

MINUTES

Joint Special Meeting

Salem Area Mass Transit District Board of Directors and Marion County Board of Commissioners

Tuesday, April 5, 2011

Marion County Clerk/Assessor's Office
1115 Commercial St NE, Salem, Oregon 97301

Call To Order
Note Attendance

Commissioner Sam Brentano called the meeting to order at 1:10 p.m. Introductions were made around the table.

Present: Marion County (MC) Commissioners Sam Brentano and Patti Milne; Salem Area Mass Transit District (SAMTD) Board President, Jerry Thompson; and Directors Marcia Kelley, Joe Green (arrived 1:15 p.m.), Kate Tarter (arrived 1:20 p.m.), and Pete Jossi (arrived 1:25 p.m.)

Excused: MC Commissioner Janet Carlson; SAMTD Directors Bob Krebs and Ron Christopher

Marion County (MC) Staff: Gloria Roy, MC Legal Counsel; Don Russo, Sara McDonald, Jan Fritz and Barb Young from the Board of Commissioners Office; Dave Henderson, Business Services

SAMTD Staff: Allan Pollock, General Manager; Chad Fosnight, Capital Projects Manager; Sue Quick, Director of Operations; Pat Mercier, Director of Finance; Andrew Cooper, Safety & Loss Specialist; Linda Galeazzi, Administrative Secretary; Ben Fetherston, SAMTD Legal Counsel

Guests: Eric Meurer, Chair, Courthouse Square Solutions Task Force (CH2STF); Geoff James, Bob Royer, and Gene Pfeifer from the CH2STF Technical Subcommittee; John Hammill, SAMTD Board Candidate-Subdistrict #4; Pete Smith, Fortis Construction; Donald Eggleston and George Hager, Sera Architects

• Insurance &
Value of
Building

Commissioner Brentano explained that the meeting had been called so that the members of each Board could hear the same information about issues that have come up, to head toward a resolution about what to do with the Courthouse Square building. Marion County had learned about some information having to do with bylaws, insurance, responsibilities and options that have to do with agreements that were made prior to the construction of the building.

Marion County's Legal Counsel, Gloria Roy, reported that she became aware of provisions in the Condominium Association Bylaws having to do with insurance and the use of proceeds from the insurance, and the obligation under the Bylaws as they currently exist that state "if less than three-quarters of the value of the building is damaged or destroyed, then the building will be repaired; and if it is more than three-

quarters of the value then there are other options.”

In a discussion about the value of the building, Commissioner Brentano asked if it is undefined, is it the construction value, an assessed value or an estimated value. How would they know which of those values was reliable with that vagueness in the Bylaws. Is it something that could be determined or researched?

Ms. Roy advised that the Bylaws just say “the value of the building.” The Assessor reported at an earlier Task Force meeting that the statement of value was \$44 million for the complex; and apparently, there is an appraisal that was done for insurance purposes. She has asked for a copy of that statement of value. If out of that \$44 million for the complex, the office building portion would be approximately \$35.5 million. They could compare the insurance value with the assessed value to determine the base number they are working from to determine the 75% level. If they are able to get some money from the insurance policy that covered the building, then, according to the Bylaws, those proceeds would be applied to the reconstruction of the building. If there are deficiencies, then the owners - which would be Marion County and the District - would be liable for the deficiency amount between the insurance proceeds and the reconstruction costs up to that 75% level. If the level is more than 75%, there are other options that come in to play. Reconstruction of the building would not need to be done if it is more than 75% of the value. If the owners decide at some future point to amend the Bylaws, there is a process to go through. Both Boards would have to agree not only to change them but also how to change them; and there is the filing of the appropriate condominium documents with the real estate commission. There are some very specific statutes of law about that; it would not be a simple process.

Dave Henderson reported that insurance on the building is approximately \$29.7 million. That would give you an idea of the estimated construction costs for replacement of the building only; it did not include furnishings or equipment in the building. Marion County got a letter from the insurance carrier dated March 25th about the claim asking for additional information. The County is pulling together that information and shared the letter with Sera Architects because they have some of the information requested. The carrier also asked for some executable files but Sera Architect is not interested in sharing those because they could lose control of the files and the files could be altered without their knowledge. Marion County is talking with the carrier on a weekly basis and that is the current status of the insurance claim.

