

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

198



**FROM:** County Counsel

**SUBMITTAL DATE:**  
August 4, 2010

**SUBJECT:** Recommendation for Distribution of Excess Proceeds for Tax Sale  
No. 171, Items 53-61, Items 82-139, Items 174-191 and Items 210-243

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the proposed Settlement Agreement and Release of all Claims dividing the excess proceeds between the City of Perris Business Park LLC (\$54,409.68) and the City of Perris (\$28,000);
2. Direct that the excess proceeds be distributed by the County in accordance with the settlement agreement; and
3. Authorize the Chairman of the Board to sign the proposed settlement agreement on behalf of the County.

Departmental Concurrence

(continued next page)

PAMELA J. WALLS, County Counsel

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$	In Current Year Budget: Budget Adjustment: For Fiscal Year:
	Current F.Y. Net County Cost:	\$	
	Annual Net County Cost:	\$	

<b>SOURCE OF FUNDS:</b>	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE

BY:   
Jerry Norris

**County Executive Office Signature**

- |                                  |                                  |
|----------------------------------|----------------------------------|
| <input type="checkbox"/> Policy  | <input type="checkbox"/> Policy  |
| <input type="checkbox"/> Consent | <input type="checkbox"/> Consent |
| <input type="checkbox"/>         | <input type="checkbox"/>         |

Dept Recomm.:  
Per Exec. Ofc.:

Prev. Agn. Ref.: | District: | Agenda Number:

9.18

County Counsel  
Recommendation for Distribution of Excess Proceeds for Tax Sale No. 171,  
Items 53-61, Items 82-139, Items 174-191 and Items 210-243  
August 4, 2010  
Page 2

**BACKGROUND:** This matter was continued originally from the Board's June 8, 2010 agenda to determine whether the claimants desired to reach a mutual resolution of the division of the excess proceeds. (A copy of the original Form 11 is attached.) The City of Perris Business Park LLC and the City of Perris have agreed that the excess proceeds should be divided and distributed by the County, \$54,409.68 to the City of Perris Business Park LLC and \$28,000 to the City of Perris. This division is reflected in the proposed Settlement Agreement and Release of Claims (attached) which will ultimately resolve the issues raised in Perris Business Park LLC v. County of Riverside et al. (Riverside Superior Court No. RIC 520704).

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

925



**SUBMITTAL DATE:**  
May 26, 2010

**FROM:** Don Kent, Treasurer/Tax Collector

**SUBJECT:** Recommendation for Distribution of Excess Proceeds for Tax Sale No. 171, Items 53-61, Items 82-139, Items 174-191 and Items 210-243.  
Last assessed to: Perris Business Park, a General Partnership.

**RECOMMENDED MOTION:** That the Board of Supervisors:

- 1) Approve the claim from the City of Perris, for payment of excess proceeds from the Tax Collector's public auction sale associated with parcels 303272001-6 thru 303272009-4, 303276001-8 thru 303276020-5, 303277001-1 thru 303277020-8, 303281001-4 thru 303281018-0, 303283001-0 thru 303283018-6, 303285001-6 thru 303285020-3 and 303286001-9 thru 303286014-1 and waive the late filing of that claim;

(Continued on Page 2)

**BACKGROUND:** In accordance with Section 3691 et seq. of the California Revenue and Taxation Code, and with prior approval of the Board of Supervisors, the Tax Collector conducted the March 21, 2005 public auction sale. The deed conveying title to the purchasers at the auction was recorded April 22, 2005. Further, as required by Section 4676 of the California Revenue and Taxation Code, notice of the right to claim excess proceeds was given on June 14, 2004, to parties of interest as defined in Section 4675 of said code. Parties of interest have been determined by an examination of lot book reports as well as Assessor's and Recorder's records, and various research methods were used to obtain current mailing addresses for these parties of interest.

