

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
October 19, 2010

Meeting Began At: 5:07 P.M.

Meeting Ended At: 5:47 P.M.

Members Present: Chris Beutler, Tim Clare, Jayne Snyder

Item 1 - Introductions and Notice of Open Meetings Law Posted by Door

Chair Snyder opened the meeting and advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Approval of the Minutes from the JPA Meeting October 13, 2010

Snyder asked for any corrections or changes to the minutes from the JPA meeting on October 23, 2010. Hearing none, Clare motioned for approval of the minutes. Beutler seconded the motion. Motion carried 3-0.

Item 3 – Public Comment and Time Limit Notification

Snyder stated that individuals from the audience will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

Item 4 – Approval of Payment Registers (Herz)

Don Herz brought forward the payment registers for the weeks ending October 6, 2010 and October 13, 2010. Most of the transactions are fairly routine with the exception of the \$2 million payment to US Bank to repay the line of credit, followed by a \$2,396 interest payment for the period of time the line of credit was outstanding. The line of credit was used to pay some of the operating expenses until the bond proceeds came in. It was also available for use for the Burlington transaction in case the first bond series had been delayed.

Clare asked if Herz anticipated keeping the line of credit open. Herz stated it would expire in two to three months and it will not be renewed.

Beutler made a motion to approve the payment registers. Clare seconded the motion. Motion carried 3-0.

Item 5 – Bill No. WH 10-03A Resolution to Approve the Assignment and Assumption Agreement Between Burlington Northern Santa Fe Railroad, the City of Lincoln and West Haymarket Joint Public Agency

Rick Peo came forward and gave the Board an updated version of the Assignment and Assumption Agreement. The primary difference is that Burlington Northern asked that the wording be changed to past tense to indicate that it is an existing agreement between the City and BNSF. The other change would make it certain that the Board won't have to come back and do additional assignment and assumptions for all of the agreements in the Master Exchange and C&M. Peo feels that the changes are minor and provide more discretion and favorable terms for the JPA. He asked that the Board approve the assignment and assumption agreement that he handed out today, designated as WH 10-03C. Peo also provided the Board with a redlined version of the agreement which showed the changes.

Snyder asked for any comments from the public. No one came forward.

Clare expressed his discomfort in approving something that he had not seen until today. Peo explained that he is trying to close with BNSF on Friday in order to begin construction next week and the JPA Board does not meet again until November. These minor details did not arise until today when the Railroad indicated that these changes needed to be adopted in order to move forward. In reviewing the changes, Peo did not feel that they were substantive changes. He recommended with confidence that the Board adopt the matter.

Snyder noted that the legal team is moving forward as fast as they can. Those involved in property negotiations know that things can change overnight. She felt the Board should show confidence in the legal team asserting that these changes are minimal and not drastic. The City Council had concerns because some of them did not have time to review the material, which is not the case with this group. She asked that the Board move forward as quickly as possible because if construction doesn't get started this fall, it will put the project behind.

Beutler made a motion to approve WH 10-03C the Assignment and Assumption Agreement before the Board. Clare seconded the motion. Motion carried 3-0.

Item 6 – Bill No. WH 10-09 Resolution to Approve the Consultant Agreement with CSL Marketing Group for Professional Assistance in Providing Marketing Services for the West Haymarket Arena

Rick Peo provided the Board with a Substitute Motion to Amend No. 1. This substitute motion replaces the former Motion No. 1 and No. 2, combining them into a single document. Peo explained that after the second motion was prepared, he discovered that a little more protection on the sale and naming rights needed to be added. The substitute motion puts additional clarification in the consultant agreement that the JPA has the discretion to determine the appropriateness of naming rights on public facilities and public spaces. It also incorporates the Memo of Understanding between the City and University regarding this concept.

Clare noted that he looks forward to working CSL and encouraged them to utilize interns and other local talent in the community. Ben Wrigley of CSL came forward and agreed that they would benefit from having interns on board. CSL has also been talking with local people interested in helping on this project.

