

JOINT WORK SESSION
EWEB BOARD OF COMMISSIONERS
AND EUGENE CITY COUNCIL
EWEB TRAINING ROOM
500 EAST 4TH AVENUE
MAY 30, 2007
NOON

EWEB Commissioners present: Mel Menegat, John Simpson, Patrick Lanning, and Ron Farmer. Commissioner John Brown was excused.

City of Eugene Mayor and City Councilors present: Kitty Piercy, Andrea Ortiz, Chris Pryor, Betty Taylor, Bonny Bettman, George Poling, Jennifer Solomon, Mike Clark, and Alan Zelenka.

Others present: Along with Randy Berggren, EWEB General Manager and City Manager Dennis Taylor, there were various members of both organizations present along with members of the public.

President Mel Menegat welcomed everyone to the third Joint Work Session of the Eugene Water & Electric Board (EWEB) and the Eugene City Council. He opened the EWEB work Session and noted that Commissioner Brown was excused.

President Menegat reviewed the desired outcomes of the meeting as set forth in the Agenda Item Summary (AIS), which focused on developing a constructive and collaborative relationship between EWEB and the City. He highlighted EWEB's priorities for the riverfront site, including maximizing the economic value of the sale of surplus property, minimizing the risk of committing to the Roosevelt project development, protecting the riparian edge and preserving the future value of remaining EWEB properties and facilities on the site after the sale of potential surplus property. He said those priorities were not inconsistent with the City's priorities.

Her Honor Mayor Kitty Piercy convened the Eugene City Council Work Session and welcomed those present. She expressed her appreciation for the opportunity for further discussion with EWEB and said the Council understood the monetary concerns and obligations and the importance of the riverfront site to the community.

PLANNING PROCESS FOR EUGENE WATER & ELECTRIC BOARD RIVERFRONT PROPERTY

EWEB General Manager Randy Berggren stated that the purpose was to develop a cooperative or collaborative approach to master planning the potential surplus property on the riverfront site that was responsive to EWEB's and the council's priorities. He summarized the activities to date and said that staff from EWEB and the City had reached unanimous agreement on the process being proposed to meet mutual objectives.

Councilor Jennifer Solomon arrived at 12:10 p.m.

EWEB Property Manager Mark Oberle highlighted four important aspect of the proposed process:

- respects the City Council's sole authority to have the final word in approval of the master plan,
- respects EWEB's sole authority for disposal of utility property,
- establishes an effective community involvement process, and
- adheres to applicable codes, regulations and laws.

EWEB Real Property Manager Mark Oberle drew attention to details of the process that were contained in the agenda packet. He said there were three phases: prelude to the master plan, creation of the master plan and implementation of the master plan. He provided a brief overview of the phases and noted that some adjustment might be necessary to achieve efficiencies in the process.

City Manager Dennis Taylor stated that in February 2007 the Council directed staff to develop two paths: one a City-managed process and one a co-managed process. He said staff was jointly recommending consideration of an EWEB managed process that would be very similar to a co-managed process. He asked Eugene City Planner Nan Laurence to highlight issues that would be the basis of the Council and Board discussion.

Ms. Laurence said the focus was on the master planning process and after extensive staff analysis of City-managed and co-managed processes and consultation with legal counsel, staff developed and was recommending a third option, which was an EWEB-managed collaborative process. She said limitations on the Council's participation due to the Council's later involvement in the Metro Plan amendment decision were the reason for the recommendation. She said the intent was for a process that was as collaborative and open to public participation as possible and asked for direction to staff to prepare a draft Memorandum of Understanding (MOU) laying out the process and bring an outline of the MOU back to another Joint Work Session.

Ms. Piercy asked if the City and EWEB would collaborate on appointing an advisory team and hiring a consultant. Mr. Oberle said that developing a list of names for the committee would be collaborative; the EWEB Commissioners would be responsible for selecting committee members and hiring the consultant.

City Councilor Bonnie Bettman thanked EWEB for its efforts to be responsive to the Council's motion. She said the law provided clarity and the fact that it was a quasi-judicial process trumped everything. She was willing to support the recommendation of both staffs and take that further by removing the reference to collaboration altogether. She said many issues in the MOU could prejudice final quasi-judicial action. She felt that the City should only provide technical assistance and cooperation in the process and staff should not be in the position of

working on policy issues. She said the MOU should only address the responsibility for resources and the City's willingness to provide technical assistance. She thought the other items were not appropriate in a quasi-judicial proceeding.

