



SPECIAL BAY AREA TOLL AUTHORITY (BATA) MEETING
October 12, 2011
MINUTES

ADRIENNE J. TISSIER, CHAIR
San Mateo County

AMY REIN WORTH, VICE CHAIR
Cities of Contra Costa County

TOM AZUMBRADO
*U.S. Department of Housing
and Urban Development*

TOM BATES
Cities of Alameda County

DAVID CAMPOS
City and County of San Francisco

DAVE CORTESE
Santa Clara County

BILL DODD
Napa County and Cities

DORENE M. GIACOPINI
U.S. Department of Transportation

FEDERAL D. GLOVER
Contra Costa County

MARK GREEN
Association of Bay Area Governments

SCOTT HAGGERTY
Alameda County

ANNE W. HALSTED
*San Francisco Bay Conservation
and Development Commission*

STEVE KINSEY
Marin County and Cities

SAM LICCARDO
Cities of Santa Clara County

JAKE MACKENZIE
Sonoma County and Cities

KEVIN MULLIN
Cities of San Mateo County

BIJAN SARTIPI
*State Business, Transportation
and Housing Agency*

JAMES P. SPERING
Solano County and Cities

SCOTT WIENER
San Francisco Mayor's Appointee

STEVE HEMINGER
Executive Director

ANDREW B. FREMIER
Deputy Executive Director

Attendance

Chair Adrienne Tissier convened the meeting at 9:19 a.m. In addition to Chair Tissier, the following Authority members were in attendance: Tom Azumbrado, Tom Bates, David Campos, Dave Cortese, Bill Dodd, Dorene Giacopini, Federal Glover, Mark Green, Scott Haggerty, Steve Kinsey, Jake Mackenzie, Kevin Mullin, Bijan Sartipi, Jim Spering, Scott Wiener and Vice Chair Amy Rein Worth.

Chair Tissier Report:

Chair Adrienne Tissier announced that the Bay Area Toll Authority was meeting under special circumstances to conduct the business related to the acquisition of 390 Main Street, San Francisco, California for the Bay Area Headquarters Project. The Authority will meet in closed session in the beginning of the meeting to confer with real property negotiators to discuss the acquisition of real property on 390 Main Street. The Authority will then proceed into open session and vote on the acquisition of 390 Main Street. Before the Authority moves into closed session, public comment will be taken on the potential acquisition of 390 Main Street, San Francisco. Formal action will not be taken during the closed session but after the closed session staff will present a summary and will take public comment at that time. Formal action will then be taken on BATA Resolution No. 102 and BATA Resolution No. 98 Revised. Due to the many people wishing to comment today, the comment period will be reduced to one minute per person so as to permit today's full meeting agendas to be completed before the loss of a quorum.

Those wishing to speak before closed session were for item #4 on the agenda:

- Michelle Rousey, Oakland resident reminded the Authority why MTC should not move to San Francisco and consider the logistics of how hard and time consuming it would be for the public to get to the building. She encouraged all Commissioners to go to the San Francisco building on public transportation and walk to the building. Ms. Rousey said it was a challenging walk.
- John Jensen brought a chart of a study to show that within a half a block 390 Main Street is accessible from 37 cities on direct public transit with no changing of an access point. In contrast the 1100 Broadway location is accessible from 27 cities within a stop within half block with no changing of transit access. Within 8 blocks of 390 Main Street you can get to 58 cities with no change of public transit access and within 12 blocks of 1100 Broadway you can get to 32 cities. Seven counties have public transit providing access to 390 Main Street, SF, within half a block; four counties have public transit providing access to 1100 Broadway accessible within half a block.
- Aide to Senator DeSaulnier, Lupe Schonberger mentioned the Senator continues to be opposed to the purchase and has a letter that will be read for the record after the Authority reconvenes from closed session.

Counsel introduced Closed Session – Adrienne Weil, General Counsel announced the commencement of closed session for a conference with real property negotiators pursuant to Government Code section 54956.8 to confer with real property negotiators to discuss the acquisition with real property and proposed co-tenancy arrangements for MTC, BATA, the Air District and potentially ABAG as follows: the property is located at 390 Main Street, San Francisco, the agency negotiators for MTC and BATA are the Metropolitan Transportation Commission /Bay Area Toll Authority, CBRichard Ellis and Orrick, Herrington & Sutcliffe LLP. MTC/BATA negotiators are Steve Heminger, Executive Director, Brian Mayhew, Chief Financial Officer, Darin Bosch, CBRE Senior Vice President and Michael H. Liever, partner at Orrick Herrington & Sutcliffe, LLP. Under negotiation: both price and terms.

Closed Session: 9:27 a.m.

Open Session: 10:10 a.m.

Counsel report – Adrienne Weil, General Counsel reported that the Bay Area Toll Authority met in closed session concerning the item on the agenda. No official action was taken.

Steve Heminger, MTC/BATA Executive Director, mentioned there would be a brief report by Michael Liever, who is the outside real estate counsel, for the purpose of providing the public a briefing of the summary of the proposed purchase and sale agreement. Mr. Heminger went on to highlight that the proposed purchase price would be \$93 million. Added to the \$93 million would be a budgeted \$74,026,515 for rehabilitation of the facility. The total budgeted amendment being asked to be approved to enable MTC/BATA to move forward with the purchase and the improvement of the building is \$167,026,515.

