

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
October 13, 2010

Meeting Began At: 3:38 P.M.

Meeting Ended At: 4:25 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 advised that 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 September 23, 2010

Snyder asked for any corrections or changes to the minutes from the JPA meeting on September 23, 2010. Hearing none, Beutler motioned for approval of the minutes. Clare seconded the motion. The motion passed 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.

Snyder announced that there were two changes to the agenda. Staff requested that public hearing and action be delayed on Item 7, the three agreements with BNSF, until Tuesday October 19th. Accordingly, the date of the next Board Meeting has been changed from Friday October 22nd to Tuesday October 19th at 5:00 PM. The meeting will be held in Council Chambers.

Beutler made a motion that Item 12 and Item 16 on the agenda be held over until the next meeting as he has not had a chance to review the resolutions. Clare seconded the motion. Motion passed 3-0.

Item 4 – Approval of Payment Registers (Herz)

Don Herz brought forward the payment registers for the weeks ending September 22, 2010 and September 29, 2010. There were not a significant amount of transactions other than the cost of issuance for the \$100 million debt. The payment to Standard and Poor's is for their rating and at this time Herz has not received an invoice from Moody's. There was a \$500 payment to Union Bank for trustee services. Grant Street is the firm that provided the web based sales transaction.

The second register contains a payment to BKD and two large payments to Ameritas and Gilmore & Bell as part of a fee schedule we have with them.

Beutler asked about the McGrath North charge and if we are contracting out part of the bond legal services. Herz explained that the charge was for Law to get an opinion regarding Davis Bacon applicability.

Snyder asked for any comments from the public. John “Cash” Austin came forward and asked about Gilmore & Bell. It was mentioned that they have been working on this for years and Austin wanted to know what would have happened if the arena had not passed. Herz stated that if it had not passed they would not have been paid.

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

Item 5 – Review of the September 2010 Expenditure Reports

Herz had two expenditure reports for the Board to review. The first was the Construction Expenditure Report which shows the total budget that the Board approved for a total of \$321 million. Through the end of September there has been \$906,179 in payments. The other report was the Operating Expenditure Report for the period of September 1, 2010 through the end of September 2010. This is the new budget the Board adopted for the current fiscal year. The year to date expenditure is \$15,638.

Clare asked about the payment to BKD and if it was paid under bonding services in the construction budget or auditing services in the operating budget. Herz explained that the payment to BKD is part of the cost of issuance of the debt in the construction budget. Auditing services in the operating budget are for the routine annual audits.

Item 6 – Update on the Next JPA Bond Issue Including Economic Recovery Zone Bonds (ERZB’s) and Build America Bonds (BAB’s)

Herz explained that approximately \$30 million of Economic Recovery Zone Bonds have been allocated to the City which carry a significant cost of borrowing advantage. He wanted to get those completed before the end of the calendar year because the authority goes away at that time. Due to the low interest rates and a number of factors he is looking at capturing the lower interest rates on as much as another \$100 million.

Scott Keene stated that this financing would look a lot like the first financing. The City has about \$32 in ERZB’s and he would like to have the balance of the \$100 million to be financed through BAB’s. The difference between the two is that BAB’s provide for 35% interest subsidy from the federal government while ERZB’s provide for 45% subsidy. The original plan was to bring \$175 million of financings before the Board this calendar year but because of the extremely low interest rates Keene would like to try to lock in a little bit more and is looking at a total of \$100 million between the two financings. The ERZB allocation and the BAB authorization expire at the end of this year, so this may be the last chance to take advantage of

these financing vehicles. Keene will come back sometime in 2011 with a traditional tax exempt financing to finish out the funding. While all of the models have assumed approximately \$340 million of debt, due to some structuring features he currently estimates that there will be approximately \$300 million of total borrowings. This would take care of approximately 2/3 of the entire capital plan at very low interest rates.

Keene will be coming to the October 19th Board meeting to ask for approval of an Adopting Resolution that will set all of the terms and conditions of the financing. He hopes to be in the market place in the middle of November and settle the financing around Thanksgiving or just after. Given that the other financing was just brought to market, Keene thinks it will move quickly through the rating process with Moody's and Standard & Poor's.