Ms. Bettman said with respect to acquiring the property, there was a clearly defined, legal process for the City to follow once EWEB had determined whether the property was surplus. She said whatever EWEB decided in consultation with the community, the plan would come before the Council and undergo a public process; the Council would review the record and make a quasi-judicial decision. She appreciated efforts to include the City in the process, but given the quasi-judicial nature it was inappropriate. She encouraged the EWEB Commissioners to consider the property as more than just something that belonged to them, and the value of which had to be maximized. She said a better approach was to think of it in terms of a resource that was managed for the public good.

Eugene City Attorney Glenn Klein stated that his advice to staff regarding the ability of the Council to become involved in the collaborative process was the same as Ms. Bettman's comments. He said because the Council would be making a quasi-judicial decision, issues related to *ex-parte* communication and bias could be raised if elected officials participated in developing a product that they would be required to make a decision on.

Ms. Piercy asked if the Council could be involved in appointment of the advisory team or selection of a consultant. Mr. Klein said that was not a problem as long as it was not tied to design of the master plan or land use components of the process.

EWEB Commissioner Patrick Lanning thanked staff for their efforts to create an opportunity to move forward in a collaborative way. He assured Ms. Bettman that EWEB was thinking not just of the monetary issues, but how the community would be affected. He hoped to move forward in a collaborative way and avoid problems later in the process. He asked that issues and concerns be raised now rather than later.

Eugene City Councilor George Poling echoed Commissioner Lanning's remarks. He was pleased to see two governmental bodies working together to resolve issues. He asked if the revised collaborative approach set forth in Attachment B to the AIS reflected any of the concerns raised by Ms. Bettman. Mr. Klein said he would research that issue.

Mr. Poling liked the approach as it was well thought out, had good public involvement and a number of points for checking in with the City Council. He hoped to see the process move forward.

Ms. Laurence said that staff would incorporate input from City Councilors and EWEB Commissioners, as well as staff analysis, when the MOU was developed.

Ms. Bettman raised several concerns regarding policy issues in the proposed process. She said determining a time limit for reaching an agreement and agreeing that process milestones were decision points and exit ramps went beyond technical assistance. She felt the technical assistance City staff might provide to EWEB should be no different than any other quasi-judicial process, such as the one for the hospital. She identified a number of items that she perceived as major policy decisions, such as clarifying the nature of mixed use development and exempting property sale from future City real property value-added charges. She pointed out a number of other policy decision points and emphasized that the process diverged considerably from other quasi-judicial proceedings.

Regarding whether there were aspects of Attachment B that could give rise to remand of the City Council's action, Mr. Klein said that would have to be based on a claim of bias or *ex-parte* communications. He said that many items in Attachment B were not actions required of City Councilors or the Mayor; they were actions for staff and those would not give rise to claims of bias or *ex-parte* communications. He agreed with Ms. Bettman that there were a number of policy issues in the recommended approach and it was not a typical quasi-judicial process because normally City staff was not involved in an application that would be submitted to the City. He distinguished the legal limitation from the policy questions and said that the City Council had the legal authority to authorize staff to be involved in the process. He noted the City Council could not agree, as part of the MOU, to exempt anything related to a future legislative action, such as exempting the property from future City real property value added charge as this City Council could not bind a future City Council. He said other than that issue, the City Council had the legal authority to authorize staff and the discussion should focus on whether the City Council wished to do so.

Mr. Berggren said from EWEB's perspective the list of opportunity areas included in the process did represent a unique approach, which was demanded by a unique piece of property. He said that EWEB was interested in mitigating risk related to the Roosevelt project and that was why the process attempted to define some of the uncertainties at an early stage and clarify those to the greatest extent. He said the spirit of the process was to be sensitive to its quasi-judicial nature but push towards its limits to achieve collaboration with the City that would have mutually agreeable results.

Commissioner Lanning asserted that if the parties did not move forward and address some of the issues at the beginning of the process it could take years to complete. He had heard repeatedly from the community that a lengthy process was not desired. He urged that staff be trusted to do their excellent work to move EWEB and the City forward in a timely way.

Ms. Bettman stated that City staff did not have the authority to make policy decisions or even to inform the EWEB Board or staff on policy issues unless they received direction from the

City Council. She understood that the City Council was being asked to participate so that EWEB could bring forward a master plan that was most likely to achieve City Council approval, but that was not something that could be done. She said there was policy on the books with respect to the City Council's priorities for mixed use development and that should guide the process.

