

Utah State Building Board



MEETING

March 17, 2004

MINUTES

Utah State Building Board Members in attendance:

Larry Jardine, Chair
Steven Bankhead
Manuel Torres
Katherina Holzhauser
Darren Mansell
Cyndi Gilbert
Richard Ellis (Ex-Officio)

DFCM and Guests in attendance:

F. Keith Stepan	Division of Facilities Construction & Management
Kenneth Nye	Division of Facilities Construction & Management
Shannon Lofgreen	Division of Facilities Construction & Management
Kent Beers	Division of Facilities Construction & Management
S. Camille Anthony	Department of Administrative Services
Randa Bezzant	Governor's Office of Planning and Budget
Kevin Walthers	Legislative Fiscal Analysts
Dennis Geary	College of Eastern Utah
Rick Stock	Architectural Nexus
Mike Perez	University of Utah
John W. Huish	University of Utah
Rolyn Smith	HFS Architects
Ed Armor	Student
Bob Askerlund	Salt Lake Community College
Mark Spencer	Utah System of Higher Education
Ryan Thomas	College of Eastern Utah
Jackie McGill	Spectrum Engineers
Chris Coutts	MHTN Architects
Matt Rich	Jacobson Construction
Greg Peay	Department of Corrections
Kim G. Passey	State Fire Marshall's Office
Richard Abbott	Department of Human Services

Lionel Blau	Mountainland ATC
Jim Paull	Sheet Metal Contractors Association
RoLynne Christensen	VCBO Architecture
Darrell Hart	Utah State University
Kevin Womack	Utah State University

On Wednesday, March 17, 2004, the Utah State Building Board held a regularly scheduled meeting at the University of Utah Marriott Library Gould Auditorium, Salt Lake City, Utah. Chairman Larry Jardine called the meeting to order at 9:03am and thanked the University for their hospitality.

APPROVAL OF MINUTES OF FEBRUARY 4, 2004.....

Chair Jardine sought comments on the meeting minutes of February 4, 2004. He noted that Kevin Womack, Darrell Hart and Brent Windley of Utah State University were inadvertently omitted from the attendees at the February 4 meeting.

MOTION: Manuel Torres moved to approve the minutes of February 4 with the addition of the USU staff members. The motion was seconded by Katherina Holzhauser and passed unanimously.

REPORT ON LEGISLATIVE RESULTS

Kenneth Nye reported on events during the 2004 Legislative session which proved to be fairly successful. Although the allocated capital budget was not as desirable as hoped, it was higher than expected. Initial discussions indicated the Legislature would hold to the \$64 million in GO bonds that was going to be paid off. The Legislature funded \$86.5 million on the GO bond, of which \$50 million went to the Capitol and \$36.5 million went to other projects. Discussions were also held to limit the level of debt for lease revenue bonds. The Legislature authorized \$25.5 million, which was higher than the \$18 million being paid off.

Mr. Nye provided a document comparing the Building Board's recommendations versus the Governor's recommendations and the Legislature's actions. He noted that the Legislature funded the capital improvements at the .9% level. They also funded the Board's first two priorities of the Ogden and Moab Regional Centers through a lease revenue bond; however the Logan Regional Center was not funded. Funded projects also included the Weber State University Swensen Building renovation and the National Guard Salt Lake/Davis Readiness Center on the GO bond.

The Board previously proposed planning funds for the Public Safety Education/Training Center at Salt Lake Community College. After the Board's prioritization meeting, Larry Miller discussed the potential of funding the project with a donation to Salt Lake Community

College, Public Safety, and Corrections and the Legislature authorized the project to proceed under a donation approach. The agencies may return to the Board next year if the donation does not materialize.

The Salt Lake Community College Health Sciences building was funded at a significantly reduced budget amount, which will require the project scope to be reduced. SLCC has had significant growth over the last several years and have not received a project which served as a critical factor in the consideration.

Discussions occurred as to whether fund a portion of the University of Utah Marriott Library and whether the Legislature would be bound to fund the remainder of the project next year. This raised concerns regarding phased funding.

The SUU Teacher Education building was not funded. Tooele Courts was funded on the lease revenue bond. The CEU library was funded at a reduced level with the perception that funds would be raised.

The Oxbow Jail purchase was also funded through state funds based on several factors including the Governor's support and statement that no more than \$7 million would be spent on the purchase. The \$7 million was \$4.5 million less than the number previously discussed with the Board, and approximately \$7 million less than the appraisal. The value was enhanced as the purchase price decreased. In addition, South Salt Lake City supported the position to renovate to a prison and indicated there was not a need to include money in the budget to purchase adjacent property, which reduced another \$700,000 out of the project. The Legislature took the option of multiple funding sources and funded \$4.8 million on the GO bond, \$1,540,000 in general fund appropriation, \$2.2 million in federal funds and up to \$1.5 million out of capital improvements for remodeling costs. This resulted in \$4.8 million on the GO bond in order to address Oxbow.

