

**SAN JUAN UNIFIED SCHOOL DISTRICT
CITIZENS' OVERSIGHT COMMITTEE (COC)**

Del Campo High School – ACC Room

September 17, 2013

6:00 pm



SJUSD COC MEETING MINUTES

Attendee	Attended	Attendee	Attended
Eric Bakke – Committee Member	X	Michelle Adams – Committee Member	X
Dick Cowan – Committee Member		Kimberly Sarkovich – Committee Member	X
Tony Oddo – Mod. Coordinator	X	Jeff Slowey – Committee Member	
Maureen Harris – Bond Secretary	X	Kimberley Johnson – Committee Member	X
Tom Fante – Construction Manager	X	Kip Skidomore – Committee Member	X
James Ray – Committee Member	X		

1. Tour of the bathroom construction at Del Campo High School.

Eric commented - Great work on the bathrooms. Has there been any feedback from the students or the administration?

Tony answered that the administrators have been very happy with the work going on and feel that a really good job is being done on the bathrooms.

2. Call to Order, Roll Call, Quorum Count and Welcome Visitors:

Eric comments that Jeff and Dick are not in attendance.

3. Approval of Minutes 7/16/13.

James Ray states he was not at last meet even though the minutes reflect that he was there. There were no other comments. Kip makes a motion to approve the minutes. Kent seconds the motion. Minutes were approved unanimously.

4. New Business/Announcements.

Eric reported on two new bills by Senator Wyland that were signed by the Governor a few weeks back.

The first is Senate Bill 581. This bill requires that when a Prop 39 audit is complete and finalized the school district will provide the audit to their bond over site committee at the same time. The audit is to be inclusive of any comments and responses that the school district may have provided to the auditors. This bill was created as the lack of scope for the auditors left a lot to be desired.

The second bill, Senate Bill 584, requires the auditing practices for Prop 39 bond funds be incorporated into the State Audit Appeals process. This will standardize auditing practices for all school districts state wide. If there are any concerns with an audit it can be appeal through the Controller’s Office and The Office of Education.

New COC member – (Eric).

Eric recommended - Brian LaPask to fill the vacancy for the COC membership. Eric worked with Brian in the past but also liked him for the spot as he represents the State perspective. Brian works for the Office of Public School Construction (OPSC), the entity by which the district receives state funding to build and modernization schools and he feels that Brian will be a valuable resource for the COC. Eric hopes to have Brian on the committee before the next COC meeting.

Facilities Master Plan Sub Committee – (Brett).

Brett explained that this is different committee from that of the Facilities Mast Plan Committee. This is another set of eyes looking at how to prioritize the Facilities Master Plan. Brett has offered to have a COC member on that committee. Eric has asked Michelle who has agreed to be on the subcommittee. Michelle will report back to the committee after those meetings. Thank you Michelle for agreeing to do that.

5. Staff Announcements – (Brett).

Brett - Recently there were four questions regarding potential conflicts of interests. Brett worked with Eileen Diepenbrock, Diepenbrock Elkin, LLP, on these possible conflicts of interest. All came to none.

The first dealt with one of the proposed Lease/Leaseback entities as she is the daughter of Dick Cowan. No conflict per Eileen Diepenbrock.

The second dealt with a question of a potential conflict of interest regarding Construction Manager Danny Martin of ICS and a company owned by his father bidding on projects. Again, working with Eileen Diepenbrock, there is no conflict there.

The third dealt with looking into the question of, “Can the Program Manager and the Construction Management be under the same roof?” It was the determination of Eileen Diepenbrock, that that is ok.

The fourth came up at the Arden pre-proposal walk through. One of Brett's best friends was there as a possible lease/leaseback entity. He has since pulled from the competition but had he stayed in the running, the solution would have been that Brett would not have scored that lease/leaseback contractor.

Facilities Master Planning Committee (Brett).

