

**MINUTES
of the
SIXTH MEETING IN 2010
of the
CAPITOL BUILDINGS PLANNING COMMISSION**

**November 15, 2010
Room 311, State Capitol
Santa Fe**

The sixth meeting of the Capitol Buildings Planning Commission (CBPC) in 2010 was called to order by Speaker of the House of Representatives Ben Lujan, co-chair, on Monday, November 15, 2010, at 1:48 p.m. in Room 311 of the State Capitol in Santa Fe.

Present

Arturo L. Jaramillo, Secretary of General Services, Co-Chair
Rep. Ben Lujan, Speaker of the House, Co-Chair
Stuart Ashman, Secretary of Cultural Affairs
Dannette Burch, Secretary-Designate of Finance and Administration
Ruth Dygert, Designee for Charles W. Daniels, Chief Justice of the Supreme Court
Sen. Stuart Ingle, Senate Minority Floor Leader
Sen. Timothy Z. Jennings, Senate President Pro Tempore
Larry Kehoe, Designee for Patrick H. Lyons, Commissioner of Public Lands
Clarence Smith, Designee for James Lewis, State Treasurer
Rep. Thomas C. Taylor, House Minority Floor Leader
Max Valerio, Designee for Gary Giron, Secretary of Transportation

Staff

Raúl E. Burciaga, Director, Legislative Council Service (LCS)
Roxanne Knight, LCS
Tom Pollard, LCS
Ric Gaudet, LCS
Bill Taylor, Director, Property Control Division (PCD), General Services Department (GSD)
Larry Miller, Deputy Director, PCD
Lemoyne Blackshear, Staff Architect, PCD

Guests

The guest list is in the meeting file.

Handouts

Handouts and other materials provided to the commission are in the meeting file.

Monday, November 15

Action Item: *The minutes of the October 18, 2010 meeting of the commission were adopted unanimously without changes.*

The commission discussed the meeting agenda and modified it to accept public comment prior to hearing presentations. There was no member opposition to the change.

Public Comment

The commission provided members of the public an opportunity to comment on the proposed Health and Human Services (HHS) complex land acquisition contract at Las Soleras before bringing that issue before the commission for consideration.

Mark Bertram of Zia Station, LLC, said that he is the owner of the Zia Station property, which has its own Rail Runner station. He is also a landowner that leases office buildings to the state. Mr. Bertram stated that he felt the site selection process was flawed from the beginning and that his site was never reviewed. He opined that it would be very unwise for the HHS project to move forward now, especially with a new executive administration coming in. He commented that the economic picture today is vastly different from what it was in 2006, when the HHS project began in earnest. He asked the commission to postpone any decision on the project until after the start of the new year.

Michael Branch of Branch Realities and owner of Southwest Plaza, an office complex leased to the state, said that an economic impact study was never performed to gauge the impact on local businesses of building the HHS complex. He said that he was appointed by Governor-Elect Richardson in 2002 to head the transition team for the GSD. He had proposed that lease-purchase agreements be allowed, but in the context of the state entering into the agreements with private developers, and not with the state creating its own financing and development. (He noted that during the Gary Johnson administration, a proposal was made for the HHS complex to be on Highway 14.)

He referred to a proposal he made to the commission and delivered to CBPC staff the previous Friday evening, about lease purchasing to the state all of the buildings currently leased and occupied by the Human Services Department (HSD).

Rosie Colgate of the Colgate Trust, which leases 100,000 square feet of office space to the state, said that she always treated the lease arrangements she made with state agencies as providing a convenience to the state. Putting the HHS complex at the far end of Santa Fe would be a disservice to the public. She said that the state could lease-purchase the existing building scheduled to be vacated at one-half of the cost of building a new building at the Las Soleras development. Finally, she said that if the HHS complex is such a great idea, it should be voted on by the voters as a general obligation bond question.

Phil Sena of the Turnkey Company, one of the land offerors for the HHS complex, said that the state does not need any more "movidas". He provided a handout of a proposal for the HHS at the Pavilion property. He said that the project needs an economic impact study before vacating private leases, and he then proceeded to detail the offer he made to the state previously of selling the state 20 acres of land at the Pavilion development (near the airport) for the HHS

complex. He requested that a decision on the Las Soleras purchase be delayed.

