



**PASADENA UNIFIED SCHOOL DISTRICT (PUSD)  
CITIZENS' OVERSIGHT COMMITTEE (COC) MEETING  
Meeting Minutes of September 20, 2017**

**Location:** Pasadena Unified School District Education Center, Room 229, 351 S. Hudson Ave., Pasadena, CA. 91109

**Date & Time of meeting:** September 20, 2017 at 6:30 p.m.

**Present:** Clifton Cates, Quincy Hocutt, Camille Dudley, Francis Boland, Glenn Deveer, Leslie Cross, Mikala Rahn, Steven Cole, Mike Mohit, Diana Verdugo, Willie Ordonez, Gretchen Vance (by phone.)

**Absent:** James Vitale, Jen Wang.

**Pasadena Unified School District (PUSD) Board Member Liaison:** Kim Kenne

**PUSD Staff:** Nelson Cayabyab, Chief Facilities Officer, Miguel Perez, Construction Specialist.

*(Abbreviations used in these minutes: PUSD - Pasadena Unified School District and COC – Citizen's Oversight Committee.)*

**I. CALL TO ORDER**

*Mr. Cates*

The meeting was called to order at 6:30 PM. In determining that the COC had a quorum for the meeting, Mr. Cates announced that Joelle Moreiseau-Phillips had resigned from the COC, reducing the total membership to 14. It was also announced that a discussion of a recent Pasadena Star News article was on the agenda at item IV.I.3.

**II. APPROVAL OF MINUTES OF THE JULY AND AUGUST, 2017 MEETINGS**

*Mr. Hocutt*

Mr. Hocutt stated that the July 19, 2017 Meeting Minutes had been distributed to the COC members for review and that no notice of changes or additions had been received.

Mr. Boland stated that he did not think the minutes accurately reflected the tone or content of the meetings and suggested the posting of either an audio or a video recording, and barring that to post the verbatim transcript. He stated that in his opinion the minutes "were fiction." He requested a more accurate record of the COC's proceedings.

Mr. Cates and Mr. Hocutt asked Mr. Boland if he had submitted his suggested changes to the minutes to the Minutes Subcommittee and Mr. Boland replied that he had done so. Mr. Hocutt clarified that Mr. Boland's received comments had been made regarding the August minutes only. Ms. Cross noted that she had suggested utilizing a verbatim transcript and Ms. Rahn noted that it might be a good idea to have both a prepared set of minutes produced and included on the website with a verbatim transcript. Mr. Hocutt observed that he had received comments over the last two years that those produced minutes made people feel that they understood the issues before the committee and that in that regard, the minutes do reflect the actual tone and the content of the proceedings. Further discussion revealed no objection to attaching a verbatim transcript to the minutes produced by the Committee. Mr. Cates noted that minutes are required by law and must continue to be produced.

Due to the fact that the Meeting Minutes were not included in the Agenda Package nor published, it was decided to defer the consideration of the July and August 2017 Meeting Minutes for the next COC meeting.

Ms. Rahn moved to move the discussion of item IV.I.e forward in the proceedings. After a discussion and 6 to 5 vote, the motion did not pass.

### **III. FINANCIAL AND PERFORMANCE AUDITS for fiscal year ending 6/30/17**

Mr. Cates

Mr. Cates informed the COC that Ms. CJ Gaunder Singh of the firm Nigro & Nigro (*the independent auditors conducting the required financial and performance audits of TT expenditures*) was scheduled to present the current status (*such items as the basis of the audit and an explanation of the process for the audit*) at the meeting, but she had not arrived due to reported automobile difficulties. Mr. Cates noted that these audits are required by the California Constitution, and ensuring that they occur is one of the committee's responsibilities and that he knew that the audit was underway currently but had no idea of its status.

Mr. Cayabyab informed the COC that:

- the last exit brief he had receive from the Sr. Auditor was that they had not yet completed their audits, that items still remained to looking into, that the auditors were planning to meet with PUSD Staff at the end of the current week, and that the auditor had expressed an opinion that she would rather not discuss matters until the audit was complete.

Upon a question from Mr. Mohit, Mr. Cates explained that the District pays for the Audits and that the law prohibits the use of TT funds for such administrative expenses.