(See supporting document - FMP Committee – COC Meeting 9-17-13.pdf)

This committee will help with the action plan and more importantly, the goals and objectives for the Master Plan. The hand out is the document the committee is developing now. Most of the first day was spend deciding what the guiding principles would be. The committee focused on two key areas and decided it was important to

determine what was really important for the Facilities Master Plan itself and for Measure N. Key areas have been developed that the committee wants to focus on. Action items are for those areas need to be developed.

Eric asked – Is this the Wednesday meeting?

Brett answered - Yes. Every other Wednesday. Anyone who wants to be there, just let us know. It is a great collaborative time.

Eric asked - Is the next meeting is tomorrow?

Brett answered - Yes, 10:30 a.m. at the La Entrada site.

Eric commented – He hopes to start attending after the legislative session is over.

Schedule for Community Outreach Meetings (Brett).

(See supporting document - FMP- Community Forums Schedule COC Meeting 9-17-13.pdf)

The first of these meeting started last night. Meeting schedule provided.

Update on the Arden Middle School (MP Room) (Brett).

The Lease/Leaseback selection process is complete. The project was advertised, proposals were submitted, and those proposals were scored with a rubric. Brett thanked Mr. Skidmore for joining in that process. The sealed bid proposal were opened and scored for their fee structures. Brett will be moving forward to recommend Clark and Sullivan. Brett really enjoyed this first foray back into the lease/leaseback arena. On Tuesday, September 24, 2013 he will review the 50% design documents. DAS submittal date is October 10, 2013.

Acronyms – (Brett).

Lastly, Brett recognizes that "we" often take for granted the use of acronyms. Thank you to the member who asked what "L/LB" (lease/leaseback) means. It is important that we all know what is being talked about.

Lease/Leaseback Presentation - Eileen Diepenbrock of Diepenbrock Elkin, LLP. -

(See supporting document - LLB Presentation for SJUSD COC Meeting 9-17-13.pdf)

The following discussion is the dialogue the group had regarding the presentation.

Eric asked - Is it a recommended and not required to have a both a payment and performance bond?

Eileen D. answered – It is a statutory requirement to have a payment bond and is her recommendation is for a performance bond and it would be operating against her advice not to have both a performance bond and a payment bond.

Jim asked – In the pre-design agreement are you paying the lease/leaseback entity to participate in the design process?

Eileen D. answered - Yes, normally a flat fee. There are a few ways to negotiate it the in pre-construction services and the price can be negotiated there is a lot of flexibility in there.

Jim asked – In establishing the base rent, are the numbers negotiation the with the entity?

Eileen D. answered – Yes, as certain elements were established in the RFP (Request for Proposal).

Eric asked (to Brett) - Where is the district with this process for the Arden MS? With DSA?

Brett answered – Going to DSA 10/10/13. Through the RFP process, Clark and Sullivan has been selected for the pre-constructions services provider only. They will begin the process of developing maximum price. Once the project comes out of DSA they finalize that guaranteed maximum price.

Kim S. asked - What is the percentage of school districts, state wide, are using lease/leaseback and going through the RFQ/RFP process?

Eileen D. answered – She does not have that information.

Eric added – There is no way to know.

Kim S. asked – Would that information be found in public records?

Eileen D. answered – Possibly.

Eric added – There is no clearing house. LA Unified has done four billion dollars in lease/leaseback.

Kim S. asked – What are other examples of flexibility are realized by using lease/leaseback? The biggest flexibility seems to be the quickness of being able to go out and build as soon as the project comes out of DSA.

Eileen D. answered – There is that. Also there is the flexibility on prices because of being able to negotiate prices. The contractor will give a price quotes during the design phase and that can be checked against the budget. It also limits the claims. Also through the RFQ process it can be confirmed that contractors are qualified to do public works.

Kim S. asked – In the design/bid/build process, during the RFP process is there an ability to throw out a bid for an unqualified bidder? Does the district have to accept the lowest bidder? Can there be conditions built into it?

Eileen D. answered – It much more difficult. The design/bid/build requires that the contract be awarded to the lowest, responsive, responsible bidder. In the last few years people, technically, illegally bided, because they were just bidding their costs.

