

CITIZEN BOND OVERSIGHT COMMITTEE  
Measure G  
"Meeting Minutes of February 4, 2009"

- Call to order by: John Moore (CBOC Chair)
- Time called to order 6:33 PM
- The following were in attendance:

6 Visitors

Julio Hernandez (SGI)  
Mariana Solomon (SGI)  
Lance Jackson (SGI)  
Frank Biehl (Board Member)  
Edward Garcia (Board Member)

9 CBOC Members

John Moore (Chairman)  
David Hernandez  
Bill Jakel  
Sara Przemielewski  
Bud LoMonaco  
Bill Becker  
Sandra Duncan  
Barbara Boone  
Jon Reinke  
Rosa Solorzano

3 District Members

Alan Garofalo  
Jerry Kurr  
June Rono  
Dan Moser

- Meeting adjourned by: John Moore (CBOC Chair)
- Time of adjournment: 9:40 PM

Public Comments

- There were no public comments made.

Review and Approve Meeting Minutes of November 5, 2008

- Members of the CBOC read the minutes from the November 5, 2008 meeting. The minutes were approved.

Old Business Overview

- No old business overview

Old Business

- Review of Measure G funds spent on salaries since last meeting.
  - Jerry Kurr to update:

- In the agenda there are some charges that date back to August, which specify what the total amount for salaries and benefits are what the current schedule reflects.
  - As of August 31<sup>st</sup> going back to the previous 18 months before 2007-2008 and including 2007-2008 salaries up through August 31<sup>st</sup>, which is this fiscal year and the salaries allocated are based on those amounts.
  - In those numbers for this year were some positions that the committee had rejected which those numbers were reflected, and will be taken out before the next meeting.
- CBOC Member Bonnie Mace questioned if health and other benefits were included in the salaries expenditures. Mr. Kurr confirmed that the salaries expenditures are a total of salaries and benefits.
  - John Moore stated the numbers everyone will see at every meeting will be two months in arrears. This will give the Superintendent ample time to process the numbers and come to a consensus agreement with his own staff. Once each of the bonds are running in good order the reports will be consistently two months in arrears so changes in spending can be measured.
  - The purpose/goal everyone is striving for is consistency on the numbers so they can be agreed or disagreed on; in order to be consistent with the policies.
  - Bill Becker questioned, "Why, if the CBOC only meets every three months, is the financial report two months behind?"
    - Per John Moore, the Superintendent has requested that much time to process records between his office and SGI. He felt that any less than that would not allow his office adequate time to review the numbers and either agree or disagree.
    - John Moore recalled that at the June meeting the salary amount was \$2.8 million and two months later it was \$3.4 million. He continued to say that the reason for the difference is the numbers presented in June didn't include additional missing data. This is a reason the 60 days are needed.
    - As a result of the 60 day time frame all numbers received in September's meeting are aligned and consistent.
    - Mariana Solomon responded regarding the 60 day gap:
      - The district has a fiscal year ending June 30<sup>th</sup> so it takes the district over a month to close out.

- By the time SGI receives year end data it is two months later. So SGI receives the data in August.
  - With November starting by the end of the year we will be back on track. It will be about 30 days behind.
- Lance Jackson responded regarding the 60 day gap:
  - SGI needs enough time to make verify the information that is going between the two departments, (i.e. SGI and the district) to conclude that this is the accurate timeframe we are looking at and that the accurate number of bodies listed, come to the same sum total, which did not agree the first time around.
    - The last time the report was put together the numbers disagreed and that made us aware that it was necessary to have a pause to reflect and to make sure the numbers are equivalent.
    - The ultimate goal is to get the most current information that SGI can possibly give that is accurate.
- David Hernandez questioned, “If the departments are meeting together to check the figures why would there be a discrepancy where the numbers between the two departments don’t have the same balance”. What would be the cause of that if the departments already know what is being billed or paid for.
  - Lance Jackson responded:
    - It was the first go around
    - The list that they worked off of last time everyone met was the second attempt, and the actual list of FTE’s was still in flux.
    - It wasn’t agreed totally on how many FTE’s and who those bodies would be.
- Bill Becker stated that if there are 24 people working on these projects that 60 days is unacceptable. (specified for this to be on record)
- Progress of the Annual Report Committee
  - John Moore commented that there was little accomplished. The Sub-Committee was put together to work on the report but was unable to provide much support, due to other circumstances John endured.