*(Editor's NOTE: Upon further examination of the Education Code and the guidelines of the independent California Bond Oversight Committee (CalBOC), it was determined that expenses for audits of the bond fund are allowed by the law.)*

### **IV. PENDING BUSINESS**

#### **A. Requests for information from PUSD**

Mr. Cates

1. Mr. Cates noted that the COC had requested information from the District in letters of May 11<sup>th</sup>, May 20<sup>th</sup>, and July 24<sup>th</sup> and these request letters are posted on the COC's website within the PUSD website. (<https://www.pUSD.us/domain/40>) Mr. Cates stated that the district has provided some information, but not all of the information requested. On August 24, 2017 a Public Records Act request was filed, and on September 8, Mr. Cates and Mr. Hocutt went to the Facilities Department where staff had prepared and set aside the information in a well ordered and easy to follow manner; even though it was not complete.

- a. Based on the information provided, Mr. Cates determined that Measure TT bond funds have been spent on non-TT related legal services. The review of the documents produced the following results:
- Legal fees of \$60,282 for the period 8 January through June 2017 were spent on the 7-11 Committee and the Linda Vista property disposition, both being non-construction related activities
  - \$11,255 was expended for “general facilities charges.” We presume these to be “improper” charges as TT funds spent on construction work are charged to specific schools.

Mr. Hocutt noted that the COC had previously discussed a Board Report approving the contract for Atkinson, Andelson, Loya, Ruud & Romo. Although legal fees can certainly be required to deal with construction issues, the approved Board Report requested “services including representation for general services as well as providing the District with informative newsletters, training opportunities, and conferences to help the district with daily legal concerns.” The described services have no bearing on construction; therefore, the COC had disapproved this Board Report twice, but the Board of Education approved it. These instances led to the questions by the COC regarding the proper usage of legal fees. Mr. Cates noted that not only did the BR include those expenditures but the Scope of Services portion of the contract included provision for expenditures on non-TT related matters.

- b. Information regarding payment of Facilities staff compensation from Measure TT bond funds.

The COC has been in possession for some time of a report provided by Facilities showing that most Facilities personnel (excluding maintenance) charge 100% of their time to the Measure TT bond fund. Mr. Hocutt stated that the COC had received copies of personnel requisitions, showing that since inception, one person’s salary has been charged 100 percent of their time to Measure TT, violating the requisition they were hired under, which limited their charge to Measure TT to 50% of their time. We also found several requisitions for electricians, mechanical & repair technicians, etc., that clearly state that some of their salaries would be charged to Measure TT. It was the understanding of the COC that work on construction projects would be done by outside contractors.

Mr. Hocutt noted that facilities staff charged (*salaries only, excluding benefits*) of \$607,128 to Measure TT in the most recent fiscal year. Mr. Cates stated “for seven of the employees, one hundred percent of their

compensation is being charged to TT. We know by examining their publicly stated work content that not 100 percent of their work is on TT matters, but, again, we don't know what the right number is, and there was no information that we found to answer that question.”

Mr. Hocutt noted that in order to construct facilities, there are multiple income sources (*Prop 39 Green Energy fund, Developer fees, City matching funds, private donations, State bond funds*) for the PUSD to utilize, including Measure TT, and asked: “Why then would we charge all of the facilities staff to Measure TT only? Why would it not be allocated according to the sources of revenue?”

Mr. Cayabyab stated that:

- Electricians and HVAC technicians, based on the existing union agreement, have the first right of refusal to do projects under Measure TT that they're capable of doing.
- The Bond authorization language states that proceeds from the Bond may be used to pay or reimburse the district for the costs of district staff when performing work on or necessary and incidental to Bond projects.
- One of his executive secretaries is 100% dedicated to Facilities and MTT, and the other one is (*Suzie Howard*) 50/50; half the time supporting Maintenance & Operations on MTT related work.
- In regards to the 7-11 and the Linda Vista issues; the 1<sup>st</sup> step in declaring a property out of surplus is to go through a 7-11 Committee, and this would lead into its construction; this matter will be identified by the COC with the auditors, who will report their findings on the subject.
- Everything the District pays under MTT is documented under (accounting code) Fund 21.1, and that everything that is paid has an approved Purchase Record properly documented under Fund 21.1.
- If there is anything outside of Fund 21.1 that is being charged to the lawyers, it would have been reported as being taken out of Fund 21.1.
- Staff has provided to the COC all the purchase orders from 2012 funded out of Fund 21.1.
- Funds used for a Survey improperly paid out of Measure TT were transferred and paid out of another funding source.
- Funds used for a Linda vista transfer paid out of Measure TT were transferred and paid from another funding source (*interest funds from Measure Y.*)