In regards to the other funds projects, Mr. Nye provided a comparison of the Building Board's recommendations, the Governors recommendations, and the Legislature's authorizations. Mr. Nye noted the Corrections UCI expansion in Gunnison was not funded due to the business partner withdrawing their interest and therefore withdrew the project from consideration. UDOT presented two projects to the Building Board and then approached DFCM and informed them they only wished to pursue the Vernal project at a reduced scope and wished to postpone the Heber City project. The Transportation Funding Committee was not supportive of using the money for buildings and preferred it for highways. Mr. Nye anticipated UDOT would return next year for the Vernal project with the reduced \$1.5 million scope.

Other differences between the Board's recommendations are the result of new projects that came to light after the Board's actions including the Board of Regents office building

purchase, the UCAT Mountainland ATC lease purchase, and the Natural Resources land purchase in Price. Wildlife Resources has requested a new office building in Price for several years, but it has not been prioritized high enough in the Department to be presented to the Building Board. They have since funded the land purchase out of their own funds.

A schedule summarized all of the funding, including all of the non-state funded projects, which totaled approximately \$323 million. Mr. Nye noted the Legislature does not typically authorize a dollar amount for non-state funded projects, and simply authorizes the project to proceed with a funding source identified.

In efforts to avoid the controversy surrounding the funding for the percent for art, Mr. Nye worked with the Legislature to have the bond bill specify which projects included art money.

Mr. Nye distributed another chart representing the level of state funding by year for the last session and preceeding five legislative sessions including the general fund and income tax funding, the GO bond, transportation fund, lease revenue bond and other state funds. The level of cash funded slightly increased over the last year due to the increase in funding for capital improvements and the money found for the Oxbow project. The amount authorized for GO bonds this year for buildings was the largest of those years represented with the exception of 2001.

Intent and authorization language was included pertaining to the capital budget and the different projects. The language for funding money out of capital improvements for the Oxbow Jail improvements was also identified. It stated DFCM could spend up to \$1.5 million on the remodeling needed for Oxbow. Greg Peay, Department of Corrections, stated the County Council met and suspended all discussion on the Oxbow purchase for five weeks to allow the Sheriff to work with the city to remove the conditional use permits governing the jail. At the previous council meeting, all members with the exception of one supported the Sheriff's position to not sale the jail. Further discussion will resume in five weeks. Kevin Walthers stated the Sheriff felt the state had money to lease the jail and anticipated charging the state \$44.00 a day per inmate. The recommendation of the Legislative Fiscal Analyst's office was to use the empty VOITIS dorm on the Draper campus. Although the facility is not ideal, it is better for the State who could then eventually build their own facility on state property.

Kenneth Nye continued that the capital improvement funding received this year is the largest level of capital improvement funding DFCM has ever received. Larger appropriations were done in the past, but part was retracted due to budget appropriation problems.

The Legislature was not able to fund DFCM's administrative operating budget out of general funds. DFCM is funded again out of project reserve, contingency and capital improvement funding. There was a lot of support expressed in the need to address obtaining permanent funding for DFCM next year.

The Legislature also funded the full amount for the National Guard's maintenance funding for the current fiscal year and half of the funding for next fiscal year. Further discussions will be held to address next year. Intent language passed directing DFCM to not perform more work than budgeted.

A number of bills were passed this session which may have impact on DFCM. HB205 would have a substantial impact as it dealt with State Settlement Agreements Amendments. This allows DFCM to resolve disputes on construction projects through their own resolution process without resolving it in court. DFCM would then be able to move ahead with the current funding processes to pay it off without going to the Legislature. The statute generally requires the Governor's approval for settlements over \$100,000, Legislative Management Committee approval over \$500,000, and Legislative approval over \$1 million.

HB217 may have the greatest impact on DFCM as it pertains to changes to DFCM contract procedures and requirements. It requires DFCM to develop a dispute resolution process and implement it through an administrative rule. The bill identified a number of specific issues for DFCM to consider when developing the rule. This rule would allow subcontractors direct access to the State on dispute resolutions and no longer require them to go through the general contractor. The rule will be written to narrow the ability of the subcontractors to come directly to the state. The bill also placed the requirements in statute regarding making payments timely and paying interests on late payments and addressed clarifying provisions with the appeal process on claims. The bill also requires DFCM to present the rule to the Government Operations Interim Committee prior to August 31. Over the next few months, DFCM will develop rules for proposal through a public process and then present their findings to the Building Board before proceeding to the Government Operations Committee.

