

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

MINUTES

Friday, August 13, 2004
1 Carlton B. Goodlett Place, Room 416
San Francisco, CA

SPECIAL MEETING
1:30 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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1:30 – SPECIAL MEETING

ORDER OF BUSINESS

1. Call to Order

Chairman Nevin called the meeting to order at 1:33 p.m.

2. Roll Call

Present: Michael Burns
Chris Daly
Greg Harper
Mike Nevin

Absent: Julie Brandt

3. Communications

None.

4. Board of Director's New and Old Business

None.

5. Executive Director's Report

Exec. Director Ayerdi announced that a new statewide survey shows that if the vote were held today, 57% of the voters would say yes to high-speed rail.

6. Public Comment

None.

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

CONSENT CALENDAR

7. All matters listed hereunder constitute a Consent Calendar, are considered to be routine by the Transbay Joint Powers Authority, and will be acted upon by a single vote. There will be no separate discussion of these items unless a member of the Board or the public so requests, in which event the matter shall be removed from the Consent Calendar and considered as a separate item.

(7.1) Approving the Minutes of the April 22, 2004 special meeting.

(7.2) Approving the Minutes of the June 23, 2004 special meeting.

(7.3) Approving the Minutes of the July 23, 2004 special meeting.

No public comment.

On motion to approve the Consent Calendar:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

ABSENT - Brandt

SPECIAL CALENDAR

8. Urging the San Francisco Board of Supervisors to initiate eminent domain proceedings to acquire Block 3721, Lots 045A, 046, 053, and 054, parcels collectively known as “80 Natoma Street” for the Transbay Terminal Project.

Exec. Director Ayerdi reviewed the steps that the TJPA Board and staff have taken to date. The offer sent to Myers Development Corp., in the amount of \$32.5 million, was not accepted. A resolution of necessity has been introduced at the Board of Supervisors and the TJPA has received a letter from the FTA regional administrator concurring that a Categorical Exclusion for 80 Natoma is valid.

Director Daly stated that he has seen the Transportation Authority’s presentation and that it seems that the central point of their solution is similar to one that our own engineers came up with and that solution would involve delay. When we asked Mr. Myers previously about a delay to his project, he stated that it wasn’t possible. With respect to the tunneling option, it sounds like a good idea but if we move forward with an agreement, what kind of indemnity will he give us? Have we asked about a delay or easement? Exec. Director Ayerdi responded by saying that early on in the negotiations, we did offer joint design but that idea was rejected by the developer as he has certain finance covenants that prevent delays to his project. Director Daly thanked staff and the Transportation Authority for their work. He thinks the tunnel option seems like a great one if Mr. Myers agrees to it, which is yet to be seen.

Director Burns stated that he asked Mr. Myers directly about the acceptability of deep piles. Mr. Myers answer was no. Have we asked the Myers team the same question with respect to the option brought forward by the TA staff that would require easement, including some delay? Exec. Director Ayerdi stated that they have not asked them that specific question as the TA report was only received on August 10. Director Burns asked about the status of the permit situation. Deputy City Attorney John Malamut stated that yesterday there was a hearing in Superior Ct. on the Myers lawsuit against the regarding permit suspension. The judge’s tentative ruling was that there was no reason why a judge would make a decision prior to a decision by the Department of Building Inspection Commission. The work remains stopped.

Maria Lombardo, Chief Deputy Director, Transportation Authority (TA), stated that they were

doing an independent financial plan and looking at possible technical solutions that would allow both 80 Natoma and the Transbay Terminal to move forward. Their foremost conclusion is that they did find an engineering solution that meets the technical requirements that will cost less than \$10 million. They also presented a solution that would save 2nd Street from a lot of the destruction of the cut and cover method of construction.