Ms. Kenne noted that the Board had looked at the 7-11 Committee for Burbank Elementary and the Linda Vista disposition (moving Stratford from

Linda Vista to Burbank) and the Board concurred that that should not have come from Measure TT.

Mr. Cates noted that the issue is not how the district accounts for expenses internally, but whether certain charges SHOULD be charged to Measure TT. And the discussion above seemed to indicate that anything that is related to Facilities is payable from Measure TT and that notion is inconsistent with the law.

Ms. Vance asked if there were any district employees being paid out of general funds before Measure TT passed but are now currently being paid out of Measure TT? Mr. Cayabyab answered that, yes, there was one case, and that Shirley Barrett switched from a District staff to a Construction Specialist. She is now Project Manager, a Construction Specialist, but it was noted that she still performs some of her prior duties, and charges them to Measure TT.

Several members of the COC asked that, having been given this information at the District, why was it included in the Star News report before a discussion was held with the COC members. Ms. Kenne noted that there was no new information in these reports, but that confirmation of its accuracy had been obtained. Mr. Cole stated that he did not doubt the facts of the Star News article but was disturbed by its publication before discussion with the full committee and was bothered by the weight or importance being put on the report.

Ms. Rahn noted that there were many issues to put forward to the public but that importance had been placed on the illegal issues. She proposed to advance Item "I" of the agenda forward for discussion, and it was approved 7-3.

#### **I. Strategy for addressing problems with TT expenditures**

1. Informal consultation and written communication
2. Formal communication
3. Publicity, including press publicity
4. Intervention by the California Attorney General's office
5. Legal action

The Agenda items listed above were then discussed in a random manner.

Mr. Cole stated that he had sent emails to Mr. Cates, Mr. Hocutt and Ms. Vance explaining his position in regards to how to move forward on the matter of the alleged illegal expenditures. He stated that he was promised "that we will take up all these important issues in regular meetings and give everyone an opportunity to present views, vote on them and act accordingly as a unitary body", which did not

happen with the Stars News and when he asked what the reasoning was, the response he received was that “there were other things going on that might overshadow us going out to the press; things such as PHS being angry about the proposed spend-out plan, and about the contractors being angry at Washington, and so the thought was to get this out as quickly as possible so that we were not overshadowed.” Mr. Cole stated that he did not disagree with the facts that had been presented but he felt that the COC should first have gone to the School Board as a group to address these concerns there. He stated that he felt the article in the Star News was not presented well and that the message should have been better controlled through a press released vetted by the COC. Dr. Rahn concurred with Mr. Cole’s statements and stated her intention was to address the item wherein members were possibly angry at the Chair so that the Chair could run an effective meeting.

Mr. Cates responded that:

- Conducting business and discussions among committee members by email is a violation of the Brown Act.
- The COC had disapproved twice the “illegal expenditures approved by the Board”
- This illegality issue has been the Committee's official position for months and this position has been a matter of public record for a long time and that it was no secret.
- The bylaws, section 5.8, paragraph 3 gives the chair or in the chair's absence the vice chair, the authority "to take whatever action is necessary to carry out the purposes of the Committee."
- Education Code 15278(b) states "the purpose of the COC shall be to inform the public concerning the expenditure of bond revenues", and that article 15288(a)(1) says "we are supposed to publicize our actions” which was “exactly what we did.’

Ms. Kenne noted that some COC members felt there was an agreement to not go to the press until everyone had a chance to talk about it, and to do it in a particular way, and that some members still thought there was an agreement to do things differently than had been done. The COC members are voicing their frustration over an implied agreement that there would be more of a committee effort when it was time to go to the press.