(Continued on page two)

  
Don Kent, Treasurer/Tax Collector

FORM APPROVED COUNTY COUNSEL

BY: DALE A. GARDNER DATE: 5/19/10

Departmental Concurrence

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$82,409.68	In Current Year Budget:	NO
	Current F.Y. Net County Cost:	\$0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$0	For Fiscal Year:	2009-10

<b>SOURCE OF FUNDS:</b> Fund 65595 Excess Proceeds from Tax Sale	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

**APPROVE**

BY:   
Christopher M. Hans

**County Executive Office Signature**

Policy

Consent

Dept's Recomm.:  
Per Exec. Ofc.:

Prev. Agn. Ref.: 12/9/08, Agn 9.22 | District: 5 | Agenda Number:

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

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RECOMMENDED MOTION: (Continued)

- 2) Deny the claim from Perris Business Park, LLC because the claim from the City of Perris has statutory priority over Perris Business Park's claim and because the claim from the City of Perris exceeds the amount of excess proceeds available for distribution;
- 3) Authorize and direct the Auditor-Controller to issue a warrant to the City of Perris in the amount of \$82,409.68, no sooner than ninety days from the date of this order, unless pursuant to the California Revenue and Taxation Code Section 4675, an appeal has been filed in Superior Court;
- 4) Grant official notice of the documents filed with the Clerk of the Board relative to Perris Business Park, LLC v. County of Riverside, RIC 520704 and make them part of the record of this proceeding.

This matter was originally before the Board for hearing and action on December 9, 2008. At that time the Board approved the distribution of the excess proceeds to the City of Perris on its claim. However, due to a clerical error, the claim from Perris Business Park, LLC had been misfiled and no hearing was afforded to Perris Business Park, LLC on its claim. On January 14, 2010, the Superior Court granted a Writ ordering the Board to re-hear this matter, taking into account the claim of Perris Business Park, LLC.

The Treasurer-Tax Collector has received two claims for excess proceeds:

- 1) Claim from the City of Perris, based on a Notice of Levy recorded November 25, 1996 as Instrument No. 448748.
- 2) Claim from Perris Business Park, LLC, based on a Grant Deed recorded May 12, 1992 as Instrument No. 169570.

Pursuant to Section 4675 (a) & (e) of the California Revenue and Taxation Code, it is the recommendation of this office that the City of Perris be awarded excess proceeds in the amount of \$82,409.68 because its claim as a lien-holder of record has statutory priority over the claim from Perris Business Park, LLC which was merely the title record holder of the parcels prior to the recordation of the tax deed. The claim from Perris Business Park LLC should be denied because the priority claim from City of Perris exceeds the amount of excess proceeds available and there are no monies available to satisfy the subordinate claim from Perris Business Park, LLC. Supporting documentation has been provided. Although the above mentioned claim from the City of Perris was received a few weeks late, the Tax Collector is recommending approval since the Levy is still outstanding to the City of Perris from Perris Business Park, LLC on the delinquent CFD taxes and because it appears that the late filing was due to an error by the City's consultant.

EP171	Item 53	\$ 2,911.73	EP171	Item 54	\$ 2,007.47
EP171	Item 55	\$ 2,007.47	EP171	Item 56	\$ 2,007.47
EP171	Item 57	\$ 2,007.47	EP171	Item 58	\$ 2,007.47
EP171	Item 59	\$ 2,007.47	EP171	Item 60	\$ 2,007.47
EP171	Item 61	\$ 2,007.47	EP171	Item 82	\$ 303.82
EP171	Item 83	\$ 232.68	EP171	Item 84	\$ 232.68
EP171	Item 85	\$ 232.68	EP171	Item 86	\$ 232.68
EP171	Item 87	\$ 232.68	EP171	Item 88	\$ 232.68
EP171	Item 89	\$ 232.68	EP171	Item 90	\$ 232.68
EP171	Item 91	\$ 303.82	EP171	Item 92	\$ 303.82
EP171	Item 93	\$ 232.68	EP171	Item 94	\$ 232.68
EP171	Item 95	\$ 232.68	EP171	Item 96	\$ 242.58
EP171	Item 97	\$ 232.68	EP171	Item 98	\$ 232.68
EP171	Item 99	\$ 232.68	EP171	Item 100	\$ 232.68

