

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)

Board Meeting

June 10, 2010

Meeting Began At: 1:32 P.M.

Meeting Ended At: 2:18 P.M.

Members Present: Chris Beutler, Tim Clare, Jayne Snyder

Item 1 - Introductions of Joint Public Agency Board Members

Mayor Beutler welcomed everyone to the first meeting of the West Haymarket Joint Public Agency.

With the concurrence of the other members, Beutler led the meeting through the first agenda items until a Chair was elected.

Beutler introduced himself and the other members. Chris Beutler is the Mayor of Lincoln and one of the three members of the West Haymarket Joint Public Agency. Tim Clare is a member of the Board of Regents and the University of Nebraska representative. Jayne Snyder is a City Councilperson for the City of Lincoln and the Council's representative on the JPA.

Item 2 - Notice of Open Meetings Law

Beutler noted that these are open meetings and the notice of the Open Meetings Act is posted near the door.

Item 3 - Approval of JPA Rules of Governance

Beutler entertained a motion to adopt the Rules of Governance that were before the board. Clare motioned for approval. Snyder seconded the motion. Beutler opened the meeting for discussion.

Clare stated that he is generally fine with the way the rules are laid out but feels strongly that Project Labor Agreements (PLAs) need to be addressed in either the Rules of Governance or an Administrative Regulation. The JPA has a fiduciary duty to the City of Lincoln, tax payers and voters to keep this project on time and under budget. The City Attorney addressed this issue yesterday and after discussion realized that it is not a violation of the Nebraska Constitution to prohibit PLAs. Clare asked that it either be inserted in the rules of governance or that he receive an assurance from the other JPA members that an Administrative Regulation will be passed.

Snyder agreed that the JPA needed to look at PLAs, however, at this time there are two conflicting attorney interpretations. Further clarification and dialogue is needed with the attorneys before a final

decision is made. Snyder asked that this issue be put on the agenda for the next meeting as an Administrative Regulation.

Beutler added that he would like more information as PLAs can be broad conceptual statements. It is probably not material for a governance document. Beutler was in favor of looking at it at a later meeting.

Clare felt strongly that the interpretation that he obtained from legal counsel regarding PLAs is correct. Clare offered to provide the members with further information that will show that there are hidden costs involved. He asked for assurances from the other members before agreeing to the Rules of Governance.

Snyder requested time to get a legal opinion from the City Attorney and agreed to discuss an Administrative Regulation at the June 25th meeting. Beutler concurred and stated that he did not feel comfortable taking a position on the matter today. Beutler and Snyder assured Clare that they are committed to keeping costs down on the project and the issue would be put on a future agenda.

Motion to approve the JPA Rules of Governance passed 3-0

Item 4 - Election of the Board Officers

Beutler described the process for electing the board officers. The first officer to be elected will be the Chair, after which Beutler will turn the meeting over to the new Chair. The officers need to be nominated and there needs to be a second to the nomination.

Beutler nominated Jayne Snyder as Chair of the JPA. Clare seconded the motion. Motion was approved 3-0.

Snyder took nominations for Vice-Chair of the JPA. Beutler nominated Tim Clare. Snyder seconded the motion. Motion was approved 3-0.

Snyder pointed out that according to the Rules of Governance; the Project Manager is the Secretary of the JPA. State Statute says that the Secretary can be nominated from the board members themselves or the Executive Director. It was recommended that a formal vote be taken.

Snyder opened the meeting for nominations for the Secretary of the JPA. Beutler nominated Dan Marvin. Clare seconded the motion. Motion was approved 3-0

The Rules of Governance state that the JPA Treasurer will be the Finance Director. Beutler motioned for approval. Clare seconded the motion. Motion was approved 3-0.

Snyder congratulated the new Officers: Chair Jayne Snyder, Vice-Chair Tim Clare, Secretary Dan Marvin and Treasurer Don Herz.

Item 5 - JPA and the State Budget Act – Decision on Filing Annual Budget

Steve Hubka came forward to discuss the State Budget Act. Hubka assumed that the JPA would have to file a budget with the State of Nebraska as is done for City, County and other government subdivisions. The State Auditor's website provides a form that indicated that because there is no property tax revenue

or state aid, a budget does not have to be filed. The form can be filled out, signed and the JPA would have complied with the State Budget Act. Considering this is a large program, Hubka suggested something more extensive.

Hubka visited with Don Herz and they recommended producing a budget that would include capital costs of the project as well as operating costs for the remainder of the fiscal year. Hubka would like to get the budget adopted before incurring expenditures. The board could have a budget hearing at the June 25th meeting and approve the budget at that meeting. The proposed budget would be published in the paper at least 5 days prior to the hearing and given to the board members a couple of days before that. Hubka will then prepare a budget for the following fiscal year with a budget hearing in August.

Item 6 - Approve Reimbursement to the City of Lincoln for a Relocation Agreement with Qwest Communications Company, LLC

Dan Marvin came forward to address the Board. Qwest has requested \$360,000 to relocate their fiber optic lines that are currently located in the Burlington Northern right-of-way. When those rail tracks move, we are obligated to relocate those communication lines. We have also received a relocation request from MCI for \$132,000. Together the relocation costs will total \$492,000. Olsson Associates originally budgeted \$781,000 which includes funds for engineering, inflation and contingencies. The City will enter into the agreement to relocate these two lines and the JPA would reimburse the City. Marvin asked the Board to approve the agreement with Qwest today. Trish Owen noted that the MCI agreement will be brought forward at the next meeting.

