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JOINT MTC/BATA MEETING

Wednesday, September 28, 2011
Joseph P. Bort MetroCenter
Lawrence D. Dahms Auditorium
101 8th Street, 1st Floor
Oakland, CA 94607

MINUTES

ATTENDANCE

Chair Tissier called the meeting to order at approximately 9:12 a.m. In addition to Chair Tissier, the following Commissioners were present: Vice Chair Rein Worth, Commissioners Azumbrado, Bates, Campos, Cortese, Dodd, Giacopini, Glover, Green, Haggerty, Halsted, Kinsey, Liccardo, Mackenzie, Mullin, Sartipi, Sperry and Wiener.

FINDINGS AND RECOMMENDATIONS OF THE AD HOC COMMITTEE ON REGIONAL HEADQUARTERS

Chair Tissier indicated that the Ad Hoc Committee, comprised of Commissioners Dodd, Haggerty, Kinsey, Sperry, Worth and herself, was appointed by the Joint MTC/BATA board on August 17, 2011 to "study the serious legal and financial issues and other issues brought to the attention of the Commission and that have been raised, concerning the potential acquisition of 390 Main Street, San Francisco, and report back to the Joint MTC/BATA board at a future meeting with a recommendation for action within 60 days." The highlights of their findings are:

- Collocation of the regional agencies is a worthy objective.
- The real estate search process was fair and transparent.
- The use of toll funds to purchase and improve the building is a legal and appropriate use of such funds.

- A proposed purchase price in the range of \$100 million is reasonable, and is largely consistent with comparable properties, independent broker opinions of value and independent appraisals.
- Due diligence has confirmed there is no need for additional expenditures on the building other than those already factored in to the budget previously proposed on July 27th.
- 390 Main Street is well served by multiple modes of public transit. A shuttle or similar service can be inexpensively provided between BART and the building for disabled members of the public.

Chair Tissier indicated that the recommendations from the Committee are:

- To authorize staff to bid on the purchase of 390 Main, up to a maximum amount to be established in closed session, assuming the Commission and Authority first vote in open session to approve the committee's findings and recommendations.
- To authorize formation of a joint powers authority, which will own the building, at the Commission and Authority meetings following this meeting.
- If MTC/BATA submits the winning bid, to return to the BATA and the newly created JPA boards to accept and disclose the final price and take other budgetary and administrative actions to effectuate closing of the transaction.

After a staff presentation, and public and Commissioner comment, the full Commission and Authority will vote on whether to approve the committee's findings and recommendations. If the vote is affirmative, the Commission and Authority will adjourn to closed session to discuss price and terms as more fully announced before entering into closed session.

Executive Director, Steve Heminger made a presentation summarizing the decisions in the proposed site selection for a co-location of a joint regional agency.

Commissioner Wiener asked Mr. Heminger as to how long ago did the process start in terms of public discussion at the MTC and other agencies for possible use of toll money to purchase a property for co-location in the bay area? Mr. Heminger responded that the process had begun about two years ago in September 2009. Mr. Heminger indicated that he does not recall if the discussion included how to finance the transaction at the very first meeting. It probably came later, but it certainly has been part of the discussion for the past year as they moved ahead into the phase of looking into actual properties. Commissioner Wiener, also asked if before the MTC voted in July to move forward with the San Francisco property as opposed to the Oakland property; had Senator DeSaulnier or Mayor Quan or any elected officials from the East Bay indicated their belief that it would be illegal or inappropriate to use toll moneys to purchase real estate.

Mr. Heminger replied not to his knowledge. Commissioner Wiener recalled that the people in question were actually advocating to purchase the Broadway in Oakland. Mr. Heminger further said that folks were advocating to purchase property within their jurisdiction. Commissioner Wiener asked whether Mr. Heminger was ever informed that Senator DeSaulnier had suggested that there be an audit of any purchase and/or on the appropriateness on the use of toll money, before MTC voted to purchase the building in San Francisco over the Oakland property. Mr. Heminger replied that he believed that the request for the audit happened after the MTC meeting in July.

The Commission and Authority received public comment from the following:

- Jean Quan, Mayor, City of Oakland – spoke before the Commissioners and indicated that it was not a question about San Francisco vs. Oakland, as she indicated in a letter she sent to the Commission recently. She also clarified that the question about the use of toll funds is because no one knew that the Commission and the Authority were going to buy a building twice the size of what was needed and use toll funds for real estate speculation. The question that citizens also raise has to do with use of toll funds to buy a building for private use not for public use and to rent out to private agencies. She indicated her concern with the seismic safety standard on the proposed building. She continued to express her support for a building in Oakland.
- Honorable Sandre Swanson, Assembly member District 16 - referenced a letter he sent to the Commission and emphasized on his support for a building in Oakland.
- Kathy Vaquilar, ACCE – Urged MTC to delay decisions on purchasing the proposed building, due to its inaccessibility and cost to the public. She indicated that the public want the money used for the building purchase to be used for public transportation services instead. She spoke in support of a facility in Oakland.
- Lindsay Imai, Urban Habitat – spoke to oppose the purchase of the proposed building due to the high cost. She believes that the money can be put to better use, considering what the transit agencies are facing as far as financial challenges. She expressed that the proposed shuttle is inadequate to the needs if the public.