Herz added that this would account for 2/3 of the financing and that it would be locked into a rate that is substantially lower than what was budgeted. Herz estimated a 5% cost of borrowing and the first financing was approximately 3.2%. That one transaction saved \$1.8 million per year in carrying costs.

Snyder asked how many of the bonds issued were ERZB's and BAB's. Keene answered that he expects to have \$32 million in ERZB's and about \$68 million in BAB's. They are lobbying the State to get more of an allocation because not many of the ERZB's have been issued state wide and many communities that were provided this allocation haven't used them.

Keene reported that in the packet that will come out on Friday, there will be drafts of the Adopting Resolution, Bond Resolution and the Preliminary Official Statement. These documents will be structured as a series A and series B. Series A will include BAB's with maturities in 2020-2035. The longest maturities will be the ERZB's due to the 45% subsidy. Keene wants the subsidy on the highest interest rate bonds for the longest period of time, therefore he is pushing the ERZB's out to the tail end of the amortization schedule. He anticipates taking this financing to a competitive sale the same way the first series of bonds were sold, with settlement around the 30th of November.

Lauren Wismer gave the Board a first draft of the Resolution. One of the changes he would like to make from last time is the inclusion of an Adopting Resolution which approves the general form but gives the officers the ability to tweak it if necessary due to market conditions. The City frequently takes this approach as does the University. The Resolution will go before the City Council for first reading on October 25th and approval on November 1st.

Clare appreciated the work done so far but was concerned because the use of this funding comes with Davis Bacon requirements. Dan Marvin came forward and stated that the Department of Labor determines what the prevailing wage is. In the City of Lincoln for building construction, the prevailing wage is set county wide. Highway construction is much broader with a multi-county prevailing wage. When compared to the Bureau of Labor's statistics, the wages of many of the categories are similar. There is a significant difference for electricians, but on balance there are not a lot of differences.

Roger Figard added that as far back as 1979 the City has followed Davis Bacon requirements on any project with Federal Aid. To the best of his knowledge, there haven't been any excess bid prices due to Davis Bacon. The City completes wage surveys and he has not seen any wages paid to the workers that don't already meet or exceed prevailing wages. On any given day if bid prices are compared between a federal aid project and a City only project, Figard is not seeing a difference in the bids. Marvin noted that on Public Works projects the requirement is put on the bid documents and the contractor is asked to comply with Davis Bacon.

Clare noted that the Board has a duty to make sure the project stays on time and under budget so he wants to make sure that costs are kept low on all elements.

Snyder asked for any comments from the public. John "Cash" Austin came forward and noted that the Board is dealing with a lot of money. He suggested that the University of Nebraska be included in the bond because if this goes under, the City will have to pay for the whole thing. The University is going to make more money on this than the City of Lincoln.

Item 7 – Bill No. WH 10-3A Resolution to Approve the Assignemtn and Assumption Agreement Between Burlington Northern Santa Fe Railroad, The City of Lincoln and West Haymarket Joint Public Agency.

Item 7 will be held until the next meeting on October 19, 2010 at 5:00 PM.

Item 8 – Bill No. WH 10-05 Resolution to Approve Amendment No. 1 to the Agreement Between the West Haymarket JPA and DLR Group, Inc. to Provide Architectural Services for the Design of the Arena and Other Arena Improvements for the West Haymarket Project

Rick Peo came forward and reported that this item was held over at the last meeting. Marvin stated that he has been working with DLR for a couple years. DLR went through an open process and won the bid. A provision of that contract was that it would be revisited and re-scoped after the election. Marvin has worked through the summer with DLR and feels that he represented the City's interest in this agreement and lowered the cost to the tax payers. The agreement provides for a work credit of approximately \$591,000. If this had gone out for bid and new architect was selected, the credit is wouldn't have been included.