Mr. Heminger introduced Michael Liever to summarize the remainder of the main points of the purchase and sale agreement. Mr. Liever mentioned the purchase price being \$93 million and the seller is a joint venture between a local developer and a New York firm. A joint powers authority was formed to be the buyer for this transaction. Two leases affect the property, one of which is with the DEA which is on the top floor and the other is a rooftop lease with Nextel. There were two rounds of heavy negotiations, each with several sub-parts. Recourse to the sellers is limited to 180 days after closing and there is a cap on liability of \$1,000,000 which, if there are no claims made, will be reduced to \$500,000 at the end of the year. Closing will happen by Thursday, October 13, 2011 or Friday, October 14, 2011. Due diligence has been completed on both legal and business sides, has been completed for a while at this point, and due diligence issues have been worked out. At this point 99% of the purchase agreement is complete, and finalizing closing logistics remain.

Mr. Steve Heminger announced that on the due diligence aspect, when due diligence work began after the Authority's July vote, the majority of the due diligence was complete before the August vote. He noted that the binders in front of Mr. Fremier's seat represented the completion of work and that the majority of the reports generated through the due diligence process were up for public review on the MTC web site. Due to the work completed, Mr. Heminger felt comfortable with closing the transaction this week.

Authority to Acquire 390 Main Street, San Francisco, CA.

Chair, Adrienne Tissier moved approval to acquire 390 Main Street, San Francisco for the purchase price of \$93,000,000 together with moneys for improvements, contingencies, optional exterior treatment improvements, and expenses of \$74,026,515, for a total expenditure of \$167,026,515.

Commissioner Jim Spering seconded the motion.

Chair Adrienne Tissier requested a roll call vote be taken on item #4 – Authority to acquire 390 Main Street, San Francisco, CA.

Commissioners Anne Halsted and Sam Liccardo were not present at the meeting.

Yes votes cast by Commissioners: David Campos, Bill Dodd, Steve Kinsey, Jake Mackenzie, Kevin Mullin, Jim Spering, Scott Wiener, and Chair Adrienne Tissier.

No votes cast by Commissioners: Tom Bates, Dave Cortese, Federal Glover, Mark Green, Scott Haggerty and Vice Chair Amy Rein Worth.

Final vote: 8 Yes and 6 No. Motion passed.

BATA Resolution No. 102, Authorization of Contribution of Funds to the Bay Area Headquarters (BAHA).

The authority was requested to approve BATA Resolution No 102, which authorizes BATA to contribute funds to BAHA for acquiring 390 Main Street in San Francisco and funds for developing the facility and other related actions

Members of the public spoke on item # 5a - BATA Resolution No 102, Authorization of Contribution of Funds to the Bay Area Headquarters (BAHA).

- Rebecca Kaplan, City of Oakland commented that she was looking forward to meeting on other important topics throughout the Bay Area and mentioned there were a couple of documents being passed out because there has been a lot said about whether or not there was a fair process and whether or not ABAG in particular which voted to decline somehow was not abiding by the process. Ms Kaplan wanted to make sure the Authority had for its records the actual board approved building selection criteria with an attachment A from a prior report from a few months ago. Part of the reason why there has been such concern is when the recommendation arrived the expectation was to review the top two buildings for a final comparison. Instead, the recommendation came back with only one building and no full building evaluation of the top two. More importantly, several of the board approved criteria were excluded from the evaluation; specifically seismic, LEED, ADA, code compliance, and the ability of Board members to access the site. Ms. Kaplan noted that the document has checks and Xs on it and was given to her in response to her request for the evaluation. The list of criteria that were evaluated do not match the list of criteria approved by the Board and LEEDs was excluded and seismic was excluded. It is important because the recommended building scores lower on seismic than the other finalist and scores lower on LEEDs. Ms. Kaplan noted that staff gave her a document entitled responses to her questions in which she asked about the LEEDs comparison. Staff acknowledged they never did the LEED comparison and they claim to have never received the LEED nor the seismic on the 1100 Broadway. Ms. Kaplan noted that was not true and if staff lost the packet they should have asked for another one. She wanted to make clear her commitment to continue to work with BATA/MTC truthfully and compatibly.
- Will Travis, Executive Director with BCDC. BCDC is a state agency; it is located in San Francisco. By law its office must be in San Francisco and its lease is expiring in April 2013. Should BATA decide to purchase this building, it is BCDC favored option. BCDC is looking for space. Having the opportunity to be there with the other agencies is a great chance for success in the region. Secretary of Energy, Stephen Chu was at the Berkeley Lawrence Lab and he used to say that great discoveries were made by people working on unrelated projects simply talking to each other by accident. Mr. Travis noted that having all of the agencies together presents that kind of opportunity. Winston Churchill said, "We shape our buildings thereafter, they shape us." This is an opportunity to shape the region's future.