Luis Zurinaga, Consultant for the Transportation Authority, presented a detailed review of the tunneling option for 80 Natoma. The proposal includes removing all soil to the top of the sand layer and replacing it with homogeneous load bearing material, on top of which the building can be constructed. This will eliminate the need for piles. Tunnels can then be built under the building with minimal risk

Maria Lombardo reviewed the key findings of the financial plan. The funding plan illustrates a high dependence on high-speed rail funds. There is a question about whether that source of funds will materialize at all given that it must be passed statewide and if the funding will be available when it's needed. The plan also assumes that the full amount of Prop K. monies will be available in FY06 and FY07, in the amount of \$295 million. This is an important project but it's not the only project seeking TA funds. Other projects include the Third Street Projects and the new central subway. The Transportation Authority feels that it's prudent to keep the project moving forward as it is a high local and regional priority.

Director Daly pointed out that the TA could look at ways to be flexible to accommodate the funding needs. For example, with the Third Street Project, the TA chose to extend debt to continue moving that project forward. The TA can issue debt to meet a project that has such a high priority and was the number one priority in the Prop. K reauthorization plan.

Deputy Director Lombardo concurred that the TBT project has urgency but pointed out that the Third Street Project is already under construction and has a TA approved budget and commitments to fund that project.

Director Harper stated that he is bothered about the TA's report because he doesn't know the extent to which the whole thing is motivated by fact that the TA has other places it wants to spend money as alluded to in Ms. Lombardo's report. Compared to the funding plan for the BART extension, our funding plan is golden. Can you tell me of another project of this size that had funding like we do?

Deputy Director Lombardo stated that the TA staff has applied the same level of oversight as they did for the 3rd St. project and are doing their due diligence as requested by the TA. They have found viable solutions as requested and have been asked to put up money quickly. They feel that it is prudent to spend as little money as possible but to keep the project moving until other pots of money come through.

Director Harper is also concerned about the state property transfer. They won't okay the transfer until the project is approved and given the states' budget, they could decide to use the property for other purposes.

Director Nevin added that the Metropolitan Transportation Commission needs real direction about the viability of the project prior to their action to allocate RM2 funds.

Exec. Director Ayerdi reiterated the results of the July poll conducted by the Public Policy Institute. This poll showed that 57% of the voters would approve the project if the vote were held today. It only requires a simple majority.

Director Daly asked if there had been any discussions with Mr. Myers about them agreeing to an easement and delay to allow for excavation for the construction of the platform. Luis Zurinaga stated that after the presentation was made to the TA, staff talked to Mr. Myers about the proposed solution. In the brief time available, their engineers believe that the solution is feasible and they have indicated a willingness to sell an easement for the project in the range of \$5-6 million. Mr. Myers indicated that while he needed to present this idea to his financial partners, he felt that 13 weeks would be acceptable.

Director Daly asked for clarification about the timeline. Does this 13-week period go from the start of excavation to the platform being constructed? Mr. Zurinaga said that the 13-week period was the time it would take to make a decision at the conceptual level about this alternative. They have yet to determine the forces and loads at play. Director Daly is not prepared to accept liability for the tunnel and asked if the TA was prepared to accept liability. Mr. Zurinaga replied that they wouldn't have proposed it if they weren't comfortable with the option. He added that nothing comes with zero risk but you can design to a level that minimizes the risk. He can't promise zero risk.

Liz Wiecha, TJPA Chief Engineer and Deputy Director, presented the TJPA response to the TA report and began by thanking the TA for their report. Staff will further investigate the design and tunneling concepts provided. At this time, we don't consider that the alternative proposal is viable. We have asked a number of professional engineers to look at it and they believe it is highly risky on both a safety and financial basis. The TJPA recognizes that the TA report was a good brainstorming session and was conducted free of constraints. The TJPA has always maintained that there is a solution but the developers' timing constraints limit us in finding a solution. Evaluating the feasibility of the TA's proposal will take more than 13 weeks and further analysis is likely to conclude that the alternative has more shortcomings.

