

## MEETING MINUTES

APRIL 20, 2016, 5:00 P.M., SBCCD BOARD ROOM

Members Present – **Ken Coate, Albert Garcia, Frank Reyes, Patricia Small, Gabriel Jaramillo, Sam Irwin**

Members Absent – **Linda Roberts-Ross, Betsy Starbuck, Kevin Retana,**

District Staff Present – **Jose Torres**, Vice Chancellor, Business & Fiscal Services; **Cheryl Marshall**,  
CHC President; **Mike Strong**, CHC Vice President of Administrative Services

Kitchell/BRJ Staff Present – **George Johnson**, Bond Program Manager; **Angela Brinker**, District Initiatives  
Coordinator

Guests Present – **David Casnocha**, Bond Counsel, Stradling Yocca Carlson & Rauth

**Welcome/Introductions**

Ken Coate started the meeting at about 5:05 pm. Self-introductions were made.

**Approval of Minutes**

Frank Reyes made a motion to approve the minutes from January 13, 2016, which Albert Garcia seconded. The committee voted as follows, resulting in the motion not being approved.

Ayes: Ken Coate, Albert Garcia, Frank Reyes, Sam Irwin  
Noes: None  
Absent: Patricia Small, Linda Roberts-Ross, Betsy Starbuck, Kevin Retana  
Abstentions: Gabriel Jaramillo

(Patricia Small arrived shortly after the vote on the minutes.)

**Public Comment**

No one from the public was present.

**Membership**

There are no outstanding membership needs at this time.

**Committee Bylaws & Training**

David Casnocha from SBCCD's bond counsel firm, Stradling Yocca Carlson & Rauth, addressed the committee. He spoke about the history of financing for community colleges and the advent of Prop 39 in 2000, which allowed the passage of local bonds at a 55% voter approval rate. He went on to provide training for the CBOC and discuss the revised by-laws, which will be submitted for Board of Trustee approval in the near future.

### Section 1. Committee Established.

David discussed SBCCD's Measure P (2002) and Measure M (2008) bond issues, which were passed under Prop 39. SBCCD agreed to create an oversight committee, provide information to voter communities regarding what the bond money would be spent on, limit bond issuance based on a tax rate of \$25 per \$100,000 of assessed value, subject the bond program to an independent audit of funds, and to share the audit report with the oversight committee. When Measure P was passed in 2002, CBOC by-laws were established according to the responsibilities set forth in Prop 39. These bylaws were amended to include Measure M when it was approved, and they are now being amended in the interest of keeping them current.

### Section 2. Purposes.

David asked the committee to note the use of the word "oversight" in its title; he clarified that the CBOC is not an advisory body, it is an oversight body. And given that the CBOC is not empowered to provide advice to the board, its members will no longer be required to complete a Form 700. The committee is, however, subject to the Brown Act, which means 1) meeting agendas need to be posted and all activities are to be conducted in public; 2) serial meetings are prohibited, i.e. members are not allowed to call each other and make decisions via email; and 3) only items on the agenda should be discussed during meetings.

Ken asked if a CBOC member would be allowed to email a member of the Board of Trustees to ask a question. Jose Torres advised that this is allowable, however the answer to such an email needs to be sent out to everyone and not just to one person. It was clarified that group email cannot be used to conduct the equivalent of a public meeting. In response to a question about committee scope, David advised that learning the legality of lease leaseback as a valid delivery method is beyond the scope of the CBOC. He emphasized that the bylaws are the legal premise for this committee. Any member can ask for items to be added to the agenda. David mentioned that non-bond monies are outside the scope of the CBOC.

