

**Minutes of the Special Meeting of the Board of Trustees  
San Mateo County Community College District  
August 2, 2012, San Mateo, CA**

**The meeting was called to order at 8:40 a.m.**

**Board Members Present:** President Dave Mandelkern, Vice President Helen Hausman, Trustees Richard Holober, Patricia Miljanich, Karen Schwarz (via telephone), and Student Trustee Bailey Girard

**Others Present:** Chancellor Ron Galatolo

**Pledge of Allegiance**

President Mandelkern said this special meeting was called to reconsider the following two items that were voted on at the July 25 Board meeting:

1. Item 12-7-101B, Resolution Regarding Board Absences (received two Aye votes and one Abstention)
2. Item 12-7-106B, Contract Award for College of San Mateo North Gateway Part II Project (received two Aye votes and one No vote)

At that meeting, three regular Board members were present, constituting a quorum. According to Robert's Rules of Order, if a quorum is present, a motion passes if a majority of the members present vote Aye. However, it was discovered after the meeting that California Education Code Section 72000(d)(3) specifically provides that "except as otherwise provided by law, the governing board [of a community college district] shall act by a majority vote of all the membership constituting the governing board." Therefore, the vote on the two items listed above was not valid.

**UNFINISHED BUSINESS**

**ADOPTION OF RESOLUTION NO. 12-9 REGARDING BOARD ABSENCES (12-7-101B)**

It was moved by Trustee Miljanich and seconded by Trustee Holober to approve the adoption of Resolution No. 12-9. The motion carried, with President Mandelkern abstaining and all other members voting "Aye."

**CONTRACT AWARD FOR COLLEGE OF SAN MATEO NORTH GATEWAY PART II PROJECT (12-7-106B)**

It was moved by Trustee Miljanich and seconded by Vice President Hausman to approve the contract award as detailed in the report. President Mandelkern said that Attorney Sabrina Teller would participate in the presentation via telephone, along with Director of Community and Government Relations Barbara Christensen and Vice Chancellor of Facilities Planning, Maintenance and Operations José Nuñez, and would be available to answer questions that are appropriate to address in open session.

Trustee Holober said he understands that the reason for this special meeting is the sense of urgency related to State funding. In light of the two letters received from Attorney Susan Brandt-Hawley asking that the District disapprove or defer consideration of the contract award and the assumption that a lawsuit will be filed if the Board approves the contract, Trustee Holober asked how litigation would affect the flow of State funding, i.e. would the funds be put on hold and would the District be reimbursed after work is completed. Ms. Teller clarified that no preliminary injunction has been issued. The District previously agreed to a voluntary stay of the construction of the Building 20 Complex and work on the North Gateway project but there has been no court order telling the District to do so.

Chancellor Galatolo said the money for this project was part of the last State bond that was passed six years ago and has been available for some time. It took two to three years to put together preliminary and formal plans and bring construction and working documents to the State. The money originally was to be used for a remodel of Building 5 but the District was successful in convincing the State to shift the money to the North Gateway project.

This required a formal reappropriation of the funds from the Department of Finance through the legislature. The funds were reappropriated one additional time and the District then had one year to award the contract. After the Board approves issuance of a contract, the documents must be forwarded to the State Department of Finance, which must grant approval before a contract can actually be awarded. Chancellor Galatolo said that at the Board meeting of July 25, Vice Chancellor Nuñez said that the funds now can be extended through June 2013. Chancellor Galatolo said he is concerned because this date was conveyed in an email between Fred Harris, who runs the Facilities Department in the State Chancellor's Office, and Vice Chancellor Nuñez rather than through a formal reappropriation. Chancellor Galatolo said he is not comfortable with this, especially understanding the limited funds available and the demand for State resources. Therefore, he believes it is important to get the contract approved by the Board and the Department of Finance as soon as possible. Trustee Holober asked for clarification regarding the reappropriation by the legislature one year ago. Chancellor Galatolo said this was not a formal appropriation process; because bonds had not been passed in a long time, the State agreed to let projects that were taking a long time proceed. However, Chancellor Galatolo said that three or four years ago, the District lost \$55 million because the planning for projects was in process but construction had not started and the State mandated that all projects that had not been started had to be reapproved.

President Mandelkern asked what would happen to the funding if the project gets embroiled in a lawsuit and a preliminary injunction is issued. Chancellor Galatolo said it is uncertain what would happen but he believes the State would consider the extenuating circumstances and be less likely to take the money away.

Trustee Schwarz said that at the July 25 meeting, the Board was told about a demand from the State for a cash flow analysis for this project, which has never been demanded before. Chancellor Galatolo said this is also a cause for concern because he believes it means the State is trying to determine if the money will really be used or if it can be reappropriated.

