WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
July 8, 2010

Meeting Began At: 3:05 P.M.

Meeting Ended At: 3:53 P.M.

Members Present: Jayne Snyder, Chris Beutler, Tim Clare,

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

Chair Snyder opened the meeting and introduced herself, Mayor Chris Beutler and Regent Tim Clare.

The open meetings law is in effect and is posted in the back of the room.

Item 2 – Approval of the Minutes of the JPA Meeting June 25, 2010

Clare motioned for the approval of the minutes from the JPA meeting on June 25, 2010. Beutler seconded the motion. The motion passed 3-0.

Item 3 – Meeting with State Auditor's Office Report

Rick Hoppe came forward and gave the Board members a letter that he would like them to sign and send to Mike Foley. On June 4, 2010, Mr. Foley sent a letter to the Board that said he intended to conduct a financial audit at the end of this fiscal year. After several discussions, Mr. Foley agreed to do a 15 month audit at the end of the next fiscal year because the current fiscal year is only a couple months long, the initial budget is under $200,000 and there would not be a great deal of transactions to audit. Mr. Foley wanted the Board to know that he will work closely with them to determine a cost for the audit.

The other issue addressed in the letter is that bond buyers are interested in nationally recognized accounting firms completing audits for bonds. During the meetings and phone conversations with Mr. Foley, he pointed out that his office does do these types of audits. The Board will work with Mr. Foley and the financial advisors to make sure that bond buyers are comfortable with the audit put forward and to ensure the lowest possible interest rate.

Snyder advised the Board to look at the total costs carefully because two separate audits may be needed in order to guarantee security with the bond companies. Clare agreed and thinks that it is important that the Board does what it can to promote transparency. Beutler added that the

integrity of this group is very important and the compromise before the Board today is something he is willing to accept. There are areas in which he does not agree with Mr. Foley but those will be left for a different forum.

Beutler made a motion that the Board sign the letter and send it to Mr. Foley. Clare seconded the motion. The motion passed 3-0.

Item 4 – Filing of WH JPA Budget with the State of Nebraska

Don Herz, City Finance Director, came forward to clarify plans for filing the budget with the State of Nebraska. The card and approved budget will be submitted, however, the prescribed forms will not be filled out. Those forms only need to be filled out if the JPA receives funds from property taxes or state aid. The Board members had no objections.

Item 5 - Line of Credit Reimbursement Resolution

Herz explained that the City Council has approved the issuance of a line of credit in the amount of $50 million. That line of credit is to bridge the gap until the $100 million bond issue comes into place. The City would like the JPA to agree to reimburse out of the bond proceeds at the time that they are sold. This would also finalize any of the transactions that are needed in order to pay bills that the JPA incurs over the next several weeks.

Clare asked if the City would pay off the line of credit once they are reimbursed. Herz confirmed that they would.

Clare motioned for approval. Beutler seconded the motion. Motion passed 3-0.

Item 6 – Financial Payment Threshold Allowance

Herz informed the Board that in a few weeks he will start to write checks for some of the administrative and project costs. Herz recommended that the Board follow the City procedure in issuing payments. All of the contracts will be brought to the Board for approval and Herz would have the authority to write the checks and make payments. The checks would be cosigned by Chair Snyder and Herz. At the Board meetings, Herz would bring forward a claims register showing a list of payments that have been processed. This would expedite payments so that they don't have to be held until the Board approves each one.

Clare asked how the County Jail JPA is handling payments for the jail. Herz explained that they follow the practice of the County Board. They cut the checks and then go to the County Board for approval to distribute the checks. Herz is concerned that this process could cause a delay between the time a claim is submitted and the time the payment is dispersed; especially if the Board decides to meet on a monthly basis in the future.

Beutler moved to adopt the procedure as recommended by Herz. Clare seconded the motion. Motion passed 3-0.

Items 7 & 8 – Draft Facilities Agreement & Draft Bond Resolution

Dan Marvin came forward to discuss the Facilities Agreement and Bond Resolution. Contained in the Facilities Agreement is the process by which shortfalls are evaluated and actions that are taken if there is a shortfall. This is a companion piece so that bond investors understand how the JPA operates and what services the JPA will be using from the City. Marvin requested input from the Board as the additional drafts come forward so there can be action in two weeks. Beutler has reviewed the documents and noted that there were several small items that can be refined to ensure they are in accordance with Memorandums of Understanding that was previously executed. Waiting a few weeks to take action will not hold anything up and will give the Board an opportunity to make sure the provisions of the agreement and the resolution coordinate.

Beutler requested clarification regarding the annual audit that is addressed in Section 16, Page 12. This provision provides for an annual financial audit that shall be done by a nationally recognized independent certified public accountant. Mr. Foley originally indicated that he would like the State Auditor's office to audit every year. If they were able to mandate an audit every year they would also require that we pay their expenses, thus, we would be paying for two audits of the same type year in and year out. Beutler asked why the audit provision was included and if an audit from the State Auditor alone would satisfy the provision. Lauren Wismer explained that the provision is fairly standard and has been included in other documents that were drafted for the University of Nebraska. The purpose of the audit being done by a nationally recognized firm is to give the rating agency comfort that the audit is going to be done according to recognized standards by a firm that has experience. It also provides assurances to the bond holders that any audit they receive is done properly.

