



TRANSBAY JOINT POWERS AUTHORITY
Board of Directors

July 23, 2004

TRANSBAY JOINT POWERS AUTHORITY BOARD OF DIRECTORS

MINUTES

Friday, July 23, 2004
1 Carlton B. Goodlett Place, Room 400
San Francisco, CA

SPECIAL MEETING AND CLOSED SESSION

1:00 p.m.

BOARD OF DIRECTORS

Michael Nevin, Chair
Greg Harper, Vice Chair
Julie Brandt
Michael T. Burns
Chris Daly

Executive Director
Maria Ayerdi

Secretary
Roberta Boomer

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1:00 – SPECIAL MEETING

ORDER OF BUSINESS

1. Call to Order

Chairman Nevin called the meeting to order at 1:00 p.m.

2. Roll Call

Present:

Julie Brandt
Chris Daly
Greg Harper
Mike Nevin

Absent: Michael Burns

Chairman Nevin noted that Director Burns had previously notified him that due to prior commitments, he was unable to attend this special meeting.

3. Communications

None.

4. Board of Director's New and Old Business

None.

5. Executive Director's Report

Exec. Director Ayerdi stated that in the Board's packet, staff provided a procurement summary of contracts that will be brought to the TJPA for approval in August or September. Elizabeth Wiecha reviewed the status of the Engineering Design, Project Management and Project Control and Architectural Competition Manager procurements.

At the last meeting, staff was asked to look at the possibility of televising TJPA meetings. Information about cost and terms of providing this service was provided to the Board in their packet. There is money in the budget. If the Directors would like to proceed, it could be agendaized for action at the next meeting.

Chairman Nevin stated that the Authority meets in different rooms and some rooms are equipped with the equipment necessary to televise the meetings. That would be part of the mix. Exec. Director Ayerdi noted that information is correct.

Staff contacted agencies in June see if they would like to serve as the TJPA's fiscal agent. Proposals are due at the end of the month and staff will return to the Board with a recommendation in September.

6. Public Comment

Board Secretary Boomer noted that members of the public who wished to address the TJPA on the items that the Authority will shortly be considering in closed session could address the Board at this time.

Jennifer Renk, Steefel Levitt & Weiss, read a letter into the record. They request that the TJPA not convene a meeting in closed session for a conference with real property negotiator. They further request that any decision about the rail alignment be postponed pending receipt of the Transportation Authority's report. The TJPA has no basis under the Brown Act to meet as they lack the legal authority to condemn the property, there is not a willing seller, they have not informed Myers Development Company about their intention to engage in negotiations and there are no funds to facilitate the purchase. The TJPA needs to understand that they can't proceed because 80 Natoma isn't for sale. Any closed session discussion would violate the spirit and the letter of the Brown Act. This rush to judgment is another example of staff's systematic attempt to impede genuine efforts to achieve a workable solution.

Director Daly commented that his understanding is that the discussion in closed session is to discuss the appraisal and possible offer and not necessarily condemnation. Ms Renk replied that their position is that an offer is a precursor to condemnation procedures. Director Daly thinks that the Brown Act gives them the authority to meet. The TJPA doesn't have the legal authority to condemn the property but that's not the intent of the closed session. Ms. Renk would argue that it is a precursor to condemnation. The property isn't for sale. Director Daly asked if she would argue that the TJPA doesn't have the legal authority to tender an offer on the property. She replied that this isn't about tendering an offer. The Authority is going into closed session to talk about a negotiation where there's only one party negotiating. That's the issue. Director Daly thinks that items 2 and 3 in their letter contradict each other. If we hadn't contacted you about our intent to purchase, then how would we know you're not willing to sell. Ms. Renk commented that the items aren't mutually exclusive.

