



CITY COUNCIL RAIL COMMITTEE DRAFT MINUTES

Special Meeting
May 24, 2012

Chair Klein called the meeting to order at 8:32 a.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Chair Klein, Vice Mayor Scharff, and Council Member Shepherd

Absent: Burt

ORAL COMMUNICATIONS

None

AGENDA ITEMS

Richard Hackmann, Management Specialist requested Item No. 6 be moved to Item No. 1A.

MOTION: Chair Klein moved, seconded by Vice Mayor Scharff to move Item No. 6 to become Item No. 1A.

MOTION PASSED: 3-0 Burt absent

1A. (former Item 6) Report from the Professional Evaluation Group, Inc.

John Garamendi Jr., Professional Evaluation Group, Inc. updated the City Council Rail Committee (Committee) on the available funding in the state for High Speed Rail (HSR). With the current budget shortfalls, HSR was competing for funding. On May 15, 2012 he attended the joint hearing on transportation where the Business Plan was discussed. Senators were beginning the process of creative thinking about what could or could not be done with Proposition 1A funding. He was looking for ways to push the vote back. Dan Richard of the California High Speed Rail Authority (CHSRA) was not concerned about the budget vote because it was an up or down vote. The Senate Pro Tem wanted the vote to occur by July 1, 2012. Mr. Richard indicated the CHSRA would continue to seek California Environmental Quality Act (CEQA) exemptions. That would cause great concern in the environmental community and among the Legislators. CHSRA was seeking a

Chief Executive Officer (CEO) and a Chief Financial Officer (CFO); Mr. Richard stated CHSRA should have a CEO within ten days or by May 24, 2012. The statute of limitations for the writ would expire on June 1, 2012. Multiple lawsuits would be filed to challenge it. The scenario was occurring as he expected.

Vice Mayor Scharff asked if he had specific predictions for the vote.

Mr. Garamendi answered no. He believed the Legislators did not want to vote on the bond at the current time. He hoped that would move them into a position for compromise.

Vice Mayor Scharff asked for a description of a possible compromise.

Mr. Garamendi reported one possible compromise was working on the endpoints while using the \$3 billion of federal funding, if the State modified where that money could be used and matching funds were identified. That would prevent use of Proposition 1A funding, which stopped the process. Opposition to HSR ran the risk of not having enough votes to reclaim control of the project.

Vice Mayor Scharff asked if the lack of votes meant HSR would move forward.

Mr. Garamendi replied yes. If it went to a floor vote, HSR could have the votes. Southern California had some thoughtful Legislators but that was not enough to stop HSR.

Vice Mayor Scharff asked if Republican Legislators would vote against HSR.

Mr. Garamendi responded yes.

Vice Mayor Scharff inquired about the number of votes needed by Democratic Legislators.

Mr. Garamendi indicated there were 15 Republicans and 25 Democrats, so Democrats needed six votes.

Council Member Shepherd recalled the prior funding discussion for HSR could be placed inside other pieces of legislation and asked if that had occurred.

Mr. Garamendi was more concerned about CEQA exemptions. Bundling funding legislation inside other pieces of legislation had not happened yet but those things would happen at the last minute. He was monitoring the conversations to see when that might come up.

Council Member Shepherd understood the CEQA exemption would have to go through a legislative process not necessarily through this budget initiative. She inquired about loopholes for it to pass during the budget process.

Mr. Garamendi reported if the CHSRA received CEQA exemptions the National Environmental Policy Act (NEPA) remained in effect. He did not believe the Federal Government would change that law. The CHSRA could not meet deadlines even with CEQA exemptions.

Council Member Shepherd asked whether redefining the plan to a blended system had changed the Federal Government's position of not using stimulus funds for the endpoints.

Mr. Garamendi was not certain the Federal Government's position had changed. If the CHSRA did start on the endpoints the President could announce HSR had begun without committing the State of California to Proposition 1A funds.

Chair Klein asked if Mr. Richard's comments on the budget vote meant he was confident he would win on an up or down vote.