Ms. Roy advised that a determination of the value needs to be made and that decision should probably be made by the Condominium Association’s Board of Directors. Both the District and the County have a member on that Board and there is a meeting within the next week so that this issue could be put on the agenda for that meeting. As owners, the County and the District can certainly ask for this matter to be considered by the Condominium Association Board.

Commissioner Milne said it would be premature to change the Bylaws until they have a recommendation from the Courthouse Square Solutions Task Force to pursue and after they have identified the value of the building, and made a decision about reconstruction or not. She was glad they were putting this issue out there

because it may need their attention and could be a game changer but there is a lot more information that they need to have.

President Jerry Thompson thought they would be hard pressed to say that the building was more than 75% damaged at this point. The building is still standing and there are furnishings and equipment in the building. He pointed out that a Federal Transit Administration (FTA) representative made it clear to him in a meeting he attended that there had to be a \$6.6 million asset invested at Courthouse Square or the District will have to pay that money back so the District has a vested interest in having something transit-oriented at Courthouse Square. They can choose to reconstruct the building into something else but there will not be any federal money to help with that and it will come out of the District's hide.

Commissioner Brentano asked for a concession from the Boards to have the Condominium Association Board come up with dollar amount. It is an important number and he did not want it to be vague. Ms. Roy advised that they have the assessed value and she will make every effort to obtain the insurance appraisal.

President Thompson recalled that the number reported by the Assessor was for the land at \$8,000,000 he did not think he placed a value on the building. Ms. Roy noted that the Assessor submitted a spreadsheet at the Task Force meeting with a \$44 million figure for the entire complex.

Director Marcia Kelley recalled that the assessed value he quoted was for prior years so the value of the building would be something less. She asked if the insurance was on the building and not on the transit mall. Ms. Roy responded that they can determine what the pre-damaged value of the building would be or what it would be worth as a good building. Mr. Henderson said he would get an answer to the insurance question.

Reconstruction
Costs

- RFP
- Tendon testing

Commissioner Brentano presented the second issue for discussion - what it would truly cost to reconstruct the building. There have been suggestions that to do it correctly they will need to put out an RFP and see what comes back in the way of defined bids and concepts. They need a value and cost to reconstruct but what will best move the process forward in the quickest, most reliable and efficient manner.

Director Kate Tarter asked what they can do to guarantee the work if they pursue an RFP. Are there any policies to ensure a money-back guarantee from the contractor if it fails? Commissioner Brentano envisioned a standard contract but it had to be written clearly to capture all of the details. It had to be at a top price with a guarantee of satisfaction that it is working and is acceptable; and they will need to compare the bids with the value of the building before they can make that decision.

Mr. Henderson explained that they do not have enough information for a proposer to respond to an RFP yet. Any proposer at this point would have to write a proposal not knowing whether the cables are performing. Tendon testing would have to be factored in to the proposal they submit and that would be without knowing whether the cables were capable of performing the function that they have; or whether you have to do something to correct that. Someone would have to write a proposal to account for the function the tendons have in holding the slabs up. If the tendons

are overstressed, any proposal would have to account for that and would have to have an alternative method for maintaining the slabs.

Commissioner Brentano stated that they have not wanted to do those tests because the cost was somewhere around \$120,000 but in the scheme of things that is minor. Could they do the work themselves with enough guarantees that the results would be accepted as fact? Mr. Henderson recalled that the cost to test three cables was approximately \$125-\$150,000. It would give some proposers a level of comfort if the three that were tested were fine. The tests would be done in the areas of greatest deflection where there would most likely be problems; however, there are hundreds of cables and there would be no guarantee that the rest are okay without testing all of them. If you test 20 cables out of 500, statistically you can say 20 out of 500 are fine but if you test 20 and two are bad, you then assume that 10% are bad.

