



September 27, 2004

# **TRANSBAY JOINT POWERS AUTHORITY BOARD OF DIRECTORS**

## **MINUTES**

Monday, September 27, 2004  
1 Carlton B. Goodlett Place, Room 263  
San Francisco, CA

### **SPECIAL MEETING AND CLOSED SESSION**

8:00 a.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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8:00 a.m. – SPECIAL MEETING

#### **ORDER OF BUSINESS**

##### **1. Call to Order**

Chairman Nevin called the special meeting to order at 8:03 a.m.

## 2. Roll Call

Present:

Julie Brandt  
Michael Burns  
Chris Daly  
Greg Harper  
Mike Nevin

## 3. Public Comment

David Schonbrunn, TRANSDEF, urged the TJPA to make urgency findings to place an item on the agenda that the action taken by the Bureau of Building Inspection Commission severely damages the TJPA's ability to deal with the City and County of San Francisco. The Building Inspection Commission showed no interest in enforcing Prop H, which is the mandate of the people.

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

### SPECIAL MEETING

4. Discussion and possible action on the San Francisco County Transportation Authority proposal for an engineering solution to rail alignment conflicts between the Transbay Terminal Project and the 80 Natoma Street project.

Chairman Nevin noted that it has been brought to his attention that representatives of the Transportation Authority weren't able to attend the meeting.

#### PUBLIC COMMENT:

David Schonbrunn, TRANSDEF, found the behavior of Mr. Myers' consultants to be reprehensible during a peer review panel meeting. They bullied TJPA staff and made sure that the TJPA's concerns were dealt with on a peripheral basis if at all. The Peer Review Panel is doing work on behalf of the City and County of San Francisco and the Building Inspection Commission. They completely ignored the TJPA's concerns as outlined in their letter to the TA in the peer review process.

Richard Mylnarik attended the Peer Review Panel meeting. He commented that the panel is an advocacy panel and doesn't represent either the TJPA or the City and County of San Francisco. Mr. Myers' point man repeatedly said he didn't want to hear about tunneling or costs. There was

no technical review of the tunneling option and costs weren't addressed. Engineers can do anything with infinite money.

Tim Tosta commented that the Peer Review Panel was comprised of experts from around the state and they were here to solve a problem that the TJPA has been reluctant to do.

Director Daly asked Mr. Tosta what Mr. Myers' financial and construction timeline was.

Mr. Tosta clarified that if construction didn't start within 90 days, their financiers could recall the money. This project is currently past the 90-day period. They meet every week with their lenders and their lenders are watching these proceedings via the Internet. They hold unilateral power to withdraw from the deal. TRANSDEF lacks the competency to judge what's going on with the Peer Review Panel and has gone beyond advocacy and into fantasy. Some of the State's best professionals are working to show that there need not be a conflict. The TA is obligated to take this step and it is a viable and financially prudent decision. The City has evidence in record that shows the actual appraisal value. Fair market value is closer to in excess of \$50 million, not the \$32 million appraisal.

Director Harper referred to a memo from the TA's executive director, dated 9/25, in which he says that Myers Natoma has not presented any records to show those costs. Mr. Tosta stated that he may be incorrect that the figures have been submitted but the \$20 million extra expenditures have been charted. Director Harper asked why Mr. Myers hadn't provided any documentation yet and if they ever would. He commented that Mr. Tosta had made a representation that the City already has the documentation yet the TA's memo says it doesn't.

Mr. Tosta replied that if this matter goes to court, they would. Director Harper asked if that was the only way we would see any cost figures and Mr. Tosta replied no. He hopes that the TJPA can review the work of the Peer Review Panel. The issue ultimately is one of mortgaging the City's transportation future to pay for a highly speculative venture when there's proof that the tunneling option is sound engineering.

Norm Rolfe has heard the discussion about the feasibility or infeasibility of 80 Natoma interests. He wondered if they were so confident that their solution was going to work, would they take out an insurance policy that would indemnify the City and County of San Francisco, TJPA, MTC, AC Transit against any or all liabilities in case this solution won't work? He wondered if any insurance company would issue a policy for the building. If they won't, you have your feasibility answer.

#### CLOSED SESSION

#### 5. Call to Order

Chairman Nevin called the closed session to order at 8:20 a.m.

6. Roll Call

Present:

Julie Brandt  
Michael Burns  
Chris Daly  
Greg Harper  
Mike Nevin

7. 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**

Existing Litigation:

Myers Natoma Venture, LLC and Myers Development Company vs. Transbay Joint Powers Authority, et al. Case No. CPF 04-504363

**ADJOURN CLOSED SESSION AND RECONVENE SPECIAL MEETING** - The closed session was recessed at 9:32 a.m.

8. Announcement of Closed Session.

Chairman Nevin announced the Board met in closed session to discuss Myers Natoma vs. TJPA with legal counsel. The special meeting would be recessed to Friday, October 1 at 1:00 p.m. in Room 400. Pending the outcome of the TA and Board of Supervisors meeting on the 28th, the Friday meeting could be cancelled.

Chairman Nevin moved that the Transbay Joint Powers Authority Board of Directors go on record in opposition to the staff recommended action of the San Francisco County Transportation, that the Transbay Joint Powers Authority has primary jurisdiction over the design and construction of the Transbay Terminal Project and that the Transbay Joint Powers Authority must be a party to any agreement concerning 80 Natoma Street.

Chairman Nevin clarified that the Transportation Authority's recommendation is listed as Item 6 on the TA agenda for the September 28 meeting.

**MOTION 04-003:** The Transbay Joint Powers Authority Board of Directors does hereby go on record opposing the Transportation Authority staff recommended action as listed as Item 6 on the September 28, 2004 agenda of the San Francisco County Transportation Authority; that the Transbay Joint Powers Authority has primary jurisdiction over the design and construction of the Transbay Terminal Project; and that the Transbay Joint Powers Authority must be a party to any agreement concerning 80 Natoma Street.



On motion to approve:

ADOPTED: AYES – Brandt, Burns, Daly, Harper and Nevin

ADJOURN - The meeting was recessed at 9:35 a.m. to Friday, October 1, 2004 at 1:00 p.m. in Room 400, City Hall.

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The meeting of October 1 was later cancelled.

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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](http://sfgov.org/ethics).