Mr. Garamendi felt Mr. Richard meant he had done his best to put forward a plan.

Chair Klein felt the compromise being discussed was not in Palo Alto's best interest. Starting at the endpoints could be good for the CHSRA but that could move up the construction schedule which was not a positive movement for the City.

Mr. Garamendi agreed. A compromise would be surrounded by the electrification of Caltrain but he was not sure of the Committee's position on the matter. The choices were a full project or some sort of electrification. He asked for direction from the Committee.

Chair Klein reported the City had not taken an official position on electrification but was in favor of modernization. Because the CHSRA had not removed the four-track proposal from its Environmental Impact Reports (EIR), anything along those lines would lead to four-track as a future threat. The Committee would have to discuss the issues before it could support the type of compromise he was suggesting.

Vice Mayor Scharff inquired about the timing of the issue so that the Council could determine their position on electrification.

Mr. Garamendi felt time was not an issue but encouraged the Committee to discuss an approach for electrification.

Chair Klein felt the appropriate time to discuss electrification was when Caltrain re-circulated its EIR on electrification. Caltrain did not have an approved EIR on electrification.

Vice Mayor Scharff suggested the discussion needed to occur before Caltrain submitted an EIR because a compromise could be offered during the EIR process.

Chair Klein agreed it was possible.

Mr. Garamendi hoped to stop the process but there was no indication that HSR or anyone else was listening.

Chair Klein stated Ray LaHood, Secretary of Transportation needed to approve the plan.

Mr. Garamendi agreed. He reported there were many moving parts and a major confrontation would occur in the next six weeks.

Council Member Shepherd stated the CHSRA needed to identify sources of funding before receiving Proposition 1A funds. If CHSRA did not receive those funds it would have to defer to the endpoints for modernization as opposed to electrification. That could be a means for compromise. Chair Klein asked for further explanation.

Council Member Shepherd explained if the Legislature voted to go forward with HSR it would release bond dollars. The City was trying to avoid that. Mr. Garamendi needed an angle to defer the vote and focusing on modernization of the endpoints could be that angle.

Vice Mayor Scharff felt the Council supported modernization of the endpoints.

Chair Klein stated the Council had no position on Southern California.

Vice Mayor Scharff indicated the Council had not decided about electrification and had not looked at the issues surrounding it.

Chair Klein stated modernization in Southern California did not include electrification.

Vice Mayor Scharff said the City's goal was not to have Proposition 1A funds being spent to commit California.

Chair Klein reported the Council's over-arching position was for the Legislature to end HSR.

Vice Mayor Scharff felt the Council should discuss it because spending federal funds to modernize the endpoints was a different issue from committing on the Proposition 1A funds.

Chair Klein stated the federal money required a match from the state.

Council Member Shepherd indicated the Memorandum of Understanding (MOU) for Caltrain also required matching dollars.

Chair Klein agreed.

Council Member Shepherd asked if there were other matching dollars in the Central Valley.

Chair Klein stated the federal money was conditioned on California coming up with its half.

Council Member Shepherd indicated the Metropolitan Transportation Commission (MTC) had other funds. That might not mean Proposition 1A dollars were used.

Chair Klein indicated the MTC funds could be used to match the federal money.

Council Member Shepherd believed that opposed the Council's stated policy. It could be a means for municipalities to match funds in a different way.

Chair Klein was not certain.

Council Member Shepherd stated the Federal Government might withdraw the money and then HSR would cease to exist.

Mr. Garamendi was not sure of Mr. LaHood's intentions because there were many unknown factors. Any sort of compromise could be in the future.

Chair Klein noted the Committee was authorized to act on behalf of the City in an emergency; although, he preferred Council authorization on major issues.

Vice Mayor Scharff asked Mr. Garamendi if he needed any direction from the Committee today.

Mr. Garamendi answered no. He would continue communicating and working with Senator Simitian, Assemblyman Gordon, and Assemblyman Hill.

Morris Brown noted the change of dates for the Senate Committee meetings on HSR. He asked Mr. Garamendi if he knew the correct dates.