Speaker Lujan thanked the members of the public for their comments. He pointed out that House Bill 728 (compiled as Section 15-3B-21 NMSA 1978) passed unanimously in the senate and almost unanimously in the house of representatives in 2009. The commission is giving the land acquisition portion of the project its final review. Ms. Knight clarified that at the April 2010 meeting of the commission, the CBPC completed the initial review of the proposal, subject to the approvals of the State Board of Finance (BOF) and the Attorney General's Office (AGO), and it required the project to be reviewed again by the CBPC when those approvals are finished.

Speaker Lujan asked whether the HHS project can proceed if the CBPC does not approve the final review of the project. Ms. Knight reiterated the requirements outlined in Section 15-3B-21 NMSA 1978 — that neither requests for proposals or contracts be issued without review by the CBPC to ensure that they are the most cost-effective method for acquiring the building and that the building and its use are within the scope of the master plan. A final review requires action by the commission.

Final Review Under House Bill 728 — Las Soleras Land Acquisition

Secretary Jaramillo and Mr. Taylor presented the proposed land acquisition contract for the acquisition of 20 acres of land at the Las Soleras development for the HHS complex. Secretary Jaramillo said that he has presented this project to the commission seven times, and the resulting contract is much better because of the review. There are some changes in the contract since it was reviewed by the commission in April 2010.

In 2002, then-Secretary of Human Services Robin Dozier Otten testified before the commission and presented the urgent need of the HSD to relocate to a centralized administrative location. The PCD and commission have been working on the project ever since. In 2006, the voters adopted a constitutional amendment allowing the state to enter into lease-purchase agreements, which provided a new financing option for projects. Lease revenues from current private leases, many of which have paid for the buildings occupied several times over, will be diverted to pay lease-purchase revenue bonds, without costing the general fund any new expenditures. The HHS project is the centerpiece of the Capitol Buildings Master Plan (CBMP) for Santa Fe and will save the state millions of dollars.

The BOF and AGO had many technical issues with the contract, and Secretary Jaramillo said that he has responded in extensive detail to all of the questions. The AGO questioned whether the New Mexico Finance Authority (NMFA) has the statutory authority to advance the \$2 million in cash needed to complete the land transaction. Four million dollars in severance tax bonds have been authorized; approximately \$1.9 million worth of land trade was authorized; and \$2 million from proceeds of lease-purchase revenue bonds (LPRBs) were authorized for the purchase of the land. However, the LPRBs will not be issued until after other seller conditions have been met, so the state needed a temporary bridge loan. The NMFA proposed to issue a bond anticipation note (BAN) instead of advancing the cash. The finance costs of the BAN

actually reduced the sale price of the property by \$51,000. The BAN will be payable to the seller only if the LPRBs are issued for construction of the complex.

Another change to the contract involves better terms for the state's options to purchase other adjacent parcels. The state retains the right of first refusal on Lots 26 and 24; 9.7 acres immediately adjacent to the sale property; and the state has the exclusive option to purchase Lots 19 and 27, comprising 31.8 acres west and east of the sale property and across Rail Runner Road.

The obligations of the seller to provide infrastructure improvements remain intact, including construction of roads in the vicinity; the construction of the Rail Runner station and platform; and installation of utilities to the property.

Other changes to the agreement include:

- increased collateral required for the seller's obligations to install infrastructure;
- the state has been exempted from any subdivision fees;
- title exceptions to the warranty deed have been resolved satisfactorily by the BOF and AGO;
- the phase I environmental study has been completed by the seller; and
- a "due diligence" period has been granted of 60 days, in which the state can, for any reason, terminate the contract. This will allow the incoming administration time to review the contract before proceeding.