Clare asked Stan Meredith to come forward. Clare explained that when Innovation Campus was in its infancy stages he received comments that they needed to look at including interns from the University and other campuses in Lincoln. As a representative of the University of Nebraska, Clare encouraged Meredith to bring in interns when possible. Meredith stated that he was asked by the Dean of the College of Architecture to address a graduate class of about 100 students last night. Several of the students approached him and asked to be placed in one of the offices in Lincoln. Meredith indicated that he will do his best to get them involved in the project. Marvin added that there were others from the University, such as engineers, who have offered to work with DLR on tasks that they would do for free. Marvin will pursue that as well. Jim Martin, Program Manager, came forward and stated that he would be willing to place interns in his office as well.

Snyder asked for any comments from the public. John “Cash” Austin came forward and asked what DLR stands for. Meredith answered that it stands for Dana Larsen Roubal and Associates which is a Nebraska corporation formed in 1966. They are entirely employee owned.

Beutler made a motion to approve Amendment No. 1 to the Agreement with DLR Group. Clare seconded the motion. Motion carried 3-0.

Item 9 – Bill No. WH 10-06 Resolution to Approve the Assignment Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency Providing for Benham Companies, LLC. To Perform Program Management Services

Peo explained that this is a resolution to approve an Assignment and Assumption Agreement which was entered into by the City with Benham Companies to provide program management services for the arena project. Due to the short timeline it was initially entered into by the City but it has always been the expectation that it would come before the Board for approval.

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

Beutler made a motion to approve the Assignment Assumption Agreement between the City of Lincoln and West Haymarket Joint Public Agency providing for Benham Companies to perform program management services as shown in the materials. Clare seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 10-07 Resolution to Approve the Purchase Agreement with Noohznik, L.P. and the West Haymarket Joint Public Agency

Peo reported that this purchase agreement is needed for the JPA to acquire property for the storm water mitigation area. In addition, a portion of this property has to be conveyed to BNSF for their future railroad corridor. The purchase price is \$18,000.

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

Beutler made motion to approve the Purchase Agreement with Noohznik, L.P. and the West Haymarket Joint Public Agency. Clare seconded the motion. Motion carried 3-0.

Item 11 – Bill No. WH 10-08 Resolution to Approve the Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency Providing for a Transfer and Exchange of Land with the Lower Platte South Natural Resource District

Peo explained that this is property that needs to be acquired for the storm water mitigation area and the BNSF railroad corridor. Initially this was entered into as an agreement with the City and NRD and now needs to be transferred to the JPA.

Beutler took this time to thank Rick Peo for all of his work on these items especially with the volume of work he has completed under many time constraints. Snyder was also appreciative of the work Rick has done.

Snyder asked for any comments from the public. John “Cash” Austin came forward and asked if there was any money involved in this agreement. Peo answered that this is an exchange of land. The NRD is giving the land for free but we would be giving conservation easements to them.

Beutler made a motion to adopt the Resolution to approve the Assignment and Assumption Agreement between the City of Lincoln and West Haymarket Joint Public Agency providing for the transfer and exchange of land with the Lower Platte South Natural Resource District. Clare seconded the motion. Motion carried 3-0.

Item 12 – 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

Item 12 will be held until the next meeting on October 19, 2010 at 5:00 PM.

Peo gave the Board a copy of a Motion to Amend to substitute a new marketing services attachment and the budget for that contract. Those items just came in today and will be put online and be available for the public. Attachment A had some minor revisions and Attachment B was omitted from the item on the agenda.

Item 13 – Bill No. WH 10-10 Resolution to Approve the Assignment and Assumption Agreement Between the City of Lincoln and West Haymarket Joint Public Agency Providing for T.J. Osborn to Complete the West Haymarket Utility Relocation Project

Peo explained that this is a contract with T.J. Osborn to do the sanitary sewer work in the West Haymarket area which has to be completed before the railroad can start relocating tracks. The total cost on this project is \$1.161 million.

