

10/27/09

6B-1

Charter Review Committee Meeting Minutes
September 17, 2009, 5:30 p.m.
Central Park Library, Redwood Room

In attendance:

Don Von Raesfeld, Committee Chair
Pat Kolstad, Committee Vice Chair
Aldyth Parle, Committee Member
Dan MacNaughton, Committee Member
Dave DeLozier, Committee Member
Dick Wentz, Committee Member
Don Callejon, Committee Member
Fred Raia, Committee Member
George Netto, Committee Member
John Haggerty, Committee Member
Kathleen Lockwood, Committee Member
Larry Marsalli, Committee Member
Lisa Gillmor, Committee Member

Raymond Gamma, Committee Member
Rosalie Wilson, Committee Member
Steve Chan, Committee Member

Jennifer Sparacino, City Manager
Ron Garratt, Assistant City Manager
Rod Diridon, Jr., City Clerk/City Auditor
Helene L. Leichter, City Attorney
Carol McCarthy, Deputy City Manager
Rajeev Batra, Director of Public Works
Kevin Riley, Director of Planning & Insp.
Pam Morrison, Administrative Analyst
Jashma Kadam, Senior Staff Aide

Guests:

John Wasson, 49ers
Harry O'Brien, 49ers
Steve Fine, 49ers
Lisa Lang, 49ers
Larry MacNeil, 49ers

Steve Van Dorn, Santa Clara Chamber of
Commerce/CVB
Bill Gissler, Resident
Bill Bailey, Resident
James Rowen, Resident
Stephen Hazel, Resident

Matters for Council Action: The Charter Review Committee, by majority vote, made the following recommendation to the City Council:

- If Senate Bill 43 is signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council use the authority granted by SB 43 to allow a design/build construction process and the use of the general contractor chosen by the Stadium Authority for the proposed new stadium; and
 - If Senate Bill 43 is not signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council propose that the City Charter be amended by a vote of the people in accordance with the draft language proposed, including
 - The City Charter be amended to provide a design/build process similar to that proposed in Senate Bill 43
 - The City Charter amendment would only apply to the proposed stadium
 - The City Charter amendment would allow the Stadium Authority to select a design/build contractor on a sole source basis, but would require that the majority of the subcontractors be awarded on a competitive bid basis
 - The Charter Amendment would provide that any City investment from RDA and CFD funds would be used only to pay subcontractors selected based on City's existing bid process.
-

Call to Order: The meeting was called to order by Chair, Don Von Raesfeld, at 5:30 p.m. The City Manager announced the absence of Committee Member Jim Lee. The City Manager went through the agenda items and binder handouts, including responses to questions from Committee Member John Haggerty and Bill Gissler. She advised the Committee that they could make a recommendation to the City Council at this meeting, or if more time was needed for deliberation, they could request one additional meeting on October 1, 2009.

SB 43 Update: The City Manager provided an update on Senate Bill 43. The City Council referred this bill regarding design/build option for a Stadium in Santa Clara to the Charter Review Committee as one of several options for their consideration. This bill has now passed both the State Assembly and Senate; October 11 is the deadline for the Governor to either sign or veto the bill. The bill, if signed into law, would allow for design/build construction process for the Stadium, based on certain conditions, which include no City's General or Enterprise funds to be used in the construction of the stadium. Further, RDA funds or Mello Roos District funds may only be used for subcontracts awarded on the basis of the lowest responsible bidder. Per this bill, the Stadium Authority would have to report to the State on the status of Stadium construction work. Voters would have to approve the Stadium; no City Charter amendment would be required.

Presentation of Options with Analysis of Advantages/Disadvantages for Committee

Consideration: The City Manager gave a powerpoint presentation on the draft amendment language to the City Charter which would provide an alternative process for stadium construction, if SB 43 is not signed into law. She informed the Committee that the conditions for use of Stadium contract procedures are still being worked on. She pointed out that the draft language mentions the specific amount of \$40 million dollars while the Senate Bill 43 states "funding is limited to a specific maximum amount." The RDA investment is capped at \$40 million dollars plus approximately \$1.7 million for a share of development fees.