Secretary Jaramillo then discussed with the commission two issues that the commission has been charged with reviewing: whether "...the contract is the most cost-effective method for acquiring the building..." and whether "...the building and its proposed use are within the scope of the commission's master plan." (Section 15-3B-21 NMSA 1978). Regarding cost-effectiveness of the land acquisition portion of the project, the state is acquiring 20 acres of land for the HHS complex, with completed infrastructure and a Rail Runner station in place. The fair market value of the property has been appraised independently at \$10.1 million, and the state is paying \$5.9 million in cash and trading \$1.9 million in land for the property. The seller is offering the remaining \$2.25 million in property as a gift. The options to purchase additional property at the lower of \$11.00 per square foot or the current fair market value add even more value to the deal, said Secretary Jaramillo. The acquisition of the property is also within the scope of the CBMP, for many reasons, including the following:

- the project will consolidate operational, functional and logistical efficiencies of the HSD, which are currently scattered in expensive and inefficient leased space;

- the new facility will allow the state to realize efficiencies, economies of scale and cost savings by eliminating unnecessary and duplicate leased space;
- the public will have convenient access to government services;
- commuter rail service is adjacent to the property;
- the property is in close proximity to retail and commercial services, and those services will be developed adjacent to the property; and
- the development will have a pedestrian-oriented interior with connections to open space.

Additional testimony was given by Secretary Jaramillo regarding the previous financing analysis done by Mr. Pollard and verified by the NMFA.

Secretary Jaramillo briefly addressed the Branch Realty proposal, noting that it does not meet any of the guidance and criteria for the CBPC lease-purchase review process. State agencies need to decide what their facility requirements are, and the HSD determined long ago that it needed to centralize its administrative functions. Purchasing the buildings it currently occupies would not be in conformance with the CBMP on multiple grounds, including cost-efficiency, operational efficiency and centralized function principles.

Senator Jennings complimented Secretary Jaramillo for the incredible amount of work put into the development of the HHS project over the past several years. He said that although this project will save the state much money, he is concerned about the effect of empty office buildings on the Santa Fe economy. At the same time, the state does not owe anything to building owners if it chooses to vacate leases. He said that he thinks the state should not move forward on the project right now.

Representative Taylor also commended Secretary Jaramillo's work and expressed some concerns about the effect of the project on the local economy. He said that he thinks the New Mexico economy is in a 20-year decline and is experiencing a steady loss of high-wage jobs. The state is very reluctant to change the rules for businesses to operate, and that means that new revenue to the state will be very slow to grow. He recommended that the commission wait a few months, until the new administration begins, to make a decision.

Senator Ingle said that the January 15, 2011 deadline for the new administration to decide on the project is too soon, since Governor Susanna Martinez will have taken office only 14 days earlier. He agreed that the lease rates the state pays in Santa Fe are extremely high, and they will probably only get higher. He proposed changing the due diligence period allowed the administration from 60 days to 180 days.

Mr. Kehoe asked if the AGO has approved the contract yet. Secretary Jaramillo said that

all of the issues raised by the AGO and the BOF have been resolved. The BOF is meeting the following day to consider approval of the project, and the AGO is expected to issue an approval letter soon. He clarified that the new administration would have 45 days to review the project before January 1, 2011 and 15 more days to decide whether to proceed. If the contract takes effect, then severance tax bonds and the BAN would be issued. When the LPRBs are ready to be issued, the project will need to be reviewed again by the commission.

Mr. Kehoe asked about the diversion of lease payments intended to pay for the LPRBs. Secretary Jaramillo said that \$5.4 million in HSD lease payments would be used. In addition, another \$1 million in lease payments from other agencies would be used once those agencies relocate from leased space to space currently occupied in state-owned space by the Children, Youth and Families Department. The state will also be able to capitalize federal lease reimbursements on an accelerated schedule for many of the component systems of the HHS facility.

Mr. Kehoe asked whether the property valuations are based on the value of future infrastructure. Secretary Jaramillo said that the GSD wanted to ensure that it did not end up with a piece of property that was undeveloped by the seller. For that reason, the seller is required to fully collateralize the infrastructure obligations.

Senator Jennings suggested that the contract be amended to extend the 60-day due diligence period another 30 days. Secretary Jaramillo said that, on behalf of the GSD, he would support the change, and he would attempt to negotiate with the sellers on that point.

