

Citizens Oversight Committee
Minutes
March 9, 2023
Taken by Sandy Navarro

At approximately 5:01 p.m., Mr. Elatar introduced Cathi Eredia and the Committee members to David Casnocha (Bond Legal Counsel) via zoom. Cathi Eredia, Citizens' Oversight Committee (COC) Chair, greeted everyone present. Ms. Eredia called roll and a quorum was reached. The meeting was called to order and Ms. Eredia conducted the meeting.

1. Introductions:
 - a. Roll Call

Present:

- Pablo Tamashiro
- Luis Aguilar
- Cathi Eredia
- Joanna Haro
- Erica Mondragon

Absent:

- Cynthia Arredondo
- Jennifer Cobian
- Heidi Carrillo
- Julia Ruedas-Alternate

- b. Flag Salute: led by Cathi Eredia

- c. Approval of Agenda:

A motion was made by Pablo Tamashiro and seconded by Luis Aguilar to approve the agenda for March 9, 2023.

5 Ayes 0 Nos 0 Abstained 4 Absent

- d. Approval of Minutes: February 27, 2023

A motion was made by Pablo Tamashiro and seconded by Joanna Haro to approve the minutes for February 27, 2023.

5 Ayes 0 Nos 0 Abstained 4 Absent

- e. Public Comments: One public comment was made by Mr. Stimpfel – Saying this is a joke and hopes things get addressed tonight.

Ms. Eredia asked Mr. Casnocha: The District Board stopped a project of one of the bond projects. So, the bond project so far has about \$1.1 million dollars in expenditures. So, we realized that part of this bond

project is 100% above board but now with the board canceling the project this project could exceed maybe up to \$1.3 million or \$1.4 million with added expenditures. So, we wanted to get your advice to see as a bond oversight committee what recourse or what options does the COC have?

Mr. Casnocha asked Ms. Eredia to clarify if the COC desired to reverse or influence the Board's action which Ms. Eredia agreed to because she understood that the project has already gone to DSA, so it's starting that phase of that project, with the company DLR Group being forced to stop all activities on this project.

Mr. Elatar clarified to David that initially, the board approved this project as part of the project using bond dollars a couple of years ago after the board directed the staff to do an assessment and identify a facility or an area or location to be used for this project and that the board also approved DLR as the Architect. DLR did the design after meeting with all stakeholders and eventually finished the design and submitted it to DSA to move with the process. The intent was once DSA approved the plans the district will be engaging in construction for that project.

Mr. Casnocha: So let me explain what I think the options are for a bond Oversight committee to get involved with this issue because the project that was going to be funded with bond funds for which a million dollars or more has already been spent, certain a lawful bond project and that money would have been properly expended in a way that had been approved by the majority of the board in 2020 as Wael just described. I have read through some of the materials that provided some background information as to why the majority of the board today has voted to rescind those contracts and to direct staff to enter into a long-term lease agreement with Pasadena Community College in a building that the district here forth thought was going to be converted for other programs that the district has. So, what does a Bond Oversight Committee do about that? I think there are two things that can be done. Option number one is because the district has spent over a million dollars of bond funds on a project that they are no longer going to do. And it looks like that million dollars included a lot of soft costs as well as maybe hard costs, but mostly soft costs. (Mr. Elatar clarified only soft cost has been spent.) If those soft costs can't be used for some other purpose, in the bond world we would call that project abandonment. There is a rule that says in the law 100% of GO bond proceeds have to be spent for capital expenditures. So soft costs associated with a bond-funded project are deemed capital expenditures because they are associated with bricks and mortar projects. When bricks and mortar project has been abandoned for which soft costs have been incurred, those soft costs are no longer associated with a bricks-and-mortar project and are no longer capital expenditures. They are what I called work in the capital. You could ask the school district to provide you with a copy of the legal opinion from bond counsel and then analyze if there are any adverse consequences to the tax-exempt status of bonds that may have been issued to fund the million dollars in soft cost that were spent on a project that is now being abandoned in favor of leasing that facility to Pasadena City College. You can ask the staff to provide that legal opinion to the board and maybe that will influence the board's decision to abandon the project in favor of extending the lease with the Community College. Option Number Two – Proposition 39 has an element of safeguarding against the waste of bond funds. There are provisions in the Education Code you can sue a school district regarding bond funds. The standard for this, you would have to show that the decision by the board to either spend bond funds for a project that was not in the best interest of the district is a waste or you would have to say "Because of the circumstances, where a new member of the board who happens to be an employee of the Community College has a vote that is now a swing vote 3-2 in the other direction", I read public comments from a previous board meeting, where a number of speakers addressed the possible conflict of interest that the board member may have had in being an employee of the College, yet casting