Mr. DeVeer stated that there's never been a discussion about implied consent and his thought regarding implied consent is that the Committee has been so frustrated that we were indeed going to go to the press.

Ms. Rahn stated that there was a sub-committee assigned the task of defining the strategy to follow on the matter of the expenditures and that a strategy would be brought back to the committee.

At Mr. Cates request, Mr. Hocutt read from the verbatim transcript of the last meeting where a discussion of contacting the press was held and Mr. Cates asked for the media to be contacted to call him. The transcript indicated no objection from anyone as to that course of action.

Mr. Boland made a series of criticisms about the manner in which the meetings are run, including such issues as a support for a return to a “normal process,” a complaint about another COC member speaking to the Board during public comment, a complaint regarding the orientation session held for new members, a complaint that the committee is run by a “cabal,” and a statement that the COC is only an “after-the-fact commentary committee” and not a part of the planning process. He also stated he understood that District lawyers had requested to explain the purview of the COC to the committee but that had not happened. He then requested a no-confidence vote in the current COC Chair and Vice-Chair and asked for their removal.

Ms. Kenne noted that if an action item is not on the agenda, then it cannot be voted on, and that to vote on an item, it has to be on the Agenda. Mr. Cates clarified that the members can ask for items to be put in the Agenda by emailing him or Mr. Hocutt. Mr. Cates noted for the record that the Education Code states the COC is responsible for ensuring TT funds are spent in accordance with the Constitution of the State of California.

Three members of the COC departed at this point, but a quorum was maintained.

## **B. Timely delivery of Board Reports (BR’s) to the COC**

*Mr. Cates*

1. Brown Act requirements
2. Section 7.1(a) of COC bylaws

Mr. Hocutt noted that he had received the BR’s on time for this meeting, as opposed to the last meeting. Mr. Cates noted that according to the Brown Act the BR’s have to be posted 72 hours in advance of their discussion.

Mr. Cayabyab in addressing the preparation of Board Reports expressed that it's a long internal process including a review at the executive leadership committee before BR’s are sent out. He rejected the notion of a piecemeal release to the COC because of direction from the Superintendent to go through him first and that requirement for Facilities is to post them for the Board meeting.

Mr. Cates stated “these are the rules that the Board has established. We're entitled to these reports at least 72 hours in advance”, Mr. Cayabyab replied that Facilities would do the best they could and that the rules were “so noted.” Ms. Kenne noted that the problem would be lessened if the Facilities Committee meeting were to be

moved a week earlier than it is currently scheduled. The current meeting was noted as potentially not providing enough time for the Facilities committee to properly vet Board Reports.

**C. Comments by and questions for the Superintendent**

Mr. Cates

The Superintendent did not attend the meeting. Ms. Verdugo noted on behalf of the COC that the Superintendent was welcome to attend any meeting he wished to attend. The COC noted any that agenda would be modified to accommodate his schedule and that his attendance was encouraged.

**D. Analysis of new Board Reports**

Mr. Hocutt

Mr. Hocutt described the contents of each one of BRs 1234-F through 1238-F and presented the arguments for approval and against approval; all the Board Reports were unanimously approved.

**E. Report by Chief of Facilities**

Mr. Perez

Mr. Perez distributed the September 20, 2017, Construction Status Report and showed a slide show of the current issues associated with the ongoing construction projects included in the report

Ms. Kenne requested to have the Construction Status Report, and the PowerPoint presentation, included in the meeting materials.

Mr. Cayabyab informed the Committee that Project Managers for the District can have separate jobs. Some are specialized on engineering matters, for example, and some are Inspectors. He noted that an Inspector could have functionality over five different construction sites.

Ms. Verdugo was asked for an updated list of COC member “assignments” to various site councils so that information could be placed on the Construction Status Report and that those members could be kept up to date.

Mr. Cayabyab noted that new Fixtures, Furniture, and Equipment (FF & E) are included in the schools that are being built, and that these cost were not included in the original budgets for Blair, Sierra Madre MS and Washington Accelerated and that now these costs are included in the construction budgets. (*Measure TT has always allowed for inclusion of capital equipment with a long service life.*)

The COC requested an electronic copy of the presentation to be posted on our website and Facilities agreed to that request.