Director Kelley asked if the insurance company has indicated what kind of testing they might do. Mr. Henderson advised that they have only asked for all of our records. We assume that at some point they will want to come in with their own engineers to do some testing, but they may be trying to get as much information as they can from them so that they do not have to incur the cost of doing the work themselves.

President Thompson asked if there were standard insurances that a contractor must have when they build a project that is governed by the State's contracting board. Pete Smith from Fortis Construction advised that there were standard insurances that a contractor must have; however, if you are doing additional construction in a building such as Courthouse Square, there is a strong possibility that additional insurance will be required.

Director Joe Green asked if they would be at a standstill in waiting to see if the insurance company plans to test the cables, or are they waiting for us to do the test. Mr. Henderson did not think this was the case but if the Boards decide to proceed with remediation then it would be prudent for us to do the tests. If they find out the cables are fatally flawed the remediation cost goes up significantly.

Commissioner Milne shared her concern about the progress being made with the Courthouse Square Solutions Task Force (CH2STF) and subcommittees. Can the Boards identify what other work needs to be done or where else they need to go. The idea behind inviting community members to the Task Force was so that they could learn what happened so they did not make the same mistakes. Can they identify what they have learned or areas of concerns that they want to be very certain of. One of those areas would be the Bylaws and insurance issue. Do they assign people to bring that information forward so they can start considering those pieces of information and when can they expect to have it to keep them moving to a final conclusion with some recommendations to have some choices. Do they need to go in a different direction?

Director Tarter had heard speculation about development as an option if the building was not saved or could not be fixed. She asked if anyone has come forward, like a developer, with an official offer and/or money. She would like to clear that up. Commissioner Milne knew of the speculation but was not aware of those offers.

Courthouse
Square Solutions
Task Force

Commissioner Brentano focused back on the discussion about the tendon testing that he felt needed to be done to reconstruct, and if they put out an RFP they would need to give some parameters. Director Pete Jossi asked why he assumed they needed to spend \$120,000 on the testing. It was a lot of money to pour down a hole according to the picture that the public sees and has to be acknowledged.

Commissioner Milne asked if the proposers would expect to automatically include the tendons testing, or could they require testing of the tendons in an RFP. When does that testing happen and who is paying for it. If we require some assurance that there was testing of tendons, it is likely that they will include the test in their cost projections.

President Thompson considered if they make that proposal, it is going to be sky high. The bid will be based on the tendons not being good when indeed they may be.

Director Green said that whatever they choose to do – whether it is to tear the building down or remediate it, they would need to be sure that the tendons will hold up or not; it would be foolish to do otherwise.

Director Tarter advised that testing the tendons should be done separately and hopefully whoever does that testing will not have something to gain contract-wise in the end.

Mr. Henderson pointed out that Sera's estimate at \$49 million assumes that the tendons are not capable of bearing the load that they were designed for. Sera's estimate was based on a worst case scenario that we would have to remediate for bad cables. Their remediation proposal assumed that you would have to apply some sort of support to make up for the fact that the tendons are not capable of doing that. They assumed that the cables are basically worthless and proposed a remediation plan based on that. If the tendons are okay, then he believed you could extrapolate that the cost of the remediation would drop.

President Thompson asked at what percentage would the cost drop? Donald Eggleston from Sera Architects advised that they never did that cost option since they did not have reliable information on the tendons.

President Thompson asked Geoff James about information that was presented on a webinar that had been shown to the Technical Subcommittee. Would the material they talked about suffice to eliminate the need for testing the tendons? Mr. James explained that the webinar presented state of the art technology that is available now for high rises. The company that presented the webinar shared some of their techniques and are specialists in post tension cable repair as well as fiber reinforced columnar and carbon fiber material techniques. This company talked about a range of \$25-\$50,000 to do the testing as part of their work because they would need to rely on those slabs as part of the structure but reinforcing them would be done with high tech material. They said some of the cables might be redundant so they might take ones that they don't need out and make the design so that the slabs function soundly and meet the seismic code to be safe.

