



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Schlossberg, Brown, Carlson, Barofsky and McRae
FROM: Anne Kah, Administrative Services Manager; Frank Lawson, General Manager
DATE: October 27, 2021 (November 2, 2021, Regular Session)
SUBJECT: EWEB Headquarters Property Solicitation Process
OBJECTIVE: Direction/Action

Issue

On October 5, 2021, Commissioners received financial data and other information to inform their decision to sell the EWEB's Headquarters buildings and associated property in the near term or retain the asset for potential increased value. The Board requested additional information about the various processes that could be used for the potential disposal or leasing of the property.

Background

The riverfront property is comprised of 3 separate developable parcels. EWEB can sell all three parcels to a single entity without encumbrance, however if EWEB sells any less than all the parcels, then a Right of First Refusal Agreement with the Urban Renewal Agency will be in effect.

EWEB employees have mostly vacated the two Headquarters buildings and the remainder of the administrative functions will relocate to the Roosevelt Operations Center (ROC) after pandemic conditions have improved. Additionally, approximately 12-18 months will be needed to fully vacate the fourth floor of the South building. As such, if the building is sold, we will be prepared to negotiate a lease agreement to meet EWEB's interim space requirements for the backup Dispatch center.

A portion of the property is under a tenant lease agreement which will expire soon. Negotiation is in progress to extend the lease for a portion of the South building's first floor through November 2022. Both parties to the lease will have the right to terminate the lease with 60 days' notice. The earliest termination date will be February of 2022.

At the June 2021 board meeting, Commissioners voiced a preference for the property to be utilized in ways that continue to benefit the community we serve. In response to the Board's sentiments, staff engaged in a targeted outreach to informally gauge local government and community focused organizations' desire to purchase or lease the property. The results of this endeavor revealed interest from several entities who aspire to lease, lease to own, and/or purchase the property. Respondents shared inspiring visions and indicated varying degrees of flexibility regarding timing. The need for fundraising and/or partnerships appeared to be a common theme. This information was shared with Commissioners in October 2021.

Discussion

During the October board meeting, Commissioners did not express any desire to hold the property for potential increased value resulting from the completion of the riverfront development. Commissioners clearly stated that the buildings should not remain empty. Several Board members stated they are opposed to a prolonged property disposition process, and Commissioners did not request any specific community engagement activities. Furthermore, it is Management's understanding that the Board is generally open to leasing or selling the property. Acknowledging that real estate management responsibilities distract from the Utility's mission to provide utility services to its customer-owners, the Board's preference is to sell the property (all three parcels as a complete package) unless retaining ownership of some or all of the parcels for a period of time facilitates a greater benefit for the community.

With these assumptions in mind, Management is seeking direction for next steps to carry out an equitable and transparent process to select the offer that is in the best interest of the community, our customer-owners, and EWEB.

Regardless of the tactical process chosen, EWEB will dispose of the property in accordance with applicable ordinances, statutes, laws, and Board policies. The applicable rules allow several paths forward within certain parameters. From a legal perspective the following guidelines must be adhered.

- ORS 271.310(1) provides that EWEB may sell, exchange, convey, or lease, for any period not exceeding 99 years, all or any part of its interest in the property to a governmental body or private individual or corporation. The consideration for the transfer or lease may be cash or real property, or both. If there is a property exchange, then ORS 271.340 requires the valuation to be equal.
- Within the authority to dispose of surplus real property is the flexibility to lease the property to another for a period no greater than 99 years. The structure of such a disposal could include a lease option to purchase. If the Lessee is another political subdivision, then they will be subject to the provisions of ORS 271.390, including restrictions on financing provisions.
- As a public entity, EWEB is restricted by the Oregon Constitution, Art. 11, Sec. 9, to the effect that, no city or other municipal corporation shall raise money for, or loan its credit to, or in aid of, any company, corporation, or association. In other words, there is a general prohibition of lending credit or investing public funds in private enterprises, and the purpose is to insulate EWEB's general funds.
- The sale of surplus real property is not subject to the Oregon Public Contract laws for solicitation of qualifications or pricing, this exclusion also includes the protest process. Public Contract law also provides exemption for contracts between contracting entities. See, ORS 279A.025(2)(a) and 279A.025(2)(f).
- Without statutory regulation of notice of sale, it is prudent to broadly notify public agencies through newspaper notification, website posting, or other media notices which are most likely to reach interested parties.
- ORS 271.330 provides an opportunity to maintain public benefit wherein, any political

subdivision is granted express power to relinquish the title to property not needed for public use to any governmental body, providing the property is used for not less than 20 years for a public purpose by the governmental body in the state of Oregon. The statutes do not expressly prohibit the potential for flexibility in disposition, such as by partial relinquishment and partial consideration.

According to EWEB's Property Management Procedures, the Board may dispose of property by such means and terms it deems appropriate after the City of Eugene has released their exclusive right. Once this condition has been met, a notice may be given to other public agencies within whose boundaries the property lies, and the notified agencies will be given 30 days to respond.

In the event a surplus property will not be purchased by a public entity and before it is listed for sale, Property Management will initiate the notice of proposed sale and public hearing process in accordance with ORS 221.725.