John Gasser has been searching through the Environmental Impact Report. He would like to know where listed and under whose direction was the turn radius decided at 600 feet. He would like to know where the EIR lists that the length of trains will be at 1300 feet. He can't find that information. He has also been reading the High-Speed Train EIR, they state that the Transbay Terminal as proposed is not ideal. The State is saying that San Francisco will have 2 terminals. If we're spending \$4 billion, why isn't it ideal? He'd also like to know what the cost per rider is on that system.

Exec. Director Ayerdi will be happy to meet with Mr. Gasser at his convenience to explain all his questions.

Richard Mlynarik was shocked to have attended the Transportation Authority's Plans & Programs and there was no presentation on the TA Consultant's report. Construction costs are \$2 billion. The remaining costs are interest costs. At standard minimum inflation, we're looking



at 3% per year. That is just about \$5 million per month. That interesting figure should be kept in mind.

THE FOLLOWING MATTERS BEFORE THE TRANSBAY JOINT POWERS AUTHORITY ARE RECOMMENDED FOR ACTION AS STATED BY THE EXECUTIVE DIRECTOR OR THE CHAIR.

Board Secretary Boomer announced that the Board would be recessing their meeting to meet in closed session for a conference with Legal Counsel to discuss anticipated litigation and to meet with their real estate negotiator regarding 80 Natoma.

SPECIAL CALENDAR

RECESS SPECIAL MEETING AND CONVENE CLOSED SESSION

CLOSED SESSION

7. Call to Order

Chairman Nevin called the closed session to order at 1:27 p.m.

8. Roll Call

Present:

Chris Daly
Greg Harper
Mike Nevin
Julie Brandt

Absent: Michael T. Burns

9. Pursuant to Government Code Section 54956.9(c), the Transbay Joint Powers Authority Board of Directors will meet in closed session to discuss attorney-client matters in the following case:

CONFERENCE WITH LEGAL COUNSEL

Anticipated Litigation:

 X As defendant _____ As plaintiff



Legal Counsel anticipates litigation by Myers Development Company and Myers Natoma Venture, LLC against the Authority and other parties regarding approval of the Transbay Terminal Project EIR/EIS.

10. Pursuant to Government Code Section 54956.8 (b), the Transbay Joint Powers Authority Board of Directors will meet in closed session for:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 80 Natoma (Block 3721, Lots 045A, 046, 053, and 054)
Agency Negotiator: Steve Legnitto or designee
Negotiating parties: Myers Natoma Venture, LLC
Under negotiation: Price and terms of payment

ADJOURN CLOSED SESSION AND RECONVENE SPECIAL MEETING - The closed session was adjourned at 3:06 p.m. The special meeting was reconvened at 3:12 p.m.

11. Announcement of Closed Session.

The Board Secretary announced the Board met in closed session for a conference with Legal Counsel to discuss litigation and for a conference with their real property negotiator. Pursuant to the Brown Act, there was no action taken.

12. Selecting a solution for the rail alignment at the 80 Natoma site, including either site purchase, joint construction of a train box, or TJPA construction of a secant wall, as presented at the June 23, 2004 meeting.

Director Daly moved that the TJPA real estate negotiator make an offer to purchase the 80 Natoma parcels from the owner of record on such terms and conditions as advised by Legal Counsel and the Real Estate Negotiator.

PUBLIC COMMENT:

Norm Rolfe urged the TJPA to adopt the motion. There is language in Proposition H that says that it "shall be law" that the CalTrain rail be extended downtown and that a new, rebuilt terminal shall be constructed on the present site. Further on in the proposition it says that the Mayor and Board of Supervisors are prohibited from taking actions that would preclude the extension of high-speed rail. It is intention of the people of the City and County of San Francisco and it's the law that CalTrain will go downtown. The Myers project may not be fully entitled.

Chairman Nevin closed public comment.



MOTION 04-002: The TJPA real estate negotiator make an offer to purchase the 80 Natoma parcels from the owner of record on such terms and conditions as advised by Legal Counsel and the Real Estate Negotiator.