Director Green asked how this information would help with the sheering. Mr. James explained that KGA from Washington was brought in and came up with three alternative

proposals; and in talking with a company back east, they think they can make the column capital scheme work with a little more engineering study; so we are back to solving the puncture sheer with a dropped slab or column capital built above the columns using carbon fiber wrap around the columns. They told us that the building could be repaired and the price range is about right.

Director Tarter stated again that she prefers that the testing be done separately from an RFP to remediate the building. It is critical that they be careful about somebody who has something to gain by doing the testing, but the testing is the smartest way to make their decision based on the results so they can decide whether to remediate or tear the building down.

Director Jossi asked why Sera did not do the testing and what is important about making this decision. Mr. Henderson explained that the County and District stopped Sera from doing the test based on the information they had received to date. They had already spent \$1 million dollars and did not want to spend another \$120-\$150,000 until the Boards had a chance to weigh in on the decision.

Commissioner Brentano said he would have the testing done as soon as possible.

Commissioner Milne was not comfortable with testing only three tendons out of 100 or more but if they move forward with the testing, they would also be taking full responsible for the results; so how would a proposal deal with that information presuming the testing came out favorably. How would somebody submitting a proposal look at that information – what kinds of proposals would they likely get? Would they assume that they are good to go?

Director Jossi asked if there was an expectation that the testing would come out favorably. His understanding from Sera was that it would not come out favorably; and it feels like there is tension between the \$49 million estimate that Sera came up with for a worse case scenario and an idea that we can repair the building for a lot less. Are we trying to cover ourselves by checking the tendons and still find out that we have a worse case scenario? He asked whether they want to spend all of that money knowing they could still be in a situation where it is not sensible to repair the building.

Mr. Henderson explained that Sera assumed the tendons were bad to prepare an estimated cost of repair. Part of that assumption was based on the fact that so many things throughout this process had been far worse than they ever expected them to be. The concrete testing was never anticipated to be as bad as it was. Throughout the discovery phase of this process, if something could go wrong, it went wrong; other than the geo-technical report which was good. So there was an assumption, especially in light of the incident where it is believed that one of the tendons ruptured, and if one tendon ruptured there is probably a pretty good chance that there are issues with the other tendons. There is also some indication that the tendons were overstressed during the construction process because some of the figures that came out of the discovery show that there is more stress put on those tendons than was called for in the design.

CH2STF Chair, Eric Meurer advised if they were thinking about going out for an RFP or

an RFI approach there was the question of timing. They may spend a significant amount of money on testing, and still wind up with unfavorable numbers; their 75% value test would not be met and they would not have used that money wisely. If they were to do an RFP/RFI process and start negotiations with a number of firms and consortiums they would certainly make the testing process a part of the ultimate contract; but they could learn enough by having an exchange of information without having to make that expenditure to answer the 75% question. Allow that exchange of information to be better informed as to whether you are likely to get to your 75% value or not. The testing would be a part of that discussion but it might save you from doing it prematurely.

Director Tarter asked if he was saying that as part of the contract the winning bidder will also assume the cost of testing. Mr. Meurer said that would certainly be the case but before that if after you have had some fairly serious discussions with a number of folks, they come back and say we think we can do this for "X" and the "X" is within your 75% range, you can make a kind of political decision to go forward, then that test would be part of the performance steps with whomever it is that you are seriously negotiating with.

Director Tarter asked who he envisions would actually be performing the test. Mr. Meurer said that it would certainly need to be someone whose credentials were not compromised. You would have to find companies who can do that sort of thing and know what they are doing. Nobody is going to accept a less than complete professional opinion.

Director Tarter asked if there was anybody he could foresee that would dispute the outcome of the test. Are there any parties that would want to do their own independent testing? Mr. Meurer stated if the parties wanted to move forward on a contractual basis, they would obviously want to test. That would be a part of the continual dialog you would want to have with whomever you had that discussion with. In the discussions everybody understands that if we are going to go forward, we have to do that test, or you make a different political decision to go forward in a different fashion.

