

Tammy Cloud-McMinn

From: Tracy Carmichael <whatzuptlc@yahoo.com>
Sent: Saturday, August 17, 2024 1:36 PM
To: michaelajd@yahoo.com
Cc: denis.jensen@gmail.com; Cindie McMahon; City Clerk; Scott Chadwick; Melanie Burkholder; Lara Benusis; Mark Packard; Teri Jacobs; Matt Hall; Raul Villamar; Jeffrey Yuen; Alanna Trimble; Greg@gregday4carlsbad.com; Momophd Momofphd; kevinshin27@gmail.com; Sarah Alegre; Mike Curtin; Dorian Hargrove; Steve Puterski; Justin Cox; philip.diehl@suniontribune.com
Subject: Re: Windsor Pointe Lease Assessment (Public Records Request R004244-062524)

To whom this my concern,

As a resident of Carlsbad and taxpayer I am truly disappointed in the City of Carlsbad in the sheer negligence and disrespect to the community members when they are voicing their concerns and the impacts this project has made in their quality of life in their neighborhood.

Here are a few thoughts:

First, the optics of this facility is a financial disaster! There has been zero transparency with the City of Carlsbad as the land leaseholder to the public. The building of this facility was built and opened during the pandemic when the building industry and supply chain experienced major delays and astronomically high costs of goods and services.

The preliminary building costs were disclosed as only estimates and the City and County to date have never disclosed any actual final costs of the construction or the ongoing expenses or long term budgets. Secondly, to date the City & County actual budgeted costs for the facility can not be guaranteed for any funding resources for five years let alone for 20 yrs per the loan documents.

Additionally there has not been any discussion as to whether this three story structure is safe for those who have severe mental illness. (Please note: the residents can personally refuse assistance and more importantly, an incident occurred from third story requiring emergency services.)

I remember prior to the pandemic, Tri City hospital closed their mental health facility due to windows that opened & the acoustical tiles in ceiling were deemed unsafe conditions for those who have mental illness. Yet a three story facility opened its doors to serve this population who have mental health issues, is this in their best interest?

The other item that has not been discussed is about the long term future needs of people with severe mental illness & their long term health plan.

As we all know the costs of health care is on the rise. This is relevant because as patients' age their needs increase due to their lack of independent and ability to be self sufficient. To date no one has given any thought to discuss what the future will be relating to their needs and related costs and who will be accountable?

It is my hope that ALL elected officials start representing the people of Carlsbad and unveil the building, budget, operational costs of this project and recognize this is not the best location for those who are in need or the community at large.

Tracy Carmichael

Sent from my iPhone

On Aug 7, 2024, at 11:57 AM, michael ajdour <michaelajd@yahoo.com> wrote:

Dear Ms. McMahon,

How hard would it be to reassure Mr. Jensen that of course the 2 letters he asked about in his July 29 email were provided to the consulting attorney? It would be very odd if they weren't and there is no harm to The City of Carlsbad as an entity by stating that they were.

Just wondering,

Julie Ajdour

Sent from Yahoo Mail on Android

On Tue, Aug 6, 2024 at 4:00 PM, Denis Jensen
<denis.jensen@gmail.com> wrote:

Ms. McMahon,

Your reasoning for not providing the name of the law firm assessing the Windsor Pointe ground lease terms focus on what is not *required*. You're avoiding why the City is *choosing* not to provide this information. And after a series of developer-favoring legal interpretations that includes ignoring the State Constitution's requirement for low income housing to be put to a public vote (all of the apartments are low income, not 48%) this serves to perpetuate the City's lack of operations transparency on the matter and its curious refusal for meaningful remedy.

Why is a third party firm even needed to assess the below? I'm adding the City Clerk to the thread, memorializing this information and requesting that it be shared with the mysterious consulting firm:

Ground Lease terms that seem to have been broken include:

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"The Tenant agrees that at all times during the Term of this Ground Lease, the Tenant will establish and maintain a quality of character and operation of the Property and Improvements in accordance with this Ground Lease and the Development Documents."

The developer, Affirmed Housing, is supposed to run a quality operation. The high crime statistics, the 762 first responder needs in two years, "bad neighbor" [as per Mayor Keith Blackburn], and "debacle" assessments [as per County Supervisor Terra Lawson-Remer] are clearly not consistent with running a quality operation.

Page 20:

"Section 5.2 Limitations on Use."

In addition of the covenants regarding the use of the Property set forth above, the Tenant further agrees:

(a)

Not to use or permit the use of the Property for any disorderly or unlawful purpose;

(b)

Not to cause or permit any party from committing or maintaining any nuisance or unlawful conduct on or about the Property;

The Carlsbad Chief or Police documented crimes that include, and is not limited to, attempted murders, drug dealing, robberies, child abuse and child sexual abuse. Windsor Pointe is not providing adequate security (nor 24/7 in-person security), nor meaningful robust visitor registration needed to prevent unlawful conduct.

