pursuant to subdivision (a) of Section 34181, the retention of the property for future development, the sale of the property, or the use of the property to fulfill an enforceable obligation. The plan shall separately identify and list properties in the trust dedicated to governmental use purposes and properties retained for purposes of fulfilling an enforceable obligation."

Pursuant to section 34171(d)(1)(E), an enforceable obligation includes "[A]ny legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy. However, nothing in this act shall prohibit either the successor agency, with the approval or at the direction of the oversight board, or the oversight board itself from terminating any existing agreements or contracts and providing any necessary and required compensation or remediation for such termination."

Although the Lease is an annually renewable enforceable obligation which has not been terminated since it was commenced on September 1, 1990, the Successor Agency, with the approval or at the direction of the Oversight Board, can terminate the Lease for sale. In view of the in-kind contribution in 1990 dollars and the surrender provisions at the end of the term pursuant to section 22 of the Lease, there appears to be no basis for providing any necessary and required compensation or remediation to the EOC upon such termination, other than giving sufficient notice such as complying with the notice to terminate the Lease, in accordance with its terms, for the EOC's termination of the Head Start Program at the Property.

The Oversight Board, however, does have the power and may "direct" the Successor Agency, under 34181(e) to:

"Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities."

The Successor Agency has the obligation to “[d]ispose of assets and properties of the former redevelopment agency as directed by the oversight board . . .” and “[t]he disposal is to be done expeditiously and in a manner aimed at maximizing value.” 34177(e). Maximizing value is not necessarily maximizing dollar value.

Given the dedicated use of the Property for the Head Start Program to primarily promote school readiness of young children from low-income families in their communities, and the fact that the EOC is a “private party” as opposed to a governmental entity, the Oversight Board could amend the Lease, within the parameters of 34181(e), if it determines that it would “be in the best interest of the taxing entities.” There is no further definition of what “best interest” means for “taxing entities” which is defined as “cities, counties, a city and county, special districts, and school entities, as defined in subdivision (f) of Section 95 of the Revenue and Taxation Code, that receive passthrough payments and distributions of property taxes pursuant to the provisions of this part.” 34171(k).

Another possibility is, given that this was the former Franklin School site, the Oversight Board may, instead of selling the Property “. . . direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, parking facilities and lots dedicated solely to public parking, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset.” (34181(a)(1); emphasis added.) This would mean transfer to the Fresno Unified School District with the current EOC Lease. It may be wise, if this is the direction of the Oversight Board, to communicate with FUSD and the EOC.

Accordingly, the Oversight Board could place the matter on a subsequent agenda for discussion and/or direction to the Successor Agency pursuant to 34181(e). Currently, two Oversight Board meetings have been proposed for January 25 and February 25. According to the email sent by Andrew Sanchez on January 13 regarding the proposed February 25 meeting, the agenda will address the Plan.

If direction is given, as described above, the Plan will need to be amended at a subsequent Oversight Board meeting. If no action is taken, the Property, as currently listed in the Plan, would be disposed of by sale.

As I stated at the December 8 Board meeting, Lozano Smith also represents the EOC as counsel and would have a conflict in advising or negotiating on behalf of the Oversight Board or the EOC. However, it should be noted that 34181 would be a “direction” by the Oversight Board to the Successor Agency and would not involve Lozano Smith in advising or negotiating.