Steve Klein, Jacobs Associates, addressed technical issues associated with the tunneling alternative. It is unprecedented to build tunnels beneath a 50-story building where the tunnels occupy over 50% of the building footprint. The significant technical issues aren't addressed in the report and it would mean significant additional costs to further investigate. The alternative is not a viable solution at this time.

Demetrious Kostaftous was asked by the TJPA staff to look at the geotechnical aspects of the report. He continues to have serious concerns about building settlement. He feels that in essence, the alternative is replacing the underpinning of the building with tunnels. Both need to be treated as one and built together. The report doesn't demonstrate technical viability of the proposed alternative.

Liz Wiecha noted that it was important to present the complexities of analyzing the TA's proposal, including additional project costs. This alternative can't be completed within the given timeframe. She is not sure that we could provide insurance to cover the risk associated with this alternative. This proposal is not a viable solution for the Transbay Terminal or the rail extension. Significant public safety and liability risks remain unaddressed. Staff can't recommend adopting the proposal as conceptually outlined in the TA report.

PUBLIC COMMENT:

Michael Kiesling questions whether you could build something that is 33% bigger without incurring any additional cost. The report says we could simply put tunnels under the building but he thinks that we're talking about "simple" as in not that bright, dumb. Putting a tunnel with four feet of soil under a 52-story building isn't smart. If it's never been done in world, why try it here? It's time to get on and get this thing built.

David Schonbrunn spoke about the quality of work of the TA study. They had several months to prepare the report but the solution was described in two pages that lacked factual detail. Was there any kind of attempt to be comprehensive? No. The production of this report has caused an unnecessary delay. He wondered if it was shopped to an insurance company. The solution includes a soil-mix wall that requires tiebacks to hold things in place during excavation. He is unaware of any agreements that would allow tiebacks in the surrounding properties and you can't excavate without those agreements.

Richard Mlynarik thinks that much of the TA's report is an advertisement for the consultant. The meat is on two pages. This report is not engineering but is playing "model trains". Mr. Luis Zurinaga is not a certified professional engineer in California. The Chronicle says that the TA can't balance their books and is a financially incompetent agency. Any responsible funding agency would ask for money upfront because it's cheaper.

Chris DeCenzo is a resident and business owner near the Transbay Terminal who has watched the proceedings carefully. He is part of the "Friends of 2nd Street", an area that the train will go through via the cut and cover method. This method has upset people because it would knockdown historic buildings, displace people, and reroute traffic. The plan shows us that there are other alternatives that don't require removing buildings. He urges the TJPA to consider the concepts in the plan before committing money to destroy a neighborhood.

Joyce Roy thinks that there's a rather obvious solution for both buildings. She would think that the Myers Corporation would agree to exchanging property at 80 Natoma for another property. 80 Natoma has got poor access and isn't a good property to build on.

John Gasser, Friend of 2nd St. had high expectations, which have been knocked down. Nowhere in the EIR was the liability of SBC's switch addressed. Instead of taking the 4x4 approach, the TJPA staff started talking about a six-track approach. The report talks about straightening tracks, with 1300 feet of train. We want straight platforms. We are asking people to look harder at the alternatives. We want this thing to go, so let's get this thing right.

Kerri Stephens, Friends of 2nd St., thinks it's inappropriate to initiate eminent domain because

there are too many options that are yet to be unexplored.

Ken Bukowski can't believe the lengths that the City has gone to satisfy the developer. Something is wrong.

Adrian Brandt, Train Riders Assoc., urged the TJPA, in light of today's presentation and months of horsing around and not moving forward, to take all necessary steps to initiate eminent domain. It's time to stop this game and do the right thing.

Margaret Okuzumi, BayRail Alliance, stated that there is clear collusion between Myers Corp. and the Transportation Authority. The TA revealed their report to the Myers group but not to the TJPA. Mr. Myers had a conversation with TA staff the night before the report was published. She questions whether the new design is insurable. She doesn't have confidence in the report given that Mr. Zurinaga isn't a registered professional engineer. She urged the TJPA to reject this nonsense and urge the Board of Supervisors to initiate eminent domain.