Beutler inquired if the market would accept the report of a State Auditor in place of a nationally recognized firm. Scott Keene came forward and advised the Board that having Mr. Foley auditing the financing would probably not result in a lower credit rating or higher interest rate, but it would clearly make it look different than other sizeable complex transactions. Anything that makes this look different runs the risk of getting less attention from the investors and the goal is to try to craft documents that will get as many interested investors as possible. When there is unusual financing involving an unusual structure like the JPA, there will be greater concern from the investing public and something they will watch carefully. Additionally, it is very risky to have two outstanding financial audits. It would cause extreme confusion in the marketplace for there to be two completely separate firms doing their own financial audits.

Snyder asked if it would put the JPA in a dilemma with the bonding agency if the two audits have conflicting findings. Keene felt it would be disconcerting for the market place and would make the JPA financing look much different than others. Clare questioned if Mr. Foley would do his audit annually until the bonds are paid off as the national firm would do. When Mr. Foley first contacted Mayor Beutler, he indicated that he intended to do an audit every year.

Subsequently they agreed that he would audit the second year. His intentions beyond that are unknown. Mr. Foley is neither a Certified Public Accountant nor an accountant and bond holders are more familiar and comfortable with nationally recognized certified public accounting firms because they have knowledge and experience with comparable financing.

The Board will continue to seek counsel and evaluate these documents and vote on them at the next meeting on July 22nd.

Item 9 – Discussion of WH JPA General Obligation Facility Bond Timeline

Lauren Wismer reviewed the draft of the Facility Bond Timeline with the Board. Delaying adoption of the Bond Resolution and Facilities Agreement until the next Board meeting will not cause a problem in terms of keeping on this schedule. Wismer still intends to publish the Notice of Intent to Issue Bonds in the paper on July 12th because he would like to begin the 30 day period. The adoption of the Bond Resolution and the Facilities Agreement will now occur on July 22nd. Wismer will forward the documents to the rating agencies so they can begin their review process. The JPA is an entity that they have not previously seen and due to the variety of sources of revenues it would be advantageous to give them as much time as possible to familiarize themselves with the documents. The City Council will have their first reading on the ordinance to approve the Facilities Agreement on July 12th with public hearing on July 19th and adoption on July 26th. The Notice of Sale and Preliminary Official Statement (POS) will be posted on July 29th and the ratings will be received in early August. The Notice of Sale and POS will then be reposted on August 5th to include the rating information. The sale will be held on August 11th and close on August 25th.

Item 10 – Other Business

Dan Marvin informed the Board that while scoping out the conditions of the contract for survey work, it was found that 1st and Cornhusker and Sun Valley and O are out of the boundaries of the JPA. The City will cover the cost for the survey of those intersections which is approximately $75,000. The project design calls for 1st and Cornhusker to be utilized as one of the entry routes into the arena. Due to the large amount of turning movements, the plan is to put dual left and right turn lanes in at that intersection. People coming in on I-180 would be routed over to Cornhusker and they would then come down 1st Street. Sun Valley and O Street would be another entry route as people are brought in off of O Street and up Sun Valley Blvd.

Marvin recommended that the Board consider modifying the JPA boundaries up to 1st and Cornhusker and down to Sun Valley and O Street. Changing the boundaries would require getting approval from the Board of Regents and the City Council. If the defined project area is not expanded, the JPA cannot be billed for expenses that would not occur but for the project. If the board is in agreement to the boundary expansion, the Law Department would craft the changes.

Clare asked if the turn lanes at both intersections were on the original drawings. Marvin stated that they were on the drawings; however, the JPA boundaries that were adopted by this Board did not include those areas. Beutler agreed that this should be corrected as soon as possible because as the boundaries currently stand the JPA could not be billed for these legitimate expenses. Marvin will bring something to the Board at a future meeting.

Marvin then reported that he has had conversations with insurance companies about providing environmental insurance. Marvin gave the Board members information from three companies that could provide the insurance. Additional environmental information would be provided to the selected company as it comes forward. The insurance provider would also work with the firm that has been hired to do the environmental work to get comprehensive information so they could write the policy. One company is offering coverage of $5 million for five years for $71,000. Another is offering $20 million for ten years of protection for $250,000. They would provide insurance against unknowns and to repair any remediation efforts that have failed. Marvin offered an example of what this could protect against. When the Washington Senators built their new baseball stadium, they knew there were three underground petroleum tanks. Once they began work, they discovered seven additional tanks that also needed to be removed. The insurance will provide coverage for similar incidents and unknowns as we actively try to remediate the site. It will also cover post remediation if, for instance, a liner should rupture after a building is put up.

The insurance would cover Burlington Northern property where the active rail yard is and it is possible for the coverage to be expanded to the UP property. The private property that has not been acquired yet wouldn't be covered under this type of policy. Once Marvin gets more information he will request that the Board provide direction as to what level of insurance, if any, they feel is appropriate. The money to pay for the coverage could come out of the contingency fund which would provide a significant amount of environmental insurance.

Clare asked who the insurance carriers are and what exclusions are in the policy. Marvin did not include the names on the handouts to protect the companies that he is negotiating with; however, he will provide that information to the Board members.

Other items that will come before the Board soon are the Facilities Agreement and Bond Resolution. There will also be a reimbursement resolution for the survey work and any other assignable contracts. The budget for next fiscal year will be brought forward in August. If the board members have any agenda items they would like to add they can be sent to Trish Owen.

Item 11 – Set Next Meeting Date: Thursday July 22, 2010 3:00 P.M.

The next JPA Board meeting is scheduled for July 22, 2010 at 3:00 P.M.

Item 12 – Motion to Adjourn

Beutler motioned to adjourn. Clare seconded the motion. Meeting adjourned at 3:53.

Prepared by: Melissa Ramos-Lammli, Engineering Services