On motion to approve:

ADOPTED: AYES - Brandt, Daly, Harper and Nevin

ABSENT – Burns

13. Executing a 3-year Joint Powers Agreement with the Special District Risk Management Authority for the purchase of property and liability insurance for a one year term for an amount not to exceed \$15, 257.

Nancy Whelan and Michael Simmons presented the item.

Director Harper expressed concerns over the umbrella. He noted that the TJPA is building a four billion dollar project but the proposed limits are similar to those that he pays personally. He is not sure if these limits will be enough to cover big risks. Legal Counsel Cooper noted that these limits are for the first year only.

Mr. Jim Townes, Chief Executive Officer of the Special District Risk Management Authority stated that if the TJPA wants coverage above ten million dollars, they could secure that coverage.

Director Harper thinks that the Authority can live with this amount for the first year but the real risk needs to be analyzed. It's important to make sure this can be molded at some future date into something that can really be relied on.

Legal Counsel Cooper noted that the figures used are those that are in the facility lease and that the Authority is required to get that amount of coverage at a minimum. As the Authority's liabilities increase, staff will work with the City's Risk Manager to assess what's needed. We also don't want to duplicate coverage that we currently have with LGS. This agreement with SDRMA also includes risk management analysis.

No public comment.

RESOLUTION 04-007

On motion to approve:

ADOPTED: AYES - Brandt, Daly, Harper and Nevin

ABSENT – Burns

14. Authorizing the Executive Director to execute a Professional Services Agreement with bluecrane to provide IT management and support services for a term not to exceed three years and a cost not to exceed \$133,341.14.

Director Daly thanked staff for providing additional information on this item. He asked for further information about bluecrane's relatively low score for cost.

Nancy Whelan stated that the selection committee gave the highest number of points to the lowest cost. bluecrane had the lowest score but for the price, they offered the highest number of hours. When staff looked at a weighted average of cost per hour, the difference between the lowest and highest bidder was within cents. Further cost analysis shows that bluecrane's cost is in appropriate range. She added that the committee was much more concerned about the expertise and qualifications of the bidders as well as their ability to fix any computer problem promptly since there are no IT personnel on staff.

Director Harper has the same concerns as Director Daly. His feeling is that unless there is a real problem with the people who bid the lowest, staff should go with lowest bid, unless Auriga is not qualified.

Sara Gigliotti, Office Manager stated that there were some specific services that bluecrane offered that Auriga could not. Staff needs to have a consultant be able to immediately access their system if something goes wrong. This ability was not a requirement in the RFP but it was included in the bids of three of the five proposers. Auriga didn't offer that service.

Director Harper runs into situations where the lowest bidders aren't selected all the time. He likes to question those situations. He will vote for the item but he hopes staff gets his point.

No public comment.

RESOLUTION 04-008

On motion to approve:

ADOPTED: AYES - Brandt, Daly, Harper and Nevin

ABSENT – Burns

15. Authorizing the TJPA to acknowledge and adhere to procedures and conditions set forth by the Metropolitan Transportation Commission for allocation of Regional Measure 2 funds in the amount of \$17,800,000 for the Transbay Terminal/CalTrain Downtown Extension Project and adopting the Initial Project Report.

Nancy Whelan presented the staff report.



No public comment.

RESOLUTION 04-009

On motion to approve:

ADOPTED: AYES - Brandt, Daly, Harper and Nevin

ABSENT – Burns

ADJOURN - The meeting was adjourned at 3:38 p.m.

A tape of the meeting is on file in the office of the Secretary to the Transbay Joint Powers Authority Board of Directors

Roberta Boomer
Board Secretary

The Ethics Commission of the City and County of San Francisco has asked us to remind individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Admin. Code Sections 16.520 - 16.534] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 1390 Market Street, Suite 801, San Francisco, CA 94102, telephone (415) 554-9510, fax (415) 554-8757 and web site: sfgov.org/ethics.