



HIGH SPEED RAIL COMMITTEE

Special Meeting
October 7, 2010

Council Member Klein called the meeting to order at 8:05 a.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Burt (left at 9:41), Klein, Shepherd (arrived at 8:25), Price

Absent: none

1. Oral Communications

None

2. Approval of 7/29/10, 8/30/10, and 9/7/10 minutes

MOTION: Mayor Burt moved, seconded by Council Member Price to approve the Minutes from July 29, 2010, August 30, 2010, and September 7, 2010.

MOTION PASSED: 3-0, Shepherd absent

3. Discussion of High Speed Rail Items

Project Manager Rob Braulik spoke regarding the presentation from Peninsula Rail Program that would be ready later in the day on the City of Palo Alto website. He said the California High Speed Rail Authority (CHSRA) was hosting a work shop in the Council Chambers from 7:00 pm to 9:00 pm that day.

Council Member Price asked who was leading the presentation.

Mr. Braulik said it was Bruce Fakugi, John Lissinger, Bethany Williams, and Dominic Spaethling.

Council Member Price said she had a meeting that evening but would try to attend.

Council Member Klein said there had been a good deal of confusion regarding who was hosting the meeting. He suggested an effort to clarify the scope of the meeting for future purposes.

Mr. Braulik said he thought the workshop would be similar to what was done in September for the High Speed Rail Committee (Committee).

High Speed Rail Intern Richard Hackmann said the format would change per the size of the crowd.

Council Member Klein spoke regarding the Station design principles and guidelines.

Mr. Braulik said the deadline was October 1, 2010. He confirmed they were still gathering input and putting together a report with comments. He offered to include comments from the Committee.

Chair Klein said they had discussed having that conversation at this meeting.

Mr. Braulik spoke regarding the response from Hatch Mott McDonald (HMM) regarding the Committee's comments about their Peer Review of the Supplemental Alternatives Analysis Report (SAAR). Staff prepared a draft letter to send, at the Council's direction, in response. He said Staff will send it to the Mayor and the High Speed Rail (HSR) Chair for their review and comment prior to sending it to the CHSRA. He said he had time to submit any comments on the letter.

Chair Klein asked if Staff had time to submit comments to HMM.

Mr. Braulik said they do and will submit them.

Herb Borock spoke regarding the letter from Robert Dody on September 23rd. It stated that HSR is still considering Palo Alto for a station. He felt the time had passed to give input regarding a station. He suggested the Committee set aside time to make a recommendation to Council regarding a station so the Council may act on it this month. He spoke regarding a law suit and said they should not rely on it and should take action now.

Chair Klein confirmed that the Council Agenda had the station scheduled later in the month.

Mayor Burt confirmed that the station issue was agendized during the month.

Tony Carrasco said there wasn't enough information to determine the benefit or risk of a station. There is no information regarding revenue, budget, traffic, etc. He asked to have the PRP or CHSRA outline the potential benefits to Palo Alto.

Chair Klein suggested Staff plan to inform the public of when the issue would go before Council.

Mr. Braulik confirmed that he would.

Chair Klein said they should also communicate to the public that they can also send emails prior.

4. Updates and Informational Items.

Project Manager Braulik spoke regarding the legislative advocacy contract. The first billing from Hatch Mott MacDonald (HMM) for their Supplemental Alternatives Analysis Report (SAAR) was expected very soon, and should be available by the next High Speed Rail Committee (Committee) meeting. He said that the City Manager suggested Staff develop a matrix outlining upcoming High Speed Rail (HSR) items. He said that matrix had been drafted. The project Environmental Impact Report (EIR) will be published in December. The technical working group announced it would be published at the end of the month. He said that HMM would have to be engaged along with a Planning Consultant, RMT, Inc. They would report back to the Committee with an update.

Council Member Price asked if RMT had been used in the past.

Mr. Braulik said they were used for the SAAR.

Council Member Price confirmed that mid or late February would be the end of the comment period.

Mr. Braulik said that was Staff's understanding, based on the release date of the report.

Chair Klein said, regarding contracts, the City Council should approve the contract with Capitol Advocates through February 28, 2010.