Eugene City Councilor Alan Zelenka appreciated the proposed process elements of an advisory team, facilitator and public involvement and understood EWEB's need for sufficient revenue to move its facilities to the Roosevelt site, protection of the public's interest and the need to move ahead in a timely manner. He said the City's role in the process was very limited as currently defined and did not meet his definition of collaboration. He wanted the City Council to have greater involvement in establishing the process, but not the content, to avoid the perception of bias. He suggested that the City Council and EWEB Commissioners jointly select the advisory team and the consultant. He also suggested eliminating policy issues in the MOU and just simply defining the process and responsibilities with respect to resources.

EWEB Commissioner Ron Farmer remarked that the discussion was ironic, as the EWEB Board initially wanted to proceed with master planning but was attempting to respond to the City Council's request to be involved in the process with the proposal for a collaborative process. He said EWEB attempted to design a collaborative process but doubted that any EWEB Commissioner would object to removing any parts the City Council did not want included. He said that EWEB had a major concern about timing and wanted an approach that enhanced its changes for approval instead of being stalled in a lengthy process. He indicated that EWEB would use the Downtown Plan for guidance in developing a master plan for the site.

Eugene City Councilor Chris Pryor recognized the delicate balance between partnership and legal propriety and observed that success was often based not on what was done but how it was done. He concurred with Mr. Zelenka's comments regarding the City Council's involvement in establishing the process but not the content and choosing an advisory team and consultant. He agreed it would be helpful to EWEB to understand what the City Council would like to see to avoid spending months on something that would not meet with approval. He felt the City and EWEB could work together to identify some of the parameters and characteristics that the City Council would be considering.

Commissioner Farmer asked if the criteria would be different from that in the Downtown Plan.

Mr. Pryor replied that part of the ongoing discussion could be visioning within the guidelines of existing plans.

City Councilor Betty Taylor agreed that the City Council had expressed an interest in being involved in the process, but if the City Council could not legally be involved than City staff

should not be involved, as City staff could not speak for the City Council. She questioned why staff would be involved. City Manager Dennis Taylor explained that staff had expertise in technical aspects of the planning process, the City's land use code and the concepts and aspirational ideas in the Downtown Plan. He said those skills and knowledge were not necessarily available in the EWEB staff and providing technical assistance could assist with a unified approach.

Ms. Taylor questioned how City staff would frame policy issues. City Manager Taylor replied that meant identifying and highlighting policy decisions to be made by the City Council or EWEB Commissioners and making recommendations.

Ms. Taylor asked if there were legal difficulties with the process suggested by Mr. Zelenka. Mr. Klein replied that Mr. Zelenka's suggestion would not present any legal problems. He said if the City Council was interested in further exploring where the line was drawn with respect to demonstrating bias he would need to conduct further research.

Ms. Taylor said she would appreciate having the additional research, but was still concerned with staff being involved in discussion of policy, as that was strictly the City Council's role.

Commissioner Lanning remarked that the discussion of staff's role in policy and implementation needed to be looked at not just from a legal perspective but also with respect to effectively moving the process forward. He said it was difficult to define that clearly in black and white and he asked the City Council to look at the leadership aspect instead of the black and white use of the word "policy." He said he did not think the way the word was being used in the discussion was how most people would refer to it, as he clarified that he had done his dissertation on governance.

Eugene City Councilor Andrea Ortiz said the issue for her was about leaders in the community giving direction to staff about how they wanted to proceed. She said conversations in the community indicated some confusion about EWEB's relationship to the City. She was pleased that staff was involved and that was consistent with direction from the City Council. She said policies were written and staff was not changing them; they were creating a plan that would be guided by those policies. She liked Mr. Zelenka's suggestions and hoped that EWEB and the City Council could continue to meet and work together as community leaders. She said the riverfront property was an important site and it should not be left to one body to decide its future. She felt there was a difference between working with EWEB and working with an entity such as the hospital because EWEB was a public utility.

Ms. Piercy said it was the City's and EWEB's job to work together for the best results for the community. She liked Mr. Zelenka's suggestion for collaborating on the advisory team and

consultant. She felt City staff could help do the work and she wanted them to be involved in developing choices and options for the City Council.

Eugene City Councilor Mike Clark expressed appreciation for the work of City staff and the EWEB Commissioner's desire to collaborate with the City. He said the public expected both elected bodies to work together to assure that a public asset was managed for the community's benefit. He concurred with Mr. Zelenka's comments and urged staff to work together on every issue where it did not raise legal concerns. He asked for an advisory memorandum from the City attorney on the legal issues related to collaboration and guidance on the City Council's appropriate involvement.