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

Beutler made a motion to adopt the Resolution to approve the Assignment and Assumption Agreement between the City of Lincoln and the West Haymarket Joint Public Agency providing for T.J. Osborn to complete the West Haymarket utility relocation project. Clare seconded the motion. Motion carried 3-0.

Item 14 – Bill No. WH 10-11 Resolution to Approve the Purchase Agreement between Magdalen Franssen and the West Haymarket Joint Public Agency

Peo explained that this is a purchase agreement for land that is needed for the storm water mitigation area for the West Haymarket Project. The cost for this land is \$18,000.

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

Beutler made a motion to adopt the Resolution to approve the Purchase Agreement between Magdalen Franssen and the West Haymarket Joint Public Agency. Clare seconded the motion. Motion

Item 15 – Bill No. WH 10-12 Resolution to Approve the Consultant Agreement between Thought District and the West Haymarket Joint Public Agency to Provide Website and Facebook Development Design Services

Peo explained that this is an agreement with a consultant to create a website. Marvin added that he has had meetings with Thought District for the last six weeks. They've made efforts to go throughout the community to find out what kind of content to put on the website. The launch date will probably be the first or second week of December. The webpage will include agenda items, webcams, and a robust amount of information to fulfill the promise to be open and transparent. Thought District is a very creative operation and takes this very seriously.

Snyder asked if they would be working with the marketing company. Marvin stated that there may be elements in the future but that is probably a year or two down the road. There are things they can do in terms of helping with the marketing end of the arena which will be key for some of the financing we are doing.

Clare asked if this service was put out to bid. Marvin answered that it was not due to the small amount of the contract, \$23,000, and because the City has prior experience with Thought District. There will be some follow up at some point about updating content and ongoing maintenance but this will get the project up and running.

Snyder asked for any comments from the public. Coby Mach came forward and stated that Thought District has already been in contact with LIBA about things they would like to see and different ways to provide for transparency. Mach thanked the board for continuing to provide a transparent arena project.

Beutler made a motion to adopt the Resolution to approve the Consultant Agreement between Thought District and the West Haymarket Joint Public Agency to provide website and Facebook development design services. Clare seconded the motion. Motion carried 3-0

Item 16 – 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

Item 16 will be held until the next meeting on October 19, 2010 at 5:00 PM.

Peo explained that the purpose of this Resolution is to have someone available to sign supplemental documents as they come through. All of the agreements listed in the Resolution will be approved by the Board; however, those agreements incorporate by reference multiple other agreements such as easements, licenses and deeds. In order to accommodate closings and processing those additional agreements as they come through, it would be easier if someone were

available to sign documents on a quick basis. As Dan Marvin is the Secretary of the JPA which designates him as an Executive Office in the bylaws, he seemed to be the appropriate person to do that. Marvin would only be authorized to sign agreements that have been approved by the body as to form and executed at a later date. For example, with the railroad there may be 20 different utility easements that need to be executed based on the form in the agreement.

Clare asked if this were approved today would Marvin be allowed to sign documents in regards to BNSF. Peo stated that he would have to strike that item out of the resolution as the Board has not approved the BNSF agreements.

Marvin stated that he did not lobby for the job but he is available if needed. Snyder stated that she would also be available until the issue is decided.

Item 17 – Set Next Meeting Date: Tuesday October 19, 2010 5:00 P.M.

The next JPA Board meeting is scheduled for October 19, 2010 at 5:00 P.M.

Snyder asked for any comments from the public. John “Cash” Austin came forward and asked who Dan Marvin is and if he worked for the Mayor’s Office. Clare answered that Marvin is under contract with the JPA. Austin stated that he thinks the State needs to audit the JPA every six months. Rod Confer came forward and stated that under the Joint Public Agency’s rules, which are different than the City Council, members of the public are only allowed to address the Joint Public Agency concerning matters that are on the agenda so these comments are out of order.

Snyder thanked Austin for his comments.

Item 18 – Motion to Adjourn

Beutler motioned to adjourn. Clare seconded the motion. Motion carried 3-0. Meeting adjourned at 4:25.

Prepared by: Melissa Ramos-Lamml, Engineering Services