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EP171	Item 101	\$	303.82	EP171	Item 102	\$	381.13
EP171	Item 103	\$	303.77	EP171	Item 104	\$	303.77
EP171	Item 105	\$	303.77	EP171	Item 106	\$	303.77
EP171	Item 107	\$	303.77	EP171	Item 108	\$	303.77
EP171	Item 109	\$	303.77	EP171	Item 110	\$	303.77
EP171	Item 111	\$	611.44	EP171	Item 112	\$	611.44
EP171	Item 113	\$	303.77	EP171	Item 114	\$	303.77
EP171	Item 115	\$	303.77	EP171	Item 116	\$	303.77
EP171	Item 117	\$	303.77	EP171	Item 118	\$	303.77
EP171	Item 119	\$	303.77	EP171	Item 120	\$	303.77
EP171	Item 121	\$	381.13	EP171	Item 122	\$	1,118.83
EP171	Item 123	\$	679.57	EP171	Item 124	\$	679.57
EP171	Item 125	\$	679.57	EP171	Item 126	\$	679.57
EP171	Item 127	\$	679.57	EP171	Item 128	\$	679.57
EP171	Item 129	\$	679.57	EP171	Item 130	\$	679.57
EP171	Item 131	\$	679.57	EP171	Item 132	\$	679.57
EP171	Item 133	\$	679.57	EP171	Item 134	\$	679.57
EP171	Item 135	\$	679.57	EP171	Item 136	\$	679.57
EP171	Item 137	\$	679.57	EP171	Item 138	\$	679.57
EP171	Item 139	\$	679.57	EP171	Item 174	\$	471.83
EP171	Item 175	\$	387.16	EP171	Item 176	\$	387.16
EP171	Item 177	\$	387.16	EP171	Item 178	\$	387.16
EP171	Item 179	\$	387.16	EP171	Item 180	\$	387.16
EP171	Item 181	\$	387.16	EP171	Item 182	\$	808.71
EP171	Item 183	\$	724.04	EP171	Item 184	\$	387.16
EP171	Item 185	\$	387.16	EP171	Item 186	\$	387.16
EP171	Item 187	\$	387.16	EP171	Item 188	\$	387.16
EP171	Item 189	\$	387.16	EP171	Item 190	\$	387.16
EP171	Item 191	\$	471.83	EP171	Item 210	\$	90.05
EP171	Item 211	\$	36.13	EP171	Item 212	\$	36.13
EP171	Item 213	\$	36.13	EP171	Item 214	\$	36.13
EP171	Item 215	\$	36.13	EP171	Item 216	\$	36.13
EP171	Item 217	\$	36.13	EP171	Item 218	\$	36.13
EP171	Item 219	\$	90.05	EP171	Item 220	\$	90.05
EP171	Item 221	\$	36.13	EP171	Item 222	\$	36.13
EP171	Item 223	\$	36.13	EP171	Item 224	\$	36.13
EP171	Item 225	\$	36.13	EP171	Item 226	\$	36.13
EP171	Item 227	\$	36.13	EP171	Item 228	\$	36.13
EP171	Item 229	\$	90.05	EP171	Item 230	\$	2,551.25
EP171	Item 231	\$	2,086.31	EP171	Item 232	\$	2,086.31
EP171	Item 233	\$	2,086.31	EP171	Item 234	\$	2,086.31
EP171	Item 235	\$	2,086.31	EP171	Item 236	\$	2,086.31
EP171	Item 237	\$	2,086.31	EP171	Item 238	\$	2,086.31
EP171	Item 239	\$	2,086.31	EP171	Item 240	\$	2,086.31
EP171	Item 241	\$	2,086.31	EP171	Item 242	\$	2,086.31
EP171	Item 243	\$	2,551.25				
<b>TOTAL</b>			<b>\$ 82,409.68</b>				

## **SETTLEMENT AGREEMENT & RELEASE OF ALL CLAIMS**

This Settlement Agreement and Release of All Claims (the "Agreement") is entered into by and between Petitioner PERRIS BUSINESS PARK, LLC, a limited liability company ("Petitioner" or "Perris Business Park"), Respondent COUNTY OF RIVERSIDE ("Respondent" or "County") and Real Party in Interest, CITY OF PERRIS ("Real Party In Interest" or the "City") and ("Petitioner," "Respondent," and "Real Party In Interest" are sometimes referred to herein together as the "Parties") to terminate and release fully and finally all disputes arising out of, or related to, the Action defined hereinafter.