- John intends to have meetings with the Sub-Committee to generate a report with the target date being January.
  - Format and data suggestions are welcome.
  - Will notify everyone by e-mail when the Sub-Committee will meet.
- Mariana Solomon gave an overview of the project expenditure report.
  - The overall program is based on the \$298 million budget.
    - According to the Pie chart
      - Every single project for Measure G is budgeted so there is no extra money.
    - Expenditures actually are warrants that the district has paid out to contractors, vendors, and whoever is involved with those projects.
    - the \$39 million under committed is based on purchase orders that are still open and that have a balance, even if there is no purchase order, the bond has been has been budgeted.
  - Money left from a completed project will not go to the general fund, but will stay with the school it was budgeted too; but not necessarily to that project. The decision of allocating the unspent funds for that school is left to the Facilities Department.
- CBOC Member questioned what each of the phases meant:
  - Beneficial Occupancy is a legal/construction term defined as a facility that is complete enough to be safely occupied for its intended use. The beneficial occupancy date is based on the contract schedule. In the past there has been liquidated damages assessed from many contractors who has gone beyond the scheduled dates agreed upon. The funds liquidated from the contractors are returned back to that particular project.
  - Completed is a legal/construction term defined as a facility with beneficial occupancy, and is currently in the final stage of punch list items, but has not yet received close out documentation from DSA.
  - Closed is a legal/construction term defined as facility with beneficial occupancy, is considered completed, and has received close out

documentation from DSA. Funds unspent in this stage of the project can now be disencumbered.

- Question was asked as to whether each site has one individual committee member assigned. John Moore responded that not every site has a member assigned for Measure G, but would be possible and preferred if there was for Measure E.
- Committee would like to acknowledge where changes in budget between campuses occur and how the budgets are addressed and handled.
  - Alan Garofalo answered that it is all dependent on the need of the school based on student capacity.
  - John Moore stated that the bond and the expenditures are a district not a local decision. Money will flow back and forth as needed and wherever the greatest need is from the greatest capacity at a site.
    - Ex: If the maximum capacity of Independence High School is 5500 students, but has 3400 students currently enrolled there would be no need to build new classrooms. But for a school such as James Lick, which is rapidly increasing in students' enrollment, new classrooms would be would be a priority.
- David Hernandez questioned who made decision to move money from site to site. John Moore commented that that was something that would be brought to the board of trustees as possibly part the consent calendar by the district. Committee would only review for consistency with the bond.
- Bill Becker misunderstanding as to how things are done at the level of ...Members would like to know when there are changes in the budget to each site. John Moore commented directly to SGI and the district that it is pertinent to receive the reports one week in advance.
- John Moore suggested that each report should include information from last reporting period to current reporting period.
- Bud LoMonaco stated that the committee should trust the district and SGI's decisions as to where the money is used in accordance with following the rules of informing the board of trustees.
- Bud LoMonaco asked where the funds come from to support a project which was started years ago and is affected by the rise in cost.
  - John Moore stated that it will mean fewer projects done by the bond.

- He commented as acknowledgement that it is a fact that Measure G will not fully fund all projects that were identified to be funded by Measure G, and that there will be instances in which projects will have to be funded by Measure E.
- Member asked what the process was to move a project that was originally funded by Measure G and can no longer be funded by Measure G to Measure E.
  - John Moore stated that, that conversation should be continued under Measure E where everyone can be incorporated.
- Measure G meeting was adjourned and Measure E meeting call order.