Mr. Garamendi did not know the correct dates but felt the June dates were appropriate because that was the day after the election.

Mr. Brown stated the American Recovery and Reinvestment Act (ARRA) funding required those monies to be obligated by September 2012 and spent prior to September 2017. Mr. LaHood wanted the earlier deadline in case California opted out and he had funds he could obligate to someone else before September 2012.

Mr. Garamendi indicated Mr. Brown could be correct.

Roland Labrun asked Mr. Garamendi if he listened to the Governor's budget update on May 15, 2012.

Mr. Garamendi responded yes.

Mr. Labrun noted the Governor expected the Federal Government to provide the \$3 billion up front.

Mr. Garamendi said the Governor suggested he would try to get the Federal Government to frontload.

Mr. Labrun asked Mr. Garamendi what that statement meant.

Mr. Garamendi did not know what it meant.

Mr. Labrun stated the Governor wanted them to spend \$3 billion between now and 2017 without California having to match it. The problem was California would have funding later.

Council Member Shepherd reported the City's position was to terminate HSR because the current project fundamentally contradicted the measure presented to the voters under Proposition 1A in 2008. She did not believe it aligned with Proposition 1A yet. If CHSRA had not fulfilled the vote of the electorate on Proposition 1A it was unconscionable to move forward. She

asked Mr. Garamendi if he needed Palo Alto to state it did not consider Cap and Trade a funding source so that the obligations of Proposition 1A were not met.

Mr. Garamendi indicated many agencies and groups were arguing that Cap and Trade was not an appropriate source of funding. Using Cap and Trade as a funding source would be challenged in court.

Chair Klein did not necessarily regard use of Proposition 1A funds as a disaster because lawsuits would be filed to contest it. Many people felt the project would ultimately be resolved by the courts.

Mr. Garamendi believed he could have reasonable conversations if thoughtful people would contrast their current positions and their original intentions.

Chair Klein suggested remaining in contact with Assemblyman Gordon, Senator Simitian, and Assemblyman Hill along with Assemblywoman Sally Lieber who was running against Assemblyman Hill for a Senate seat.

Mr. Garamendi would contact Assemblywoman Lieber.

Chair Klein indicated she did not have particularly close ties to Council Members but she was a serious candidate for the Senate seat.

Mr. Garamendi would follow-up and ensure Assemblywoman Lieber understood Palo Alto's position. He would attend the Peninsula Cities' Consortium (PCC) meeting on June 1, 2012 to talk with allies.

NO ACTION TAKEN

2. Approval of Minutes

MOTION: Council Member Shepherd moved, seconded by Chair Klein to approve the minutes of December 08, 2011

MOTION PASSED: 3-0 Burt absent

3. Follow-up to the May 21, 2012 City Council Presentation

Richard Hackmann, Management Specialist reported a number of questions were raised about the timing of the Project Level Environmental Impact Reports (EIR) for this section and the Caltrain electrification EIR versus the California High Speed Rail Authority (CHSRA) blended system EIR. Caltrain staff indicated their current target for completion of the electrification EIR

was December 2013. The Business Plan provided CHSRA time to certify its EIR between December 2014 and mid-year 2017.

Council Member Shepherd asked why there were two EIRs.

Mr. Hackmann stated the first EIR reflected the initial six trains and the second EIR was for the additional trains.

Council Member Shepherd asked if the CHSRA would perform the EIR on the additional two trains.

Mr. Hackmann responded that was correct.

Council Member Shepherd stated that could change the track configuration for Caltrain's EIR.

Mr. Hackmann explained the difference between six and eight trains and eight and ten trains could cause different mitigation triggers at each of the grade separations. Caltrain wanted to perform its EIR first and then the CHSRA could talk of those later.

Steve Emslie, Deputy City Manager indicated Caltrain and CHSRA were taking a risk by segmenting the two EIRs because they would be open to lawsuits charging they were segmenting the project and not considering the cumulative impacts. They had decided to follow a weakness in the process.

