

**SPECIAL JOINT MEETING OF THE COSTA MESA CITY COUNCIL AND THE
ORANGE COUNTY FAIRGROUNDS AUTHORITY
CITY OF COSTA MESA**

August 10, 2010

The City Council of the City of Costa Mesa, California and the Orange County Fairgrounds Authority met in a Special Joint Session on Tuesday, August 10, 2010 at 4:42 p.m. in City Council Chamber, 77 Fair Drive, Costa Mesa. The meeting was called to order by the Mayor/Chair.

I. ROLL CALL:

Council/Authority Members Present: Mayor/Chair Allan R. Mansoor
Mayor Pro Tem/Vice Chair Wendy Leece
Council/Authority Member Eric R. Bever
Council/Authority Member Katrina Foley (late)
Council/Authority Member Gary Monahan (late)

Council/Authority Members Absent: None

Officials Present: Executive Director/City Manager Allan Roeder
Authority Counsel Kimberly Hall Barlow
Development Services Director Kim Brandt
Becky Bailey-Findley, Consultant
City Clerk/Authority Secretary Julie Folcik

II. CLERK'S STATEMENT

The Costa Mesa City Council and Orange County Fairgrounds Authority Special Joint Meeting Agenda and Notice and Call were posted at the City Council Chambers, on Friday, August 6, 2010 at 5:00 p.m.

III. MEETING MINUTES - None

IV. PUBLIC COMMENTS (00:01:18)

None

VIII. UNFINISHED BUSINESS - None

IX. NEW BUSINESS (01:26)

Executive Director Allan Roeder introduced the item and noted that the purpose of this meeting is to update members of the public on progress on various aspects of efforts with the Orange County Fairgrounds, review the current status of land-use regulation

and discuss the Orange County Fairgrounds Joint Powers Authority (JPA). He deferred to Authority Counsel Kimberly Hall Barlow for a report.

1. Status Report on negotiations with State of California and Facilities Management West (FMW)

a) Purchase and Sale Agreement (00:04:06)

Ms. Barlow reported that the Board previously approved a Purchase and Sales Agreement in substantially final form. She noted certain exhibits needing updates but stated that the final document will be brought to Council/Authority for consideration and review by the public.

In response to Mayor Pro Tem/Vice Chair Leece's inquiry, Ms. Barlow reported that Facilities Management West has been involved in preparing the final Purchase and Sales Agreement and are finalizing the document based upon their due diligence. She added that the final document will be brought back before Council/Authority before it is executed. The public will have an opportunity to provide comments on the document.

Mr. Roeder addressed some of the challenges related to the exhibits. Discussion followed regarding the required deadline for the agreement and keeping the process transparent.

b) Due Diligence (00:11:09)

Mr. Roeder reported that the Due Diligence applies to all of the ground and background work that must be done to ensure what is being purchased, the condition of the asset being purchased, environmental review and other relevant actions. The process has been performed by Facilities Management West. He deferred to representatives of Facilities Management West for a report.

Becky Bailey-Findley introduced Mark Urita of Facilities Management West, who provided a presentation that addressed areas of due diligence required by the Purchase and Sales Agreement including inspections and investigations. Ms. Bailey-Findley noted inspections and investigations required and the status of Due Diligence inspections and investigations performed to date and in process. She reported that the due diligence review and investigations is currently focused on existing Orange County Fair and Event Center (OCFEC) documents and analysis of the current condition of the facilities and grounds.

Council/Authority Member Foley requested a copy of all of the documents identified and reviewed by FMW and asked the status of the OCFEC's meetings with employees.

Ms. Bailey-Findley reported that meetings were scheduled, then re-scheduled and a new date had not been set. A meeting had been held with current vendors and access to documents had been provided.

Council/Authority Member Foley requested a list of all community uses of the site as well as high schools that use the facility for fundraising, noting that Costa Mesa high schools have never been invited to participate. She wondered how that information is conveyed and the program is administered.

Discussion followed regarding future plans for meeting with employees and right-of-entry agreements provided by the State Department of General Services (DGS). Ms. Barlow reported that the Right-of-entry agreements have been finalized and executed.

Council/Authority Member Foley requested a copy of the agreements and Ms. Barlow stated that she will provide them. Council/Authority Member Foley wondered regarding independent review of the documents. Ms. Barlow reported that all of the documents will be independently reviewed and will be cross-referenced.

Mr. Roeder noted that a replacement for Ms. Bailey-Findley had not been found but that a consultant will review all of the environmental documentation to make sure that they satisfy the City's interests.

