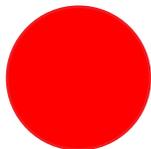


Del Mar City Council Special Meeting Agenda

Del Mar City Hall – Via Teleconference Only
1050 Camino del Mar, Del Mar, California

March 1, 2021 City Council Special Meeting

**INFORMATION RECEIVED
AFTER THE COUNCIL AGENDA
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("Red Dots")**



From: Laura <laura.cunitz@thewinstonschool.org>
Sent: Monday, March 01, 2021 11:51 AM
To: City Clerk Mail Box
Cc: Kendrick Maureen; Terry Gaasterland
Subject: Winston School submission for City Council Closed Session
Attachments: 2020-March 1 Closed Session Submission Winston .pdf

Follow Up Flag: Follow up
Flag Status: Completed

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Dear City Clerk,

I am submitting the following for Closed Session item IIID: Support Winston Lease Renegotiation.

Thank you for your help. Please let me know if there is anything additional I need to do.

--

Laura Cunitz

President, Winston School Board of Directors

Laura.Cunitz@TheWinstonSchool.org

(760) 840-7773

Legal Areas of Disagreement

There are areas of disagreement in the application of the lease terms between the City and Winston School. A detailed support for the School's position on these items was sent to the prior City Manager and copied to the prior City Council on November 17, 2020.

<p>Notice to Cure</p>	<p>The City's February 24, 2021 stated the reason for the School's delay in meeting lease redevelopment deadlines was due to process delays while omitting the relevant portion of the paragraph, which reads in its entirety as follows.</p> <p><i>Lease Section 3(c): Force Majeure</i> <i>Redevelopment Deadlines set forth above shall be extended to the extent that Tenant's performance is prevented or indeed by circumstances out of Tenant's reasonable control, including an act of God, casualty, epidemic, war, terrorism, insurrection, riot fire, flood, earthquake, strike or boycott. Tenant's inability to fund the Redevelopment or to timely process entitlements and proceed with construction shall not extend the Redevelopment Deadlines.</i></p> <p>The City Attorney seems to be arguing that the worldwide pandemic that has closed schools across the country has not had an impact on the School's operations and redevelopment plans. However, the change in how schools operate in the future has a direct impact on the facilities needed to support them. In addition, the School is governed by State agencies who have not yet determined the ongoing requirements for educating students in a COVID world.</p>
<p>Submission and Approval of Redevelopment Plans</p>	<p>In 2020, the former City manager instituted a new requirement that the City Council must pre-approve the School preliminary plans before the Planning Department will accept the School's application for ADR approval. This was first implemented with the School's perimeter fence permit submission.</p> <p>As detailed in prior communications, the School strongly disagrees with this additional requirement as it is not a part of the lease agreement which simply requires the School to follow standard submission guidelines.</p> <p>As demonstrated by the fence permit, this allows the City Council to delay the approval by not putting it on the meeting agenda, then hold the School responsible for the delay.</p> <p>As shown in the School's Red Dot submission, the City planning department was unable to accept the Schools application for campus renovation without the City Managers approval and signature, which required City Council approval. The preliminary plans were submitted to the City planning department and City Manager June 2020.</p>

<p>Impact of Change in Leasehold Lot Lines</p>	<p>It was discovered in 2020 that the leasehold lot lines were incorrect. As a result of the discrepancy and realignment, the former City Manager demanded the fence running along the west side of the rear driveway easement be relocated from its location of 70 years to the east side. As a result the School lost 5 parking spaces.</p> <p>The realignment also reduced the amount of land the School can use in redevelopment on the east edge. The total impact is a decrease in 15% of the School's usable area.</p> <p>The School's request for a proportionate reduction in lease payments is consistent with the City Council's proposal and communication between Scott Huth and the School to reduce the School's lease hold for a reduction in lease payments dated December 20, 2018.</p>
<p>Parking Requirements</p>	<p>The letter from the former City Manager dated September 24, 2020 and included in the latest correspondence to the School states: <i>"The City Council has indicated that they are amenable to considering the School's proposed development concept as its "redevelopment" under terms of the lease"</i>, as if the City were granting a special concession when this right is part of the lease terms. It also imposed two requirements based on this "concession".</p> <p>The first is that the renovation meets all current building codes. This is part of the standard development process and the School has responded that all building codes will be met.</p> <p>The second was that the School submit a plan to meet parking code requirements entirely on its own leasehold. This is in direct violation of the lease, which provides the School "non-exclusive right to use the parking lot to the south of the Premises. The School's redevelopment plan does not change the footprint of the School nor is there a change in student population size that would trigger any change to existing parking requirements.</p>
<p>2006 MOU</p>	<p>The 2006 Memorandum of Understanding between the School and the City includes a provision that the <i>"Upon completion of a complete development and replacement of the Building by the Winston School, the Parties shall enter into good faith negotiation for a new lease"</i>. This clause was included to prevent the School from paying for both the lease on the old buildings and cost for new buildings.</p> <p>According to the School's attorney, the MOU was incorporated into the lease by reference.</p>
<p>Public Gift of Funds</p>	<p>The City staff has claimed a reduction in the lease rate constitutes a public gift of funds. Not only is this contrary to the MOU as stated above, in a letter to the City dated November 17, 2019 the School's attorney explained that the constitutional prohibition on a gift of public funds has been held not to apply to a charter city, unless the city's charter itself contains a similar prohibition, which the Del Mar charter does not. The City has never responded with a legal argument that supports the claim but continued to cite this argument as a reason not to negotiate with the School.</p>