### Section 3. Duties

David directed members to Section 3, which he advised is the main part of the bylaws, with 3.2 Review Expenditures being key. He advised that the monthly bond report is the functional equivalent of an expenditure report. Committee members should look at the report and determine if the projects being funded from Measure M are lawful Measure M expenditures. He directed attention to the Measure M Election Resolution, Exhibit A Ballot Measure and the Exhibit B Full Text Ballot Proposition Language. David explained that this language, shown to voters in 2008, constitutes the bond project list. Committee members should link this language with the expenditure reports provided by the staff. He further clarified that, based on a 2007 lawsuit, courts have interpreted that bond projects do not have to match the project lists word for word; they just have to be like projects.

CBOC members should be satisfied that bond moneys are not being used for salaries or operating expenses. For example, if an SBCCD employee (manager, secretary, bookkeeper, etc.) is charged with bond program duties, can his or her salary and overhead be paid by bond funds? The California Attorney General's answer was yes. If there are salary costs, connected with the bond program, committee members should ask about that person's duties to evaluate if the percentage of the salary charged is attributable to the bond program.

Item 3.3 if the bylaws outlines the second most important function of the committee. That is to prepare a report including a statement that SBCCD is in compliance. For example, "In a review of

the expenditures made in the prior year it is the opinion of the committee that expenditures were for the facilities and not for salaries.”

Regarding the duties of the committee outlined in 3.1 Inform the Public, the chair will only release information that represents the majority view of the committee and not his or her individual opinion. This is to protect against the CBOC being used as a platform for personal political views.

The committee can hear about contracts and ask about change orders, but do not have the right to approve change orders or to criticize the Board of Trustees with the respect to the award of the contracts.

#### Section 4. Authorized Activities

Ken asked about the CBOC’s role if it believes the Board of Trustees takes an action that is not a cost savings. David directed attention to Section 4 of the bylaws which addresses what activities CBOCs can engage in. The CBOC can 1) receive and review the audits at the same time the Board of Trustees does; 2) inspect facilities and grounds where bond money has been spent; 3) review copies of deferred maintenance proposals or plans developed by the district (bond money is not allowed for routine maintenance); and 4) review efforts by the district to maximize bond proceeds by implementing various cost saving measures.

David provided some examples of a CBOC reviewing a district’s efforts to maximize cost savings. For example, if the CBOC believes there should be solar panels on every building, it could address this concern to the staff. If the Board of Trustees does not agree, the CBOC can ask SBCCD staff to express its disappointment that the solar cost savings measures have not been implemented and ask if the Board of Trustees would reconsider the issue. If the Board of Trustees says thanks, but no, that is the answer. The CBOC, if it stills feels strongly, can include in its annual report language expressing disappointment that implementation of solar panels was not accepted. This is not a legal issue, but rather a political one.

David explained that the committee should use the chain of reporting to express concerns. First, requests should be made through SBCCD staff, namely, the vice chancellor of Business & Fiscal Services. If that effort is not met satisfactorily, then the CBOC can approach the chancellor. If that effort fails, then the committee could approach the Board of Trustees. If all else fails, then perhaps the CBOC would want to post something on the SBCCD website, or write letter to the editor of a local publication, etc. However, he cautioned that the committee should be clear about whether they are addressing a legal issue such as improper expenditures, or a difference in opinion.

Ken spoke about the committee’s concern regarding the bond assistance program which helps small contractors get bonds. David said a lot of community colleges are struggling with this same issue. He explained that districts cannot use bond monies to get local or smaller companies to bid. Unless the training program is specific to a certain project, bond money cannot be used for “feel good” community expenditures. Expenditures have to be for capital costs, and training not connected to a project is not a capital cost.

Ken then expressed the committee’s concern about the project labor agreement. David responded that this is an extremely controversial issue. While the decision to use a PLA is beyond the scope of the CBOC, the committee is not prohibited from discussing it. He went on to say that it would be reasonable for a CBOC to request a presentation and an analysis from the staff on why SBCCD has chosen to use a PLA. However, like many of the other topics already discussed, the CBOC can express its opinion and that is the end of the game.

Committee members asked what recourse they had if it was concluded that bond money was being spent on non-Measure M projects. David replied that if this was the CBOC's conclusion after going up the reporting chain and discussing with legal counsel, then a taxpayer could bring a lawsuit. The lawsuit would be in the name of an individual and not the committee.

