

MONTEREY PENINSULA COMMUNITY COLLEGE DISTRICT

CITIZEN'S BOND OVERSIGHT COMMITTEE

Monday, March 7, 2011
3:00 PM – Regular Meeting
Sam Karas Room, Library and Technology Center
Monterey Peninsula College

Meeting Minutes

MEMBERS PRESENT: Mr. Scott Coté
Mr. J. Fagan
Mr. Stewart Fuller
Ms. Daphne Hodgson, Chair
Mr. Robert Mulford
Mr. Ron Pasquinelli
Mr. Gary Ray, Vice Chair
Mr. Niels Reimers
Mr. Antron Williams

ABSENT: Ms. Mary Ann Kane

STAFF PRESENT: Ms. Rosemary Barrios, Controller
Dr. Douglas Garrison, Superintendent/President
Mr. Stephen Ma, Vice President for Administrative Services
Ms. Vicki Nakamura, Assistant to the President

OTHERS PRESENT: Mr. Joe Demko, Kitchell

1. Call to Order

The regular meeting of the Citizen's Bond Oversight Committee of Monterey Peninsula College was called to order at 3:03 PM by Chair Hodgson.

2. Introduction of New Committee Members

Dr. Garrison introduced new committee members, J. Fagan, Stewart Fuller, Bob Mulford, and Niels Reimers. A handout summarizing the backgrounds of the new members was distributed.

3. Public Comment

There were no public comments.

4. Purposes, Duties and Authorized Activities of the Citizens' Bond Oversight Committee/Review of Ethics Policy Statement

Mr. David Casnocha, the district's municipal bond counsel, was introduced to provide an orientation on the role of the committee for the new members. Mr. Casnocha noted the college's bond, Measure I, was approved under Proposition 39 requirements. He reviewed the history leading up to the passage of Proposition 39 in 2002, resulting in a constitutional amendment which lowered the threshold for voter approval of general obligation bonds from 66% to 55%. In addition to acquisition and renovation of real property, Proposition 39 allowed bond proceeds to be used for acquisition of furniture and equipment. He cited other

Proposition 39 requirements include greater project specificity to allow the public to determine if funds are being spent appropriately, an annual bond audit and financial performance audit, and the establishment of an independent oversight committee.

Mr. Casnocha reported that the District's \$145 million bond measure was passed in 2002 and the Citizens' Bond Oversight Committee was established in 2003. He stated 3 ½ series of bonds have been issued, series A, B, and C, for a total amount of \$145 million. Mr. Casnocha explained the "half" referred to the refinancing of the series A bonds, which raised \$4.25 million in additional proceeds, for a total of approximately \$150 million.

He then began a review of the committee's Bylaws, noting it may be time for some of the language to be refreshed. The Bylaws were approved by the Board of Trustees in 2003 and reflect Education Code and Proposition 39 provisions. He referred to Section 1 on committee establishment and pointed out the last sentence which stated the committee has no independent legal capacity. Mr. Casnocha explained the committee has no legal recourse if it believed bond funds were being misused; a taxpayer would have to file a lawsuit in this situation.

Mr. Casnocha observed the committee's activities are subject to the Brown Act; all meetings must be conducted in open session in public. There should be no need for closed sessions which are reserved for personnel matters or litigation. Meetings of the committee should be properly noticed, and only items appearing on the agenda may be discussed. He cautioned against participating in serial meetings or engaging in discussion of committee business outside of the regular meetings. Using e-mail to discuss committee matters is also a violation of the Brown Act.

Mr. Casnocha continued with his review, stating that bond funds may get mixed in with funding received from other sources. He emphasized that committee review powers only extend to bond proceeds and regular and deferred maintenance projects also fall outside of the scope of the committee. Mr. Casnocha advised the committee should receive an expenditure report to review regarding bonds funds that have been spent since the last meeting and for what purpose. He referred the committee to Exhibit A of the bond resolution for a description of the primary purposes for Measure I and to Exhibit B for more specificity, including a list of authorized projects. Mr. Casnocha cited litigation against Foothill DeAnza Community College District where local taxpayers complained the bond projects listing in Exhibit B was not specific enough. The appellate court's opinion, recognizing conditions change over time, stated Exhibit B is not just a list of approved projects, but also conveys approval of projects of the same type.