a vote nonetheless who abandoned a project and enter into a lease. You can argue that circumstance has resulted in a waste of a million dollars of bond funds that are now being forfeited because of the abandonment of the original project for that Rosemead site. Action for waste of bond funds cannot be brought by a Bond Oversight Committee. Because a Bond Oversight Committee does not have what is called a legal standing to sue. The education code grants the right to sue for waste to a taxpayer in the district. It could be any member of the oversight committee in their individual capacity, but it couldn't be in the name of the oversight committee. You can bring an action for waste. The district cannot pay for the legal expenses. There has only been a handful of cases and not all have been successful. It is a challenging undertaking to bring that kind of lawsuit for waste of bonds. Especially because the majority of the board has voted that it is in the best interest to abandon the project and throw away a million dollars and continue to work with Pasadena City College. These are the Oversight Committee's two options. The Oversight Committee doesn't have control over which projects get funded out of the bond program. That decision rest solely within the governance of the board of the school district. The Oversight Committee could ask – did the board evaluate the possible consequences to the tax-exempt status of bonds that have been issued prior to making the decision to reverse the project? That is one question you can ask the staff. Yes or no, and if the answer is no, you can follow up by asking why not? Don't you think they should? Even though you are not an advisory board you can take a vote and say we vote to directly communicate a request to the board for a copy of the legal opinion concluding that there was no adverse effect in the tax-exempt status of the bonds by the decision that was made. You can also inform the public. The Committee has three duties, to submit an annual written report, two to review bond expenditures and make sure they were done for purpose of bond measures and improving school facilities, and three to inform the public.

Cathi Eredia: Mentioned they had a previous discussion at one of the COC meetings and were voted by the majority to speak at a public comment board meeting in February. I did speak as the Chair and the Co-chair Mr. Tamashiro brought up a good point, but that was just that one meeting. Maybe we need to go to school board meetings to provide the same public comment to notify the public not just El Monte Union High School District. We can expand by speaking to parents. There are also two newspaper articles regarding this matter. Asking for legal opinion to present to the board is an option and the same thing to the board evaluating the tax-exempt status. I know that has not been done. (Mr. Elatar - mention not that he is aware of that.) The purpose of this committee is to make sure that those bond dollars are spent wisely and that they are all our property tax dollars. We are taxed pretty heavily in this community.

Mr. Casnocha: In that narrative, you have to use the word waste. It's a waste of bond dollars because the board has the authority to say this is a bond project and that's not a bond project. I don't think there is any law that is being broken. The board has the power to make the decision that they made. But I do think there is an argument that bond monies that have been spent and are now of no value cannot be used on any other project. You can make the case that is wasted taxpayer money that didn't need to be wasted. In the bond campaign, all along people were taught this was going to be a priority project, the board would still be right they can change their minds as to what is in the best interest of the district when projects for bond funding get identified. Once they have identified a project and spent the money and then abandoned it, that gives you the opportunity to use the word waste. Waste of taxpayer bond funds that cannot be reused for any other purpose.

Cathi Eredia: The Citizens Oversight Committee feels this is a waste of taxpayer dollars. I also have a gentleman here that is part of the public and wanted to know if he can ask a question. He is not a member of the committee but he is a member of the public and a taxpayer in El Monte.

Mr. Casnocha: As the chair, it is your call, if you would him/her to ask a question I am happy to respond to it.

Cathi Eredia: Asked Mr. Stimpfel to ask his question.