Norman Rolfe asked if anyone had seen Myers' financial papers. Mr. Myers has cost the public a lot of money to accomplish nothing. TA report does address the secant wall by saying it's not feasible. The voters of San Francisco want a downtown extension and a rebuilt Terminal. The project is in jeopardy unless you proceed now.

Chris Peeples urged the TJPA to begin eminent domain proceedings. You need to acquire the property to allow the project to go forward. The TJPA should take Mr. Myers at his word about his covenants and financing. The TJPA can sell air rights in the future after the terminal is built, which is a much safer way to go. The biggest concern is the implication that the Myers project, which is a private project, seems to have equal dignity with this public project. The Terminal will bring in new housing and will revitalize the neighborhood. Any private property, while important, is not as valuable. The TJPA and the Board of Supervisors should move forward.

David Llewellyn recognizes a stacked deck when he sees one. The proposed deal is a bad risk for the city and is an attempt to transfer risk to the city. He suggests that we move forward with the original plan and ask the developer to fold his hand.

Lock Holmes, Friends of 2nd St, is impressed with what he has heard. The TA's proposal saves important historic buildings that are registered landmarks, and preserves economic and neighborhood viability. You can't damage historic resources without examining other technical solutions. This proposal tells him that the current EIS is deficient.

Chairman Nevin closed public comment.

Director Daly asked staff to comment on the possibility of tunneling as the preferred option. Liz Wiecha noted that the TJPA's position has always been that if funding is available, we could evaluate the tunneling methodologies; look at the alignment, and the geotechnical conditions that would maximize tunneling and the preservation of buildings. Staff will look at the tunneling concepts as suggested in the TA report as it warrants careful consideration. We will look to apply it wherever possible to minimize construction impacts. Dave Mansen noted that the EIS/EIR

mentioned tunneling but with the information available today, we can't save these historic properties. The area has difficult geology to tunnel through. Director Daly stated that if there were technological changes that would allow the preservation of these historic properties, then he would like staff to do that. Mr. Mansen commented that at this point in time, it's not technically feasible, but that could change in the future.

Chairman Nevin stated that that the business of the TJPA Board is to stay on schedule to move the dream of the entire region forward. It's time to move on. The action today to urge eminent domain doesn't prevent other solutions from being investigated.

Director Daly appreciates the engineering presentation prepared by the TJPA given the limited time they had in which to prepare it. He doesn't fully understand the tunneling options but realizes that it needs more discussion and study. He feels that to not move forward with acquisition, the TJPA would have needed to see the Myers Corporation in the room with an easement agreement ready to sign. They're not here. It's our duty to move forward.

Director Harper agrees with the comments made so far. This is about risk. If we assumed risk, the cost would be astronomical. He doesn't understand why we should turn a vacant lot into the "big dig" and he can't imagine that any major insurance executive would agree with this proposal. For that reason, he doesn't want to tunnel under the lot. He appreciates Ms. Okuzumi directing us to the August 5th letter in which Mr. Myers doesn't give any of the positive assertions of what he's willing to do. Mr. Myers is really trying to waste time. We should move this along.

Director Burns thanked the TA for coming into the wolf's den and thanked the TJPA staff for their professional response. He believes that the TA has been responsive to the direction given and has been creative in looking for ways to allow both projects to move forward. He commented that we can't duck the financial impact of this situation, as there is a limited amount of resources. From the City's perspective, a \$16 million hit, without further creative solutions, as suggested by Director Daly, would be detrimental to other SF projects including those already in the queue. At this time, given the financial considerations, he is not prepared to support the condemnation recommendation today. He is not suggesting that this is a permanent position as it could change. He appreciates the position of the other board members and supports staff but he continues to have serious concerns about this project moving forward. He is convinced that there is a mutually agreeable solution if we approach the situation with open minds and are creative.