- Michelle Rousey, commented that the board has reviewed the topic in closed session and has probably made up their minds but as Rebecca Kaplan has said, I don't think you have fairly compared the two buildings in due diligence; I don't think you have done that in a way that has been fair to both Oakland and San Francisco; and I don't think it really has been about Oakland or San Francisco and it shouldn't be about which building is right for what city. It should be about what is right for your employees.
- Lupe Shoenberger, with Senator Mark DeSaulnier office presented a letter and read it into the record. Letter was directed to Chair Adrienne Tissier and read as follows:

Dear Ms. Tissier:

I understand that today the Bay Area Toll Authority (BATA) is scheduled to consider the purchase of a building in San Francisco and renovations to house the Metropolitan Transportation Commission (MTC)/BATA, the Bay Area Air Quality Management District and potentially the Association of Bay Area Governments. As you know, I am opposed to this purchase.

I apologize that I am unable to attend today's meeting as well as the meeting on September 28th as I have been travelling. It has come to my attention that at the last MTC meeting a few Commissioners expressed concern that they have not been able to reach me to discuss this issue. I was surprised to learn this and will look into it. But I want to assure you that I am available to discuss this issue with any Commissioner.

I am concerned that this is an improper use of toll revenues which has not yet been fully vetted. As the Chair of the Senate Transportation and Housing Committee, and a Senator representing hundreds of thousands of East Bay motorists, I think that we should all be working together to serve all of our constituents' transportation needs.

With the incredible Bay Area transportation funding challenges that we face, we all need to be working together on this and other transportation issues. Together we must all earn the trust and respect of the motorists that drive on our roads and bridges. When voting on this transaction, MTC/BATA should consider how it may erode the trust of the toll payers that elected us to serve their needs.

Again, I respectfully request that BATA/MTC please put a hold on this purchase until the State Auditor has had the opportunity to fully look into the transaction.

Sincerely,
Senator Mark DeSaulnier, Chair

- Jack Broadbent, Executive Officer with the Air Quality Management District, expressed thanks for action taken so far today and looks forward to working with MTC. The Air District is in need of finding a new location. The Air District is experiencing some significant deferred maintenance and have been for several years now and the 390 Main Street, The Air District believes will not only meet its needs but will serve as an excellent regional governance center. It is ideally suited for that. To answer any questions BATA may have in terms of logistics Mr. Broadbent noted that the Air District will move expeditiously now to finalize its agreement and the Air District Board will be taking up an action in November. On behalf of the Air District Mr. Broadbent applauded the Authority's efforts in its decision.
- Joyce Roy, public citizen, commented on the physical attributes of the building. Will there be big fights over who gets what few windows there are? The good news is that this action of BATA will speed up a creation of a true Metropolitan Planning Organization (MPO), which we don't have in the Bay Area right now. This is going to speed up the action to really put together the agencies so that we have a true MPO.

Item # 5a – Resolution No. 102, Contribution of Funds to BAHA is there a motion:

Commissioner Jim Spering moved approval of Resolution No. 102, which authorizes BATA to contribute funds to BAHA for acquiring the 390 Main Street, San Francisco facility and funds for developing the facility and taking other related actions. Second by Commissioner Steve Kinsey.

Chair Adrienne Tissier requested a roll call vote be taken on item #5a – BATA Resolution No. 102 Contribution of Funds to the Bay Area Headquarters (BAHA).

Commissioners Anne Halsted and Sam Liccardo were not present at the meeting.

Yes votes cast by Commissioners: David Campos, Bill Dodd, Steve Kinsey, Jake Mackenzie, Kevin Mullin, Jim Spering, Scott Wiener, and Chair Adrienne Tissier.

No votes cast by Commissioners: Tom Bates, Dave Cortese, Federal Glover, Mark Green, Scott Haggerty and Vice Chair Amy Rein Worth.

Final vote: 8 Yes and 6 No. Motion passed.

BATA Resolution No. 98, Revised, Budget Amendment for the Bay Area Headquarter Project.

Upon the motion of Chair Adrienne Tissier and second of Commissioner Bill Dodd the Authority approved authorizing an amendment to the FY 2011-12 BATA Budget for the purpose of transferring funds to BAHA for acquiring 390 Main Street, San Francisco (Facility) and funds for developing the Facility.

Chair Adrienne Tissier requested a roll call vote be taken on item #5b – BATA Resolution No. 98, Revised, Budget Amendment for the Bay Area Headquarters Project.

Commissioners Ann Halsted and Sam Liccardo were not present at the meeting.

Yes votes cast by Commissioners: David Campos, Bill Dodd, Steve Kinsey, Jake Mackenzie, Kevin Mullin, Jim Spring, Scott Wiener, and Chair Adrienne Tisser.

No votes cast by Commissioners: Tom Bates, Dave Cortese, Federal Glover, Mark Green, Scott Haggerty and Vice Chair Amy Rein Worth.

Final vote: 8 Yes and 6 No. Motion passed.

Public Comment/Other Business/Next Meeting/Adjournment

There being no further public comment or business, Chair Adrienne Tisser adjourned the meeting at 10:27 a.m.