(g) Not to cause or permit obnoxious odors to emanate or be dispelled from the Improvements;

Neighbors frequently smell marijuana emanating from the facility and tenants openly smoke marijuana on adjacent streets, in front of neighbor kids.

(h) Not to permit undue accumulations of garbage, trash, rubbish, or any other refuse;

Neighbors complain about stolen shopping carts discarded in front of the building

(i) Not to use or permit the use of the Property for any purpose that violates the terms of this Ground Lease or the Development Documents.

As per the Chief of Police, the property is regularly used for criminal acts.

Page 21:

“The Development shall be managed and operated by a Management Agent, reasonably satisfactory to the Landlord, having the necessary financial capability to operate the Development”

However, the developer wrote a letter to the City and County on August 30, 2022 clearly saying that they do not have the financial resources to properly address tenant needs, acknowledging that they are not successfully serving tenants. It said they “lack these additional resources and funds to cover these [Serious Mentally Ill] services. This funding gap, paired with funding requirements to house individuals with the highest acuity, is leading to operational challenges which inhibit the success.”

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“The Tenant shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably requested by the Landlord to determine whether the proposed Management Agent meets the standard”

I’m told that the Management company has no prior experience with the Serious Mentally Ill homeless of the No Place Like Home program.

Page 44

“ARTICLE 12. EVENTS OF DEFAULT

(g) Subject of this Article 9, and except as expressly provided otherwise in this Ground Lease, failure by the Tenant to perform or observe any other provisions of this Ground Lease or any of the Development Documents to be observed and performed by the Tenant, if such failure shall continue for a period of sixty (60) days after written

notice thereof has been given by the Landlord of the Tenant; provided, however, that if any such failure cannot reasonably be cured within such sixty (60) day period, then the Landlord shall not have the right to terminate this Ground Lease

All of the breaches above are older than 60 days.

Page 47:

“ARTICLE 13. REPRESENTATIONS AND WARRANTIES

Section 13.1 Representation and Warranties of Tenant.

The Tenant hereby represents and warrants to the Landlord as follows:

(a) Organization. The Tenant is a duly organized, validly existing California limited partnership, and is in good standing under the laws of the State of California and, pursuant to the Partnership Agreement, has the power and authority to own its property and carry on its business as now being conducted. The Tenant shall not amend the Partnership Agreement except in accordance with the City Loan Agreement.”

Affirmed Housing Group and Affirmed Housing Partners were not in good standing with the State of California at time of execution.

Sincerely,
Denis Jensen

On Jul 31, 2024, at 1:44 PM, Cindie McMahan
<Cindie.McMahan@carlsbadca.gov> wrote:

Mr. Jensen,

Thank you for your inquiry seeking the name of the outside counsel the city has hired to review the Windsor Pointe matter. In prior responses to your California Public Records Act requests for this and other related information, our office has explained that the Act does not require the city to answer interrogatories or to create documents that do not already exist. Our office has also explained that there are existing documents containing the information you seek; however, the documents are exempt from disclosure because they are protected by the attorney-client privilege.

Among the legal authorities our office provided to you to support this exemption is California Business and Professions Code section 6068(e)(1), which states: “It is the duty of an attorney to ... maintain inviolate the confidence, *and at every peril to himself or herself* to preserve the secrets, of his or her client.” (Italics added.) Rule 1.6(a) of The State Bar of California’s Rules of Professional Conduct incorporates this same duty. The duty exists to encourage candor between attorneys and clients and to allow clients to obtain legal advice without fear their communications with their attorneys will be used against them.

You indicate you are seeking outside counsel's contact information because you do not trust that our office has provided outside counsel with the necessary information to properly perform the task requested by the City Council. However, there are important safeguards to ensure this does not occur.

Ethical safeguards

Our office's client, to whom every attorney in our office independently owes a duty of undivided loyalty, is the City of Carlsbad as an entity. Practically, this means the attorneys in our office must place the interests of the city ahead of our own interests and the interests of others within the city, including city staff and the individual City Council members. As obtaining a disinterested opinion from outside counsel was requested by and benefits our client by allowing our client to make fully informed decisions, there is no reason for any attorney in our office to withhold relevant information.

Outside counsel has the same client to whom they owe the same professional duties. If outside counsel needs information from our office that our office declines to or fails to provide, then outside counsel would be obliged to bypass our office and inform the City Council of our lack of cooperation. This further discourages any attorney in our office from withholding any relevant information.