Council Member Shepherd had believed Caltrain would have the only EIR because they were the lead agency. She now understood another agency would perform an EIR. She asked if they could present a non-blended system.

Chair Klein stated the CHSRA could. Caltrain's position had long been electrification. He suggested she think of it as Caltrain having completed electrification before High Speed Rail (HSR) came into existence. Two separate EIRs were needed.

Council Member Shepherd stated the CHSRA's access to the tracks was through a stagnant Memorandum of Understanding (MOU) with Caltrain. She felt the City needed to ask for the rescission of that MOU. She wanted to prevent the CHSRA EIR or have CHSRA perform its EIR inside the Caltrain EIR.

Chair Klein asked why she felt it was in the City's interest to have only one EIR.

Council Member Shepherd explained the City could then talk with one agency that owned the system and was responsible to the stakeholders. HSR was responsible to the stakeholders of the entire state. Caltrain would be the preferred agency if HSR wanted to use the tracks and system. She wanted to prepare Caltrain not to have an expansion of the system after modernization. If Caltrain rescinded the MOU it would have to develop a new MOU and all agencies could participate in the language.

Chair Klein agreed the Caltrain Board had not represented the City's interests but two EIRs gave the City two chances for review and opinion on the matter.

Council Member Shepherd explained if a CHSRA EIR did not occur the City had to consider an EIR only once and only with the Caltrain organization with Caltrain's EIR including two trains for HSR.

Chair Klein felt that did not make a difference.

Council Member Shepherd believed asking Caltrain to rescind the MOU officially provided a clean slate for the future.

Margaret Monroe, Management Specialist suggested there be a letter asking the old MOU be rescinded.

Mr. Hackmann explained the Council asked for clarification on the implications of the previous MOU in its comments to the Peninsula Corridor Joint Powers Board (PCJPB). Staff was currently drafting a letter seeking the legal implications of the Resolution and the previous MOU. The City had not officially asked Caltrain to rescind the MOU.

Council Member Shepherd had heard statements that the MOU was old and was not being used.

Ms. Monroe asked if this was the MOU concerning the lead agency.

Chair Klein answered no. That was the MOU with the Metropolitan Transportation Commission (MTC).

Ms. Monroe asked if the old MOU addressed the issue of which agency would be the lead agency.

Chair Klein stated that was not an issue.

Mr. Hackmann reported the 2009 MOU established the Peninsula Rail Program which would run the process of building the four-track system.

Vice Mayor Scharff inquired whether Staff expected a response to the letter.

Mr. Hackmann felt Caltrain would respond.

Chair Klein suggested the letter be sent sooner rather than later.

Mr. Hackmann agreed and noted he had a few other follow-up communications on the Caltrain electrification EIR.

Chair Klein indicated the follow-up letter should contain language that questions were not raised by members of the Committee.

Morris Brown felt the Peer Review Report had changed tone from the prior report. The present report seemed to suggest the Legislature should approve the project. The Peer Review Committee indicated it would not consider the legal implications of the revised Business Plan because members were not attorneys. On the other hand the Peer Review Committee discussed operating costs and the members were not experts on finances. There was a conflict of interest within the Peer Review Committee.

Herb Borock wrote a letter to the Caltrain Board asking them to terminate the MOU of 2009. Marian Lee, Acting Caltrain Modernization Program Acting Director responded they would abide by the National Environmental Protection Act (NEPA) and the California Environmental Quality Act (CEQA). The deadlines for the Caltrain and HSR EIRs appeared to be based on conversations with Staff rather than a written statement from either of the agencies. He suggested Staff summarize information in writing and attribute it to individuals at those agencies. He asked if the letter would ask for termination or clarification of the MOU. He wanted the letter to ask for termination.

NO ACTION TAKEN

4. Caltrain Electrification EIR Update

Richard Hackmann, Management Specialist contacted Marian Lee, Acting Caltrain Modernization Program Acting Director regarding further discussions of a policy working group. She informed him if the Legislature approved the High Speed Rail (HSR) budget they would determine the feasibility of a policy working group and structures for the Corridor. Once they determined if there would be forward movement with the blended system they would consider a policy working group for input.