New Business
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- The CBOC chair explained going forward the meeting will run as a single committee (combining both Measure G and Measure E committees). In an effort to make the best use of time.
- Lance Jackson of SGI speaking on performance audits commented that there is a total of three performance audits Prop. 39 require. (1) Fiscal audit and (2) performance audits.
- John Moore commented that the committee debated and said that this additional performance audit should have been done at the district's expense because it went over and above the legal requirements that of audits that needed to be performed, and should therefore be an expense of the operating funds. Right, wrong or indifferent that was what the committee voted for.
  - "What was told to the committee is that the expense will be taken out of the bond anyway. We are an advisory body, but that is a precedent that I personally object to."
  - "For the record I object to that, I don't think that's it's the proper way. I acknowledge that the 1<sup>st</sup> cabinet and ultimately the board has the ability and the right to disregard the recommendation made by the committee, but it should be done in a way that is more public." "It should be something that we can look to that says "hey we've (Board) taken your advise under council and we disagree."
  - "Not suggesting or proposing that this committee do the Board's work, but if our advice is to have any weight we can't be simply ignored."
- It was commented that there are two opinions on performance audits.

- People who wrote the law said a performance audit should be agreed on standard, “was this money spent within accordance of the bond?” That’s the basic way the law was written.
- However the word “Performance Audit” according to the US Government is a whole different thing, where they come in and look at the operation. So we always had the cheap audit (\$3,000), but the district wanted to have the full performance audit which included going through the entire operation (i.e. “Were the people doing what they were suppose to do?”).
- How Measure G Money was Spent
  - John Moore complimented SGI and District staff, despite critiques of the issues over salaries. The representation of how bond money was spent on project was the best seen in 8 years. Job well done to all. The report is clear and concise.
- Question was asked where were the Change Orders reflected shown in the report.
  - Lance responded that the only way it would be reflected if it affected the bottom line increase.
    - (i.e. Pg 23 of the report, Yerba Buena tab, “Major Projects”, Bldg 900 Voc. Ed.)
  - If there is a budget of \$5 million dollars and it cost a little over \$2 million dollars including the A/E fees, the \$3 million savings will go back to into the Measure G building fund.
  - It was questioned if those funds were allocated specifically somewhere?
    - Mariana Solomon responded that the transaction will not show up on the report until the district gets whatever final documents they need from the state where they actually have half the money in hand, and it recorded into their QSS system. Once that is complete, then SGI will reflect it on the report.
    - The difference/savings, once transferred can be used for another project.
  - Per Lance Jackson, the funds cannot be disencumbered until we know we have the savings.
- It was suggested for SGI, to include a list of how much was saved on the projects to be incorporated into the data report.

- Question was raised “Got the bid and saved \$2 million, so now that goes back to the bond fund and you can’t use it until that school is completed? Or when can you use that for something else? Where did the savings on the bidding go?
  - John Moore: The money was never spent, that money remains in the bond program in the overall fund, and the only money that was spent was the money that was billed for, which is reflected in the report.
- Lance Jackson to give a small presentation explaining how to read the report.
  - Program Summary Tab:
    - CBOC Summary Report:
      - Column B shows the same fund amount as the budget under each school tab.
      - Column’s C-I is an executive overview of the entire bond program each year from 2002 thru November 30, 2008.
  - Individual School Tab (ref. Independence HS):
    - Campus Allocations Page
      - \$36 Million is the budget, \$28 Million was spent (Expenditures), \$1.5 Million was committed, and the remaining balance is \$6.4 Million.
    - Project Status Page
      - Explain which projects, in a graphical way, are at in various phases
    - Bond Program Update Page
      - A drill down into the actual projects from a cash flow point of view
      - Shows expenditures by project.
        - Column (A) shows the amount budgeted per project.
          - The final page of the of this section (Bond Program Update pg 27) titled “Project Total for Independence” shows the same budget total as the “Program Summary” tab for Independence.
        - Column’s (B), (C), (D), serve as clarity when there are additional funds outside of pure bonds (i.e. Other funds that come to bare on projects.
          - Other funds include: State Funds, Other Funds, and Developer Funds.
        - Column (H) – Changes in activity since the last CBOC meeting.