Ms. Barlow reported that the City had no one physically present at the site but that all documents are being reviewed independently as well as by Counsel.

In response to Council/Authority Member Foley's inquiry, Mr. Roeder stated that if Council feels that another individual is needed to replace Ms. Bailey-Findley to ensure that everything that is being provided is authenticated, staff will do so, but noted challenges with time restrictions.

Discussion followed regarding ensuring that expertise and knowledge is retained on the site and, that the City does not just rely on FMW regarding due diligence.

Mayor Pro Tem/Vice Chair Leece commented on the importance of knowing the information and plans for assigning a responsible party to administer the details and the process.

Mr. Roeder reported that going forward from this point until there is a final sale agreement, the City will receive all copies of documents listed in the presentation. A separate, independent consultant will review those documents for sufficiency. However, that will not address the on-ground, physical walk-through of the operations. He referenced shadow-management opportunities which have not happened at this point, but noted that will need to be assigned at such time as the final sale agreement is processed. He agreed with the need for on-going oversight and coordination with the operator to ensure that Council and the public is made aware of what takes place on the property.

Discussion followed regarding designating a contact person for the City to address fairground issues and the importance of having a back-up plan.

c) Legislation (00:39:37)

Mr. Roeder presented an update on legislation noting that he and Council/Authority Member Foley recently met with representatives in Sacramento. He addressed AB 4X22 which authorized the sale of the fairgrounds property, the public-bidding process and the auction. A decision was made not to award the property to the highest bidder and there had been no decision so far regarding putting the property back on the market. He referenced AB 1590 which opposed the sale and is still pending, and AB 1790 which would allow for the property to be sold to the JPA and will require two-thirds approval of the legislature.

Council/Authority Member Foley discussed concerns expressed in the meetings in Sacramento.

Council/Authority Member Foley addressed different interests who are concerned about transparency and the governance process.

Mayor Pro Tem/Vice Chair Leece thanked Council/Authority Member Foley and Mr. Roeder for travelling to Sacramento as well as Assemblyman Solorio for working with the City on this issue.

Mr. Roeder noted that there are a lot of interests out there and acknowledged the efforts of Assemblyman Solorio.

Council/Authority Member Monahan addressed the issue of zoning control and Measure C provisions.

Council/Authority Member Foley noted that one of the other interests working against legislation is the Fair Board.

d) Ground Lease (00:52:34)

Authority Counsel Barlow reported that a draft Ground Lease is under review and a complete red-line version would be available for the prospective tenant soon. She indicated that the firm Latham and Watkins had been retained to work on the review and revision of the document would be available for public review at the first meeting in September or sooner. The lease would make clear that the property must comply with the General Plan and Measure C and that change to the property will need to go through environmental review.

Mayor Pro Tem/Vice Chair Leece asked that sufficient time be given for review of the document and the MOU. She noted that there were too many unknowns and stressed the importance of addressing those issues.

Council/Authority Member Foley felt that she would need additional due diligence details before finalizing the Ground Lease especially relative to non-profit uses.

Ms. Barlow reported that she was assured that no one is using the property for which there are no documented agreements. All of the documents would be provided as appropriate to ensure that every use is documented as thoroughly and as early as possible.

Mayor Pro Tem/Vice Chair Leece felt that it would be helpful to have prior year event calendars to rule out that possible verbal agreements were made.

2. Prospective land use regulation of the Orange County Fairgrounds (00:59:08)

Mr. Roeder introduced the item and deferred to staff for a report.

Development Services Director Kim Brandt presented details of the report noting that while the property is under State control, the City has very limited land-use authority. However, that had not prevented the City from adopting a General Plan Land-Use designation and zoning for the property. She noted that the information presented is predicated on the sale of the property going into private or City ownership and is not reflective of today's condition.

Ms. Brandt reported that land-use is mandated by the General Plan and guides the City's development for a twenty-year timeframe. She stated that Council had approved a ballot initiative that would lock-in land-use designations established by the General Plan so that any future change would require voter approval within the community. The initiative was approved and Council can no longer make any change to the Fairground land-use designation without getting subsequent voter approval. She presented details of the land-use designation approved by voters. Ms. Brandt addressed the OCFEC land-use policy and regulation hierarchy including details of each level within the hierarchy. She presented information regarding the 1980 Settlement Agreement, ongoing litigation and 1990 court orders that became permanent injunctions as well as the MOU noting that the latter does not circumvent the City's land-use authority for reviewing and approving future building alterations, additions or changes to the operations of the property.

Discussion followed regarding the Settlement Agreement and it was noted that it did not have an expiration date.