Mr. Stimpfel: My name is Ted Stimpfel and I would like to make a clarification. It is my understanding under the law that a 3-2 vote was appropriate for the cancellation of the contract with the DLR. However, it is my understanding when it comes to a lease agreement such as with PCC under the policies of this school district which has been adopted from the state education code. Any lease agreement requires a super majority of 4-1 vote and we do not have this here. And yet, we have a board that is directing the administrative staff to enter into a negotiation which I do not see them having the power to do.

Mr. Casnocha: It's ironic you would ask that question because, in the last couple of weeks, I have had to witness a community college district in Los Angeles County that was confronting a similar issue. I think you are right, there are certain types of lease agreements that do require a super-majority vote. I don't know whether or not the district entering into this lease under those provisions requires that. But there are provisions you might be familiar with in the ed code that says if you are going to lease property not needed for district purposes you have to advertise in the newspaper and get a determination of rental of value. Those kinds of leases are required to be approved by a super-majority vote. There are requirements in the ed code that mandate that certain types of leases are approved by a super-majority 4 yes vote.

Cathi Eredia: What happens if the district does have to prove that this build (Rosemead Center) is needed for two different groups? So, do they still need a super majority vote?

Mr. Casnocha: Well I think the super majority vote analysis is limited to if the district were too into A lease with PCC or anyone else there are procedures that are set forth.

Mr. Elatar: I believe the procedures are similar to the procedures public entities would have to follow if they want to sell a property.

Cathi Eredia: Would you have to form a 7-11 committee? Mr. Elatar / Mr. Casnocha clarified no because the district is just leasing not selling the property. Does anybody else on the committee have a question? No questions. Cathi Eredia thanked Mr. Casnocha for taking the time to meet with the committee.

Joanna Haro: Mentioned the second action will be of an individual person taking action regarding legal action that would not be paid by the district. The first option would be to suggest to the board again in a public comment.

Cathi Eredia: Mr. Casnocha mentioned there is the potential of the district losing the tax-exempt status. Which I am sure the district would not want to lose. How would that impact the district Mr. Elatar? Mr. Elatar said he could not give an answer at the moment. He would have to ask Mr. Casnocha about this matter.

Mr. Elatar: COC needs to have action if the COC elects to use the bond counsel Mr. Casnocha to provide his legal opinion and available options for what to do.

Cathi Eredia: So right now, I think the only option is one where Mr. Casnocha was talking about the soft cost versus project abandonment and it becoming capital expenditures. So, to me, if it becomes a capital

expenditure does that mean that is where the district would have to pay back the bond? Is that what capital expenditure means?

Mr. Elatar: I have been around facilities for a long time in school districts and this is the first time for me where I am faced with questions about the waste of bond dollars for a project. So, my answer to you is I am not really sure, But the way I understood Mr. Casnocha is that COC with a vote you can ask the district staff to contact the bond counsel to look into the legality and impact. In addition, you can ask the staff, the district, or the school board to find out if they did go through the process to evaluate the tax-exempt status. Joanna Haro mention that is the same thing she understood.

Joanna Haro: Mention the swing vote is of the person who works for PCC but it's not because she has been there for a long time. I do not think it is really her, it is the ways things shifted. I do not agree with either side.

Cathi Eredia: Let's form our concerns and questions into a motion. Would you like me to make the motion or would any of you like to make the motion? Mr. Tamashiro said for Cathi to make the motion. Cathi moved the Citizens' Oversight Committee through the district working with the district to work with the bond attorney to find out if the board or the district evaluated the possibility of losing the tax-exempt status. Can we also get a copy of the legal opinion of a bond attorney? A motion was made by Cathi Eredia and seconded by Mr. Aguilar to consult with legal counsel with 5 Ayes and 4 absent.

Cathi Eredia: Is putting the Discuss Terms for COC members on hold they need the whole committee to review the terms. She thanked everyone present for attending the meeting.

A motion to end the meeting was made by Mr. Tamashiro and Ms. Mondragon seconded the motion. The meeting adjourned at approximately 6:00 p.m.