EWEB President Mel Menegat reiterated Commissioner Farmer's earlier comments that EWEB had moved toward a collaborative process because of what was heard at a previous meeting with the City Council and because of the benefit of having City staff working in conjunction with EWEB staff. He agreed that there were some aspects of collaboration in which the City Council and the EWEB Board could not participate, but there were many others, such as developing the MOU, where it was possible.

Mr. Zelenka remarked that sharing selection of the advisory team and consultant could enhance the process and assure inclusion of all of the perspectives that City Council and EWEB Commissioners wanted to see. He understood EWEB's desire to have as much upfront agreement with the City Council as possible and thought that sharing selection would be a good start. He perceived the process as similar to a refinement plan where City staff made their expertise and professionalism available to guide the process. He supported the involvement of City staff to provide the land use and other expertise that EWEB staff would need.

Mr. Poling felt that Ms. Ortiz had characterized the policy issues accurately; City staff was aware of the City Council's policy and there to make sure they were followed, not to change them. He said the motion to direct City staff to develop an MOU for the City Council's consideration was a good move forward while legal counsel was preparing guidance for the City Council's involvement in the process.

Mr. Berggren commented that it was less important what the process was called than that both bodies shared an understanding and agreement about it. He was comfortable taking the suggestions from Mr. Zelenka to the EWEB Commissioners for consideration and as a result of the discussion had a better understanding of the line between policy and process and could present that to the Board with some advocacy.

Ms. Bettman stated that she did not have any objections to Mr. Zelenka's suggestions for a shared selection approach, but did not want the City Council to put resources into a process, as that became a tacit partnership. She pointed out that the first and second options in the AIS were

responsive to the City Council's direction, but the third option for an EWEB-managed process was not, although that was prompted by legal advice about the quasi-judicial process. She appreciated that EWEB had tried to be responsive but the process had changed because of legal problems. She said the City Council had general policies and it was not the purview of staff to interpret those unless they requested direction from the City Council. She supported City staff in providing technical assistance, as that would be available to anyone. She asked for a response from EWEB Commissioners to a public message from EWEB that it was willing to offer the City a place at the table but had no intention of giving up the lead role. She said EWEB should take a lead in the master planning process and it was the City Council's decision whether or not to approve the plan. She asked if there had been a change in EWEB's sentiment regarding taking the lead role.

Commissioner Farmer agreed that EWEB had to take the lead in master planning and present the plan to the City Council for approval.

Vice President John Simpson thanked staff from the City and EWEB for their cooperative and collaborative approach to working together. He said collaboration simply meant working together and he favored that approach, as it would best serve the community. He favored working with the City Council to select an advisory team and consultant and reducing the MOU to a process-only document. He said it was important to realize that EWEB was a tremendous asset to the community as a public utility and the benefit was significantly greater than if it was a for-profit utility. He looked forward to the City Council's guidance and the City staff's leadership and expertise to assist EWEB in the master planning process.

Vice President Simpson acknowledged that EWEB would be working toward a master plan that would provide adequate financial value to EWEB so that facilities could be moved from the riverfront property to a more appropriate location. He said the highest possible value was simply one consideration and others included community interests, design criteria and relationship to the Downtown Plan. He said that existing plans and policies would provide guidance to EWEB about what the City wanted. He was disappointed that the City Council was constrained from participating in a collaborative approach but had faith that there were legal ways for the City Council to communicate its needs and desires for the process.

Ms. Ortiz, seconded by Mr. Pryor, moved to support an EWEB-managed, collaborative master planning process and to provide direction to the City Manager and the EWEB General Manager to draft a Memorandum of Understanding to outline the steps leading to the disposition and redevelopment of the EWEB riverfront property and to bring the outline back for discussion at a subsequent joint meeting between the City Council and the EWEB Board.

Ms. Bettman offered a friendly amendment to remove the word "collaborative." Ms. Ortiz and Mr. Pryor accepted the amendment.

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Mr. Zelenka asked if an amendment to specify a shared advisory team and consultant selection process was necessary. City Manager Taylor and Mr. Berggren assured him that the direction was clear to staff and an amendment was not necessary.

The motion as amended passed unanimously, 8:0 by the Eugene City Council.

Ms. Piercy adjourned the Eugene City Council Joint Work Session at 1:10 p.m.

President Menegat adjourned the EWEB Joint Work Session at 1:10 p.m.

EWEB Assistant Secretary

EWEB President