In response to an inquiry from Mayor/Chair Mansoor regarding control of the property with and without the Fair Board's proposal being approved, Ms. Brandt reported that the City's ability to implement zoning and enforce the General Plan would exist as it does today, and would be very limited. However, Measure C would still be in effect and is not connected to who owns the property. Ms. Brandt explained that the 32nd District Agriculture Association is looking to propose revenue-generating uses but that a plan had not been submitted.

Mr. Roeder reported that staff did not come prepared to present or comment on the Fair Board's plan. He stated that the plan, as envisioned, carved out corner parcels for commercial development for the purpose of generating revenue.

Ms. Barlow reported that there is no expiration on the 1980 Settlement Agreement and is, at this time, the City's only land-use control over the fairgrounds. It specifically does not preclude the district from doing other commercial developments, as long as it is in compliance with the Settlement Agreement.

Discussion followed regarding the parties to the Settlement Agreement and impacts of changing ownership. Ms. Barlow noted that the issue will be addressed in the Lease Agreement.

Council/Authority Member Foley wondered if the matter should be addressed in legislation.

Council/Authority Member Monahan noted that any commercial developments on the corners as independent commercial developments would not be allowed under the City's General Plan and Measure C.

3. Orange County Fairgrounds JPA – Rights, Authorities & Responsibilities (01:15:11)

Mr. Roeder introduced the item addressing formation of the JPA, required meetings, roles, and Council levels of participation. He noted the intent to get Council feedback relative to staff direction and governance of the JPA.

Council/Authority Member Foley wondered if the City's authority under the JPA would be jeopardized if it included elected members from other agencies or stakeholder groups.

Mayor Pro Tem/Vice Chair Leece stressed the importance of transparency and indicated that she would like to have a structure including monthly meetings of the JPA, initially, with the possibility of scheduling quarterly meetings in the future. She noted the importance of allowing the community the opportunity to ask questions and comment.

Council/Authority Member Bever commented on the importance of defining a line between the business operation and the City's operation. He noted it should not be the role of the City to define how the tenant will run his/her business but felt that the City must make sure that community uses are protected and the existing uses are respected into the future.

Council/Authority Member Foley suggested that it may be helpful for Council/Authority to see an example of a similar JPA. Mr. Roeder stated that there are many examples and that staff will follow up.

V. COUNCIL/AUTHORITY MEMBER COMMENTS (01:25:20)

Council/Authority Member Monahan stated that the agreement saves the fair and keeps the existing land uses. He referenced a letter from American Fairs and stressed that the City had met all of its objectives, including maintaining control, raising revenues and providing guarantees that no tax-payer money would be at risk. He noted no controls with the Fair Board proposal. He felt that if the City is unable to go through with the deal, the State will put the property up for sale and the City will lose all control. Council/Authority Member Monahan stated that the deal was solid, backed up financially and keeps current uses intact.

Council/Authority Member Foley inquired regarding review of financial data by the City from either of the potential tenants.

In reply to Council/Authority Member Foley's inquiry, Ms. Barlow reported that the JPA will receive the revenue and that it is free to distribute it to either Member of the JPA. She anticipates that the JPA will use the revenue to cover its costs and the Board will decide whether it wants to set aside reserves as additional financial backup or transfer the money to the City for Recreation programs or other similar General Fund uses.

Council/Authority Member Foley requested a memo defining possible remedies for the City, should the State put the property up for sale through the bidding process.

Mayor Pro Tem/Vice Chair Leece agreed with Council/Authority Member Bever's comments and thanked Council/Authority Member Monahan for his comments regarding the MOU. She encouraged the public to attend upcoming meetings and provide input and felt optimistic that the City would prevail.

In response to Council/Authority Member Bever's inquiry, Mr. Roeder addressed previous staff recommendations regarding ranking the proposals and explained the process of negotiation. He addressed financial terms and guarantees by American Fair and stated that an agreement could not be reached. Therefore, staff went to the second proposal by FMW.

VII. CLOSED SESSION (01:44:44)

1. Conference with Real Property Negotiators – Property: 88 Fair Drive. Agency Negotiator: Allan Roeder, City Manager. Negotiating parties: State of California and Facilities Management West, Under negotiation: price, terms of payment. Pursuant to Government Code Section 54956.8.

Authority Counsel Barlow indicated that she anticipates no reportable actions after the Closed Session.

X. ADJOURNMENT

The Mayor/Chair adjourned the meeting to the Closed Session at 6:30 p.m.



Mayor of the City of Costa Mesa/Chair
Orange County Fairgrounds Authority

ATTEST:



City Clerk of the City of Costa Mesa