Prior to the formal listing of the surplus property and pursuant to ORS 221.725, the Board will conduct a public hearing for which staff will prepare a memo for the Board indicating intent to make the surplus property available for marketing and sale. The memo will include an estimated listing price and marketing strategy.

When marketing surplus property the following disposal options may be exercised:

1. Direct Sales - straight forward transactions, exchanging land for dollars.
2. Trades of surplus property for other property that can be used by the utility as provided by ORS 271.340. Appraisals, if obtained, shall conform to ORS 271.350.
3. Donations (disposal at less than market value) shall be limited to other governmental agencies and non-profit organizations and shall conform to ORS 271.330 and ORS 271.350. Donation of property is allowed, providing the donation conforms to the Board's policy and is otherwise permitted by law.

When the property, is to be marketed, Property Management may order an updated Preliminary Title Report and/or appraisal. Property Management will typically employ a licensed Real Estate Broker, with expertise in the type of property to be sold, to represent EWEB's interests in marketing the property for sale.

Taking the aforementioned guidelines into account, the Board's priorities and desired timeline will drive our next steps and process for disposing of the property.

Option – Focus on Public and Community Organizations:

If the Board wishes to focus on beneficial public use and time is not an urgent factor, an Invitation to Participate in a Purchase and Sale Agreement could be employed as the next step to widely promote the property to all community and public agencies. The property could be advertised as available for long-term lease, sale, or trade, or some combination thereof.

As mentioned in the legal perspective above, the sale of real property is not subject to Public Contract rules, therefore a formal Request for Proposals (RFP), with specifically defined selection criteria and scoring, is not required. Rather than an RFP process, the Board could direct staff to conduct an Invitation to Participate in a Purchase and Sale Agreement. The difference with the latter being that

EWEB could have more flexibility to explore creative solutions and accommodating terms such as disposal at less than market value, or lease to own, based on a holistic evaluation of the proposals received. This added flexibility should not preclude the Board from establishing guidelines in advance that would be used to evaluate both social and economic benefits while contemplating which offer is in the best interest of the community, our customer-owners, and EWEB.

If Commissioners do not accept any proposal received through this process, an RFP solicitation could be expanded to the real estate market at large as described below.

While exempt from Public Contract rules, the qualitative nature of this approach could draw scrutiny, criticism, or both.

Option – Focus on Real Estate Market at Large:

The intent of an RFP process would be to encourage the broadest range of proposals from both public and private entities concurrently. The property could be marketed for sale, long-term lease, trade, or some combination thereof. The Board could consider more than the financial bottom line when deciding whether to accept a proposal.

When using either of the above options, evaluation criteria should be established in advance, irrespective of whether the criteria will be used formally or informally, as use of objective criteria will provide more confidence in the process. In a formal RFP process, point values could be established and used by a committee to score proposals. Examples of evaluation criteria include but are not limited to - total purchase price, financial capability, proposed terms of purchase if other than cash sale, conditions and contingencies and the amount of time to resolve or remove them from offer, requirements for fundraising and time to accomplish, community benefits (could be used as a potential offset to revenue), compatibility with riverfront development, and other criteria important to the Board.

Regardless of the method of solicitation, the evaluation and scoring of proposals, and the actual approval of the award, are two very distinct and separate roles.

Commissioners could provide direction on the evaluation criteria and scoring during the development of the solicitation; however the collective Board would not be able to participate in the evaluation of the proposals since the Board will ultimately approve the actual award.

With the Board approving the final decision, it may be possible to limit the evaluators to no more than two board members, the General Manager, and several staff. In this scenario, the RFP would still have the oversight process by the quorum of the Board if a decision were to be challenged.

If the Board wishes to have one or two members participate in the evaluation, Board policy GP12 provides an avenue to designate, via resolution, a commissioner liaison(s) to staff managed work. While serving in the liaison capacity, a board member(s) should stay within the structure provided in board policy which includes; participating as a project team member, with no more or less authority than others; not directing staff or managing the work of the group; bringing important information back to the full Board; and representing the views of the Board to the best of their ability. The criteria and the recommendation by the project group would be submitted to the full Board, and subsequent decisions requiring board-action would be made by the full Board in accordance with the EWEB

bylaws.

It may be sufficient to have one Board member designated as a liaison, but if the Board is interested in having two Commissioners on the evaluation team, the Board should be careful to not create a sub-committee which could trigger public meeting laws. In that vein, it may be prudent to ensure that the designated Commissioner liaisons do not meet together, or with other board members, outside the staff project meetings and board meetings to discuss their thoughts and opinions on this matter.

Requested Direction

Management is requesting the following direction regarding the desired process to move forward with the potential disposition of the Headquarters property.

- Confirmation that Management's understanding of Commissioners' feedback as stated in the "Discussion" is correct.
- Does the Board wish to focus on public and community organizations using an informal Invitation to Participate in a Purchase and Sale Agreement, or does the Board prefer to focus on the real estate market at large using a formal RFP?
- Does the Board wish to appoint a liaison(s) to the evaluation team?

Based on the Board's direction, Management will submit a draft solicitation for discussion at the January 2022 meeting.

Requested Board Action

Management requests that the Board direct the General Manager to pursue disposal of the riverfront property either using 1) an informal Invitation to Participate in a Purchase and Sale Agreement with public and/or community organizations, or 2) a formal RFP process to a broader real estate market.