Eric added - The district can set a standard for pre-qualification.

Eileen D. – The district will be required to.

Eric agreed - A district can set a standard for pre-qualification. It is a big expense and it takes a lot of resources to develop and keep up with these standards so a lot of districts don't do it. It is hit and miss with districts up and down the state.

Brett added – Another issue of flexibility with lease/leaseback is the idea of local contractors. With traditional design/bid/build if a contractor from Reno and a local contractor bid on a project and the contractor from Reno came in \$5 less than the local contractor, the contract would have to go to the contractor from Reno. In this situation the district would have some flexibility.

Kim S. asks – In the school district financing arena is there no local builders' preference policy?

Eileen answered – There can be.

Brett answered – There can be a request or requirement for a 20% local participation.

Eileen D. answered – That is another way to encourage competition and local participation.

Jim asked – In this negotiation how is overhead and profit dealt with?

Eileen D. answered – It is part of the negotiation.

Jim asked – So it is a line item?

Brett added – In the Arden MS building it was part of the sealed bid proposal. The bidders were to put their best foot forward with terms of their fees. In the sealed part, it asked that it be no more than 4.5%.

Jim asked –A criteria was set?

Brett answered – It was also very clearly defined what was in the fee.

Eileen D. answered – It was done very, very well.

Jim asked – And that is at what point in time?

Eileen D. answered – In the RFQ/RFP time.

Brett added – This insures that the fees are clear at the top of the work and the monthly fees are known at the top of the schedule.

Kip stated – It is no secret that he is anti lease/leaseback for a variety of reasons. He feels he has become more neutral, especially after participating in the screening/scoring. Jordi did a great job and eliminated one of the biggest drawbacks in lease/leaseback and those are the General Conditions. He still does not feel that lease/leaseback is the only answer but he thinks that the district is on the right track. He feels it is important that all lease/leasebacks projects need to be open and frank and contain a very open complete and thorough screening/scoring process and not have projects automatically be awarded to “friends.” He likes the flexibility for the lease/leaseback contractor in dealing with a sub contractors and not having to necessarily accept the lowest bid (and be able to explain why they choose another bidder). He feels that we are all strong advocates that those of us in SJUSD that paying for the bond should be able to have a shot at being the subs for these projects and that a 20% local participation can be required. He feels that the lease/leaseback process is on the right track but believes it will cost about 5% more to do but feels it is still a positive step. The delivery method is a critical thing here.

Jim asked – Please distinguish between design/build and lease/leaseback.

Eileen D. answered – Lease/leaseback is one contract with designer and a separate contract with the entity delivering the contract. Within design/build there is one contract with one entity that is doing both the design and the building.

Brett added – Design/build is probably the least litigious of all.

Eileen D. agreed - However the projects have to be at least \$2.5 million and still have to go through a complicated RFQ process. Regardless, the basic difference is with design/bid/build or lease/leaseback there are two primary contracts, with design/build there is only one contract.

Kip states - He hopes district might look at design/build down the road. Lease/leaseback originally helped Public Entities that didn't have capitol. Lease/leaseback has grown from there.

Eileen D. answered – That is exactly how it was originally started.

Kim S – Is not seeing the financial savings by using lease/leaseback when district has the bond money to pay for a design/build contract instead. She also wonders why the education codes don't require the RFP or RFQ, which is an extremely powerful tool for transparency in the governmental arena instead of going out to your “buddy's” construction firm to do the building.

Eileen D. answered – She does not know the answer but what makes sense to her is it historically would provide financing for a school district so that district doesn't have to do and RFP because it would be contractor financed.

Eric added – There would be no need have competition as your partner is you contractor.

Kim S. asks - Then where is the district saving money?

Brett answered - Up front it may look like a wash, but at one time there was a philosophy out there (in design/bid/build) at one time to bid low and change order high.

Kim S. countered - If the RFP/contract is written correctly there should be not be high change orders.