Chair Klein suggested Staff create a chart listing all the issues because there were many parts and processes for discussion.

Mr. Hackmann accepted the direction.

Chair Klein suggested the chart include the status of issues.

Steve Emslie, Deputy City Manager asked Mr. Hackmann to create the chart and draft the memo to Council for follow-up.

Mr. Hackmann would work to complete those by Wednesday, May 30, 2012.

NO ACTION TAKEN

5. Proposed State Budget Update Related to HSR

Richard Hackmann, Management Specialist indicated this topic was covered earlier in the meeting.

NO ACTION TAKEN

7. Reports on Meetings

California High Speed Rail Authority (CHSRA) Board

Peninsula Cities Consortium (PCC)

Peninsula Corridor Joint Powers Board (PCJPB)

Richard Hackmann, Management Specialist reported the next PCC meeting would be June 1, 2012. An important item on the agenda was the Caltrain Modernization Program. The PCJPB meeting was scheduled for June 7, 2012 although an agenda was not currently available. The next CHSRA meeting was July 10, 2012.

Vice Mayor Scharff confirmed the PCC would discuss Caltrain Modernization.

Mr. Hackmann indicated the PCC would discuss the electrification.

Council Member Shepherd asked if that would be in open forum

Mr. Hackmann noted there was usually oral communications but was uncertain if there would be written materials. He would distribute any written materials he received.

Vice Mayor Scharff asked for any materials from Caltrain or the PCC be distributed in kind.

Council Member Shepherd inquired if the PCC meeting would be held in Burlingame.

Mr. Hackmann answered yes, but beginning in July 2012 the meetings would be held in Palo Alto.

Chair Klein believed the PCJPB could have some handouts at the June 7, 2012 meeting.

NO ACTION TAKEN

FUTURE MEETINGS AND AGENDAS

Chair Klein stated the next meeting would be June 28, 2012 and suggested a tentative meeting be scheduled for June 7, 2012.

Richard Hackmann, Management Specialist suggested a meeting on June 14, 2012.

Vice Mayor Scharff could not attend a meeting on June 7, 2012.

Council Member Shepherd was available on June 14th.

Mr. Hackmann inquired if there was a preference for meeting the same day or after the PCJPB meeting.

Chair Klein did not feel that was important because the PCJPB would not approve the Environmental Impact Report (EIR).

Chair Klein reported the next meeting would be June 14, 2012. However, there was some concern because the state budget was scheduled for approval by June 15, 2012.

Mr. Hackmann suggested polling for an alternative date.

Chair Klein suggested polling for a meeting on June 7th at various times during the day.

Vice Mayor Scharff noted he would be out of town on June 7th.

Chair Klein suggested June 8th.

Council Member Shepherd could not attend on June 8th. She noted Elizabeth Warren noticed Palo Alto had the second highest ridership with only two bullet trains stopping in Palo Alto, while three bullet trains stopped in Menlo Park. Guiding Principle No. 11 discussed supporting Caltrain service; she suggested the City Council Rail Committee (Committee) reconsider the item. The methodology for bullet train stops was based on the size of the parking lot available. She also suggested inviting Ms. Warren to speak at a committee meeting.

Chair Klein agreed and suggested inviting a representative of Caltrain to speak to the Committee on that topic.

Steve Emslie, Deputy City Manager suggested the Transportation Department also be present. The reduction in services also affected California Avenue.

Council Member Shepherd reported Ms. Warren thought the Committee should ask for a Cal Grant. Mountain View had more stops on the bullet train than Palo Alto. The Palo Alto trains were filled because ridership had increased in the last year.

Mr. Hackmann would check the availability of representatives.

Council Member Shepherd asked Staff to determine if Caltrain was reevaluating service. If that was true, there could be a deadline to request additional stops.

ADJOURNMENT: The meeting adjourned at 9:41 a.m.