Mr. Kehoe said that Commissioner of Public Lands Lyons would support the agreement if it has the extra 30 days for the new administration to consider it.

Speaker Lujan said that the new administration could request additional time to study the proposal before January 15. He agreed that the administration needs time to review the proposal, and he supports moving the proposal forward.

Joshua Skarsgard, representing the sellers of the property, said that the sellers would accept the amendment to the contract.

Secretary Ashman made the following motion, which was seconded by Secretary-Designate Burch:

In accordance with Laws 2009, Chapter 145, Section 1, Subsection D, a final review by the Capitol Buildings Planning Commission is required for the Purchase Agreement and Cash Option Agreement (hereafter "the Agreement") between the Property Control Division of the General Services Department and Paseo Nuevo, Ltd. Co., a New Mexico limited liability company, for purchase, acquisition, sale, trade and gift of certain real properties of the Parties located in Santa Fe County, New Mexico. Motion is hereby made to conclude the final

review of the Agreement contingent upon: 1) the parties agreeing to extend the right to terminate to February 15, 2011; and 2) final approval of the State Board of Finance and the Attorney General. The final review shall be evidenced by a letter from the Speaker of the House as Co-Chair of the Capitol Buildings Planning Commission.

Action Item: *The motion to conclude final CBPC review of the land acquisition agreement was adopted by the commission, with all members voting yes, except Representative Taylor voting no.*

Final Presentation of Guidance and Criteria for the CBPC Lease-Purchase Review Process

John Petronis, Architectural Research Consultants (ARC) and master planner to the commission, and Andy Aguilar, ARC, presented for the commission's approval the Lease-Purchase Agreement Review Process Guidance document developed this year. Mr. Petronis said that the guidance document is essentially the same document as was presented at the October CBPC meeting, with a few technical changes. He sent the document to all potentially affected agencies for comment, but he has not received any responses. The PCD and CBPC staff have, however, provided useful input into the document.

One change made to the process is to clarify that state agencies will have the opportunity to address any issues raised by the CBPC staff review of a lease-purchase proposal. Another change in the document is the inclusion of an agency checklist prior to submission of a proposal. The master planners are creating a web-based tool to calculate life-cycle cost analyses of proposed lease-purchase agreements. Currently, the calculations are available as a spreadsheet application. Upon completion, it will be available on the legislative web site.

Senator Jennings asked whether counties would be allowed to use the CBPC lease-purchase guidance document. Staff indicated that counties only have limited ability to enter into certain types of lease-purchase agreements; however, staff will research questions raised by the senator and respond in December.

Direction to Staff: *Staff was directed to research the question of county lease-purchase authority.*

Senator Jennings expressed concern that the use of the lease-purchase process might circumvent the statutory requirement in the Public Works Minimum Wage Act that public works projects of the state or a political subdivision be constructed using the prevailing wage in the area. If a private developer builds a building and then lease-purchases the building to the state, the developer does not have to use prevailing wages, which means that the building could potentially be built cheaper than if the state uses a design-build or other type of existing procurement process.

Staff requested time to research the issue and suggested that final approval of the guidance document be done in December.

Direction to Staff: *Staff was directed to research the applicability of prevailing wage statutes to the lease-purchase financing process.*

The commission postponed action on the guidance document until the December meeting, pending further research by CBPC staff.

Additional Public Comment

Michael Bodelson, Vistas del Caja del Rio, one of the property offerors for the HHS complex, thanked members of the commission for their diligence in selecting a site for the HHS complex. He said that the developers of the Vistas property are looking at the long term for future state infrastructure development. He said that the offer of land donation to the state for an office complex will remain in effect for some time.

Review Legislative Proposals and Agency Requests in Master Planned Areas

Five-Year Facilities Master Plans

Ms. Knight and Mr. Taylor presented legislation for the commission's possible endorsement. The bill proposed would be very similar to the five-year facilities master plan bill endorsed by the commission in 2009. That legislation did not receive an executive message and was not introduced. The bill requires state agencies to develop and annually update a five-year facilities master plan, consistent with the CBMP and master planning principles. The facilities master plans and updates are to be submitted to the Department of Finance and Administration (DFA) on July 1 of each year. The legislation does not contain an appropriation, nor does it restructure government.