HB226 pertained to the legislative approval of capital projects. Several years ago the Legislature passed a bill authorizing the Building Board to be the approval authority for non-state funded capital projects if no state money was involved with the original construction, the operations and maintenance or the capital improvement funding in the future. The bill language did not have enough clarity raising questions as to whether some projects should receive approval from the Building Board. This legislation clarifies and requires state agencies to go through the legislative approval process. If no state appropriated funds are involved in Higher Education projects for the original construction, and they acknowledge they will not be eligible to ask for any increase in state funding for O&M or for capital

improvement money, the Building Board is authorized to grant approval. The bill clarified that institutions going through this process are not eligible for future O&M funding.

HB228 did not pass but pertained to the sale, exchange, or donation of real property to agencies. This bill would have required DFCM to adopt rules to establish a process they would follow for selling or exchanging property. It has some requirements for items needing to be addressed in the rule. It required a public notice and a formal independent appraisal, although it did allow them to set exceptions. Any time an agency went over 95% the appraised value, Building Board's approval was required. Part of the bill creating the most contention was a requirement that the actual purchase offer had to be reviewed and approved by the Governor if the appraised value was over \$500,000, or by the Legislative Management Committee over \$1 million, and the Legislature as a whole if it was over \$2 million. The provision would have resulted in a requirement to have some special sessions every year for the Legislature to approve specific sales transactions.

Mr. Nye also highlighted SJR10 which is the Master Study Resolution. It indicates topics that Legislature did not act on this year, but has enough concern to potentially act on next year. The two topics Mr. Nye felt were of most interest and greatest concern to DFCM were identified in the resolution and included calling for a review of the approval process for the lease revenue bonds for the regional centers. Representative David Clark and others are concerned about the process and whether it is appropriate for the state to use rent budgets to repay a bond and use it as a justification. The second topic dealt with design/build and other construction methods and their appropriateness. Fortunately for DFCM the focus of the debate was on local government and not on DFCM. There was a bill initially proposed in the senate clarifying the existing statutes to allow the local government the authority to do design/build. This issue is currently being reviewed by the Legislative Auditors.

Mr. Nye concluded with his presentation by announcing that Representative Loraine Pace has declared she will not be seeking re-election and will be leaving the Legislature at the end of 2004. Representative Pace has been very involved with issues and has been very dedicated.

Kevin Walthers distributed the summary done by the Legislative Fiscal Analyst's office which included the state budget overview and findings of the capital facilities committee.

Keith Stepan highlighted recapped that DFCM's budget was not on the list for the third year; however they did make a wish list to be funded for administrative budget. As of next year, DFCM will be out of funds.

Mr. Stepan stated there were much improved relationships with the legislators themselves. He too expressed his admiration of Representative Loraine Pace and her commitment to

the Building Board. She has been an incredible leader and involved with her efforts. She will be greatly missed in the Legislature.

MOTION: Steve Bankhead moved to send a letter of appreciation to Representative Loraine Pace thanking her for her support. The motion was seconded by Manuel Torres and passed unanimously.

Chair Jardine recognized the efforts of DFCM on behalf of the Board.

☐ ADVANCE OF FY 2005 CAPITAL IMPROVEMENT FUNDS TO CEU.....

DFCM recommended the Board advance the College of Eastern Utah \$255,800 in the upcoming FY2005 capital improvement funding. This will allow DFCM to combine this project with a project that was funded last year.

Last year, the Board authorized \$1,036,000 to replace 450 feet of tunnel at the Price Campus at CEU, which has been delayed due to the engineering and soils. A new location for the tunnel has finally been located and CEU is now prepared to proceed with the construction. In conjunction, their request for the upcoming year involves replacement of the high voltage distribution system and they wish to place the system in the tunnel being abandoned. By hiring one contractor to do both projects, they would save construction costs and achieve overall efficiency. In addition, it would help achieve completion during the summer.

MOTION: Cyndi Gilbert moved to approve the advancement of funds to the College of Eastern Utah. The motion was seconded by Steve Bankhead and passed unanimously.

☐ ADMINISTRATIVE REPORTS FOR UNIVERSITY OF UTAH AND UTAH STATE UNIVERSITY

John Huish, University of Utah, reported on the delegated projects for the period of January 16 to February 27, 2004. Three A/E contracts were awarded including one for design, one for a master plan and one for a feasibility study. One project was closed in the statewide accounts and eight were closed in the improvement accounts. The quarterly construction status report was included for the quarter including five closed projects, three pending final accounting and four projects remaining open and in construction.