Management safeguards

Consistent with the attorney-client privilege, outside counsel's opinion will be presented to the City Council in a closed session. Closed sessions operate in a manner similar to open sessions in that the City Council members receive a report and are able to ask questions, provide comments, and deliberate and vote on any desired actions. The actions and votes are recorded and retained in accordance with the City Council approved records retention program. Any actions the Brown Act requires to be reported will be reported during the open session following the closed session.

In our office's experience, City Council members come to closed session prepared and do not hesitate to ask tough questions, probe the bases for recommendations, and consider the various options presented. Our office expects this same type of scrutiny to occur when outside counsel's opinion is presented.

If the City Council members do not believe outside counsel has received all relevant information, they will have an opportunity to ask why. They will also have an opportunity to direct that any omitted information be provided and that the opinion be returned to outside counsel for further work.

Separately from the City Council's oversight of specific closed session agenda items, the City Council directly oversees the City Attorney. If the City Council believes the City Attorney has not properly managed the task of

obtaining outside counsel's opinion, the City Council has avenues for addressing the matter with the City Attorney.

I hope this information is of assistance.

Best regards,
Cindie K. McMahon
City Attorney

From: Denis Jensen <denis.jensen@gmail.com>
Sent: Monday, July 29, 2024 1:55 PM
To: Keith Blackburn <keith.blackburn@carlsbadca.gov>; Council Internet Email <council@carlsbadca.gov>; Melanie Burkholder <melanie.burkholder@carlsbadca.gov>; Priya Bhat-Patel <priya.bhat-patel@carlsbadca.gov>; Carolyn Luna <carolyn.luna@carlsbadca.gov>; Teresa Acosta <teresa.acosta@carlsbadca.gov>; City Attorney <attorney@carlsbadca.gov>; Scott Chadwick <Scott.Chadwick@carlsbadca.gov>; CARLSBAD RECORDS REQUEST CENTER <carlsbadca@govqa.us>
Cc: Lara Benusis <ibenusis@yahoo.com>; Mark Packard <marbon812@gmail.com>; Tracy Carmichael <whatzuptlc@yahoo.com>; Teri Jacobs <tjacobs86@pacbell.net>; Matt Hall <mhall4046@gmail.com>; Raul Villamar <estodoaboutme@aol.com>; Jeffrey Yuen <Jeffrey.Yuen@sdcounty.ca.gov>; Alanna Trimble <alannalt@yahoo.com>; Dee Dee Rowlett <deedee.rowlett@gmail.com>; Christie Calderwood <Christie.Calderwood@carlsbadca.gov>; Greg@gregday4carlsbad.com; Momophd Momofphd <momofphd@gmail.com>; kevinshin27@gmail.com; Corey Uhden <corey@kevinfaulconer.com>; Sarah Alegre <SAlegre@fox5sandiego.com>; Mike Curtin <mike@curtinforcarlsbad.com>; Dorian Hargrove <DHargrove1@cbs8.com>; Steve Puterski <steve.puterski@gmail.com>; Justin Cox <Justin.Cox@10news.com>; philip.diehl@sduniontribune.com
Subject: Windsor Pointe Lease Assessment

City of Carlsbad, Mayor and Council Members,

Regarding the request for Carlsbad voters to know the name of the law firm retained to assess the ways in which the developer of the Windsor Pointe homeless housing project has broken the City's ground lease terms (Public Records Request R004244-062524), why will you not provide the name of the firm? The City Attorney is claiming attorney-client privilege for something the third party attorney needs to adhere to but the City, their client, can certainly convey the name of this firm.

Has an informed, unbiased, third party legal assessment happened? Was this firm provided all of the information it needs? **Were they provided the letter that the developer wrote the City just four months after opening,**

communicating that they are unable to properly manage the facility's seriously mentally ill tenants? Were they provided the letter the Chief of Police wrote complaining of rampant crime and the developer's inability to operate a safe environment for either tenants or neighbors? Was the firm informed that, almost a year later, the majority of the Chief of Police's safety requests are still unfulfilled and the developer is trying to get County taxpayer funds to fulfill its lease obligation to run quality operation?

Why is the City being so protective of the developer?

Ms. Acosta, you're up for reelection. Will you ask the City Attorney to disclose this information in a public forum in advance of their findings? Mr. Day, you're running for that District 4 seat in November, what are your thoughts on the City's lack of accountability, transparency and respect for the very people paying for all of this bureaucracy? Let's chat.