Snyder asked for any comments from the public. No one came forward.

Clare asked Peo if UNL was being bound to cooperate with the naming rights and other marketing opportunities. Peo answered that there is mutual cooperation between the City, JPA and University which applies just to the arena. Peo wanted to broaden that out and include the West Haymarket area because there is a possibility that the garages or other public spaces might also have naming rights assigned to them. He wanted the JPA to have some control over those naming rights as well. Beutler noted that it is not changing anything in the relationship with the University but rather identifying that relationship to the consultant.

Beutler made a motion to adopt the Resolution to approve the Consultant Agreement with CSL Marketing Group, Bill number WH 10-09. Clare seconded the motion.

Beutler then made a motion to approve Substitute Amendment No. 1. Clare seconded the motion. Motion carried 3-0.

Beutler made a motion to adopt WH 10-09 as amended. Clare seconded the motion. Motion carried 3-0

Item 7 – Bill No. WH 10-13 Resolution to Delegate to Dan Marvin the Power to Execute, Receive and Acknowledge Documents and Agreements on Behalf of the West Haymarket Joint Public Agency

Peo explained to the Board that there has been a lot of discussion among staff about delaying this item in order to work out more of the details. However, some matters arose today that needed to be addressed at this time.

Included in the packets Peo distributed to the Board, are two amendments to the purchase and sales agreement with Union Pacific Railroad. The second amendment is to better define what their reservation of rights are. UP has an existing billboard and the early legal description said it was on UP property that won't be conveyed to BNSF. BNSF was concerned about this so UP agreed to amend their reservations rights to specifically identify the lot the billboard is on to show it is clearly outside of the property going to BNSF and does not cause any title problems.

The other item is a third amendment to that same purchase and sale agreement which requires an agreement for UP's construction of bridge improvements as part of the track relocation project. The person needed to sign this agreement for UP is not available, so this amendment is designed to clarify that this contract can be signed after the closing on the property. It doesn't affect the construction of the project as it will have to be executed by the end of the month.

Peo asked that the Board adopt a verbal resolution to authorize the JPA Chair to sign the second and third amendments to the purchase and sale agreements with UP as they are requirements for

closing. The Dan Marvin resolution can be delayed, but these two items need to be authorized for signature by the Chair.

In regards to the Dan Marvin Resolution, Snyder would like a discussion about how the Board would receive the information so that they know what is going on. That needs to be investigated before the next meeting. Clare added that he is okay with Marvin doing some of the administrative follow-up and signing those documents, but he is not comfortable with the language in the resolution. He would like to work with Peo on this as the current language in the Resolution doesn't accomplish what Peo is trying to do.

Clare made a motion to authorize the Chair to sign the second and third amendments to the purchase and sale agreements with Union Pacific Railroad. Beutler seconded the motion. Motion carried 3-0.

Item 8 – Bill No. WH 10-14 Resolution authorizing the issuance of not to exceed \$100,000,000 of the Agency's General Obligation Facility Bonds, consisting of (a) not to exceed \$67,965,000 principal amount of General Obligation Facility Bonds, Taxable Series 2010B (Build America Bonds – Direct Pay) and (b) not to exceed the Agency's allocation of General Obligation Recovery Zone Economic Development Facility Bonds, Series 2010C

Don Herz came forward and reminded the Board that this item was discussed at the last meeting. Due to the favorable interest environment, he felt it was prudent to move forward with a second bond issue and try to get it to market before Thanksgiving.

Lauren Wismer gave the Board a revised version of the adopting resolution. The edits to the document include formatting changes, the addition of the definition of facilities, and a revision to allow for the possibility of the City receiving an additional allocation of Recovery Zone Economic Development Bonds. The City has received approximately a \$32 million allocation and continues to work at getting more. The advantage of Recovery Zone Bonds is that the interest subsidy is 45% as opposed to 35% on the Build America Bonds. This revision permits the maximum amount of Recovery Zone bonds to be issued with the necessary reduction in the amount of Build America Bonds so that the amount to be issued by the JPA would not exceed \$100 million. The maximum true interest cost on the bonds has been set at 5.5% and the maturity date will be no later than December 31, 2045. The Finance Director would also be able to establish any additional accounts that would be desirable under the Facility Agreements. This resolution will permit the issuance of these bonds on terms that are most favorable to the City and JPA.