Mr. Huish stated the request for reallocation of the Marriott Library renovation was incorrect. Although the Building Board did authorize the University to proceed through the design phase, they are waiting for permission to proceed beyond planning.

Mr. Huish explained how days left on contracts are determined. Cyndi Gilbert requested more information on contract delays in the future.

MOTION: Steve Bankhead moved to accept the administrative report of the University of Utah. The motion was seconded by Cyndi Gilbert and passed unanimously.

Darrell Hart, Utah State University, requested a reallocation of capital improvement funds to support the Technical Support Services Renovation. As the library budget was cut a few years ago, they had to find some other space for some of the non-library units in the building including space for the technical support services group. Early estimates were for \$400,000, which was severely underestimated as the cost was realistically \$691,936. USU proposed to cover the \$291,936 shortfall by reallocating \$214,123 from the Steam System Supply (HPER/Museum of Art) and \$77,813 from Nutrition and Food Science Chiller Replacement.

Cyndi Gilbert inquired about the percentage of reserve funds. Kenneth Nye clarified the project reserve does not have a percentage budget; it receives a savings on the projects and there is no cap on the reserve fund. This last Legislative session, Utah State University requested approval from the legislature to redirect \$250,000 out of their contingency reserve fund to enhance their chiller plant. The accounts are documented and audited.

MOTION: Steve Bankhead moved to authorize the reallocation of the funds for Utah State University. The motion was seconded by Cyndi Gilbert and passed unanimously.

Darrell Hart continued with the administrative report for the period of January 14 to February 25, 2004 and referenced the summary sheet. He noted the Housing sprinkler system project was 148 days over due to a delay in the contractor submitting the Certificate of Substantial Completion form.

MOTION: Cyndi Gilbert moved to accept the administrative report of Utah State University. The motion was seconded by Katherina Holzhauser and passed unanimously.

☐ ADMINISTRATIVE REPORTS FOR DFCM

Keith Stepan referred the Board to DFCM's administrative report which included portions of the Legislative summary and the capital budget summary. Mr. Stepan highlighted there

were seven new A/E contracts awarded for the period including one direct award for EMA Architects. This was based on a project for the Navajo Trust Fund in Monument Valley. There were approximately seven agencies involved who had already selected EMA and therefore DFCM felt it was appropriate to give them the complete project. This contract is very difficult and has been administered with the State of Arizona and the Indian Nation.

The Decker Lake Youth Correctional Facility multi-denominational chapel had donated money and therefore a sole source contract was issued. This is mostly donated funds and donated labor.

Mr. Stepan stated DFCM is currently funding themselves out of contingency and reserve funds. Those budget amounts increased and the Legislature determined to use those funds for DFCM. DFCM would have preferred reallocating those funds to projects.

Mr. Stepan stated they recently had a very good construction season, which is coming to an end. Steel and concrete prices are rapidly rising causing bids to come in over budgets. Usually the estimates for capital improvement projects are done a year ahead of the project, as they must receive the Board's approval in May for next year's work. He offered to identify projects that are partially funded for the Board in the future.

Katherina Holzhauser questioned the lease report which showed a 6-10% increase in lease space pricing. Mr. Stepan responded this is an excellent lease market and there may be opportunities to see this drop. Kenneth Nye added that a number of leases have an explanation amendment to the lease to remove additional rentals. In those situations, the original lease is set up at a base rate and then allows for increases annually depending on the actual O&M costs. Some agencies have struggled in addressing these issues with their budget and others have asked DFCM to renegotiate those leases to remove that provision and replace it with a flat full service lease so it is a fixed rental now as opposed to a base amount plus O&M.

LITIGATION UPDATE AND POTENTIAL SETTLEMENTS

Chair Jardine sought a motion to move into closed session to discuss litigation issues effecting DFCM.

MOTION: Manuel Torres moved to go into closed session to discuss litigation issues. The motion was seconded by Cyndi Gilbert and passed unanimously.

MOTION: Steve Bankhead moved to resume into regular session. The motion was seconded by Cyndi Gilbert and passed unanimously.

OTHER.....

Katherina Holzhauser inquired about a project prioritization method. She entertained the option of using a conscious alignment model to use in their prioritization processes in the future. She offered to provide the contacts to DFCM to determine feasibility for the Board's use.

☐ ADJOURNMENT.....

MOTION: Cyndi Gilbert moved to adjourn and proceed with the tour at 10:57am. The motion was seconded by Katherina Holzhauser and passed unanimously.

Minutes prepared by: Shannon Lofgreen