The CBOC has a right to be informed and SBCCD has an interest in keeping CBOC members informed. However, the CBOC should not just criticize the district for not accepting its opinions. (Mike Strong left the meeting at 6:15.) Ken expressed that he did not completely agree that the CBOC couldn't argue issues about cost savings measures. Frank asked again about local hire. David responded that these are reasonable concerns, but not technically what the CBOC is charged with. The concerns revolve around political rather than legal issues. He reiterated his counsel that the CBOC use the reporting chain to air any concerns (staff/vice chancellor, chancellor, Board of Trustees, public statements via a website or letter to the editor), and that it accept the Board of Trustee response once it is rendered.

Ken asked about the local subcontractor that came to the CBOC about not being paid. David felt the subcontractor should tell SBCCD, not the oversight committee. He advised that it is not the duty of the oversight committee to be an advocate for the subcontractors. He suggested the committee not try to solve these issues, but rather refer them to SBCCD decision makers.

Discussion returned to the redlined changes in the bylaws.

- Sam Irwin asked why the language about formation was left in regarding drawing lots, etc. David replied that these procedures could come in use if ever all the current committee members dropped out and a new group had to be formed.
- A question was raised about Section 6.1 stating the committee can't meet more frequently than quarterly. It was explained that committees cannot hold regular meetings more often than quarterly, but that special meetings could be called if and when necessary. It was decided that paragraph 6.1.5 can be added to address this ability.
- It was pointed out that Ed Code declares that members cannot serve more than three consecutive two-year terms. This is a change from the previous stipulation of two consecutive two-year terms.
- It was decided that the organization meeting would remain in November and that member terms did not have to commence in July. These changes will allow the CBOC to continue functioning as it has been.

Gabriel Jaramillo asked how often the committee reported to the Board of Trustees. The answer was three times annually – once in the form of a written annual report, and two other standing verbal reports. Verbal reports are only made if the CBOC has something on which to report. David advised the CBOC that in his experience, community colleges generally don't write the report as Ken does. The committee can look through the samples and ask the staff to draft an annual report in a particular style and bring that report to the committee for review and approval. This is an option for the CBOC.

Ken expressed his opinion that the training was good for the committee and asked if David could return at some point. David said he could return and if there are questions in the meantime, the CBOC can ask them through Jose.

### **Re-Vote to Approve Minutes**

Given that Patricia had arrived subsequent to the first vote on the minutes of January 13, Ken asked if he could have another motion. Frank made the motion, which Albert seconded. The committee voted as follows, approving the minutes.

Ayes: Ken Coate, Albert Garcia, Frank Reyes, Sam Irwin, Patricia Small  
Noes: None  
Absent: Linda Roberts-Ross, Betsy Starbuck, Kevin Retana  
Abstentions: Gabriel Jaramillo

(Frank and Albert left the meeting at 6:52 p.m.)

### **Status of Measure M Projects**

George Johnson presented and reviewed a brief update on bond program projects. There was no further discussion.

### **Update on CBA – LADM Bid Award**

Angela Brinker presented and reviewed information on the LADM bid award.

### **Payment of Subcontractors**

George talked about the payment of subcontractors and reviewed the handout.

### **Update on Pre-Qualification Program**

Jose spoke to committee members on this topic and presented a handout.

### **Board Reports**

The committee decided not to report to the Board of Trustees in June, as there was no longer a quorum present to vote on what would be reported. The next report will be October 20.

### **Review Board Items & Site Visits**

There were no comments on board items. CBOC members were invited to a job tour of the SBVC Gym to take place on April 29. George advised there would be stairs, and asked anyone planning to attend to wear long pants and closed toe shoes with no heels.

### **Adjournment & Next Meeting**

Ken will coordinate the next meeting via email. It will be some time after July 4. The meeting adjourned at 7:28 p.m.