Council Member Shepherd, speaking regarding eminent domain, said that the primary purpose was to start thinking about outcomes of eminent domain

within Palo Alto. She asked if they wanted the California High Speed Rail Authority (CHSRA) owning partial or full lots. It may be a decision to have at the Policy Working Group. The CHSRA may make some decisions themselves, which would leave the City with lots that may not be able to get zoned.

City Attorney Gary Baum said it isn't a legal question but more of a policy question that can be raised with CSHRA through Staff. CSHRA has a right to do eminent domain as they want to. It does not mean the City can't provide input. The Planning Director could coordinate the HSR Staff to create an approach. He said Palo Alto can't legally tell CSHRA how to do eminent domain.

Council Member Shepherd asked what policies they were allowed enact. How much input were they allowed to give. She hoped they wouldn't have to look at eminent domain.

Mr. Baum said the Planners can develop with a policy or approach to present to CSHRA.

Chair Klein said coordination is limited.

Mr. Baum said the legal options are limited.

Deputy City Manager Steve Emslie said to leverage or negotiate with CSHRA ahead of time can help make sure that if they do take property we don't end up with unusable properties that become nuisances and do not fairly compensate the owner. He said that severance damages would be liable by the agency. He said it has to go through the eminent domain process which includes a jury trial. He said that he would hope that before it got to that point they would have some leverage as they would probably have to take some public property. That creates a leverage which is how agencies develop freeway agreements which is an opportunity to negotiate.

Chair Klein said that was in reference to public property.

Mr. Emslie said that Cal Trans has set parameters for how they deal with the corridor.

Council Member Shepherd said the freeway system does have these policies. But Caltrain may not.

Mr. Emslie said it would be a good discussion.

Council Member Price asked if Staff could begin to look at those issues.

Mayor Burt said he was at a loss about how to formulate policies in the absence of clarity of the positions of the private property owners. They were discussing creating a uniform policy and starting policy negotiation without the opinions and understanding of the property owners. He said when and if that issue of property taking arises, public property issues can create leverage for negotiating for private property owners if they have consensus.

Council Member Price clarified that she felt because of the preliminary identification of issues they should have an understanding of what the typical issues would be. It's not time to begin negotiations; they need to have a thoughtful conversation with property owners. But we should begin to identify issues and plans to address typical issues.

Chair Klein said there is a sharp distinction between public and private property. The City can help private property owners in a general sort of way, but the City does not have a role in the process if HSR wants to take private property. Spending public money on behalf of a particular property owner such as Stanford is a concern. Secondly he said the conversation regarding conceptual problems with HSR is now getting more specific. He said he wasn't sure how to have that conversation. Eminent domain principles are very clear.

Council Member Price said she wasn't asking for a detailed research study. There were decisions the City could make regarding land use as it relates to the Comprehensive Plan. She was suggesting they lay down some initial thoughts regarding what a relationship with a private property owner would look like. She said it would be useful at some point to have some technical details.

Council Member Shepherd said this could cost the homeowners money if the City doesn't provide some type of policy. It might be too early, but it should be taken to the Policy Working Group to decide if there are other concerns. The owners will be on their own, and that is inappropriate. The City should define parameters. This will add costs to their version of the project. A viaduct may not require eminent domain, but we could set a policy demanding that they take it so homeowners can get out from under the tracks.

Mayor Burt suggested they seek more clarity on what they can and can't do and what they ought to do. He felt it would be wrong to advocate policy without consent of private property owners. There may be a variety of positions they would take. We don't have a legal right to represent them. There may be a role to seek the current policy of the Peninsula Rail Program regarding private takings, which is different than us advocating. Within that we could also

advocate on behalf of the residents for rights beyond those that are protected by law. But we can't advocate a policy. He asked Staff about partial takings. He thought partial takings were not permissible.

Mr. Baum said they are permitted, but severance damages would have to be paid out. It's not a pure mathematical formula. It's the denudation of the property. Over a certain undefined percentage the owner can demand the whole property is taken.

Mayor Burt said he would support the City providing information that is in common allowing property owners to not have to seek legal guidance regarding their rights. He said that if there were bunch of properties with ten feet taken that's not enough to trigger an obligation to take the whole property.

