



**CITY COUNCIL
TRANSPORTATION &
LAND USE
SUBCOMMITTEE
Approved Meeting Minutes**

Date/Time: Monday, March 1, 2010, 3:00 pm

Where: Milpitas City Hall, Committee Conference Room

Attendants: Mayor Bob Livengood, Council Member & Chair Debbie Giordano

Quorum was established

1. Call to order

The meeting was called to order at 3:00 pm.

2. Public Forum *Please limit comments to 3 minutes*

There were no comments during Public Forum

3. Approval of agenda and minutes

The March 1, 2010 agenda and January 11, 2010 minutes were approved

4. Receive staff update and provide direction to staff on draft agreement between Valley Transportation Authority and City of Milpitas on the BART Extension Project*

Staff James Lindsay deferred to Staff Greg Armendariz to present this item. Mr. Armendariz referred to a red-lined BART Master Agreement included in the Agenda Packet that shows the City staff's comments to the VTA document. Mr. Armendariz shared a PowerPoint presentation on this project.

As background, the BART Project, also known as the Silicon Valley Rapid Transit (SVRT), is considering a phased extension to Berryessa Road which would include 2 stations, Milpitas and Berryessa in San Jose. The Federal Transit Administration (FTA) new starts application was accepted. VTA staff is currently under going the Final Environmental Impact Study process. The VTA has started construction on the project by relocating the freight railroad.

Mr. Armendariz stated in order for the VTA to obtain FTA funding, the VTA has to demonstrate agreement with the local agencies. VTA will then pursue permits through from the City of Milpitas as a local permitting agency.

Council Member Giordano asked how the community will be involved. She mentioned the Terrace Gardens neighborhood and noise issues, citing the need to replace soundwalls. Mr. Armendariz said there will be extensive outreach through the environmental review process.

Mr. Armendariz pointed out that the City of Milpitas will be requesting that the improvements such as upgraded infrastructure are the “base level” infrastructure instead of their defined “betterment” where the City pays. Since the upgraded infrastructures are in existing and programmed Master Plans, BART should pay for provisions for future improvements.

Mr. Armendariz went on to discuss cost recovery. He says the VTA will consider a permit deposit for reimbursing the City for plan reviews, as the City does for private development. He noted that the City has already “carried” over \$400,000 of staff time for the BART project in the last 4 years. In addition, the City just adopted the Transit Area Specific Plan, a \$1 million dollar project, in order to prepare for BART.

Mr. Armendariz discussed dispute resolution as a 3-level process up to the General Manager and City Manager, after which disputes go to an Alternative Dispute Resolution Board (ADRB). City staff is opposed to this because this prevents the permitting agency to have a say and prevents local officials to discuss this at the VTA Board level.

Council Member Giordano stated the upside of dispute resolution would to incur less costs from attorneys and requested that more discussion and options be presented.

Mayor Livengood inquired what the next steps are when you don’t agree with the ADRB decision.

Mr. Armendariz stated staff will review this item.

Mr. Armendariz discussed City Permit Requirements. The VTA will maintain the fire flow and other utilities at all times and provide 24/7 response to emergencies during all phases of construction. Mayor Livengood stated the City should be in control of the Utilities and be able to seek reimbursement from the VTA.

Regarding traffic, staff will review detours and design criteria. The VTA will not impact traffic in he commute direction and provide access for public safety.

Mr. Armendariz stated the VTA will have Community Outreach and a Business Vitality Analysis. These efforts will intensify as the project begins construction. Council Member Giordano asked for the business vitality analysis and requested that the City have more input on this.

In addition, Public Safety will not be impacted.

Regarding Budget impacts, the Transit Area Specific Plan is the City’s cost-sharing where Milpitas developers will provide the cashflow over the next 10 to 20 years.

The VTA’s construction method is the “Design/Build” method where they can receive schedule savings by combining design and construction into one contract, and the contractor designs and builds. The Challenges for this method

is Milpitas will have a shorter review period and pressure to issue conditional use permits to allow for start of construction. There is also a higher probability to shut down construction operations for going beyond conditional approvals and higher dispute risks with the permitting agency (City).

The VTA schedule is to begin revenue service in 2018.

Currently, the VTA is reviewing the City comments and will provide a response in 2 weeks. The Master Agreement will be presented to the City Council for consideration and approval in April/May.

Staff recommends to receive this report and to provide direction to staff on the draft Agreement between the VTA and City of Milpitas on the SVRT extension.

Council Member Giordano expressed concerned over arbitration. She thinks there should be some way of handling dispute resolution instead of involving attorneys right away. Is it the 3 member board (who they are) or do we feel handcuffed to what the resolutions from preventing our ability to execute our rights. Mr. Armendariz stated it is non-binding; perhaps the City can pursue how we deal with the decisions whether it is through a policy environment with the Council then ultimately the VTA Board. Council Member Giordano asked if we can go through a 3 step process where it is a policy issue, mediation/arbitration, and then legal/attorneys. Mr. Armendariz said he can bring back VTA's comments on this item and continue to work wit the Subcommittee and Council on this.

Bryan Otake, Assistant City Attorney, added the big issue is the community outreach and how responsive do we want VTA to be. Right now, VTA is taking the lead, which Council Member Giordano is concerned about, and whether the City should have a self-help option. These items are non-technical issues with real community impacts where it might be helpful to receive from the Subcommittee.

Mayor Livengood suggests that the City should continue working with the VTA. He says the document is well thought out and a lot of good feedback. Part of the process is to disagree and go through a give-and-take process. IF the VTA can agree to these items, then the City is protected.

Council Member Giordano asked what the next steps are. She requested staff come back to the Subcommittee to review the changes and comments to the agreement.

5. Other business

There was no other business

6. Adjourn

The meeting was adjourned at 3:28 pm