Deputy City Attorney Malamut reported that an appraisal was done on the fair market value of the property. If the eminent domain action is approved, then this process would go to court and they will decide the price. Through this process, we will need to pay the fair market value and direct value and costs that the developer has put into property. If the permits remain suspended, then the loan and other costs that the developer has been carrying will continue and will get factored into the final price. If City asks for immediate possession, that action will freeze the date of valuation, after which the costs are frozen and can't be included.

Director Daly commented that it might make sense to include the right of possession. If we proceed now with immediate possession, then we can stay close to the \$32 million dollar

appraisal figure. If not, the costs will only go up. He appreciates the fiscal argument but there's an equally valid fiscal argument for moving forward to avoid greater costs in the future.

RESOLUTION 04-010

On motion to approve:

ADOPTED: AYES – Daly, Harper and Nevin

NAYES – Burns

ABSENT - Brandt

9. Authorizing the Executive Director to negotiate and execute a short-term loan agreement with AC Transit in the amount of \$16,125,000 for Right of Way acquisition.

Director Burns requested clarification about the nature of this money. Exec. Director Ayerdi thanked AC Transit for coming to the plate and clarified that the money is a loan and not a contribution. Director Harper stated that the money is being taken from anticipation notes. AC Transit doesn't have \$16 million to give to the project and this money is being loaned because they know they can get it back by the end of September.

Director Burns has a better understanding now and appreciates that AC Transit is prepared to make this loan. It provides a fair amount of leverage with MTC, which is not a bad strategy. Despite the efforts of those communities to get the RM measure passed, San Francisco is an integral player and is contributing \$275,000,000, which needs to be recognized. The primary user of this building will be AC Transit.

No public comment.

RESOLUTION 04-011

On motion to approve:

ADOPTED: AYES –Daly, Harper and Nevin

NAYES – Burns

ABSENT - Brandt

10. Adopting Budget Amendment #1 to the Authority's FY2004-05 annual budget in the amount of \$32,265,257 for a total budget in the amount of \$38,538,697 for Right of Way acquisition and property and general liability insurance coverage.

Bob Kuo, Transbay Consulting, reviewed the budget amendments to the FY05 budget. The additional monies are for Right of Way acquisition and for insurance premiums. He presented a

substitute resolution that would add two “whereas” clauses to clarify the status of the allocation requests as follows:

WHEREAS, The TJPA is processing FY2004-05 allocation requests for Proposition K and Regional Measure 2 funds in amounts that would be sufficient to provide at least \$32,250,000 of additional funding to the TJPA FY2004-05 budget for right of way acquisition, and the allocation of these funds to the TJPA will require approval by the San Francisco County Transportation Authority and the Metropolitan Transportation Commission, respectively; and

WHEREAS, In accordance with the terms of Resolution No. _____, the Executive Director may utilize funds from a short-term loan agreement with AC Transit in an amount not to exceed \$16,125,000, to provide interim funding for right of way acquisition, while awaiting approval of the FY2004-05 Proposition K or Regional Measure 2 allocation requests cited above.

No public comment.

RESOLUTION 04-012

On motion to approve as amended:

ADOPTED: AYES – Daly, Harper and Nevin

NAYES – Burns

ABSENT - Brandt

11. Authorizing the Executive Director to enter into an agreement with SFGTV for television coverage of TJPA meetings as budget, City Hall room scheduling and SFGTV recording commitments allow.

Director Daly commented that perhaps the meetings could also be aired in the other Directors’ jurisdictions. He feels that the project is of great public interest.

No public comment.

RESOLUTION 04-013

On motion to approve:

ADOPTED: AYES – Burns, Daly, Harper and Nevin

ABSENT - Brandt

ADJOURN - The meeting was adjourned at 3:52 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.