Council Member Shepherd said that was the point she was trying to get to. She wanted to determine a policy before one is dictated.

Mayor Burt said he was trying to articulate a few things including if there were an initiation of a conversation. There needed to be more clarity from the Rail Authority. That could begin a process of determining what the next step would be, if there would be one.

Council Member Shepherd asked about what would happen with lots that are not legally zoned.

Mayor Burt said that was getting ahead.

Council Member Price said the other part was not only the position but also the process. There is another issue of the legal issues. Beyond legal issues, they have fact finding work to do. They are in no way saying to create a policy without community input.

Mr. Emslie said it would not be difficult to get that.

Mayor Burt said as a member of the Policy Maker Working Group he has recommended and it has been agreed that they will have a greater role in setting their own agendas. Staff could approach Bruce and ask for policies and procedures on eminent domain to be considered on the next agenda.

Mr. Baum said that High Speed Rail has a right of eminent domain. It can be exercised against other agencies. The property owner would be paid fair market value. It is a public process. The property owner can be present during the assessment, and can get money for a private assessment. There is a

specific procedure regarding the amount and method of payment. It is not a pure mathematical equation. They must establish public purchase and the necessity. The Authority is entitled to get an order of possession within 120 days and a valuation trial can take place after. He said there are guidelines that can be established and a referral list of consultants etc that can be established by the City. He said the system is designed to be a public and orderly process.

Chair Klein confirmed that the homeowner was reimbursed at fair market value prior to the impact of the project.

Mr. Baum agreed. He said that appraisals are completed by licensed appraisers.

Mr. Emslie suggested they discuss inverse condemnation.

Mr. Baum said that inverse condemnation is the reduction of the value of properties due to actions of government. The issue isn't going to be significant, in Palo Alto, but it isn't resolved either. There are cases with other mass transit where it was not an issue, but there are cases with freeways where it was an issue.

Mr. Emslie said these are properties not taken at all but are in the shadow or elevated tracks or some such thing.

Mr. Baum said it could apply to partially taken properties as well.

Mayor Burt suggested they remind people that Mr. van Ark said three months ago that it was his personal belief that High Speed Rail would increase value of property regardless of the train stopping in the City or the grade of the tracks. That statement may give an indication of the position of the CHSRA on the subject of inverse condemnation. A policy question for the Council is what position they should take on any project design that would result in significant, unwilling domain takings. Another policy question would be regarding the position on inverse condemnation as influenced by economic impact study the City has commissioned.

Chair Klein asked if the City Attorney was aware of any noise cases under inverse condemnation.

Mr. Baum said he was only vaguely aware of some cases. It's worth more research. The authority's position is interesting but he said that in the course of the process it may not be that critical.

Council Member Price said it would be useful to look at cases related to BART.

Mr. Baum agreed. He said he hadn't reviewed BART cases yet.

Council Member Price said light rail should be reviewed as well.

Council Member Shepherd said that the Mayor's comments were exactly her point in bringing this up. There is a significant impact. She said it was important to know if there are homes that might be taken.

Mr. Emslie said Staff was looking into that.

Council Member Shepherd said that a policy could be drafted after that.

Mr. Baum said that a Motion was not required, he would take the conversation as direction and look into it.

4. Legislative Update

Ravi Metha with Capitol Advocates called in and said there were approximately 22 bills that were introduced and or amended that day. He said he was working with a number of Legislators. He had heard the Governor was trying to persuade Steinberg to include language in the bill that would get around the conflict of interest provisions. It was in play about a week ago. A group of Senators reviewed the change and argued against it. Yesterday the Governors Office was trying to get items back into the budget trailer bills as part of his program. In his last update there was an analysis for AB1609. Within that were some provisions that have since changed. So far none of the key High Speed Rail (HSR) elements had changed. Six additional exempt positions have been added. Additionally they were looking for a peer review and it has been included. The group will be put together by November 1, 2010. He discussed the Peer Review Committee Member appointment requirements. He said the Council should consider their contacts that might be recommendable.

Chair Klein asked if this meant that the current Peer Review Committee Members were no longer on the committee.

Mr. Metha said he would need to compare the bill to the existing law.