Rethinking Education in a COVID World

Develop a Flexible Education Model

- ▶ **On Campus - Remote - Hybrid** with the ability to move seamlessly between on a school-wide and individual student basis

Incorporate new health & safety guidelines into renovation plans

- ▶ Hand washing stations, natural airflow, state-of-the-art HVAC systems, easy to clean surfaces
- ▶ Change classroom sizes to support fewer students in each class; add one-to-one teaching rooms for medically fragile students.

Campus Development Impact - Switch to a Two Phase Plan

- ▶ Phase I: complete gut and remodel of 4 existing buildings
- ▶ Phase II: remodel 5th building based on updated requirements in 3-5 years.

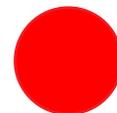
Benefits: Faster, More Cost Effective, Flexible

Winston's Approach to Education Benefits Students and Our Community

Many of our students struggle with reading or math but are gifted in art, music, photography and computers. These programs are essential to engaging a student's interest, imagination and help them identify their strengths.

The facilities that support these programs could also be of benefit to the Del Mar community with specific application to senior citizens.

- | | |
|--------------------------|-----------------------------|
| • Auditorium | • Occupational Therapy Room |
| • Outdoor Learning Areas | • Art and Music Studios |
| • Professional Kitchen | • Art Presentation Spaces |
| • Yoga Studio | • Computer Labs |



From: Robert Fried <robertsfried@sbcglobal.net>
Sent: Sunday, February 28, 2021 10:39 PM
To: City Clerk Mail Box
Cc: Tracy Martinez; Terry Gaasterland
Subject: Red Dot for Monday, March 1 Special Meeting Agenda – Closed Session, Item D (Winston School Real Property Negotiations)

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Dear City Clerk;

I would like to bring to the City Council's attention that during the initial "CPP" Process for the required redevelopment plan, the Winston School proposed a much higher capacity school with many more classrooms than are currently available. These changes were primarily to be able to afford the significant increase in lease payments going forward.

However, during that "CPP" meeting, the proposal was strongly rejected by the neighbors for numerous reasons, including the negative impact on the local community (greatly increased student capacity and traffic, bulk and mass issues at the corner of 9th St., and large institutional facility in the middle of a residential neighborhood).

The neighbors suggested a more limited a redevelopment plan with lower expected development and running costs, more limited school-size, and by addressing the most important renovation issues and required modifications to the existing buildings. The Winston School listened to our suggestions, and the Winston team did a great job in revising their redevelopment plans.

A separate but important issue is that the existing lease provides for the Winston School to have a Non-Exclusive Right to share the large parking lot to the south of the school. This sharing has worked very well for the past 30 years. And there does not appear to be any real reason (or legal justification) for changing this Non-Exclusive Right to share the parking lot now.

However, the City appears to now be requiring Winston's redevelopment plan to accommodate all its school parking needs on the Winston property, thus reducing the total area available to the school going forward (including parking) to be approximately half of what it has been for 30 years.

I hope that the City Council and the Winston School will take the necessary time to reach a collaborative decision that is in the best interests of the Winston School, the City, and its residents.

Thanks very much in advance.

Robert Fried
910 Stratford Ct.
Del Mar, CA 92014