Mr. Fagan asked if the committee would review regular and deferred maintenance projects that were completed with Measure I funds. Mr. Casnocha's response was yes, if the projects were funded with bond proceeds. However, he clarified that similar projects completed using state scheduled maintenance funding would not be within the committee's purview.

Mr. Casnocha noted Proposition 39 also specifies no bond proceeds may be used for teacher/administrator salaries or for operating expenses. The state attorney general has issued an opinion that the law excludes expenditures related to administration of bond projects.

One of the committee's primary duties is to inform the public of District expenditure of bond funds. Mr. Casnocha provided examples of how information could be provided, such as through the committee website or through a presentation by the committee chair to the Board of Trustees. The preparation of an annual report also accomplishes this objective.

The annual report must include a statement that the District is in compliance with the constitutional requirements regarding bond expenditures. The annual report should then be presented in person to the Board of Trustees. There is no standard template for the annual report and new members may ask for changes in the format.

Mr. Casnocha then reviewed Sections 3.4 and 3.5 which addresses areas where the committee has no approval authority, such as construction contracts and change orders. He said the committee may still be interested in receiving information about these items to avoid waste of taxpayer dollars.

Mr. Casnocha addressed authorized committee activities listed in Section 4. The bond financial audit report and performance audit may be reviewed by the committee. He mentioned legislation effective in January 2011 that specified the performance audit should be done according to generally accepted accounting standards. District audit fees may rise as a result.

In addition, the committee may inspect college grounds and facilities through a tour and review copies of deferred maintenance and other facilities plans. He noted it is appropriate for the committee to ask how buildings being financed by the bond are being maintained to ensure these assets are preserved for the long term.

The committee may also review the efforts of the District to maximize bond funds. He cited several examples, such as applying for state matching funds, revising plans so design costs are reduced, controlling fees through the use of request for qualifications, and promoting energy efficiency.

Mr. Casnocha discussed Section 5 which covers committee membership. He noted a potential change to Section 5.3 regarding conflicts of interest. The committee is not subject to state conflict of interest regulations because the committee's purpose is oversight rather than advisory. This section should be changed to remove the requirement to complete the state conflict of interest form. Under Section 5.4, the Bylaws provide for continuity of membership through the staggering of terms and specify committee members are limited to two terms. He said this section should be amended further to add that a member whose term on the committee has expired may continue to serve until a replacement is made. Mr. Mulford asked if a member could return to the committee after serving two terms. Mr. Casnocha responded the member would need to be off of the committee for a year before returning, and the prescribed method of filling vacancies should be used.

Mr. Reimers asked how a quorum of the committee was defined. Mr. Casnocha stated there are ten members, so a quorum would be a simple majority or six members. If there is not a quorum, the committee may still meet, but items may not be voted upon.

Mr. Casnocha reviewed Section 7 regarding the technical and administrative support to be provided to the committee, including compliance with Brown Act requirements and preparation and maintenance of a website. The committee may request the District's consultants to attend meetings and share information.

Mr. Casnocha concluded his review of the Bylaws with Section 11 regarding termination of the committee. He stated this section should be revised to state the committee will terminate when all bond proceeds have been expended, a final accounting has been presented to the committee, and the annual report has been submitted. Since the last bond series was issued in 2008, the District expected the bond program to be completed in January 2013. He surmised the November 2013 approval of the annual report might be the concluding act of the committee.

Mr. Casnocha followed with comments on the Ethics Policy. He stated committee members should be interested in helping the college rather than acting as ex-officio trustees or using membership as a stepping stone to elected office. Mr. Casnocha advised members have no authority to approve contracts and thus, no influence with contractors.

Mr. Mulford asked if bylaws were common to most districts. Mr. Casnocha responded yes. He explained the powers are the same as they are derived from the Education Code.