Eileen D. answered - That is not a function of the RFP. It is of the design documents. The designer has a duty to the school district, legally, that is a professional standard of care. The school district is impalpably warrants to the construction contractor that the design is adequate and sufficient for its intended use. That is a breach of contract theory if the design is defective. If there is a design issue, which results in a claim, a contractor can say to a school district that they breached the contract because they have a design issue. The school district will take a look at it and say maybe yes and maybe no, but if they agree, this is the standard of care owed to a school district by the design professional. A school district can get stuck in the middle and she calls that the “owner squeeze.” The only way to get rid of “owners squeeze” is design/build.

Kim S. asked - Does that includes lease/leaseback but does not get rid of the “owner squeeze?”

Eileen D. answered - It substantially mitigates it because of the preconstruction services agreement. Design/build gets as close to zero risk, legally, as possible. Lease/lease back is the second closest. Design/bid/build leaves a district wide open.

Kim S asked - Why is there the movement toward lease/leaseback state wide with school districts?

Brett answered – Design/build was prohibitive for a little bit, as the minimum per project was \$10 million; because of that the Arden Middle School project, for example, wouldn't not have qualified for design build. They just recently the reduced the minimum to \$2.5 million.

Eileen D. answered – There are other legal restrictions on design/build as they relate to a labor contract.

Kent added – We have not had a lot of litigation around our design/bid/build project in our district over the years and a lot of credit is to be given to our Construction Management firms (CMs) for that. The only significant litigation was over a lease/leaseback. That is why there is a big reaction to lease/leaseback in our district.

Eileen D. answered – In the early 90's and early 2000's there was a fair amount of claims that were solved in an early litigation stage.

Jim stated – That doesn't mean there were no change orders or claims, it just means that there was no litigation.

Eileen D. answered – That is correct. She wanted to echo what Kent said, that in this district, we are very fortunate with our CMs.

Kip agreed. He does not see a lot of claims come up but are going to be claims at some point. This district is fortunate in their processes and the plans they put out (including the constructability analysis). The plans that are put out are good plans. Claims come from an inaccurate set of plans and that creates a lot of problems. This district doesn't have that to that extent.

Eileen D. stated – The take away that she would like to offer is that lease/leaseback is a very valuable procurement method for this district to use. It has a lot of benefits and there are ways to address the concerns about price and the lack of competition. Through the lease/leaseback documents that they have prepared and made available to the district, she has addressed the issues that concern this district. The district doesn't have to use it but it, she happens to like it because she likes having the contractor involved in the design phase. She feels it is a very important useful tool for the district to use.

Eric – Thanked Eileen and stated that this COC will probably be the most educated COC in the state after her presentation.

Bond Overview Presentation - Jeff Small of Capitol PFG.

(See Supporting Documents – Bond Overview Presentation COC Meeting 9-17-13.pdf)

The following discussion is the dialogue the group had regarding the presentation.

Eric asked – In 2027/2028 there is a spike in the chart? What contributes to that spike?

Jeff S. answered - In 2003 the district issued capital appreciation bonds (CAB). Those are the bonds that have a delay in both principal and interest. There were also capital appreciation bonds issued in 1999 and some issued in 2000. They were not necessary to be issued but they were issued. There is probably about \$20 million dollars in them and they cannot be refinanced. The most important question is, "What is the repayment ratio?" For San Juan Unified, for every dollar they borrowed they have to pay back \$3.50. We probably won't ever see this pattern again.

Kent asked – Doesn't the Board have a resolution not to issue any more CAB bonds?

Jeff S. answered – On Measure N there was a commitment not to issue CAB bonds.

Kim S. asked – And they cannot refinance them?

Jeff S. answered – There is legislation proposed that CABs cannot be issued beyond 25 years and they could not have a payment ratio above 4:1. There are reasons why they would issue CABs, why they are cost effective can and why they would fit in. He is not advocating them but just mentioning it for a group understanding.

