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Sent: Wednesday, November 27, 2013 5:27 PM
To: Charlie Fleetham; Hutchinson, Nicholas; robert.czachorski@ohm-advisors.com
Subject: RE: URGENT> Fwd: Meeting Material for December 17 CAC Meeting on FDD Legal Questions

Charlie – please forward to the CAC my responses to the questions you forwarded to me. Thank you.

A CAC member has asked a couple of critical questions about my November 25 memorandum “Response to Concerns Raised about the FDD Program.” Following are the questions and my responses:

1. Does the memorandum mean that the City legal staff now represents CAC members?
2. If the above is true, am I now prohibited from talking to other lawyers?
3. If the City is sued regarding this project, will I be required to support the City’s position even if I do not agree with it?

My responses:

The CAC and its members HAVE to be independent to do what the CAC is tasked to do. Whether other members of the CAC agree with another member or not does not matter; whether members are inclined to support the FDD concept, inclined to oppose the FDD concept or neutral does not matter; each member needs to reach his or her own conclusions during the process of the CAC developing a recommendation or recommendations. The City Attorney’s office does not represent any CAC member or the committee entire in any matter at this time. More important, our office does not tell any members of the CAC what to think.

CAC members are free to talk to anyone they want and my memorandum did not say otherwise.

The only time representation MIGHT come into the picture is if someone were to file a lawsuit that named CAC member individually in his or her role as a member of the CAC – as opposed to being a lawsuit against the City. That should not happen if the lawsuit were brought by a knowledgeable attorney, given the role of the CAC and its members. However, if that were to happen and if the CAC member wanted the City Attorney’s office representation, IN THAT CASE, we think it appropriate to consider members of the CAC eligible for representation. Members of the community who have chosen to put in the time and effort to volunteer on the CAC should not have to bear the cost of representation if they become subject to a lawsuit based on that participation. If CAC members wants that representation, they need to help/cooperate with the attorney representing them. If they don’t want the City Attorney’s office to represent them, that is their choice. In any event, no member of the CAC ever would be asked to make anything other than truthful statements; the facts will be the facts. Being intentionally untruthful would be considered non-cooperative. Whether a CAC member agreed or disagreed with this office’s view of the legal issues relative to the FDD program likely would not be an issue in the representation.

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A mind once expanded by a new idea never returns to its original dimensions. OLIVER WENDELL HOLMES