

CITIZENS' OVERSIGHT COMMITTEE
MEETING MINUTES
August 26, 2002

Chairman Al Valdez called the meeting to order at 4:04 p.m. with Geoffrey VandenHeuval, Glenn Duncan, Maurice Ayala, Roger Larkin, Gerald Bruce, Michael Calta, Al Valdez, Stuart Holland and Paul Andersen present. Andy Anderson arrived at 4:18 p.m., and Gary Larsen arrived at 4:39 p.m.

Review/Approval of Minutes, July 15, 2002.

Minutes were distributed and reviewed. Members had received and reviewed the minutes previously. Mr. Duncan motioned for approval, Mr. VandenHeuval seconded the motion, and the minutes were approved.

Questions/Answers with Robert Barna, Bond Underwriter

Mr. Barna provided an overview of the Measure M plan for bonding. He gave a handout to the committee and explained the plan of finance and projected issuance schedule. A question was raised about how the public was informed about the issuances. Mr. Barna explained that the information was provided in the Tax Rate Statement, required by law, to tell the voters three things; 1) the estimate of the tax the first year the bonds are issued; 2) the estimate of the tax the first year after the last issuance of bond, and 3) the estimate of the maximum tax throughout the life of the bonds. He further explained how the district, along with bond counsel and the underwriter, planned the issuances to stay within the tax amount promised to the voters. He explained the rationale for spreading out the issuances of bonds, how the tax rate statement is developed, and how assessed valuation affects the ability of the district to sell more bonds. He explained what would happen if an issuance were not spent in the time allotted.

Communicating with Other Bond Oversight Committees

Chairman Valdez shared information he gathered by contacting a number of chairpersons of other bond committees. He found there are three basic avenues they look at: 1) are bond monies being spent on bond projects; 2) are bond monies that are being spent on bond projects being spent effectively; and 3) notifying the public. They communicate with the public via information sites on a website where public information can be reported and citizens can contact members of the committee and leave messages. It was generally agreed that this should be the focus of this group and a web page would be established utilizing the district website. Mr. Calta and Mr. Holland volunteered to be on the website subcommittee. They will contact Dr. Andersen to set up an appointment to meet with him and Bob Blackney, the district director of technology to discuss accomplishing this goal.

Mr. Valdez also found that other bond committees used Rogers Guidelines for Meetings, and suggested that they be used to orchestrate these committee meetings as well because they are easy and well defined.

Mr. Bruce told the group about what he learned in communicating with other bond committee members. He found that other districts had bond committee members participate in the selection of auditors as well as engineering, architectural and environmental firms for bond projects. It was determined that this district was too far along in the construction process to be able to utilize bond committee members for this purpose. Based on information he had received that other bond committees had members involved in the financial and performance audits, Mr. Bruce asked if this committee would also utilize a member for this purpose. It was explained by bond counsel that the committee was free to do this but it would be on a volunteer basis only.

Discuss Future Expectations of Committee Direction

Chairman Valdez made suggestions regarding possible subcommittees. No consensus was made other than to establish the Website Committee.

Discussion was held regarding priorities. The chairman stated he felt that the law was clear that this committee does not have the authority to override the school board on what priorities get done. Mr. Ayala thought that it is a poorly written law and it is a matter of interpretation as to whether a school board is bound by the approved priority list. The point was made that this was a political issue and comments were made that the committee did not want to get involved in the issue at this time. Mr. Ayala also thinks the community is looking to the committee to address the trust and the priority list issues.

Mr. VandenHeuval explained he wants to spend the time listening to reports on how the district is actually spending the money, what they plan to spend the money on over the next three to six months, short term, and longer term, get strategy updates as projects get completed, visit sites and report on a regular basis to the community.

Mr. Holland agreed that the committee has no real power but that they should be prepared to make the school board aware if they don't agree on the priorities and not just rubber-stamp everything the board approves.

Mr. Duncan agreed that it is a political issue and the committee can exert political pressure on the board to remedy the situation of the priority list. He thinks that the committee has an important job to do and should not be sidetracked on issues they have no control over.

Mr. Larkin pointed out that the stadium is the only issue of concern in the priority list. He agreed the committee can let the board members know the concerns, but he also thought the committee had more important concerns of how to oversee spending bond money.

Questions/Answers with Legal Counsel

Lisalee Anne Wells, bond counsel from Fulbright and Jaworski provided a handout and gave an explanation of bonds in general and bond law in particular. She explained that there are tax rules on expenditures and pacing requirements under the tax code. School districts have two different sets of laws that govern their tax-exempt bonds; 1) State law, AB1908 and changes by Proposition 39 to the Constitution; and 2) Internal Revenue Code of the United States. The Internal Revenue Code expects districts to size the transaction at the dollar amount they can spend within the time limit specified. There are timelines the district is expected to meet in terms of due diligence. They have to commit to spend a specified portion of the money within the first six months on projects to get started. She explained that the code is very clear that money may not be spent on something that is not on the project list, but the law doesn't say in what order to undertake the projects.