### **RECITALS**

WHEREAS, on or about December 9, 2008, the County Board of Supervisors (the "Board") held a public hearing to consider the distribution of \$82,409.68 in excess proceeds resulting from the tax sale of real property in Perris, California previously owned by Petitioner ("Excess Proceeds") and granted said Excess Proceeds to Real Party In Interest; and

WHEREAS, a dispute between Petitioner, Respondent and Real Party In Interest thereafter arose concerning the distribution of the Excess Proceeds (the "Dispute"); and

WHEREAS, as a result of the Dispute, Petitioner filed a petition for writ of mandate (the "Petition") against the Respondent and the City (as a real party in interest) in the Superior Court of the State of California, County of Riverside, Case No. RIC520704 on or about March 5, 2009, entitled *Perris Business Park v. County of Riverside, et al*, seeking to set aside the Board's determination to grant the Excess Proceeds to Real Party In Interest (the "Action"); and

WHEREAS, on or about January 14, 2010, the Court granted the Petition, thereby vacating the Board's award of the Excess Proceeds to Real Party In Interest, and remanded the determination back to the Board; and

WHEREAS, on or about June 8, 2010, the Board held a public hearing to reconsider the distribution of the Excess Proceeds, continued the public hearing, and requested that the Parties consider settlement; and

WHEREAS, all Parties hereto wish to terminate this Action and to avoid the uncertainty and costs of trial, and any potential appeals therefrom, and to resolve fully and finally all disputes which may exist by and between the Parties as set forth in the Action.

### **AGREEMENT**

NOW, THEREFORE, for full and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and based upon the foregoing recitals and the terms, conditions, covenants, and agreements contained herein, all Parties hereto agree as follows:

1. **Settlement Payment.** Respondent agrees that it will pay Twenty Eight Thousand Dollars and Zero Cents (\$28,000.00) of the Excess Proceeds to Real Party In Interest and pay the remaining Fifty Four Thousand Four Hundred and Nine Dollars and Sixty-Eight Cents

(\$54,409.68) of the Excess Proceeds to Petitioner in full consideration and settlement of any and all claims by any party herein (the "Settlement Sums"). Said Settlement Sums constitute a full and complete settlement and compromise of any and all disputed claims arising out of or related to the Action by Petitioner.

2. **Mutual Release.** For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Petitioner, Respondent, and Real Party In Interest do hereby release and forever discharge each other and the "Releasees" hereunder, consisting of the Petitioner and Real Party In Interest's and Respondent's elected or appointed public officials, officers, employees and agents, including, but not limited to, each of their associates, predecessors, successors, heirs, assignees, agents, directors, officers, employees, representatives, elected or appointed public officials, attorneys, and all persons acting by, through, under or in concert with them, or any of them), of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expenses, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "Claims"), which the Parties now have or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof including, without limiting the generality of the foregoing, any Claims constituting, arising out of, based upon, or relating to the Action, as well as any matters, causes, or things whatsoever that were, or have been, could in any way have been, alleged in the respective pleadings filed in said suit

3. **Discovery of Different or Additional Facts.** The Parties acknowledge that they may hereafter discover facts different from or in addition to those that they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of the Release set forth in Paragraph 2 of this Agreement, and expressly agree to assume the risk of the possible discovery of additional or different facts, and the Parties agree that this Agreement shall be and remain effective in all respects regardless of such additional or different facts.

4. **Release of Unknown Claims.** The Mutual Release set forth above in Paragraph 2 of this Agreement is a release of ALL claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are described in the Mutual Release and is intended to encompass all known and unknown, foreseen and unforeseen claims which the Parties may have as a result of the Action, except for any claims which may arise from the terms of this Agreement.