Council Member Price asked if there was language related to terms.

Mr. Metha said this particular bill does not discuss those provisions, and thus

will defer to the prior bill. If there is a vacancy the appointing authority has a right to reappoint an individual for the remainder of the term.

Chair Klein asked about environmental review.

Mr. Metha said he believed there was no language in the trailer bills that affected that, but it was expected to be included in the next session.

Council Member Shepherd asked for clarification on the budget appropriated for the peer review.

Mr. Metha said that he included notes about that issue. The discussion among the Legislature was that a quarter of a million dollars was excessive for travel expenses.

Council Member Price said there was language related to peer review that scheduled reports biannually. She asked if the reports should be quarterly instead.

Mr. Metha agreed and said the probability of getting the language amended is slim. They will vote today. He said he would attempt to make the change.

Chair Klein said the last paragraph regarding the peer review funding plans stated it will be reported within 60 days after receiving.

Mr. Metha said the purpose was that anytime the California High Speed Rail Authority (CHSRA) does anything significant it has to be run by the peer review group who has to report to the Legislature in 60 days.

Mayor Burt asked if during that 60 days refinement to the Legislation is something they could begin to work on.

Mr. Metha agreed. He said that to take a more proactive position will be much more beneficial than just responding to their desires.

Chair Klein said the Peer Review Committee Membership asked him to find out about the current members and how many vacancies there will be. He asked what would happen if it wasn't done by November 1.

Mr. Metha said he would. Said there could be a change in the positions of the authorities on November 2, 2010.

Council Member Price asked if there was any geographic representation on the

Committee.

Mr. Metha agreed and said it was not listed in the bill but they could do through lobbying.

Rita Wesby asked him to speak about revenue and ridership forecasting.

Mr. Metha said he did not have many details regarding that other than there was a hearing scheduled for November 4, and there will be many discussions about the studies.

Ms. Wesby discussed the budget portion of the bill. She said the budget proposal included provisions for being accompanied by the ridership model plan prepared by UC Berkeley. She thought that was a nice addition to the bill.

Nadia Niak said the amended language regarding the make-up of the Committee has not changed.

Mr. Metha confirmed.

Ms. Niak said she wanted to know if the Peer Review meetings needed to be public. She wanted to be able to review reports on-line. She asked when they could expect to see more detail on how Peer Review will work.

Mr. Metha said it can only be amended through new legislation. He added that they should find an author to introduce new legislation soon. He said the bill was short on specifics regarding the Peer Review Committee. He agreed that the Committee should be fully transparent.

Ms. Niak said that they should have a list of current members made available.

Mayor Burt suggested Jerry Hill may be willing to sponsor a bill.

Mr. Metha said there was a meeting the prior date. They spoke about the Committee focus being set on propaganda.

Chair Klein said the group was primarily to promote HSR.

Mr. Metha said the tone of the meeting was exactly that.

Mayor Burt asked if there was a vehicle to retitle the committee.

Mr. Metha said no. He reviewed some tentative dates for van Ark to visit Palo

Alto.

Mayor Burt said Mr. van Ark was interested in engaging with the communities more, and Palo Alto was interested in the same.

Mr. Metha said he had offered to come out in November 1, and 2nd. He had not specifically agreed to a public meeting yet.

Mayor Burt said they would presume some neighboring cities would also be interested in meeting with him once he is in town.

Mr. Metha said they would need to accommodate the Brown Act.

Council Member Price asked if there were other dates.

Mr. Metha said he also offered to meet October 26th or 27th in the morning.

Mayor Burt said those dates would work.

Mr. Braulik said the tentative dates for a BART Warm Springs tour is October 26th or 28th.

Mr. Metha asked them to contact him regarding the November 4th meeting in Sacramento. They would be able to speak during public comments. There was also a meeting on October 20th for the CHSRA in Sacramento. The November 4th meeting for the Senate Transportation Committee to study the ridership will be postponed.

Chair Klein if he ever learned why they postponed the board meeting earlier in the month.

Mr. Metha said it was not a significant reason.