- Shows the funds spent as well as possible credits (-) since time reported.
      - Explains how to track funds that might flow between projects.
        - Example: If funds were taken out of Independence HS, it would show as a credit, and if it was placed for Yerba Buena, Yerba would show that same amount .
    - Is the difference of the Current Expenditure and the Previous CBOC meeting data
    - If there is any activity within that project, Column (H) will show it.
    - Per John Moore, this column is what was specifically what the committee requested SGI to add to this report in the previous meeting.
  - Column (G) subtracted by Column F equals H
    - $(G) - F = (H)$
    - Column (G) is expenditures as of a certain date
  - John Moore commented, per Mr. Hernandez and Mr. Becker, that it would be nice to see a page (Executive Summary Overview) that would include dollar amounts for ease of use, it would also make good press.
  - Bill Becker stated the reason the Committee is here is to trace the dollar flow.
- John Moore stated “In my opinion, there is a learning curve for all of us. As we (committee) become more familiar with the format, the report will make more sense to everyone. This is a good format, compliment to SGI.”
- Per Lance Jackson, In our capacity as your Program Manager we have to manage the risk, i.e. potential change orders etc, and meet the milestone required by the contract. Once beneficial occupancy is filed that triggers the lead time for contractors and subcontractors to submit any final changes.
  - We want to make sure we maximize the output of the bond money. If there is a potential new project to be funded, we look at this report to see what dollar amount is left so that we can move it on to the next project.
- Bill Becker questioned that in other districts he receives a list of vendors and their contract amounts and how much is spent on the contracts, as well as a remaining balance, is that something that is do able for this district?

- The concentration of the report would show a dollar amount paid to each vendor (i.e. \$=SGI, \$=Blach Construction etc.). So when you add up all the major players we know where we spent the money to who the vendors were, so we would know if we have too much concentration on one vendor, to avoid a possible risk of that vendor going out of business/bankrupt.
- Bill Becker questioned how we look at fixed assets when a contract is closed, because there was a problem with SGI before with going to fixed assets.
  - Lance Jackson replied that is not SGI's roll.
  - Alan Garofalo replied that it is updated annually through the risk management office.
  - John Moore replied that this subject will be on the agenda for the next meeting.
- Measure G Funds Spent on Salaries
- Per Lance Jackson, 9.2 FTE is what is being charged against the bond. \$298 Million is the Measure G Bond value. Total current program value is \$314 Million accumulative effect of FTE in reporting period from the last time reported to this time. There in Column A of the FTE salary report shows the changes from December 31<sup>st</sup> 2008, \$3,728,302 is the net cost for the 9.5 FTEs.
- Mariana Solomon commented that "Capitol Funds Transferred to Measure G" include OPSC Funds coming in and State Funds. "Other Funds Transferred to Measure G" would reflect City Grants.
- John Moore questioned if the interest earned from the County is shown?
- Mariana Solomon stated the report reflects what the district had in their system as of November 30<sup>th</sup> 2008. The changes on the report are changes that were received as of the end of the day Thursday February 4<sup>th</sup> 2009, because we wanted to show you that there's transfers for those items that were not suppose to be part of the FTE reconciliation.
  - Lance Jackson commented that in the future, when SGI report out on the FTE it's included in the overall program pie chart, the backup data will be behind that page.
  - Member requested a definition of all the job description.
  - Per Lance Jackson the information is forthcoming.
- Per John Moore, would like to be able to track what the bond is paying SGI, and incorporated in SGI, if the bond is paying anyone else (Bond paying SGI, and if

SGI is paying other sub-consultants). Would like to have that information for the next meeting.

- David Hernandez questioned if SGI is hired as a consultant why is it necessary to know who they are paying or sub-consultant.
  - John Moore stated he that has worked with SGI a long time, and with a great deal of confidence. It is his responsibility to say to anyone “I know where that money went.” If that includes payments to SGI for them to send to someplace else, he would like to be able to know that.
- Bill Becker stated that it seems to be an attitude from SGI when we (committee) ask a question, or try to get illumination on something that we’re complaining about what SGI is doing. That is not the case, we’re only asking for whatever it is to be accounted for so we can justify why we’re here.
- Member requested a description of what is included in the “Capitol Funds,” “Other Funds,” how much is from interest, e-rates, and how much from everything goes into the Bond.
  - Member to e-mail SGI a list of all information requested.
- Review of status of insurance reimbursements to Measure G from bond proceeds used to repair/rebuild Foothill HS following fire damage.
- John Moore questioned “What is the status of that reimbursement? Have we received the money from the insurance company? If we did, was it put back into the bond?”
- John Moore commented:
  - Foothill Library was reconstructed using Measure G bond money at a cost higher than the damages.
  - Measure G should be responsible for any cost in excess of the reimbursement, but Measure G should be reimbursed by whatever the insurance settlement is.
- Jerry Kurr responded:
  - Foothill Library burned a year ago.
  - It was agreed to use capitol funds to up front the cost of replacing the library, at the same time filed for loses with the insurance company. The losses’ included the actual building, the impact on the staff, and other items affected by the fire.