Commissioner Dodd clarified that the money being used for the purchase of the building cannot be used for transit.

- Michelle Ronsey, PAPCO – spoke in support of an Oakland site.

- Nathan Roupp, Senator Loni Hancock's office – read a letter sent by Senator Hancock; Senator Ellen Corbett and Assembly member Nancy Skinner, referencing the Bay Area Toll Authority audit to be performed by the Bureau of State Audits and urging MTC not make final decisions regarding the relocation until the audit findings are released and reviewed; and again emphasizing on a downtown Oakland or East Bay site close to BART and bus stations.
- Maha Ibrahim, Assembly member Nancy Skinner's office – spoke in support of an Oakland site.
- Carmen Rivera-Hendrickson, ADA Advocate – spoke in support of an Oakland site.
- Mark Stivers, Senate Transportation and Housing Committee Senator Mark DeSaulnier's representative – He expressed that the Senator is available to speak to any Commissioner that wishes to speak to him to discuss his position at any time. Mr. Stivers reconfirmed the Senator's belief that toll payers funds to enter the commercial real estate business is inappropriate. The Senator questions the need to re-locate. The Senator further asked that action be delayed until the results of the audit are known.
- Jack Broadbent, BAAQMD – encouraged the Commission/Authority to move forward in the acquisition of 390 Main Street in San Francisco. He referenced the BAAQMD's interest in sharing space with MTC and BATA.
- Paul Junge, Oakland Metropolitan Chamber of Commerce – spoke in support of an Oakland site.
- Joyce Roy – expressed her opposition for the 390 Main Street building in San Francisco.
- Alia Phelps, ACCE – spoke in support of public transit and the Oakland site.
- Rebecca Kaplan, Councilmember, City of Oakland – spoke in opposition of the 390 Main Street building in San Francisco and continued to support an Oakland site. She referenced a handout that outlines the seismic retrofit of the proposed building. She clarified that the question pending it is not whether BATA has the authority to purchase and manage public facilities for the purpose of reducing bridge congestion and improving the bridge, what is being questioned is whether BATA has legal authority to spend the money on for-profit commercial real estate business.
- Mahasin Abdul Salaam, Genesis – spoke in support of the MTC/ABAG Library housed in the MetroCenter facility.

- Bette Ingraham, MD, Genesis – spoke about her concern of the rush to judgment to acquire 390 Main Street and expects the same zeal when it comes to non-compliance with Title VI guidelines under Federal Government to which MTC/BATA have a fiduciary and regulatory responsibility to enforce. She referenced a complaint that was filed by Public Advocates on behalf of Genesis and Urban Habitat that claims MTC/BATA is not in compliance of Title VI and indicated that those things are also important.
- Nancy Kirshner-Rodriguez, SFMTA – spoke in favor of the 390 Main Street facility and expressed the SFMTA commitment to the Commission/Authority on the co-location facility.
- Karen Smulevitz – spoke in support of an Oakland site.
- John Jensen – referenced charts which he distributed, showcasing a multi mode and public transit analysis supporting the 390 Main Street facility.
- Todd Rufo, City of San Francisco – read a letter sent by Mayor Edwin Lee; Supervisor David Campos and Supervisor Scott Wiener in support of the Commission reaffirming its decision to acquire the 390 Main Street facility in San Francisco.
- Gregory McConnell, Jobs & Housing Coalition – spoke in support of an Oakland site.
- Dennis Conoughan, San Francisco Chamber of Commerce – spoke in support of the 390 Main Street facility.
- Jessica Lehman, Community Resources for Independent Living – spoke in opposition of the 390 Main Street facility.
- Andreas Clover, Alameda County Trades Council – spoke in support of an Oakland site that would create local jobs and promote business hubs. Indicated interest on an economic analysis and urged the Commission to slow down their process; weigh all the factors and not to rush to a decision.

Commissioner Green expressed his gratitude for all the work that the ad hoc Committee did and stated that he stills believes that the location of the 390 Main Street facility remains a problem for him and reemphasized his disagreement for the acquisition of this facility.

Commissioner Campos made reference to the public issue of accessibility and thanked advocates, indicated that the City of San Francisco and region will work to make sure that access is the top priority as MTC/BATA moves forward.

Motion made by Commissioner Spring seconded by Commissioner Dodd that the Commission and the Authority approve the ad hoc committee's findings and recommendations as presented.

Commissioner Halsted expressed BCDC's interest and support of the co-location with MTC at the proposed facility.

Commissioner Cortese thanked the ad hoc committee for their work and report. He indicated that he is comfortable moving forward and thanked staff for being available to answer his questions.