Trustee Miljanich asked what the process would be for opponents to get an injunction to stop the project. Ms. Teller summarized the two letters from Ms. Brandt-Hawley:

1. The first letter, on behalf of the Friends of the College of San Mateo Gardens, expresses concerns about the effects of certain aspects of the North Gateway project on gardens and potentially on other landscape areas. The letter threatens a new lawsuit over the North Gateway contract approval, alleging that this is a new CEQA event and that the North Gateway project has not received adequate CEQA review.
2. The second letter is written on behalf of the Hillsborough neighbors regarding the tree removal. Ms. Teller said their petition already challenges the North Gateway project generally, asserting it might have been subject to inadequate CEQA review, particularly the effect of lighting now that the trees have been removed. Ms. Teller said they are concerned that awarding the contract is progress toward implementing the North Gateway project and they believe it is ill-advised in light of the pending lawsuit in the tree removal litigation which is scheduled for a hearing on August 17. The District has agreed voluntarily to hold off on any physical construction of the North Gateway project until that hearing date. Therefore, no physical conditions would change and Ms. Teller believes there is no basis for a preliminary injunction at this point.

Ms. Teller said that if a new lawsuit is filed, it would likely occur soon after the awarding of the contract. It would require going through the normal CEQA litigation process. If physical construction was threatened before getting to a hearing on the merit, there would likely be an application for a preliminary injunction. Ms. Teller said that one of the factors the court takes into consideration in determining whether to issue an injunction is the likelihood of success on the merits of the petitioner's claim. She said it has been the District's consistent position that the North Gateway project has received adequate CEQA review in the form of the Initial Study and Negative Declaration that the District prepared and adopted for the Facilities Master Plan in 2007 and that it is not a new project.

Trustee Miljanich asked if it is likely that the District will receive a response from the court on the day of the August 17 hearing. Ms. Teller said it is up to the judge whether to issue a tentative ruling.

President Mandelkern noted that the District has agreed not to proceed with construction until after the hearing on August 17. He asked if the intention is to proceed with construction immediately following the hearing, regardless of whether there is a formal decision by the judge. Chancellor Galatolo said that the recommendation before the Board asks for authorization to award the contract, allowing time to go to the Department of Finance for approval. This typically takes approximately two weeks and then decisions on whether and when to mobilize would be considered after Department of Finance approval.

Trustee Holoher asked if the litigation regarding tree removal already encompasses the North Gateway project. Ms. Teller said the Hillsborough neighbors' lawsuit regarding tree removal does encompass the anticipated work on the North Gateway project. The newly threatened litigation is on behalf of the Friends of the College of San Mateo Gardens, which claims unstudied effects on the gardens.

President Mandelkern asked Ms. Teller if she was able to give an opinion on the relative merits of the new claim regarding the impact of the North Gateway project on the gardens. Ms. Teller said the North Gateway project – both Part I and II as well as all changes – were previously analyzed in the Initial Study and Negative Declaration that were adopted for the Facilities Master Plan in 2007 and the District is not contemplating significant changes to the project. Therefore, the claim now that the North Gateway project has not received adequate review is, in her view, too late as the statute of limitations under CEQA has run.

Trustee Miljanich said the District has followed proper procedures and laws during all the years it takes to plan a project and she does not find it compelling to change plans because of the threat of a lawsuit by someone who is clearly willing to sue on any minimal basis. Trustee Miljanich said she believes it would be very destructive to risk losing funding and not keep the project on track. She said she is willing to go forward with making a decision.

Vice President Hausman concurred with Trustee Miljanich's comments. She said the Board cannot run the District based on intimidation. She said the stakes are high at a time when every penny counts. Vice President Hausman said she does not believe that more study would cause her to change her support for the recommendation. She added that the District has an incredible staff who has worked on this project for a long time.

Regarding the timing of funding, Trustee Holoher said he understands that a contract must be awarded before work begins. He asked if the process is that the District bills the State and gets reimbursement after the work begins and if the billing and payments are ongoing throughout the work on the project. Chancellor Galatolo said this is the correct process. Trustee Holoher asked if, since the State has appropriated the money for this project, it is likely that the District would receive reimbursement once the work begins. Chancellor Galatolo said it would. Trustee Holoher asked why, then, there was a need for the special meeting today. Chancellor Galatolo said that if the project was stopped due to litigation and a subsequent reappropriation was needed, he would feel more comfortable arguing before the legislature if the District had clearly shown its intention by authorizing the contract and seeking Department of Finance approval. Trustee Holoher asked if the risk is that another district which is in line could jump ahead of the District if the project is stopped due to litigation, or if the risk is that the money goes away at the end of the fiscal year. Vice Chancellor Nuñez said it is the former.

Trustee Miljanich said she is not clear about the basis for the Friends of the College of San Mateo Gardens' contention that there could be potential harm from the project. Student Trustee Girard said he understands that they are concerned about the effect of blowing wind and dirt from the construction due to wind patterns. Chancellor Galatolo said that dust mitigation is part of the project and it was studied in the Initial Study.