Ms. Wells defined the major jobs of the committee in audit and review areas: 1) Take the financial information provided by the district, keep an eye on the balance of bond proceeds, and know how much money is there and how much it's making (earnings that also have to be spent on bond projects); and 2) Once the money starts being expended, check to see if it's being expended efficiently and for those projects. The law suggests the committee should make suggestions to the district regarding cost effectiveness, such as combining use. There is a formal system for the committee to use to make suggestions, that is to compile them and present them to the district either orally or in writing.

Bond counsel said the district is required to provide two audits: a financial audit and a performance audit. The financial audit must be paid for by the district, can be paid out of bond money, and it can be done by the district's regular CPA firm. The rationale for using the regular CPA firm is that they are already working on an audit for the district and it would save money. The County treasurer keeps the bond proceeds. The bond proceeds will show up on the audit as an asset of the district and have investment earnings. Bond proceeds will have their own section on the audit and the money is not mixed in with the district general funds. The law calls for the financial audit to show a breakdown of the expenditure of the bond proceeds. The performance audit may also be paid for out of bond money and it is suggested that it be done by a third party, someone not involved in either the planning, the construction or the project management, perhaps an outside architectural firm.

The committee is required to make one report, the annual report. Ms. Wells encouraged the committee to decide what the annual period will be, suggesting either first money received, first money spent, or the anniversary of the first Citizens' Oversight Committee meeting. And she encouraged the committee to prepare a written report and make a presentation at that time to the board.

Bond counsel explained that the law permits the committee, on reasonable notice to the district, during business hours, with protection, to go out and see what's being done with the money. She said that Deferred Maintenance plans are supposed to be given to the committee and the district is required to provide administrative support, which may not be paid for out of bond proceeds

A discussion was held about the recourse that the committee has if they find that money is being spent on projects not on the list. Ms. Wells explained the three recourses under law; 1) make a presentation to the board; 2) inform the public; and 3) taxpayer lawsuit. She further clarified that there is no funding in bond law provided for a taxpayer lawsuit. In answer to a question about how to fund a taxpayer lawsuit, she suggested either using an attorney who will volunteer their time, the committee and public may fundraise to pay the retainer for an attorney, or go to a public interest law firm or organization that does taxpayer lawsuits. There was discussion that problems might be caused by the construction management firm, but in that case, Ms. Wells pointed out that the committee, district staff and the board would be on the same side and the board can approve funding from bond proceeds for that sort of lawsuit.

Brown Act Questions

Questions were answered by bond counsel regarding the committee being designated a Brown Act committee. While citizens' oversight committees would not generally be subject to the Brown Act rules, it was specified in AB1908 that they be Brown Act committees so the public could watch the deliberations.

Discussion of By-Laws and Meeting Schedule

Discussion was held regarding the frequency of meetings. It was decided to hold monthly meetings as long as the committee had important issues to consider. After the initial issues had been covered thoroughly, the meetings may be held every six weeks.

The next meeting will be Monday, September 23, at 4:00 p.m. The committee will meet in the District Board Room to receive a report on what projects are started and what money has been spent. They will then receive a briefing and take a bus tour of the Wickman Elementary School site construction and Don Lugo High School modernization project.

Other Items

Mr. Bruce had questions regarding the methane management program at the Woodcrest Junior High and Liberty Elementary school site. He wanted to know if the start of construction will interfere with the methane management. Dr. Andersen explained that the building pads are the primary area for the methane mitigation liquid boot that gets poured to prevent methane gas from escaping into the buildings, and what is being done at the sites now will not impact the methane mitigation procedures.

Mr. Holland brought up the issue of the president of the committee going to the school board to express that some of the members have concerns about the timing of the projects and community trust issues. Mr. Ayala suggested it could be part of a larger presentation to the board to report on what the committee had accomplished up to this point. Some members didn't agree that it is the role of the committee to get involved in it and some

felt that the committee is not prepared at this time to pose those issues to the board. It was pointed out that the members of the committee are not in agreement on the issue and the issue would not be brought forward for a vote because it was not on the agenda.

Sylvia Orozco addressed the committee regarding a letter she had sent to each of them. She thanked Mr. Bruce and Mr. Calta for responding. She encouraged the committee members to work on providing a means of communication to the public and a way for the public to communicate with members.

Mr. Duncan made a motion to adjourn the meeting, Mr. Holland seconded, and the meeting was adjourned at 5:59 p.m.