

date: Mon, Jul 27, 2015 at 12:01 PM

subject: Balboa Park Heritage Association Statement re: City Council July 28 @ 2 PM  
Sham "Response" to the Grand Jury formal Report and Recommendations re  
the failed BPCI and related debacle.

**Dear Mr. Mayor, Council President Lightner and Members of the City Council:**

**Balboa Park Heritage Association submits the following Statement re: Agenda Item 333 on the Council Agenda for 28 July, 2015 at 2 PM and requests that this statement be incorporated into the formal record and minutes of this meeting in full as a public submission and that hard copies be made available in Council chambers for the public and members of the Press. A WORD file of the Statement is attached for your convenience. Thank you.**

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**Balboa Park Heritage Association**

**Statement to the San Diego City Council re: Agenda Item 333, July 28, 2015 @ 2 PM**

**Re: Robust, Open and transparent Public Hearing in Balboa Park Celebration, Inc.**

**Contact: David Lundin; [619 807 2694](tel:6198072694); [LoveBalboaPark@GMail.com](mailto:LoveBalboaPark@GMail.com)**

**Dear Council President Lightner:**

**The County Grand Jury made an independent investigation of the history and institutional and individual failures that led to the costly collapse of the failed Balboa Park Celebration, Inc. ["BPCI"]. BPCI not only wasted more than three million dollars in City and donated funds. It wasted the unique opportunity to engage the Community and visitors in a series of appropriate, low-cost Centennial events and celebrations of the Park's past, productive dialogues on its current needs and specific and positive planning for its future.**

**The Grand Jury made six specific Findings, each requiring a response from the Council and Office of the Mayor. This process gives the City the valuable benefit of an independent review of this sad episode, and an opportunity to improve planning, fund controls and oversight for any similar projects in the future.**

Rather than embracing this process in a good-faith effort to learn from its failures and to improve its future governance skills, this Council and its current President are instead engaging in denial and deceit.

Three of the Grand Jury Findings are of particular interest to the Balboa Park Heritage Association; Findings 1, 5 and 6. These Findings and the proposed responses contained in this Docket Item # 333 are presented below:

**Finding 01: The Memorandum of Understanding (MOU) between BPCI and the City of San Diego lacked sufficient detail to define objectives adequately and to identify funding.**

**Response: The Mayor and City Council disagree with the Grand Jury's finding.**

The MOU contained specific objectives and deliverables with regard to project management and required BPCI to develop the funding model, specifically requiring that BPCI develop a strategic plan for raising the necessary funds, a budget for the Celebration, and a business plan for executing the Celebration within the budget. The MOU contained specific dates for the delivery of these documents. Additional safeguards under this type of contract will be considered in the future.

**Finding 05: City officials did not adequately monitor the Balboa Park Celebration project.**

**Response: The Mayor and City Council partially disagree with the Grand Jury's finding.**

While better monitoring of the project would have been preferred, many converging events and situations interfered with the project schedule; and a number of them related to a changing environment. With changing circumstances, there were adjustments to plans, and the deadlines for deliverables were not always able to be achieved.

**Finding 06: Public presentation of the OCA Audit to the full City Council would enhance public**

**exposure to the facts and could stimulate public debate.**

**Response: The Mayor and City Council disagree with the Grand Jury's finding.**

The City Auditor's October 2014 performance audit was presented to the City's Audit Committee during a publicly noticed hearing held on October 6, 2014. Both the report and the presentation at Committee received citywide coverage and members of the public provided comments to the Committee. The City Auditor provided a copy of the performance audit to the each Councilmember.

Prior to release of the audit, items related to the termination of the MOU with BPCI were docketed and discussed at the Council Committee on the Environment meeting of April 23, 2014 and the City Council meeting of May 13, 2014. The public had the opportunity to, and did, provide comment on the matter during these public meetings.

Additionally, City responses to the Grand Jury report, "Balboa Park Celebration Lessons Learned," will be docketed for discussion by the City Council at a publicly noticed hearing to be held on July 28, 2015. The public will have additional opportunity to provide comments on the matter at that meeting.

Re: Finding 1, the Council should freely admit that the MOU between the City and BPCI was hopelessly vague, contained no budget or clear over-all objectives, and no safeguards or fund control mechanisms. The proposed Response is pure, self-serving fiction.