5. **Waiver of Civil Code Section 1542.** Further, the Parties expressly agree to waive and relinquish all rights and benefits they may have against each other and the Released Parties under Paragraph 2 of this Agreement based on Section 1542 of the Civil Code of the State of California. That section reads as follows:

" §1542. [General release; extent] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

6. **No Pending Actions.** The Parties represent that they have not filed any complaints or charges (other than the Action referenced above) against each other (including the Releasees above) with any local, state or federal agency or court; and that if any such agency or court assumes jurisdiction of any complaint or charge against the Respondent, Real Party In Interest, or their predecessors, successors, heirs, assigns, employees, shareholders, officers, directors, agents, attorneys, subsidiaries, divisions or affiliated corporations or organizations, whether previously or hereafter affiliated in any manner, on behalf of that party, whenever filed, that party bringing such an action will request such agency or court to withdraw and dismiss the matter forthwith. Furthermore, Petitioner agrees to take no further steps to prosecute the Action and/or to seek the recovery of attorneys' fees and/or costs concerning the same, and agrees not to file any appeal(s) concerning the Action.

7. **Non-Admission of Liability.** The Parties acknowledge and agree that this Agreement is a settlement of disputed claims. Neither the fact that the Parties have settled nor the terms of this Agreement shall be construed in any manner as an admission of any liability by any party hereto, or any of its employees, or an affiliated person(s) or entity/ies, including the Respondent's or Real Party in Interest's attorneys, all of whom have consistently taken the position that they have no liability whatsoever to Petitioner.

8. **No Assignment of Claims.** The Parties warrant that they have made no assignment, and will make no assignment, of any claim, chose in action, right of action or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses or claims referred to herein.

9. **Successors and Assigns.** This Agreement, and all the terms and provisions hereof, shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns.

10. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that prior to signing this Agreement they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment. The Parties further specifically represent that prior to signing this Agreement they have conferred with their counsel to the extent desired concerning the legal effect of this Agreement.

11. **Assistance of Counsel.** The Parties each specifically represent that they have consulted to their satisfaction with and received independent advice from their respective counsel prior to executing this Agreement concerning the terms and conditions of this Agreement.

12. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.



13. **Singular and Plural.** Whenever required by the context, as used in this Agreement the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

14. **Enforcement Costs.** Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

15. **Severability.** Should any portion, word, clause, phrase, sentence or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

16. **Headings.** Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the Parties and are not a substantive part of this Agreement.

17. **Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the Parties, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

18. **Waiver.** Failure to insist on compliance with any term, covenant or condition contained in this Agreement shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

19. **Governing Law.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State without giving effect to conflicts of laws principles.

20. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement shall be valid or binding, unless executed in writing by all of the Parties to this Agreement.

21. **Authority To Sign.** The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party and to bind that party, including its members, agents and assigns, (iii) by so executing this Agreement, such party is

formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

22. **Modifications.** Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each party hereto in order to become effective.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement and Release of All Claims, consisting of a total of 7 pages, hereby approving all of the terms and conditions above, on the dates set forth below.

“REAL PARTY IN INTEREST”

CITY OF PERRIS

Dated: \_\_\_\_\_, 2010

By: \_\_\_\_\_  
RICHARD BELMUDEZ  
City Manager

“RESPONDENT”

Dated: \_\_\_\_\_, 2010

COUNTY OF RIVERSIDE

\_\_\_\_\_  
By:  
Its:

“PETITIONER”

Dated: \_\_\_\_\_, 2010

PERRIS BUSINESS PARK

\_\_\_\_\_  
By:  
Its:

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2010

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
ERIC DUNN, ESQ.  
City Attorney  
Attorneys for Real Party In Interest, CITY OF  
PERRIS

Dated: \_\_\_\_\_, 2010

RIVERSIDE COUNTY COUNSEL

By: \_\_\_\_\_  
PAMELA WALLS, ESQ.  
Attorney for Respondent, COUNTY OF  
RIVERSIDE

Dated: \_\_\_\_\_, 2010

PERRIS BUSINESS PARK, LLC

By: \_\_\_\_\_  
TANYA SIZEMORE HEHIR, ESQ.  
Attorney for Petitioner, PERRIS BUSINESS  
PARK, LLC