**F. Report by Board liaison to the COC**

Ms. Kenne

Ms. Kenne noted that at the Board Meeting of September 14<sup>th</sup>, there had been a presentation of the results of a public survey regarding the issuance of a future

Construction bond for \$850 million.

([http://pusd.granicus.com/MediaPlayer.php?view\\_id=15&clip\\_id=628](http://pusd.granicus.com/MediaPlayer.php?view_id=15&clip_id=628))



Ms. Kenne also mentioned that it would be helpful to have in the COC website the terms and the appointment information of the COC members along with data on who had resigned to date from the COC so that a formal Board report could be made. The COC committed to provide that information.

Ms. Kenne observed that in the COC review package was an updated budget report as of 9-7-17 from the “Accountability” system, the software used for Measure TT accounting to keep budget, expenditures and commitments. She noted that the District accounting system cannot sometimes capture projects that have expenditures over several years.

Mr. Mohit asked about the difference between the Original Budget and the Current Budget, on the report. Ms. Kenne explained that the Original Budget refers to the 2012 Budget, and that the Current Budget refers to the actual one, with all the modifications that had to be added to it to reflect the actual cost of the projects; she also clarified that there is support for the budget changes. Ms. Kenne noted that there's still some fine-tuning that staff is doing on some of the numbers. Mr. Cayabyab stated that the Actual Budget is updated on a quarterly basis and that some funds are not zeroed out, but left on with the knowledge that these funds can be used as a contingency fund.

Mr. Mohit asked if the Total should match the TT Bonds total; Mr. Cayabyab clarified that there are several items which have been double budgeted and that staff is working on reconciling this intricate matter; he also noted that, at this time, “we're closing books, and we're answering PRs, and we're answering audit reports”, and that he hoped to have the next Budget update in October. The COC awaits that update, as the budget report showed a massive mismatch regarding the actual budget available.

Mr. Cayabyab stated that the current report does contain some double budgeting that has to be reconciled.

Mr. Cates expressed “it's just striking that the report shows budgeted expenditures vastly exceeding the funds to pay for them.”

#### **G. Report by COC liaison to Facilities Committee**

*Mr. Cole*

Mr. Cole was absent at this point and no report was made.

#### **H. Report by Public Outreach Subcommittee**

*Ms. Verdugo*

Ms. Verdugo noted that she had not heard back from the people who were assigned as Site Council Reps. Mr. De. Veer mentioned after numerous attempts to contact the people at Marshall, he had not received any callbacks, and that the information he has received is that they are happy.

Mr. Ordonez: informed that there's a change to the Webster calendar, now they will meet the last Wednesday of each month. He also noted that he had received an updated meeting schedule for Longfellow, up to May 16, 2018.

#### **V. Public comment**

Ms. Awl thanked Mr. Cayabyab for attending the meeting and for the projects updates.

Ms. McKinley expressed a thought that it was very clear, at the last meeting, public members had encouraged the COC to go to the Board of Education, and it chose not to do that. Instead the COC went to the newspaper.

Paul Beach noted that the job of the COC would be much easier if the District would “Do what they said they would do.” To wit, provide a document with a breakdown of school budgets reflecting the status and what projects would be done. He noted that the job of the COC was “extremely important” as the COC appeared to be the only people with a finger on where TT would all end up, that the COC was the accountability arm and that the COC deserved thanks for their efforts.

Mr. Cayabyab requested a last word. He noted that Facilities is “moving things along, getting things done for all the kids.” He noted that a lot of school projects have not moved forward, stating there were obstacles that are preventing the staff from continuing. He asked for help in moving things along so that the remainder of the money can be spent within the three years after its issuance and that was what he was trying to do. He stated that air-conditioning during the heat wave was a problem because the projected had been stagnated since 2008. He asked for obstacles to not be put in his way. “My gosh, you spend so much time and effort on minuscule things and not really concentrate on things that are getting the work done and spending the money in the right direction and moving forward and getting the next bond or this bond completed so that we can move on to the next bond.”

**VI. Next meeting date**

October 18, 2017 in the Board Room at the Education Center of the PUSD on Hudson Avenue in Pasadena.

**VII. Adjournment**

The meeting was adjourned at 9:55 PM.