Re: Finding 5, the Council should again admit failure and accept full accountability. Most elected politicians are delighted to appear at Ribbon Cuttings but not at hearings relating to their failures. This Council is no exception to that standard of mediocre leadership. Rather than accepting blame, the proposed response engages in absurd double-talk: "... many converging events and situations interfered with the project schedule; and a number of them related to a changing environment. With changing circumstances...." Effective leadership, program administration and fiscal oversight ALWAYS involve "converging events", "interfering situations" and a "changing environment." Had this Council been in charge of D-Day we might all be speaking German today. This proposed Response is equal parts fiction, mixed with self-serving denial.

Re: Finding 6, this Council should freely embrace the Grand Jury's recommendation for a public presentation of the OCA Audit to the full City Council that would enhance public exposure to the facts and could stimulate public debate. Of course this Council and the Office of the Mayor do NOT want "public exposure to the facts" and a robust "public debate". This Council and the Office of the Mayor want all of this to be buried quickly and quietly.

Have you no shame ?

In a May 20, 2015 E Mail, your senior staff member, Jennifer Kearnes, wrote to Jeff McDonald of the San Diego Union Tribune to explain why you did not favor a full public hearing regarding the failure of Balboa Park Celebration, Inc. and subsequent Performance Audit as explicitly recommended by the County Grand Jury.

Ms. Kearnes asserted your decision was justified because:

1. Council President Lightner supports the decision to not hold a full Council hearing on this issue because the underlying audit by the Office of City Auditor "was a financial audit and not a performance audit";

2. "The Audit Committee action on this issue was to send it to the Environmental Committee and not to the full Council";
3. "No crime was committed"; and
4. "Five of nine Council members heard the item in committees and none recommended that to go to the full Council."

Each of these four factual assertions is false.

First, while the scope of the audit conducted by the Office of City Auditor was much narrower in scope than desired by professional OCA staff pursuant to the explicit limiting directions of the Council, the audit was indeed a Performance Audit and not a Financial Audit. The very title of the final Audit document confirms this. [A full copy of the OCA Performance Audit is attached for your reference.]

Second, at its October 6, 2014 public meeting Audit Committee Chairman Sherman accepted a Motion and the Committee passed a Motion to Accept the Independent City Audit Report on Balboa Park Celebration, Inc. and the formal Recommendation to forward to the full City Council. I personally attended that meeting and have a clear independent recall of that explicit action. The official video transcript of that meeting shows that acceptance of Motion, the vote and the results of that vote. After the favorable vote to refer the matter to the full Council, Chairman Sherman went on to lament the lack of accountability as shown by the Audit. The Audit Committee is, by design and structure, intended to be Independent, as it has Public voting members in addition to Council Members. This unambiguous and recorded vote of the Audit Committee should be accorded deserved respect and not ignored as urged by the arbitrary and capricious actions of the Council President and her staff.

Third, no sufficiently independent and in-depth investigation has been conducted to in fact establish that "no crimes were committed". There is sufficient evidence of gross waste, unlawful conflicts in interest and self-dealing to justify such an investigation. [See the attached San Diego Free Press article:

<http://sandiegofreepress.org/2014/03/following-the-money-wasted-on-the-balboa-park-centennial/> ].

The normally-appropriate party to conduct such an investigation, the City Attorney, should recuse himself from such a necessary investigation. The City Attorney hired the former BPCI Public Relations director and BPCI "Transition Director", Gerry Braun, as Public Affairs Director for the Office of City Attorney.

Fourth, the independent Audit Committee made up of both Council and Independent Public voting members voted on October 6, 2014, to refer the OCA Audit to the full Council for hearing and acceptance.

Accordingly, the recommendation of the Council President to support Agenda Action Item 333 is based on a totally false factual foundation.

### **GROSS NEGLIGENCE AND WORSE**

By design of the City Council, the Audit by the OCA was intentionally narrow in scope. Following the explicit orders of the Council, inquiry was never made into the propriety, wisdom or formal selection processes used to select the providers and employees receiving funds from BPCI.

The history of successive and wholly unsuccessful CEOs and senior employees of BPCI illustrate the need for further in-depth inquiry.

BPCI's first CEO, Mark Germyn, resigned after four months on the job. He received compensation of \$123,523 for his four months of failed effort.