Mayor Burt said they were expecting to hear from the FRA this week and wanted to that before their next meeting. He added that Staff had not yet distributed the most recent letter from van Ark. He said it's not very clear. There was no acknowledgement that what would need to be built on the peninsula was subject to ridership demands. The letter stated that he was comfortable with the study as it was performed and had no intention of revisiting the issue. Caltrain's phased implementation ran up against the City streets if they were not going to do grade separations and had significant problems.

Chair Klein said, returning to the subject of the meeting with Mr. van Ark, that Council Member Price was only available on October 26th. He said that the entire Council should be included.

Council Member Shepherd said that Mr. van Ark might be available on November 1 which is a Council Meeting night.

Council Member Price said to schedule without her if needed.

Mr. Emslie said that Mr. van Ark was only available in the morning on November 1st.

Council Member Shepherd said there was a City School Liaison meeting on 27th. She said the morning after a Council meeting would be difficult.

Chair Klein said there would be conflicts no matter what.

Council Member Shepherd said that City School takes out two Council Members.

Mr. Emslie said they could move City School if needed.

Council Member Price said Staff will work it out.

Mr. Emslie asked if Staff should try for 27th or 26th.

Council Member Price reiterated that she could not attend on the 27th.

Council Member Price confirmed that future HSR meetings would be scheduled from 8:00 am to 9:30 am.

Chair Klein said he was neutral they had been running long every time anyway.

Council Member Shepherd said they never get all of the work finished.

Chair Klein suggested they could meet from 8:00 am to 9:45 am as a compromise.

Council Member Price requested updates from working meetings and meetings scheduled to take place outside of the HSR Committee.

Council Member Shepherd said a debrief sent to all Committee Members would be helpful without taking valuable meeting time.

Mr. Emslie said it was not always very clear up until the last minute.

Council Member Shepherd asked if they could have notes taken at meetings such as the pending meeting with Mr. van Ark.

Mr. Emslie said they would take notes.

Chair Klein said that Council Member Scharff would be in Washington DC.

Mr. Braulik said that Staff meet with him yesterday and are working on setting up a meeting between Council Member Scharff and the FRA.

Council Member Price confirmed that he would speak regarding the issues in the letter from the FRA.

Council Member Price said she has work-related business in Washington DC the first week of February.

Chair Klein said they would keep that in mind as the more contact they have with representatives the better.

Council Member Shepherd requested they discuss the conflict of interest item. She was wondering if the Council should take a position on the fact that two of the CHSRA members have conflicts in an effort to bring more transparency to the issue.

Chair Klein said he didn't think it was appropriate because it looks so personal it could be discrediting.

Council Member Shepherd suggested discussing the policy of eliminating the conflict rather than calling out the board members. There needs to be action taken.

Chair Klein said the action would be removal from office, which is personal.

Council Member Price asked if they could make a general statement as it raises questions about the group's integrity.

Chair Klein said it would still be personal.

Council Member Price agreed but said it makes sense to make that statement as part of a group of cities.

Chair Klein said that if they try to divorce themselves from the people it becomes a more difficult question. He said that the Governor was trying to build exceptions into the bill.

Council Member Shepherd said that building exceptions to the bill to suit this case was very personal.

Chair Klein agreed. He said there are other exceptions. It's not so clear that this is really bad. The case is made by some that it enhances their ability to serve. Conflict of interest implies a personal benefit and there is no personal benefit here.

Council Member Shepherd said there was a municipality benefit.

Chair Klein said some say that validates it and makes him better able to make decisions on transportation issues.

Council Member Price said perhaps it was something the press could continue to pursue.

Chair Klein agreed.

Council Member Shepherd asked if they could bring it back. She said she was very concerned about Pringle being on the board and Anaheim gets more dollars than any other city because of his being there. It's important to make the statement that we are watching this.

Chair Klein said they hadn't established many guidelines regarding agendas, and said she could put it back on.

Chair Klein said the next meeting was two weeks out.

Nadia Niak said the important thing to understand is that the process had been broken. There is not a dais big enough to have all the stakeholders at the table. As a Council they should discuss the Governors appointments.

Mr. Emslie said the Mayor asked him to announce there would be a committee for Green Foothills Advocacy group award on Friday, October 15th.

ADJOURNMENT: Meeting adjourned at 10:00 a.m.