Chief of Police Calderwood is now aware that Windsor Pointe tenants are saying they're being pressured by management not to not call the police when they feel in danger. To be clear, gearing up for the next Council Meeting review of Windsor Point in August:

- **You will not disclose the name of the law firm assessing the terms of the developer's ground lease, nor is there transparency that they have been provided all of the information needed for this assessment.**
- **Tenants are being pressured to not call the police when they feel in danger and this appears to be an attempt to manipulate police call data.**
- **Nearly a year later, less than half of the security and none of the visitor precautions recommended by the Chief of Police has been enacted nor are any of these missing safety measures even being considered.**

I'm bcc'ing the hundred+ concerned citizens that have requested to close or move Windsor Pointe. We'll put this matter in the court of public opinion as to whether or not the cagey issues above or the impending "we'll add more social worker office hours" August Council update is taking us seriously. Otherwise, we look forward to your office disclosing the name of the firm. The original request is beyond the 10 day requirement.

FYI, the Ground Lease terms that seem to have been broken include:

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Affirmed Housing Group and Affirmed Housing Partners were not in good standing with the State of California at time of execution.

Sincerely,
Denis Jensen

On Jul 22, 2024, at 2:41 PM, CARLSBAD RECORDS REQUEST CENTER <carlsbadca@govqa.us> wrote:

--- Please respond above this line ---



RE: PUBLIC RECORDS REQUEST of June 25, 2024., Reference # R004244-062524.

Dear Denis Jensen,

The City of Carlsbad received a public information request from you on June 25, 2024. Your request mentioned:

**"06/25/24
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008**

RE: Public Records Act Request

To Whom it May Concern:

This is a request made under the California Public Records Act, Government Code sections 7920.000 – 7931.000, for records in the possession or control of your agency.

I'm requesting documentation for all outside legal counsel retainer agreements and payments, the dates and subject matters for their services, from January 1, 2024 through now.

Please keep in mind your agency's obligations under the law require you to:

- Respond within 10 calendar days.**
- Produce electronic records in the format in which you hold them.**
- Help me to make a focused and effective request by (1) identifying records and information that are responsive, (2) describing the information technology and physical**

location in which the records exist and (3) providing suggestions for overcoming any practical issues.

- Segregate or redact any exempt information contained within a record so that the public information in the remainder of the record may be released.
- Broadly construe all provisions that further the public's right of access, and apply any limitations on access as narrowly as possible, per Article 1, Section 3(b)(2) of the California Constitution.
- Provide a written justification for any denial of this request, in whole or in part, stating the specific exemptions from disclosure that you assert and the name and title or position of each person responsible for the denial.

Thank you for your timely attention to this matter.

Sincerely,
Denis Jensen"

The city has located records responsive to your request. However, those records are exempt from disclosure under the California Public Records Act pursuant to California Government Code sections 7927.200, 7927.205 and 7927.705, California Business and Professions Code sections 6068(e)(1) and 6149, Code of Civil Procedure 2018.030, California Evidence Code sections 952 and 954, and Rule 1.6(a) of the California Rules of Professional Conduct (see County of Los Angeles v. Superior Court (2012) 149 Cal.Rptr.3d 324). To the extent this is a denial of your request, City Attorney Cindie K. McMahon is responsible for the denial.

If you have any questions or need additional information, please feel free to contact my office at 442-339-2953.

Sincerely,

Tamara Cloud-McMinn
Senior Deputy City Clerk
City Clerk Services

To monitor the progress or update this request please log into the [Records Request Center](#)

<GovQA logo>

Tammy Cloud-McMinn

From: Momophd Momofphd <momofphd@gmail.com>
Sent: Tuesday, August 20, 2024 1:59 PM
To: Cindie McMahon; City Clerk; Council Internet Email
Subject: Windsor Pointe

*Add to public record

To Whom This May Concern:

As a forty year resident of Carlsbad, I'm continually appalled by your lack of response to Windsor Pointe.

Let me remind you that the original intention of Windsor Pointe was to house veterans.

This goal was never realized, which seems to me to be a clear breach of agreement.

It also seems clear that the developer bait and switched the veteran angle.

Sadly, this was never going to be about veterans. I feel that they must have known that — and as someone who had been trying to find housing for a Vietnam veteran, that's especially troublesome.

Kicking the can back and forth to different entities is absolutely not solving the problem and it's a lazy ploy to not actually accomplish anything.

I also understand that the city attorney has never provided the name of the attorneys hired by the city, although there was a public records request.

This only serves to further highlight the lack of transparency and utter stonewalling the community has received by city leaders—YOU.

Do you have any idea how utterly shady this project has been in both development and execution?

It's no longer an option for the City of Carlsbad to continue to steamroll over the ways in which the Windsor Pointe ground lease has been broken by the developer.

The community will no longer allow this shameful behavior to be swept under the rug.
Rosanne Bentley

CAUTION: Do not open attachments or click on links unless you recognize the sender and know the content is safe.