Mr. Casnocha was asked to clarify the use of bond funds for maintenance and repair projects. He stated bonds are not intended to be used as working capital to fund operational costs; however, repairs to buildings are bond-authorized. Regarding the purchase of maintenance equipment, items should be reviewed on a case-by-case basis. For example, the purchase of lawn mowers would not be appropriate. He explained any equipment purchased should be connected to a bond project or used for many bond projects, e.g., a parking lot blower. As another example, Mr. Casnocha mentioned classroom renovations and the purchase of smart boards. If a smart board needs replacement due to damage, the purchase would not be an appropriate bond expenditure; however, if a smart board has a useful life of five years, then replacement using bond proceeds would be justified after five years.

A question was asked if an initial maintenance agreement for equipment was an appropriate bond expense. Mr. Casnocha responded yes as the equipment could not be operated without a maintenance agreement and training. He gave another example where a building was being renovated and equipment needed to be moved from the building, temporary housing had to be obtained, and then the equipment was moved back in. Mr. Casnocha said all of the associated costs were legitimate bond expenses due to being secondary effects of the building renovation.

Mr. Casnocha was thanked for his presentation. He advised if the committee has further questions to forward them through Mr. Ma.

5. Review of the Ralph M. Brown Public Meetings Act

Mr. Casnocha's review of the Brown Act was incorporated in his presentation on the previous item.

6. Approval of November 1, 2010 Minutes

Ms. Nakamura distributed a revised page 3 containing a clarification regarding Mr. Ma's comments on the bills and warrants report.

Mr. Ma provided follow up on a question in the minutes regarding a double billing for Mobile Management Corporation for rental of the testing modular in the bills and warrants report. He said staff had researched the two entries and discovered an error was made in the second entry. The first payment was for the period, April 30 – May 29, 2010 and the second payment for May 30 – June 28, 2010.

Motion to approve the minutes of November 1, 2010 with the corrections noted was made by Vice Chair Ray and seconded by Mr. Reimers. Motion carried unanimously.

7. Accept Bills and Warrants Report

Vice Chair Ray noted on page 1, under the Automotive Technology Building Renovation, there are two entries for George H. Wilson. One payment is for plumbing work and the other is a retention payment. He questioned the retention payment being significantly larger than

the billing for the work. Mr. Demko explained the retention payment is 10% of the total contract and the other entry was different work. Mr. Ray asked about the first two entries for Williams Scotsman under the Swing Space category on page 5. The period of service in the two entries differed by a few days. Mr. Fagan also questioned the slight difference in the payments. Mr. Ma said he would have staff check both of these items.

Chair Hodgson had several questions on the report. She referred to page 1, under the Student Services building project, and noted there was retention paid to Swinerton Builders as well as a regular payment. Ms. Hodgson commented retention payments are usually made to another party. Mr. Demko explained the District pays for 90% of the work and retains 10%. Contractors have objected to the retention due to the interest earnings lost. To address this concern, an account has been set up with Union Bank to hold the retention payments until the District signs off. Mr. Demko said the wire transfer is in Swinerton's name, but the payment goes to the bank. Chair Hodgson suggested the retention payment be described differently to clarify the retention is being held. Mr. Mulford asked for further information about the type of bank account being used. Mr. Demko responded the Union Bank account references MPC, and both the District and the contractor must sign off before the funds are released to the contractor.

Chair Hodgson asked if the college was holding the retention as there was no retention payment listed under the Business and Computer Science building project on page 9. Mr. Demko's answer was yes. He explained the approach used depends upon the contractor. If the project is small or will be completed in a short timeframe, the contractor may not want a retention account to be set up.

Chair Hodgson asked if a copier service agreement referenced on page 4 was for general operations. Mr. Demko clarified the copier was being used in the construction management trailer. She suggested this information be included in the description.

On pages 7-8, Chair Hodgson noted several items that could be listed under specific projects rather than grouped under Infrastructure – Phase III. She commented that an entry for installation of a workstation in the MPC Foundation office did not appear to be a capital improvement. Mr. Ma responded all equipment in the new administration building was purchased with a combination of state and bond funds. Mr. Demko explained the original budgets for several projects did not include a contingency and there is a penalty if the project is not closed out. Afterwards, items have come up, and he said it seemed better to handle these items under infrastructure or a miscellaneous category. Mr. Ma added that this approach also avoids reopening of a project and incurring additional fees from the Division of the State Architect (DSA). Mr. Fagan asked if infrastructure needs any sign-off from DSA. Mr. Demko answered the District's infrastructure projects are submitted for DSA approval and fees are being paid appropriately.