Scott Keene added that the parameters of this financing are the same as the earlier financing where bidders were limited to an underwriters discount not to exceed 1.5%, with at least 98% of the proceeds in their bid. The goal is to make this look as much like the prior financing as possible due to its success. Interest rates have improved a bit since the last financing but the expiration of the Build America Bonds and the Recovery Zone Economic Development Bonds is coming at the end of the calendar year. Keene is expecting to see a lot of activity in the market these last two months. Volume is expected to be very high with a lot of financings coming to market. The documents have been delivered to Moody's and Standard & Poor's with rating calls

planned for the first week of November. Keene anticipates posting all of the requisite information on their website by November 9th and holding the sale November 16th to allow for settlement on November 30th or December 1st.

Clare asked about the initial pro forma and when it showed the monies would be raised. He also inquired about what interest rate Keene and Herz are anticipating the second financing will receive. Herz answered that the original pro forma showed as much as \$200 million being issued this year. It was thought that only the \$100 million and \$34 million Recovery Zone Bonds would be issued but due to the favorable interest rates he is now back to \$200 million. Herz estimated a 5% cost of borrowing, however, he thinks the second financing will be in the same neighborhood as the 3.2% received in the first financing. Keene added that the savings against the initial plan and pro formas that were delivered would probably total \$50 million if these rates hold.

Clare questioned why 5% was budgeted but the document says not to exceed 5.5%. Keene explained that the 5.5% was a level of caution that was used as a parameter in the first financing. He did not know where the market would go even though the pro formas had looked at 5% as a planned amount. Keene knew the rate would not be that high but felt there would be value to have some cushion to allow the financing to proceed even if it ended up as high as 5.5%. Fortunately it went the opposite direction and rates actually dropped after the Board approved that parameter.

Snyder asked for any comments from the public. No one came forward.

Clare made a motion to approve the Bond Resolution. Beutler seconded the motion. Motion carried 3-0.

Item 9 – Bill No. WH 10-15 Resolution to Execute an Engagement Letter with BKD for Auditing Services for the Period of the JPA’s Inception Through August 31, 2010

Herz stated that by approving this resolution the Board would be executing the attached engagement letter. He would like to have a financial audit completed annually at year’s end. This first engagement would be for the period from the inception of the JPA through August 2010. There are not a significant amount of transactions to audit but the documents will need to be prepared in the format that will be used as the JPA goes forward, including the footnote disclosures and other similar things. Herz has determined that when the City wide financial statements are issued, the JPA needs to be folded in due to accounting factors. The JPA numbers need to be audited so that when they are inserted into the City’s financial statements it can be noted that they are audited instead of unaudited.

Herz asked BKD to do this initial JPA audit because they are going to be doing the City audit and there are a lot of things to be worked in together. He thought it would be prudent to just have BKD do this 2 month audit and the Board then could determine this spring what to do on a long term basis. He intends to do a multi-year audit RFP at least through the construction period.

Snyder asked if the total fee shown is the total cost or if there would be another fee for the review of bond offerings. Herz explained that the bond review would only come into play if the JPA issued some additional bonds in 2012. Auditors typically want to come back and do a refresh if that occurs. If another bond resolution were brought forward, the Board would approve the bond and any associated costs, which is when this fee would apply. The actual audit cost is not to exceed \$12,000.

Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

Item 10 – Set Next Meeting Date: Tuesday November 18, 2010 3:00 P.M.

The next JPA Board meeting is scheduled for November 18, 2010 at 3:00 P.M.

Item 11 – Motion to Adjourn

Beutler motioned to adjourn. Clare seconded the motion. Motion carried 3-0. Meeting adjourned at 5:47.

Prepared by: Melissa Ramos-Lamli, Engineering Services