The DFA and PCD then jointly prepare and annually update a five-year program for all state capital improvements. This directive is similar to what existing statute requires, except that projects are prioritized and further classified into those that need funding for the initial planning and design phase and those that have completed the planning and design phase and need full construction funding.

The PCD is directed to develop guidelines for state agencies in developing their master plans and to provide assistance to state agencies with those plans. Key aspects of the agency facility master plans will include:

- requirements for preventive and deferred maintenance plans, including standards for facility maintenance plans;
- a criteria-based weighted ranking system to determine priority capital projects;
- space and energy standards with which facilities must comply; and
- life-cycle cost analysis of existing and proposed facilities.

The current version of the bill includes language to clarify that the PCD has the authority to regulate lease-purchase proposals of most state agencies. Other differences from the 2009 bill include changing the effective date to occur 90 days after the end of the legislative session, rather than next year, and changing the due date for the submission of the state capital improvements plan from September 1 to November 1.

Senator Jennings asked whether the legislation would require state agencies to maintain their buildings. Mr. Taylor said that preventive and deferred maintenance plans would be required for all facilities under the management of a state agency.

Action Item: *The commission unanimously endorsed the five-year facilities master plan bill.*

Capital Outlay Within Master Planned Areas of New Mexico

From the GSD

Mr. Taylor presented a list of priority capital projects for which the GSD is seeking funding. He said the GSD is not seeking endorsement of the projects from the commission. GSD capital projects include:

- \$10 million for statewide repairs, deferred maintenance abatement, emergencies, infrastructure, decommissioning and demolition;
- \$10 million for phase I of the Lujan Building renovation at the South Capitol Campus in Santa Fe; and
- \$2 million for statewide planning and design, including master plan development of state properties and for demolition and decommissioning of properties.

Linda Kehoe, Legislative Finance Committee (LFC), said that the estimated severance tax bonding capacity for the upcoming year is \$260 million. Thus far, state agencies have requested \$1.5 billion in funding for capital projects. She said that the LFC recommendations may match up fairly closely to the GSD's requests.

Action Item: *The commission unanimously endorsed the GSD projects as to their consistency with the CBMP and master planning principles.*

From the Cultural Affairs Department (CAD)

Secretary Ashman reviewed the priority capital outlay projects for which the CAD is requesting funding. He said the department has reduced funding requests since the CAD presented its capital projects to the commission at its June 2010 meeting. The capital projects include:

- \$2 million for repairs and maintenance of statewide cultural assets;
- \$250,000 for project completion of cultural facilities; and

- \$750,000 to equip the New Mexico Museum of Natural History and Science.

Action Item: *The commission unanimously endorsed the CAD projects as to their consistency with the CBMP and master planning principles.*

PCD Regional Update

Mr. Taylor briefly provided the commission with updates of PCD projects around the state. Ongoing projects include:

- Executive Office Building. The PCD is in the process of preparing comment to the completed programming document for the new building to be constructed on the Main Capitol Campus in Santa Fe. One problem for the building site is that the proposed 52,000 square-foot building does not fit very well on the proposed site on Don Gaspar Road if the existing casitas are to remain intact. The project, which is expected to cost \$22 million, has already been approved by the legislature.

- Roswell Rehabilitation Facility. The Department of Health (DOH) will be moving into the new facility soon. The regional housing authority in the Roswell area is interested in leasing from the state the vacated rehabilitation facility.

- Fort Bayard Medical Center. The DOH has occupied the new facility. The PCD will enter into a contract for a feasibility study for future uses of the old facility and property.

- New Mexico Behavioral Health Institute. The New Meadows nursing home construction project in Las Vegas began on September 9, 2010 and is expected to be completed in September 2011. There is an issue with the City of Las Vegas regarding a zoning permit for the facility.

- Former College of Santa Fe Campus Land Acquisition. The GSD will be presenting the acquisition of nine acres of land at the former College of Santa Fe campus to the BOF the next day.

There being no further business, the commission adjourned at 4:42 p.m.