Director Green asked if the columns were to be fixed with an increase in the footprint so that it does not sheer would that negate or reduce the need for the cables; has that been studied; are the cables still needed. Mr. James responded that they would still need the cables. The company that put on the webinar has the equipment to test the cables as they go along. It is part of their structural design at \$25-\$30,000. There are two different approaches to the specifications for remediation – the one that Sera responded to has two key ingredients – replace the interior systems – maintenance, air conditioning, etc., at \$10 million; and secondly, they will bring the building up to 'as new' condition. When you bring a building up to 'as new' condition, you expect it to be spanking new. If you can accept a building that is better than the way it was left, it will not be in new condition but it will be structurally sound and safe and that is a decision you will need to make - whether you want to go with \$15-\$16 million or \$49 million. There may be a difference in the quality but it will be acceptable with the lower fare.

Commissioner Brentano asked the Boards if they wanted to continue on this track or go on a different track with the RFP. It will need to be written just right and sent out; they can let the market decide what is real and give them something they can

act on otherwise they are faced with going in circles. Can they give the task force any more guidance?

Commissioner Milne did not know if they were at a place where they could determine how to do the tendon testing. After making that decision, the next question is when to get it done.

Mr. Meurer advised that there is the issue of the dividing concrete as well and somewhere along the line someone will want to clarify that. If a dialog is started through an RFP/RFI process some of those questions can be addressed and then you can determine what tests are necessary or advisable and what they cost. You will also have a better base of information for your 75% question.

President Thompson said he would like to hear the webinar first with their recommendations because they do not know what they will put in the RFP.

Ms. Roy reported that staff was able to pull up the 2007 appraisal for insurance purposes with a value of \$35 million. This would be consistent with the assessors figures if parking was subtracted which is how they came up with \$35 million on the building; 75% of that would be about \$26 million.

Commissioner Brentano asked where they would come up with \$26 million. Barb Young suggested they could stipulate in an RFP whether they want a fix to neutralize the tendons or test the tendons, and build the technical aspects in a Scope of Work. They could hire an outside firm to help them write the technical aspects to the Scope and bring it back for feedback. She has been told that remediation is very different work in a Scope than new construction of a building.

When he hears "RFP" Mr. Pollock's expectation is that they are issuing a proposal and there is going to be action taken on that by one of the successful bidders which means there is a financing plan in place. As he anticipates the magnitude of this kind of project and the time, effort and cost to prepare these proposals – if it is just to gather more information – they need to be up front about that so that the proposers don't have a false expectation that it is a bid to remediate if in fact that is what they choose to do; but they do not know that yet.

Commissioner Brentano agreed and asked if anybody would respond if there was not a probability that they would get reimbursed for their time. Mr. Meurer said that he had heard there were some who would want to start that dialog with the hope that it would result in a contract; so yes they are putting out time, effort and expense like they would do for any other contract operation. That is why he wants the open dialog for ideas.

Commissioner Milne was not concerned if the information they put out was clearly written and expressed what they were looking for. She likes the idea of opening up to as many possibilities as might be out there so that they don't leave any stone unturned. It is a good discussion to be having.

President Thompson asked what was preventing those people from coming forward now. Mr. Meurer suggested that these people may not be fully informed

or they may not know what is going on and members of the task force are not supposed to talk with these people without committee approval.

Director Kelley did not think they were ready to do an RFP and was not sure they were ready to do an RFI. The insurance issue is big and they just found out about the Bylaws definitions. The Transit Board has to address and formulate their thoughts on transit needs before sending out an RFI.

Ms. Young suggested that they could do an RFP but would not have to accept the proposals. They could hire an outside firm to do technical pieces for the Scope at \$5-8,000.

[end of audio tape]

Commissioner Brentano tasked the Boards with four objectives prior to having another meeting. Each Board will report what their objectives are; have a discussion about potential parameters and legal restrictions for an RFP and/or an RFI and report back what would look like and cost. They will also make arrangements to show the webinar at the April 19th CH2STF meeting that had been seen by the Technical Subcommittee.

ADJOURNMENT The meeting was adjourned at 2:45 p.m.

Respectfully submitted,

Linda Galeazzi
Administrative Secretary
Salem-Keizer Transit