- Taken to the Board in December 2008, as part of addressing the budget problem we had with the state, and items included in the report was the amount of \$880,000 insurance proceeds.
  - The insurance proceeds itself is not restricted for a certain purpose, it is simply reimbursing the client for a loss.
- The commitment understood was that Measure G was up fronting the funds, but it has not gone back to the Board, and was told the alternative because it's not on any of bond project to replace the Foothill Library.
  - Did not see the dollars spent out of the Foothill funds.
- Will be using other capitol funds to reimburse Measure G for that cost.
- Received \$880,000 reimbursement from the insurance company those funds were not returned to the bond.
- Bill Becker commented, "My opinion would be that that's Measure G funds that is being used for operating funds and that is in violation.
  - Jerry Kurr responded: "We know we had the commitment to the intent of Measure G, but the Board has the option of replacing those funds with other capitol funds the district has. We do not have just General Fund Money."
- Frank Biehl commented that from a Board Member perspective it would be said "Do we use Measure G funds to pay for the insurance?"
  - It would seem that the proceeds from the insurance policy should go back to the fund that was used to pay for the insurance policy.
  - If Measure G funds were not used to pay for the policy, then it would be reasonable thing for the Board to consider using the proceeds from the insurance money back to the General Fund.
- Jon Reinke stated that the intent of the Insurance is to make the District whole again after a loss, to restore what was destroyed.
- Per Alan Garofalo, the district has received the \$880,000 reimbursement for the loss. It is not the total amount, approximately an additional \$750,000 is coming to the district for the loss, and that should bring the project to close. There was a difference because the Library was upgraded in the process and brought up to current standards. Approximately \$400,000 in upgrades.
- John Moore stated there were other losses the district incurred in addition to the Library. Those costs should be paid out of the insurance proceeds.

- John Moore stated that at some point funds that would have been spent elsewhere was spent on a project that was not part of the bond. Therefore the bond should be reimbursed to the maximum extent.
- John Moore stated that lines have been crossed. Lines were crossed with salaries, lines were crossed with “well we really are in desperate circumstance” thoughts and actions, and lines were really crossed many years ago with the Quimby Funds. We need to stop crossing the lines.
- Bud LoMonaco questioned if there was an exact figure the insurance came up with in the replacement dollars? Is the insurance company policy written for accurate or current replacement?
  - Alan Garofalo to return with a response later.
- Sara Przemielewski questioned if the district has an intent on returning the funds that was not expected to be spent to Measure G bond?
  - Jerry Kurr stated the District have other alternative that can be given to the Board for replacement of the fund, the General fund does not necessarily have to be hit.
- Bill Becker question if the District continues to borrow from the Measure G bond because it is bad time/economy, how and when would the district be able to pay back those funds.
  - Alan Garofalo commented that we do expect the economy to change eventually.
  - John Moore stated things are going to get a lot worse before they get better.
- Measure G meeting was adjourned and Measure E meeting called to order. Per John Moore, it is not necessary to review meeting minutes for the second time.

Additional Items
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- John Moore commented that Superintendent Bob Nuñez requested he ask about Greening Projects.
  - Jerry Kurr:

- The District has been exploring renewable energy and there are schools in San Jose and Milpitas that have been putting in solar rays and generating their own energy.
- The District has been looking into the same company to see what can be done with that. What's nice about their project is that there reliable and what there are installing is already DSA approved, so it can be deployed and installed pretty quick.
- Will be briefing the Board on Saturday February 7<sup>th</sup> about proposing it.
- It will generate about 7700 kilowatts per hours, which will save about \$6 Million a year.
- The guarantee period is twenty-five years.
- The committee raised two concerns about this proposal.
  - Use of bond funds is not in the language of Measure E.
  - Savings assumptions are not supported by results in other districts.