The Assistant City Manager continued the presentation with the advantages and disadvantages of modifying, or not modifying, Section 1310 of the City Charter. He also reviewed the advantages and disadvantages of the Stadium Authority choosing to use Senate Bill 43 to accomplish the Sole Source Engagement of a General Contractor for a 49ers stadium project. He stated the City Charter has served the City well for decades. However, Staff also understands that under requirements of the Term Sheet, the Team is responsible to pay for all construction cost overruns, and as such has significant concern that the cost overruns remain minimal considering the risk they are taking.

If the Governor signs SB 43 into law, the Charter Review Committee could recommend that the City use the authority granted in the bill to allow a design/build construction process and the sole source selection of the general contractor by the Stadium Authority. This will also solidify the Team's commitment to cover all construction cost overruns. In addition, the bill will require public funds used in financing stadium construction to be competitively bid in compliance with existing Charter Section 1310. If SB 43 does not pass, there will be two ballot measures: one for the approval of the Term Sheet, and the second, for City Charter amendment to allow for some focused, limited use of a design/build process not subject to competitive bidding in some or all of the construction of an NFL stadium. Both measures will have to be approved by the voters for the project to move forward.

Larry McNeil from the 49ers responded verbally to Bill Gissler's questions, which were submitted following the September 3, 2009 meeting. Mr. McNeil stated the Team will not publish the construction cost estimates for the stadium in order for the bidding of contracts to be a fair and competitive process. He stated that the Team would invite bids from subcontractors from local area; however for specialized contract work they would look for contractors nationally. A letter from Turner Construction responding to other questions from Mr. Gissler was also included in the handouts. Committee Member Don Callejon advised the Committee that the Santa Clara Unified School District had contracted with Turner Construction to rebuild the Buchser Middle School Science Building and the project was completed ahead of schedule.

When asked, under public presentation, why sole sourcing of contractor was never specified in the Term Sheet, the Assistant City Manager said the Term Sheet is not the final definitive agreement. The Development and Disposition Agreement is still in the process of being negotiated and will speak to this issue. The Term Sheet is to make the community aware of the key points of negotiations.

Committee Discussion and Deliberation: Committee Member Pat Kolstad proposed, and Committee Member Kathleen Lockwood seconded, the following motion for consideration of the Charter Review Committee:

- If Senate Bill 43 is signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council use the authority granted by SB 43 to allow a design/build construction process and the use of the general contractor chosen by the Stadium Authority for the proposed new stadium; and
- If Senate Bill 43 is not signed into law by the Governor, the Charter Review Committee recommends that the Santa Clara City Council propose that the City Charter be amended by a vote of the people in accordance with the draft language proposed, including
 - The City Charter be amended to provide a design/build process similar to that proposed in Senate Bill 43
 - The City Charter amendment would only apply to the proposed stadium
 - The City Charter amendment would allow the Stadium Authority to select a design/build contractor on a sole source basis, but would require that the majority of the subcontractors be awarded on a competitive bid basis
 - The Charter Amendment would provide that any City investment from RDA and CFD funds would be used only to pay subcontractors selected based on City's existing bid process.

In the discussion that ensued, it was asked whether SB 43's grant of power directly to the Stadium Authority to use design/build construction process would override Section 1310 of the City Charter. It was clarified for the Committee that the City Council approved the Term Sheet on the proposed stadium project and referred the specific issue of competitive bidding to the Charter Review Committee for its recommendation on how to deal specifically with the Charter language and design/build process. In response to Committee Member John Haggerty's letter and questions from several Committee Members, the City Attorney advised the Committee that SB 43 does not appear to conflict with Charter Section 1310, as SB 43 only grants the power of design/build to the Stadium Authority, which is a separate and distinct legal entity from the City. The limitation in Charter Section 1310 would apply only to the City.

The Committee was also advised that the funding of the stadium is more significant than the RDA and Mello Roos funds. The Stadium Authority will award the contract for the entire stadium construction budget.

Committee Member Lisa Gillmor supported the motion and provided comments in favor of it. The motion was carried by a majority, with one opposing vote. The agenda report on the Charter Review Committee's recommendation will be on Council agenda for the October 27th meeting.

Public Presentations: Stephen Hazel and James Rowen made some general comments.

Adjournment: The meeting adjourned at 6:55 p.m. Since the motion was carried by the majority, no additional meeting was scheduled.

Prepared by:



Jashma Kadam
Senior Staff Aide

APPROVED:



Jennifer Sparacino
City Manager