Eric asked - From Facilities and Planning standpoint, being up against that cap, it restricts your ability to plan and go to contract because nothing of any significance can be issued and nothing truly meaningful can be planned compared to a districts needs issue - correct?

Jeff S. answered – That is exactly right. There is going to be a point where a yearly reevaluation is going to be needed to look at these assessed value projections. For the last several years the projection was 0% assessed value growth increase. For this past year 2% was predicted for the average growth increase and it is actually 2.5%. That growth is starting to be seen now and that growth will help create a little more space.

Eric asked – For paying it down?

Jeff S. answered – It will allow more income to enable the district to make some payments in order to issue more Measure J bonds in advance of getting past that tax rate.

Kent commented - This shows the benefit of passing Measure N to allow us to continue to meet the needs of our facilities.

Jim commented – This \$60 cap is additive to each Bond.

Jeff S. answered - Yes, there are two Prop 39 Bond Measures, Measure J for \$60 and Measure N for \$60 for a total of \$120 per \$100,000 of assessed value. Measure S is not subject to that so you would add the \$40 to the \$120.

Kim S. asked – The \$40 because it was under the two-thirds vote and can change?

Jeff S. answered - Yes, because assessed value rose over time the debut service basically should be constant. The tax rate is expected to go down over time. There are other implications in terms of planning for future bond measures because the district is stuck with the last maturity in 2028 so the voters will see that on their tax bills until then.

Kim S. asked – As assessed value grows there is going to be more capacity to bond. Under Prop 39/Measure J with a higher escalation with the values going down it can grow faster than Prop 13 so there will have more capacity to bond in the future.

Jeff S. answered – Yes. I want to back up to Measure N. Measure N was originally designed as \$70 million dollars to be issued every year for five years.

Jordi asked - What was the growth rate on these assessed values to make this cash flow?

Jeff S. answered – Two percent.

Jordi commented– Pretty conservative. I like that you plan to spend the bond money within 10 years and thereafter on bond issuances.

Jeff S. answered – This was discussed in a Board Workshop in June – what is the most efficient way to issue Measure N? Based on what happens with the Facilities Master Plan and some other planning issues. He anticipates some Board policy on the best way to issue these bonds.

Jordi asked – From the Facilities perspective we get away from the cost of escalation against of the potential cost of the issuance.

Eric agreed - Between 2002-2006 costs skyrocketed to \$700 sq ft. in Los Angeles. The capacity to build diminishes because of the cost to build. Part of this discussion here is to understand what goes into issuing bonds and knowing what is at stake, the timing and how important that is. What we are trying to do under the Facilities Master Plan (FMP) – is the issuance supporting the FMP? Or is the FMP supporting the issuance? There is a cost issue to consider, and costs have to be weighed against debt and escalation. This is not an easy science. There is no right answer right now.

Jim asked – The \$20 million Measure N bond is priced at .3% (point three percent)?

Jeff S. answered – Yes, a fractional percentage because it is a two and a half year bond and not a twenty year bond.

Kim S. asked - How much has been spent so far of the \$20 million

Kent/Brett/Cherie/Jordi answered - DLR Contract for a total of \$800,000. Of that about \$300,000 has been spent. There are also the stadium and infrastructure projects that are being worked on.

Kim S asked - The bonds have been issued so we are sitting on the cash?

Jeff S answered – Yes.

Jordi asks – Hypothetically, if the funds on Measure J need to last through 2015 when will the district can sell more Measure J Bonds? Can the district borrow from Measure N to keep Measure J going?

Jeff S. answered – He doesn't know that there is any need. Since 2014 is when the district is set to sell Measure N bonds again.

Kent added - there will be a pause button hit on the remaining Measure J projects. We have identified the 2014 projects in Measure J. There may be no Measure J projects in summer of 2015. If all of a sudden if there was no available cash, projects would come to a screeching halt.

Jordi asked - Is there an ability to continue the projects somehow?

Jeff S answered – I think this is a discussion that the district has to have.

Tony added – And the projects may shift.

Jim asked - What is \$60 on today's assessed value?