Commissioner Haggerty offered his appreciation to MTC staff in general and indicated that he personally does not necessarily like the building, and is not opposed to San Francisco, just personally believes that this is not necessarily the best building that could have been acquired. He indicated that the work in relation to using BATA funds is a sound deal and could possibly keep toll rates down in the future. The idea of a regional agency and having BCDC, MTC, ABAG, and BAAQMD in one building is sound.

Commissioner Liccardo asked about the legal issues that have been routinely raised by the public. He expressed that specifically in their own cities and counties there are public facilities often created with the use of public bonds and their private activity restrictions in those facilities. He asked if there is a legal opinion on appropriateness of the use of the public funds in the said case. Bill Donovan, Bond Counsel, with Mary Collins of Orrick also present answered that there is no question that BATA and MTC can acquire facilities to house their operations. Many governments lease space to private entities. Commissioner Liccardo asked Mr. Heminger about the criteria used when evaluating space. Mr. Heminger answered that yes, the three agencies had a criteria that ensure that they would get a building that was not only adequate for the current space needs, but had some room for growth and not necessarily to rent. But if extra space is to be available it would only make sense to get the extra income if possible.

Commissioner Bates mentioned that as the Chair of the Air District, the Air District looks at the advantages of keeping 390 Main Street facility and voted overwhelming to co-locate with MTC. Commissioner Bates said that he is concerned about the large percent of space that is going to be available to rent. He also indicated concerns about the seismic issues not being well thought out, and that it is unfortunate that ABAG will now not be relocating with MTC when that was the initial point of co-locating -- to have the proximity of one another to be able to work and communicate together.

Commissioner Mackenzie expressed his support of the ad hoc committee's recommendation and moving forward.

Commissioner Dodd indicated that this is not about an issue of San Francisco vs. Oakland. There has been a process and it has been going on for a long time. He expressed his concern about people's perception of the Commission not listening to the public. He wants the public to know that the Commission did listen. He expressed his concerns and supports going to closed session to discuss the building's price and terms. He believes that if MTC/BATA acquires the facility ABAG will co-locate.

Commissioner Spering said that he wanted to address comments about accessibility and indicated that San Francisco has been one of the most progressive cities not only in this region, but in the nation providing for seniors and persons with disabilities and believes that is not a valid criticism. He believes that the leadership of San Francisco will deal with the concerns raised and supports going to closed session to discuss the property's price.

Commissioner Glover expressed concerns about the legislators' opposition. The same legislators have been some of the stronger supporters of these agencies on the co-location of these agencies, with the understanding that these dollars can be spent. Commissioner Glover also expressed his respect of the ad hoc committee's recommendation, but indicated that he cannot support it because not all partners are in agreement.

Commission Vice Chair Rein Worth made reference to all the comments pro and con received from the public and fellow Commissioners; and her agreement with some of them. She also stated that she wanted to reiterate the fact that MTC and BATA have done an exemplary job with the stewardship of the public dollars that are collected through tolls in terms of the management and commitment to projects. She expressed her concern on the use of the toll funds and voter support, and the fact that not all four agencies will be co-locating. She indicated that she cannot support moving forward.

After receipt of public comments Commissioner Spering moved and Commissioner Dodd seconded that the Commission and the Authority approve the ad hoc committee's findings and recommendations as presented. Motion passed with 10 yes votes by Commissioners Campos; Dodd; Halsted; Kinsey; Liccardo; Mackenzie; Mullin; Spering; Tissier and Wiener and 6 noes by Bates, Cortese; Glover; Green; Haggerty; and Rein Worth.

CLOSED SESSION

The Commission and the Authority went into closed session at approximately 11:15 a.m. pursuant to Government Code Section 54956.8: to confer with real property negotiators to discuss the acquisition of real property and proposed co-tenancy arrangements with the Air District and, potentially, ABAG as follows: Property - 390 Main Street, San Francisco. Agency Negotiators: For MTC/BATA: Metropolitan Transportation Commission/Bay Area Toll Authority, CB Richard Ellis

and Orrick, Herrington & Sutcliffe LLP: MTC/BATA Negotiators: Steve Heminger, Executive Director, Brian Mayhew, Chief Financial Officer, Darin R. Bosch, CBRE Senior Vice President and Michael H. Liever, Esq., Partner, Orrick Herrington & Sutcliffe LLP. What will be discussed is what is under negotiation; that being only price and terms.

OPEN SESSION

The Commission returned to open session at approximately 12:00 p.m. and General Counsel Adrienne Weil reported that the Commission and the Bay Area Toll Authority met in a closed session for conference with real property negotiators as noticed on the agenda dated September 28, 2011. Upon a vote of 11 to 5 with Commissioners: Cortese, Green, Haggerty, Liccardo and Rein Worth voting No, direction was given to staff on a maximum bid, price and terms for bidding. The amount and terms will be disclosed at a later meeting after conclusion of the real property negotiating process.

PUBLIC COMMENT/ADJOURNMENT/NEXT MEETING

There being no further business or public comment, Commission Chair Tissier adjourned the Joint MTC/BATA meeting at 12:02 p.m.

Adrienne J. Tissier, Chair