It was moved by Mr. Fagan, and seconded by Mr. Mulford to accept the December 31, 2010 bills and warrants report. Motion carried unanimously.

8. Bond Expenditure Status Report

Mr. Ma reviewed the bond expenditure status report for December 31, 2010. He noted the total bond budget in Column A for all projects was \$149.2 million, with \$63.9 million remaining in bond funds. If the remaining \$63.9 million is added to the amount of bond funds spent to date of \$89.8 million, the total is \$153.7 million. He explained the difference between \$149.2 million and \$153.7 million reflects the interest earned.

Questions were asked about what years are included in Column B. Ms. Barrios clarified all prior year expenses through June 30, 2010 are included in Column B.

Mr. Demko reviewed the cost control report. He stated the current, active projects are forecast to enable the Board of Trustees to monitor the status of the budgets. Mr. Fagan commented the change order budget for the Student Services project will need to be increased. Mr. Demko said the state guideline is 10% for change orders. He explained there were architect design issues as well as additional testing that went over budget. Both he and Mr. Ma expect negotiations to occur with the contractor and architect to reconcile these items.

9. Bond Auditors' Reports for 2009-10

Mr. Ma reviewed the auditors' reports. He reported there were no findings and the audit was done on a modified accrual basis. Referring to page 2, he said the liabilities total \$1.7 million and noted \$182,000 is due from other funds. He explained that at year end, June 30, Ms. Barrios moves some expenditures from the capital outlay fund to bond funds. In this case, the capital outlay fund owes \$182,000, which is part of the state allocation for the Humanities/Business Humanities/Student Services project. State funding is provided on a reimbursement basis.

Mr. Ma reported the statement of revenue shows \$621,000 in interest earnings from the County treasury. He also clarified the operating expenditures listed refer to the use of consultants to provide construction management and inspection services. Dr. Garrison asked if this language may cause concern due to Proposition 39 requirements. Mr. Ma explained the wording came from the auditors; he will request a better description be used in future reports.

Mr. Fagan asked why a modified accrual basis was being used. Mr. Ma did not know the reason, but this has been the practice of the District's auditor for quite awhile. Ms. Barrios added the same basis is used for District audits. Mr. Ma said he would check with the auditor and report back.

Mr. Pasquinelli reiterated a past concern that the auditor does not express an opinion on the District's internal controls. There was discussion regarding what the auditor was engaged to do and the level of assurance provided. Chair Hodgson commented the audit is done by random sample and it would be cost prohibitive to have the auditor do the level of work necessary to state the internal controls and statements were perfect. Dr. Garrison stated the auditor is evaluating the District's records, just not performing an exhaustive review. Mr. Côté concluded the committee was still showing care and due diligence.

10. Updated Credit Rating Letter and Report on the District's General Obligation Bonds

Mr. Ma reported he had recently received a statement from Standard & Poor's affirming a credit rating of "AA-" for the District. He said the report referenced the wealthy economic base of the District. Mr. Ma stated this was a good report and there were no changes from prior years.

11. State Capital Outlay Funding Process

Ms. Nakamura stated one of the challenges faced by the District in planning the use of bond funds was that the needs were far greater than the amount of bond funds available. Since November 2002, efforts have been undertaken to leverage local bond funds with other funding. One of the main sources the District has sought is state funding. She provided an overview of the process to obtain state funding for District facility projects. Ms. Nakamura described the various plans that must be prepared and submitted to the Chancellor's Office to qualify for consideration for state funding. There is a five year construction plan that must be prepared on an annual basis as well as initial project proposals (IPP) and final project

proposals (FPP) for each project that must be approved by the Chancellor's Office to be eligible for funding.

She listed the projects where the District was successful in obtaining state funding, including the Child Development Center, the renovation of the former library to provide a new administration building, and the upcoming Humanities, Business Humanities and Student Services project.