Clare noted that the requests are approximately \$280,000 under the budgeted amount and asked what other fees may be included. Marvin explained that the only additional costs may be attributed to administrative expenses when the paperwork is processed, but that would be a relatively small amount of money. The engineering and design work has been completed. There is also a possibility they could encounter a large rock or other issue that could cause the cost to go up.

Beutler asked when the notice to proceed will be issued. Marvin indicated that work would probably begin in July or August. Once the communication lines have been relocated and are underground, the railroad and/or other agencies will be free to start digging in the ground without worrying about cutting a line and disrupting communications.

Clare made a motion to accept the Executive Order. Beutler seconded the motion. Motion was approved 3-0.

Item 7 - Notice of Intent to Issue Bonds – Publication Date of June 17th, 2010

Lauren Wismer came before the board and gave each member a draft of the notice of intent to issue bonds. The notice will include a not to exceed principle amount, a tentative maturity schedule and a not to exceed interest rate. The last paragraph states that a copy of the proposed form of the resolution authorizing the issuance of bonds is on file at the City Clerk's office.

Clare asked if the bonds would be issued at the same time or staggered. Wismer stated that a \$100M bond will be done with more to follow. The \$100M will be used to pay off the \$50M line of credit.

Scott Keene came forward and explained that final determinations of the size of the first financing will be based upon market conditions and the need for funds. The JPA doesn't need a significant amount of funds until next summer when construction really gets going. Rather than borrow a lot of money early on and investing it at a very low interest rate, Keen is looking at \$100M to \$175M in 2010 and another significant piece in the spring or summer of 2011. The initial series is anticipated to be Build America Bonds which are taxable and have a higher interest rate than tax exempt obligations.

Beutler asked if Build America Bonds are subject to the municipal bond arbitrage rules. Wismer answered that they are plus a few additional rules. Keene added that there are additional record keeping requirements and timing requirements in regards to the subsidy payments from the federal government. To guarantee receipt of the subsidy prior to an interest payment, the IRS request must be in place no earlier than 90 days and no later than 45 days prior to the interest payment. If it is filed later, the IRS will still make the payment but won't guarantee that it is received prior to the interest payment. The IRS has also taken the position that the subsidy payments are essentially a refund, so if the issuer has other amounts that are owed to the IRS they will offset those against the subsidy. The JPA currently doesn't owe them anything so there shouldn't be any reduction or offsets.

Another significant difference between issuing tax exempt and Build America Bonds is that Build America Bonds have to be used entirely for capital expenditures. Tax exempt bonds allow for a little room where an amount that is not a capital expenditure can be covered, but that is not the case with Build America.

Beutler motioned for approval of the publication of the notice of intent to issue bonds. Clare seconded the motion. The motion was approved 3-0.

Item 8 - Timeline and Critical Path General Discussion

Dan Marvin came forward to address the board. He plans on having a facilities agreement before the board at the June 25th meeting. The program manager RFP is currently being advertised. The environmental RFP has gone through most of the process and is in final negotiations. There is a surveying agreement also being advertised. Staff is currently in negotiations with DLR to review their contract for the architectural work.

The agreements the City is putting together are assignable to the JPA and will come before the board in the next few weeks. The board will meet approximately every two weeks. Long term the meetings will be scheduled monthly, but during the summer months the two week meeting schedule is preferable.

Marvin reported that the facilities agreement will come before the board at the June 25th meeting for discussion and action at the July 9th meeting. With the approval of the facilities agreement by the board on July 9th, the JPA will have the ability to issue debt in mid July. Concurrently the occupation taxes will be moving forward with the City Council. The ordinances have been drafted and are going through the City process. They should show up on first reading shortly.

Wismer pointed out that because the bonds are being issued in a series he anticipates that there will also be some Recovery Zone Facility Bonds. One of the purposes of the facilities agreement is to identify the various revenue streams and divide them into the parts they need to be divided into. Then they can be used in the various bond resolutions rather than trying to address them in each resolution. It will be

cleaner and a little easier to keep track of if it is put into one place together with the obligations that the City will have in terms of managing and supervising the operation of the arena.

Marvin added that when Hubka brings forward the budget, there will be some capital costs paid for by debt that is issued through the JPA. There will be operational costs that will not meet the Build America standard. There will not be any operating revenues for the JPA until the occupation taxes kick in. They are scheduled to begin January 1, 2011 and the first payment will not be received until February 25, 2011. The customary process is for the City and JPA to enter into a reimbursement agreement in case the City were to incur operating costs.

Snyder asked if the board would need to take action on the budget at the next meeting. Marvin affirmed that in general the board will act on the same day that an item is presented. The facilities agreement is an exception as it is a long document and it may be cumbersome to discuss and take action on the same day.

Item 9 - Other Business: Possible Future Agenda Items

Snyder observed that there is already an agenda formulating for June 25th. Among those items, Regent Clare wanted to have discussion regarding the Administrative Regulation related to PLAs.

The next meeting is scheduled for June 25th at 3:00 P.M. There is also a meeting planned for July 9th.

Beutler motioned to adjourn to meeting. Clare seconded the motion. Motion was approved 3-0.

Meeting adjourned at 2:18.

Prepared by: Melissa Ramos-Lammler, Engineering Services