



CHINO VALLEY UNIFIED SCHOOL DISTRICT

Facilities/Planning Department

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CITIZENS' OVERSIGHT COMMITTEE MEETING MINUTES June 21, 2004

Mr. Larkin called the meeting to order at 5:15 p.m. with Maurice Ayala, Andy Anderson, Stuart Holland, Michael Calta and Paul Andersen present. School board members Mr. Pruitt and Mr. Truett were also present. Mr. Larkin said that since there was no quorum no actions could be taken that require a vote.

1. The District's response to questions submitted by Committee members regarding the Ohrbach Report and Dr. Saul's memos

Mr. Larkin asked if there was a response to the questions submitted by members. Dr. Andersen said questions from Mr. Holland, Mr. Anderson, Mr. Calta and Mr. Bruce were received and distributed to members and cabinet. Cabinet decided to share the questions with the board members and seek counsel on a response. Dr. Maureen Saul received an advisory from Mr. Gutierrez, the district's general counsel, as follows:

"Please be advised that I have received and reviewed 15 pages of questions submitted to the District by Mr. Calta. However, it is not clear whether the questions are submitted to the District by Mr. Calta or the Citizens' Oversight Committee. Nevertheless, these questions exceed the authority of the Bond Oversight Committee as set for the in "Strict Accountability in Local School Construction Bonds Act of 2000", Education Code Section 15264 et. seq.

"In addition, the Bond Oversight Committee is not granted any investigatory functions. Section 15278 (b) provides as follows:

"The purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues. The citizens' oversight committee shall actively review and report on the proper expenditure of taxpayers' money for school construction. The citizens' oversight committee shall advise the public as to whether a school district or community college is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XII of the California Constitution."

"While Section 15278 (c) authorizes the Oversight Committee to engage in a number of enumerated activities, the only activity related to construction limits the authority of the Bond Oversight Committee to 'reviewing efforts by the school district...to maximize bond revenues.'

"Therefore, the Bond Oversight Committee may only consider programs and documents produced by the District, as opposed to undertaking its own investigations and making its own findings.

"Because of its limited jurisdiction, neither the Oversight Committee, nor any member such as Mr. Calta, has the authority to submit any questions to the District independent from any existing 'efforts by the school district to maximize bond revenues.'

"For this reason, I recommend that you or Dr. Andersen advise the Oversight Committee at this evening's meeting."

Mr. Larkin asked if the committee has access to legal counsel excluding Mr. Gutierrez. Dr. Andersen said legal counsel is one of the provisions in the bylaws and Lisa Lee Wells from Fulbright & Jaworski had been bond counsel in the past. Mr. Larkin said the questions were on documents produced by the district and he takes exception to Mr. Gutierrez' opinion. He thought the committee should be able to get a second opinion.

Mr. Ayala felt Mr. Gutierrez' comments were off target and he should have made himself available to clarify them. Mr. Ayala

said since Mr. Gutierrez is unavailable, his advisory becomes irrelevant to the committee and it shouldn't be considered the last word on the matter. He also thought some people would use the advisory as a shield.

Mr. Calta asked if the questions had been sent out. Dr. Andersen said the questions have been distributed to everyone but Dr. Bloch. Mr. Calta asked if they were waiting for authorization from legal counsel whether to proceed. Dr. Andersen said the advisory he read was the response from legal counsel. Mr. Calta read from his cover letter, quoting bylaws:

"The purpose of the Citizens' Bond Oversight Committee for Measure M as set forth in Proposition 39 (and AB 1908) is to inform the public at least annually by issuing a written report concerning the expenditure of bond proceeds from Measure M approved by the voters March 5, 2002.

"In fulfillment of that purpose, we, the committee, are seeking clarification on a number of reports we have received, including but not limited to the Ohrbach & Huff report, publicly released copies of Dr. Saul's memos, board newsletters, etc. Any assistance you can lend in addressing the attached questions or related subjects would be of great assistance to the committee and great benefit to the public. It is our intent to provide the most accurate information to the public as is possible."

Mr. Calta said his intent and the committee's intent is and has been to look for clarification because they are writing an annual report and want to provide the most accurate information about what has transpired in the last 12 months. He wanted to give everyone an opportunity to explain to the best of their ability so the committee can fulfill their obligation. He doesn't see it as an investigation. He said since Dr. Andersen said there were material inaccuracies in the Ohrbach report, the committee wants to be as clear as possible.

Mr. Truett said he wanted to answer some of the questions. He said the Ohrbach & Huff report concerns Dr. Bloch, not the expenditure of bond funds, because those funds were never spent. Mr. Larkin said the report referred to Dr. Bloch's actions that lead the board to investigate whether he needed to be terminated, and that some things he may have done incorrectly were directly related to Measure M, and those are the only things that the committee is interested in. Mr. Truett referred to a list given to the board members in closed session from Dr. Saul on the expenditures that he felt confirms the accuracy of the Ohrbach report. He said it was accurate enough for him because he was involved with what went on so he knows. He thought if she can find it it would open some eyes. He said it was a list of payments that the board members were asked to approve and they would not approve them, and those were the payments that were mentioned in the Ohrbach report.