Phase 2 of the Public Safety Training Center Project at the former Fort Ord has also been approved as eligible for state funding; however, currently, there are no state capital outlay funds available. Ms. Nakamura explained community college facilities projects are funded by state capital outlay bond measures that are placed on the ballot every two years. Due to the recession and the state's poor economy, the state bond measures scheduled for 2008 and 2010 were deferred. This delay in state funding resulted in the District revising its facilities plan in August 2010 to downsize some projects (previously approved for state funds) in order to go forward without the state funding match.

12. Facilities Construction Plan Overview

Mr. Ma stated the plans for facilities projects were conceptual when the District's bond measure was approved in 2002. During 2003-2005, the District developed a facilities master plan that set the framework for facilities projects to be completed and the design criteria. He noted during the early years, the demand for labor and materials was high and projects went over budget. This situation is currently reversed and both the Student Services building and the Business, Computer Science building projects were under budget. The reduced construction economy has allowed the District to stretch its bond dollars. In concluding his overview, Mr. Ma said he anticipates \$30 million of construction work to be underway in the next few months.

13. Update on Facilities Projects, Timelines and Schedules

Mr. Demko reviewed the status of active facility projects. He indicated the District is trying to take advantage of the favorable bid climate with several projects expected to be approved by DSA.

Humanities/Business Humanities/old Student Services – Mr. Demko said the plans have been approved by DSA and the District is waiting for the approval to go out to bid from the state Chancellor's Office. Bids are planned for receipt on April 19. This project will be completed in 3 phases.

Life Science/Physical Science Buildings – Mr. Demko reported the drawings are being reviewed by DSA. Construction is slated to begin in the summer, with the bid award in June.

Theater – The drawings are being reviewed by DSA. Bidding is expected in July with construction expected to begin in summer.

Mr. Demko noted these three bid amounts will help to determine the future bond program. Mr. Mulford asked about the projected cost for these projects. Mr. Demko responded the estimate for the Humanities/Business Humanities/old Student Services project is \$4 million, the Life Science/Physical Science project is \$9 million total, and the bid estimate for the theater is \$7.1 million.

Gym First Floor – Mr. Demko reported the plans have been approved by DSA.

Education Center at Marina Permanent Facilities - Mr. Demko reported construction is going well. The roofs were installed before the recent rains. Windows, asphalt, and power will be installed this week. The project is ahead of schedule.

Infrastructure - Mr. Demko said signage work is being completed that will assist visitors to find their destinations on campus. Information kiosks are planned for installation. Parking Lot B work will begin in June.

New Student Services Building - Mr. Demko reported furniture has been received and commissioning services are being done. The move of departments will be accomplished in phases.

Swing Space - Mr. Demko reported the modular buildings have been installed near the Theater. The general classrooms building is being used for swing space and will be renovated to meet the needs of each program.

Facilities Committee - The committee meets to address issues and make recommendations for project priorities.

Business-Computer Science Building – Mr. Demko reported the building is finished and move-in is being scheduled.

Outside Lockers Adjacent to the Art Buildings – Mr. Demko said this project will be completed by summer. Funding includes \$100,000 of state scheduled maintenance funds.

Social Science – Mr. Demko reported modifications were made to offices and two classrooms over the semester break.

Pool/Tennis Courts – Mr. Demko explained the first floor of the gym needs to be renovated before the pool and tennis court work can be done.

Music Building and Student Center Projects – These renovations are future projects. The bids expected this spring on three projects will determine the funding and scope of the music and student center projects.

Mr. Demko concluded his report with a review of the construction schedule. Acknowledging Mr. Casnocha's earlier comment regarding 2013 as the completion year, Dr. Garrison noted the timeline shows the plan being completed in 2015.

14. Meeting Schedule

The remaining meeting dates for 2011 are June 6, August 8, and November 7 (annual organizational meeting).

15. Suggestions for Future Agenda Topics and Announcements

There was discussion and support for a tour of facilities projects on the Monterey campus prior to the June meeting.

16. Adjournment

Chair Hodgson adjourned the meeting at 5:46 p.m.