

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

***1112 I Street, Suite #100
Sacramento, California 95814
(916) 874-6458***

April 2, 2008

TO: Sacramento Local Agency Formation Commission
FROM: Peter Brundage, Executive Officer *PB*
RE: Arden Arcade Incorporation Proposal Status Report (03-07)

There is no written material for this item. Depending upon the closed session, a verbal report may be given.

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SACRAMENTO LOCAL AGENCY
FORMATION COMMISSION

Joel Archer
3301 Watt Ave Suite 700
Sacramento, CA 95821

Honorable Commissioners
Sacramento Local Agency Formation Commission
1112 I Street, Suite #100
Sacramento, CA 95814

Re: Arden-Arcade Incorporation

Dear Commissioners:

I am writing on behalf of the Arden-Arcade Incorporation Committee ("the Committee"). It has come to the attention of the Committee that Commission staff may be recommending that the Commission conduct one or more closed sessions, based on "potential litigation" (as that term is used in the Brown Act, Government Code sections 54950 et seq.), in regard to the Committee.

If this is accurate, the Committee is somewhat surprised. Under the Brown Act, a public entity may hold a closed session when there is actual litigation involving the public entity, a threat of litigation against the public entity, or the public entity has decided or is deciding whether to initiate litigation against a third party. (Government Code sections 54956.9 (a), (b), and (c).) The Committee is unaware of any pending litigation and would be taken aback if the Commission were contemplating litigation against the Committee; that leaves only the threat of litigation by the Committee against the Commission as a valid basis for a closed session based on Section 54956.9.

Under Section 54956.9(b), a public entity may hold a closed session *only* if "a point has been reached where, in the opinion of the legislative body ... on the advice of its legal counsel, based on existing facts and circumstances, there is a *significant exposure* to litigation against the local agency" or if the legislative body "is meeting *only* to decide whether a closed session is authorized" on the above-quoted basis. (*Id.*, emphasis added.)

As stated in previous correspondence, the Committee is exploring its options as to the recent acts and/or omissions by Commission staff; however, at this time, the Committee is not contemplating litigation against the Commission. Accordingly, the Committee believes there is no valid basis for the Commission to conduct a closed session in regard to the Committee.

At the very least, if the Commission, based on advice of its legal counsel, believes a valid basis exists for closed session, then the Committee anticipates Commission staff will also comply with Section 54956.9(b)(3)(B), by publicly

announcing or placing on the agenda the "facts and circumstances ...that might result in litigation against the agency...." However, we are hopeful that the Commission will recognize that a valid basis for a Section 54956.9 closed session does not, in fact, exist.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

Joel E. Archer
Chair, Arden Arcade Incorporation Committee

CC: Peter Brundage
Nancy Miller