Germyn was succeeded by BPCI Board member Michael McDowell. McDowell had no background, experience or training in history, large-scale fund-raising or special event planning and production. He was hired with no competitive search and no public RFP. He received a \$12,000 "signing bonus" to take the position and an initial monthly salary of \$12,000. That was quickly raised to \$15,000 a month. McDowell's total compensation for his brief term was \$181,862.

McDowell was succeeded by BPCI Board member and former Chief of Staff to former Mayor Jerry Sanders, Ms. Julie Dubick. Dubick also had no background, experience or training in history, large-scale fund-raising or special event planning and production. She served from the ten months from May of 2013 thru February of 2014. She received total compensation of \$136,300.

Gerry Braun, former Special Projects Director for former Mayor Jerry Sanders was initially retained as a part-time public relations director for BPCI at a monthly retainer of \$8,000. Again, this hiring was made with no solicitation of other competitive applicants and no public posting of a RFP. Braun was hired in March of 2013 as "Interim CEO" of BPCI at a monthly salary of \$15,000. After the total collapse of BPCI, he was hired in March of 2013 as BPCI "Transition Director" at \$13,000 a month. Braun had no background, education or experience qualifying him to conduct the legal and accounting

formalities of the liquidation of a failed non-profit. He was hired for these positions with no competition, and no posting of a public RFP.

As part of his agreement to serve as "Transition Director", Braun was required to also execute a most unusual Non-Disclosure Agreement. That Agreement prevented the disclosure of potentially damaging inside information relating to mismanagement, negligence or worse by BPCU Board members and employees to the Public, but provided nothing of benefit to the charitable and public benefit objectives of BPCI. A copy of that Agreement is attached.

It is worth noting that the primary task of any non-profit's Board is to engage in and support effective fund-raising to advance the non-profit's mission. Both McDowell and Dubick were BPCI Board members at all times relevant to this inquiry. While together they received \$318,162 for serving as CEO in a very part-time capacity, they contributed no personal funds to BPCI. While Mr. Braun was not a member of the BPCI Board, he was the primary public relations spokesperson for the non-profit mission of BPCI. He received \$144,044 in compensation from BPCI, and never made a personal contribution to the non-profit. These Board members and Executives took all they could from BPCI and contributed nothing in return.

#### THE BEST PATH FORWARD IS NOT A CLOSED DOOR

This pattern of non-compliance with procedural and legal safeguards in contracting and procurement was a sufficient foundation for further focused and in-depth inquiry. Many more examples of waste, mismanagement, gross negligence, conflicts-in -interest and violations of legal requirements for employment and procurement contracts have been presented as well. The Council failed to advance that inquiry.

Your intentional failure to request an appropriate wide-ranging Performance Audit resulted in a failure- by - design to review and investigate the negligent expenditures, self-dealing, and non-competitive employment of professionally unqualified Board member friends and relatives by BPCI as detailed here: <http://sandiegofreepress.org/2014/03/following-the-money-wasted-on-the-balboa-park-centennial/>.

**You justify being content with ignoring the Grand Jury's Formal Report and Recommendation as "no crime was committed". That is a shocking low standard, even for the City of San Diego. Aside from criminal conduct, why was no evaluation made of gross negligence or intentional civil wrong- doing by BPCI Board Members and employees that may fall short of an indictable offense?**

**Why was no effort made to evaluate whether the City and its taxpayers have a claim against the Directors and Officers Liability Insurance policy and extended Tail Coverage required to be obtained and kept in force under the terms of the City's MOU with BPCI ? At a minimum, that question should have been submitted to your fine City Attorney for objective and expert review. Mr. Goldsmith's Communications Director, Gerry Braun, could have been a valued source of inside information to assist in that effort.**

**Today the Council President advocates closing the door on this sad chapter with no public hearing before the full City Council as explicitly recommended by the County Grand Jury. The reasons gives for rejecting the Grand Jury's sound recommendation are based on totally false assertions of four facts---a foundation of lies.**

**The public and this Council should insist on a robust, genuinely open and transparent inquiry to be led by the Office of City Auditor. Independent and qualified legal counsel should immediately be retained to evaluate the possible assertion of claims against BPCI Directors and Officers and the underlying liability insurance policies.**

**BPCI represents a costly and totally preventable failure in governance and oversight. Please don't compound this series of shameful errors by closing the door on the truth today.**

**David Lundin**

**President, Balboa Park Heritage Association**

**3 Attachments**