Mr. Ayala said he thought the questions were to come from the committee as a whole and not from individual members. He thought it was a mistake and should be corrected. Mr. Holland also thought the questions would be put together as a set of questions from the committee. There was further discussion about whether the questions should be reformulated.

Mr. Truett said he's willing to address some of the questions. In answer to questions by Mr. Holland, he said the board members didn't get the packet of memos and didn't know they existed until the public got them. He said he had never met Linda Kuykendall, he had met Linda Sweaney but never suggested the district hire her. Mr. Holland said his questions were directed more to Dr. Saul because she wrote the memos. Mr. Ayala asked if they could paraphrase the questions for the audience.

Mr. Truett read: "On the project manager position, recommending Lynn Kuykendall. This memo summarized what had been going on with this position. It states that after the board authorized staff to hire two project managers in July 2002, an RFP was sent out. Before anyone was interviewed, they were instructed to abort the process. 'Some board members' had met with Linda Sweaney and wanted her hired. Which board members met with her and made this recommendation? Are they the ones who told staff to abort the process of hiring a project manager?" Mr. Truett said he didn't know, he did meet with her but he would never want to hire her. Mr. Pruitt said the question has nothing to do with Measure M and to ask the question is going over their bounds because it is an internal procedure of who gets hired and not one dime was spent. He said that the mission of the committee is on expenditure and because she wasn't hired and the position would have been paid from the General Fund.

Mr. Ayala said that many of the questions asked may have nothing to do with Measure M and may be beyond the scope of the committee, but they don't know that until the questions are answered. Mr. Truett said they just told them. Mr. Holland said that when the committee started they were told that a project manager was going to be hired and was going to be paid for out of Measure M funds. He said the committee doesn't have the full information on the memos so they are trying to find out what they mean. Mr. Larkin said the information the committee gets is a "day late and a dollar short," or they don't get it or it's ambiguous. He said they are asking questions that they think are relevant.

There was some discussion about how to proceed with the questions. Mr. Truett said he wouldn't answer any questions from Michael Calta because they were too ambiguous and they were political in nature. Mr. Larkin asked him what questions he was interested in answering.

Mr. Truett referred to a question submitted by Mr. Anderson regarding approved construction management firms. He said he'd worked with Swinerton/Wahlberg and C.W. Driver in the past and those were the firms he thought would get the contracts. He set up meetings with other board members to see whom they liked and whom they thought should do the work. They walked some of the sites. Mr. Black went to some construction sites these firms were responsible for. Mr. Larkin asked if he did that with all the firms, and Mr. Truett said no, only with those he knew. Mr. Larkin asked if that gave those firms more of an advantage to get insight from board members and if it wasn't a conflict of interest. Mr. Truett said they didn't get the job and he didn't think it was a conflict of interest.

Mr. Truett quoted, "Staff was later instructed that BEMC and one architectural firm would be assigned all projects." He said that was a decision that was made by the entire board, it was a 5 – 0. It wasn't for one architectural firm, though. He said it started with Chino Hills High School, that if BEMC did a good job there they'd give them some more work. He said Harriet Beck brought B.E. McMurray on. He said he was challenged about the other choices and one of the firms dropped out. He said BEMC wasn't his choice; it was everybody else's choice so he agreed with it. Dr. Andersen clarified that the initial choice of B.E. McMurray was made long before the June 20, 2002 meeting, which was when the most recent list of CM firms was board approved. Mr. Truett said he's not aware of any direction given by the board limiting the district to one architectural firm.

Mr. Truett addressed another question from Mr. Anderson regarding intimidating and threatening statements by Bob Olin to CVUSD staff indicating that he would involve Mr. Truett in dispute resolution involving BEMC shortcomings identified by staff such as incomplete constructability studies and if he had been requested by Bob Olin or BEMC to address District staff on their behalf to resolve matters involving the performance of BEMC on assigned construction projects. Mr. Truett said Mr. Olin had requested it several times. Mr. Larkin asked if he had taken action. Mr. Truett said that he had. He discussed the method Mr. Olin used for the constructability studies by giving plans to potential bidders; he said that shouldn't have been done. Mr. Larkin asked who oversees that. Mr. Truett said the district and Dr. Bloch was involved, as far as he knew. Mr. Larkin asked if the district wasn't on top of what the construction manager was doing and Mr. Truett said not on that part of it. Dr. Andersen said the methodology employed by BEMC to do their constructability review was not fully understood by the district. Mr. Larkin asked if the district puts the contract together to tell the CM what, where, when and how to do it. Dr. Andersen said once the district gave the contract to BEMC, staff didn't know how they accomplished the task. Staff thought BEMC was using their own in-house sources to do that review. Mr. Truett said he hadn't seen that done in his 30 years in construction, especially in a public project. Mr. Truett said if he had seen any of this information, he and any of the other board members would have done something about it. Mr. Anderson said that's what the committee is trying to determine. Mr. Truett said the question is whether staff did their job or not. He thought the new superintendent and the board have a responsibility to act. Mr. Anderson said in his opinion the potential expenditures do involve Measure M projects even if some of them didn't get approved by the board. He said maybe the district didn't need to expend as many funds.