President Mandelkern asked if the recommended contract has a provision that the District will not have to pay the contractor if there is a holdup due to litigation. Vice Chancellor Nuñez said the contract specifies that the District would have to pay only for the work already completed, including mobilization which is a relatively small exposure. Chancellor Galatolo noted that this is largely a State-funded project and the State would be paying these expenses.

Trustee Miljanich said the only other choice the Board has is to ask the opposing attorney when she thinks the District should do the work. She said the Board has previously assessed that the project was properly studied and it is time to move forward. Trustee Miljanich said the risks are high in not moving and the District should proceed

so that it can be done as effectively and efficiently as possible. Chancellor Galatolo added that the District already voluntarily delayed the project by one year and this cost an additional \$600,000 in bid costs.

Trustee Schwarz said she appreciates the fact that the Board is cautious. She said they have consulted an attorney and received answers that are satisfactory to her. She said she agrees that the District should not be guided by threats about what could be rather than by what is. Trustee Schwarz said there is no change in her support for the recommendation.

Trustee Holober asked Ms. Teller if she has a sense of a timeline for a decision if litigation occurs. Ms. Teller said that a reasonably aggressive schedule would result in a hearing before a judge within 30 days and for a court date no later than January 2013. Trustee Miljanich said that if there is a request for an injunction, the District would have the opportunity to present its arguments against it. Ms. Teller said this is correct. She said that in deciding whether to grant an injunction, a judge is supposed to consider (1) the likelihood of success on the merits and (2) the relative balance of harm, i.e., what would be the alleged harm to the gardens by allowing the North Gateway project construction to go forward vs. the harm to the District of putting the project on hold and risk losing State funding. Ms. Teller said she believes the balance is in favor of the District.

Ms. Christensen presented a report which included renderings of plans and photographs of current spaces. The report is attached to the official minutes of record. Ms. Christensen said that in the 2006 College of San Mateo Master Plan, adopted by the Board in August 2006, the project was described as "North Front Door" and included demolition of Buildings 21-29; creation of a plaza near Building 36; expansion of Parking Lot 11; reconfiguration of Lot 9; a "boulevard of trees" between Lots 9 and 11 to lead pedestrians to the Science Building; realignment of the Loop Road; pedestrian corridor that frames views to the Bay and leads to a new outlook plaza; consistency of landscaping throughout the campus; and exterior lighting upgrades. This Master Plan is what was studied in the Initial Study. The Initial Study/Negative Declaration was presented to the Board in December 2006. There was a 20-day public review period, during which the Initial Study/Negative Declaration was advertised, posted and shared with County and other agencies. It was adopted in January 24, 2007.

Ms. Christensen said the description of the North Gateway plan in the Initial Study is even more detailed than that in the Master Plan.

Ms. Christensen said the current plan for the project is essentially the same as the Master Plan and Initial Study descriptions and renderings, except:

- Parking Lot 10a is no longer part of the plan (a reduced impact)
- Plaza is larger and shifted right
- Larger open space/green area east of Building 36 (reduced impact)
- Water feature was eliminated (possible reduced impact)
- Decomposed granite pathway added around perimeter
- Cianthus hedge added around perimeter (4 feet tall)
- Outlook shifted further south

Ms. Christensen said none of these changes is substantive. Vice Chancellor Nuñez said the elimination of Lot 10a in the plan was a concession to the Hillsborough neighbors, as was the addition of the hedge. He said the District has been good neighbors to both the Hillsborough neighbors and the Friends of the Gardens and has provided concessions to both groups. President Mandelkern said he hopes these changes will be noted as concessions in court records as well as in the record of this meeting. Trustee Miljanich said she believes the District has gone beyond the call of duty in trying to balance the legitimate interests of the parties while maintaining the ability to provide a safe and attractive campus.

Student Trustee Girard said that the majority of classes are held on the back end of campus and it is usually chaotic to try to find parking in that area.

Ms. Christensen said the Board was provided with copies of a timeline of FUSHION records (Planning Module) showing the approvals of the North Gateway project from 2002 to the present. A copy is attached to the official record of minutes.

Trustee Holober thanked Ms. Teller for participating in the presentation and answering questions.

President Mandelkern said that at the July 25 meeting, he was concerned that (1) the Board did not have an opportunity to talk with the attorney prior to the July 25 meeting, and (2) two members of the Board were not present at that meeting and did not have a chance to weigh in on this serious action. He said it was good to have had this opportunity to discuss the issue at greater length.

President Mandelkern called for a vote on the motion to approve the contract award to Interstate Grading & Paving Inc. as outlined in the board report. The motion carried, all members voting "Aye."

**ADJOURNMENT**

It was moved by Trustee Miljanich and seconded by Vice President Hausman to adjourn the meeting. The motion carried, all members voting "Aye." The meeting was adjourned at 9:40 a.m.

Submitted by

Ron Galatolo, Secretary

Approved and entered into the proceedings of the August 15, 2012 meeting.

Helen Hausman, Vice President-Clerk