Jeff S answered - Slide 21- it talks about how the tax rate is computed.

Jim asked - What is the district's bond rating?

Jeff S. answered - Moody's AA2. Very good.

Eric asked Brett – With the Master Planning within Measure N is there going to be an idea of what the needs are? Within the Master Planning are you going to be capable of planning out 2015, 2016, 2017? Will the district be able to look out that far to get ahead? To give Jeff a sense of what our needs are for bond issuance are?

Brett answered - The needs assessment will give the district what the short falls are. Some of that is in the Master Planning itself. It is not complete. Brett and Jordi met with DLR to see how they can bridge the gap in terms of where the Facilities Master Plan will leave off and where they need more information to fill in.

Eric asked – As far as issuance goes, looking at how much CAB space there is to issue, Eric wonders if a plan is being structured that can be contained within that \$70 million?

Brett M answered – \$50 - \$70 million per year model is really in line with what Brett was thinking.

Eric asked - Is there a project list plan?

Jeff S. commented - One comment on lease/leaseback. Why do you need lease/leaseback if you have financing? Lease/leaseback does not need to be a financing method. The only reason he can think why a public entity would use it, is because it puts a lot of the liability back on the contractor. Government agencies can barrow at a low rate and their credit is good. They don't see it as a financing option but as a construction option.

Kim commented – The key is timing getting the good rate.

Update on Projects in planning, design, and construction (Tony).

Group 10 - Projects complete or nearly complete and all doing well.

- Pasture
- Mariposa
- Peck
- Del Campo - Phase II
- Cottage in last phase.

Low Voltage ongoing right now.

- Del Campo
- Mesa Verde

Current planning and construction

- Rio Americano - Safe Schools. Fence leading out to the levy.
- Woodside K-8 Science classroom
- Arden Science

Last page – Landscape & Irrigation – an ever changing Group 11 list.

- 15 restrooms slated
- 11 LV but that is changing
- Couple of new construction - Arden and Churchill
- Other project pending but were removed. Legett

Tech Services projects - about 15 projects

- Del Campo infrastructure - water line in the back of the school.

Brett added – Two water districts, one district supplied and the other reclaims.

Eric commented - Tony, I like the narrative. You set the bar.

Quarterly Report (Cherie).

Cherie met with Dick and she was ready for Dick's questions.

Cherie will start to report Measure N - hopefully next quarter.

Eric reported that Kimberly had sent an e-mail about purchasing about tires?

Cherie answered – That was an M&O expenses. We don't do that anymore. Tech Services is the other question. These again, are in the past. We don't do business like that anymore.

Eric stated - For those of you not familiar, the concern was that software was being purchased and does not count as infrastructure under Measure J. Eric is comfortable that this issue is closed.

Cherie continued – We determined that \$4 million was spent on the student information center that failed. It was board approved there was a discussion on if that was appropriate, but it was board approved and it was decided that it would be supported by the bond.

Brett M - Kent, Bob L. and Brett met on Deferred Maintenance to make sure it falls in line with the language of the bond.

Eric is confident that we have turned a corner.

Cherie – Tech Services is getting \$1.4 per year and they are matching those funds up with E-Rate, so that is good.

Kim S asked - When do we get the performance audit?

Fil answered – We don't usually get the audits until November or December.

Kim S asked - Both performance and financial?

Fil answered- Performance audits are due in March.

Eric stated - We have requested to have input on the scope for the next audit as the COC want to be somewhat informed on the process because of the gaps that they found in past audits.

Update on School Consolidation (Kent)

There will be a Board workshop next Tuesday. Looking for the board's direction to see if closing schools in 14/15 is a go or not. They are working with Dr. Davie. There is really nothing further to report until we have word from the board.

Eric states – He just wanted to close the loop on the consolidations and postpone the discussion until further date.

New Items

November COC meeting conflicts with a Board Meeting. A new date will be set for November.

Outstanding actions are being skipped for this meeting time.

Meeting adjourned at 8:39 p.m.

Approved:
mh