Mr. Truett read the next question, "Did you instruct District Staff and/or BEMC to do whatever is necessary to ensure that the Ayala Stadium project was completed on time?" He answered absolutely not; he would never say to complete a project no matter what it takes. Mr. Anderson said it doesn't appear that senior staff members would feel they would need to pursue activities such as splitting bids and the other things in the Ohrbach & Huff report in order to accomplish a project if they felt that there wasn't some other factor that was requiring it to be accomplished. Mr. Truett said that the athletic director at Ayala, Steve Martin, caused a lot of the problem because he scheduled a scrimmage on the 5th versus the 12th and took away a week on the project.

Mr. Truett read from Mr. Bruce's questions, "After the investigation by the legal firm and the results were submitted to the district, why did the COC have to learn of these alleged activities from the news media as opposed to the district informing us?" Mr. Truett said he wished he could answer it because he doesn't know. He said a lot of people thought the board members should have known what was going on in respect to the investigation. He said the board members knew nothing about what was contained in the memos; not one of the memos got through the superintendent to the board members.

Mr. Truett read, "There were ample opportunities to inform the COC regarding the costs exceeding the amounts which would have required that other bids be entertained, yet there was no mentioning of this." He said he didn't know why the committee wasn't informed. If there were costs that exceeded what the architect says they should, that happens.

Mr. Truett read, "On the change orders with the justification 'not in original contract,' did the district specify that these items be included in the original contract and did the architects fail to include them?" He said yes, the architects failed to include them, and that's why they weren't in the original contract. He gave an example regarding a bike area at Rhodes that needed changes. Dr. Andersen agreed that there are changes discussed during meetings and if a change of direction is recommended, the change order process will begin. Dr. Andersen said part of the question is whether the architects are liable. He said that architects will respond that if the district had put a change in the bid, the contractor would have bid it and the district would have paid for it. Dr. Andersen said the bike issue was not the need for a bike area but the location. The school wanted to have an area to add a kiln if funding became available. Mr. Larkin said the explanations in the change orders are ambiguous.

Mr. Calta asked if Mr. Truett had an issue with his questions or with him personally. Mr. Truett said it was improper for Mr. Calta to ask about work done on his residence. Mr. Larkin thought it was a legitimate question if it comes from the committee; if it's true, it's wrong; if it were not true, then they would take him at his word. Mr. Calta said the issue first came up anonymously but since then it had come up again through Dr. Bloch's attorney, and that's the only reason he had asked the question. Mr. Truett said he was asked in a deposition for the Carmichael-Kemp lawsuit about how many times a week he talked with Bob Olin, and he said it was two to three times a week, and he gave examples of the issues he called him about, mostly problems at sites dealing with complaints. There was further discussion about problems at the sites and how to deal with them, mostly about Chino Hills High School, which is not a Measure M project.

Mr. Calta read from his questions for Mr. Truett, "Staff is authorized to use B.E. McMurray as the sole construction management for District projects. Because of this restriction, it is extremely important that staff, the Superintendent and the Board of Education take all steps necessary to ensure that the District remain in compliance with the Education Code, the Public Contract Code and the Government Code as they relate to the preparation and advertising of bids; the soliciting and hiring of professionals and the award of contracts." He said it appears that staff sees that having B.E. McMurray as the sole construction manager as a restriction. He asked if Mr. Truett perceived that that's how staff felt. He said he didn't think they perceived it as a restriction. He said he was in favor of having one construction manager, until things got out of hand, because that's what he'd seen in other districts. He said on December 18th the board received the list he referred to earlier and that is what started the whole investigation; it is the whole key. He said several audits are going on that will answer some questions for everyone.

Mr. Calta said he's grateful that Mr. Truett came to answer questions. Mr. Ayala thanked him for attending the meeting. He shared many of the concerns about what the committee is supposed to be doing and whether or not they're exceeding their procedural abilities. He also had hoped Mr. Gutierrez would have attended because he has several questions to help clarify the gray areas.

2. Discussion of the annual report

Since there was no quorum, the discussion of the annual report was continued until June 28, 2004. Mr. Bachor of PCM3 asked if the committee needed some input from PCM3 for the annual report. Mr. Calta said it would be helpful to have up-to-date information through June 30th for the report. The meeting was adjourned at 6:33 p.m.