

Board of Directors
Wednesday, May 17, 2006

A Special meeting of the Peninsula Health Care District Board of Directors was held pursuant to written and posted notice, as required by the Ralph M. Brown Act, on Wednesday, May 17, 2006, at 1745 hours in the Sierra Rooms at Peninsula Medical Center, 1783 El Camino Real, Burlingame, California 94010.

ROLL CALL: On roll call there were present: Directors: Donald E. Newman, Chair; Susan S. Smith, Treasurer; Rick Navarro, Secretary; Helen Galligan, Board member; and Daniel J. Ulyot, Vice Chair via Teleconference Call.

Also present were: Staff: Colin J. Coffey, Esq., General Legal Counsel; and Maureen Mignacco-Dutil, Assistant Secretary.

Consultants Present: Adam Alberti, Executive Vice President of Singer Associates, and Courtney Lodato, Account Supervisor of Singer Associates, Communications Consultants; Robert W. Merwin, CEO, Mills-Peninsula Health Services.

As noted on the posted and distributed Agenda, Chair Newman advised this meeting would be conducted in whole or in part via teleconference. The teleconference locations are (1) Peninsula Medical Center, Sierra Rooms, 1783 El Camino Real; and (2) 56105 Village Drive, LaQuinta, California. The Board then welcomed Director Ulyot via teleconference call from LaQuinta.

Chair Newman noted the two sole items for discussion as stated on the Agenda, and indicated he would like to explain why the Board is here this evening. He indicated this is probably the most important meeting in the five plus years of negotiating the contract for a new hospital. There have been many milestones along the way, but tonight is the culmination of those deliberations. Chair Newman related the District and Mills-Peninsula signed an Agreement in which the District was committed to the project with Sutter/Mills-Peninsula also wanting the project but they could not commit to the project at that juncture until they knew what the fiscal impact was going to be for them since they are paying for the project. In the definitive agreements signed by the district, there is a clause that Sutter/Mills-Peninsula could walk away from the project if it became financially unfeasible. The district at that point indicated they could not go to the public to ask approval of the project unless there was a firm commitment from Sutter/Mills-Peninsula. Everything was then resting with OSHPD as to whether or not they would approve the project or make significant changes to the submitted plans. Director Newman related that Sutter/Mills-Peninsula wishes to move forward with the project as they wish to lock-in contractor and subcontractor pricing. However, the District did not wish to go forward without getting rid of the clause that allowed Mills-Peninsula to walk away from the project. They understood the District's position and in order to rid this clause they wished to advise of all possible elements of the project that they might have to do to the current project in order to remain on budget and bring it forward. A listing of possible elements of the project that may or may not be eliminated in order to come in on the budget target has been provided to the District.

Chair Newman commented that the list of potential items has been provided to the public within days of the District Board receiving the same list. Chair Newman advised the listing was just created and it was reviewed and the Negotiating team did not see anything on the list that warranted the District holding up the project at this juncture. Chair Newman expressed his feeling that the District can call for a vote by the public on this proposed new project. Chair Newman then deferred to Attorney Coffey to address the two agenda items.

CONSIDERATION OF PROPOSED MODIFICATION TO PRE-CLOSING AGREEMENT re: MPHS WAIVER OF POTENTIAL ALTERNATIVE HOSPITAL PROJECT AND DISTRICT CONSENT TO POTENTIAL PROJECT CHANGES: Attorney Coffey noted the prior approval by the District of Definitive Agreements including the Pre-Closing Agreement and related the current Agreement before the board this evening modifies that existing Pre-Closing Agreement in two main areas: (1) the 'right to walk away' by Mills-Peninsula in the event the project exceeded the \$488 million projected budget will now be waived in its entirety under this new Modified Agreement and (2) relates to the submission of project changes by Mills-Peninsula, which are attached as an exhibit to the Modified Agreement. Attorney Coffey related that these changes suggest that as Mills-Peninsula goes forward with construction the project as approved by the City and as approved by the District *may* actually be reduced in scope of construction pursuant to that list. By reason of this attachment and by reason of the language in the Modified Agreement, the District is giving its consent in advance to any of the reductions in the scope of the project listed on this Exhibit A.

Mr. Merwin, CEO of Mills-Peninsula, provided an update on where Mills-Peninsula is with the status of the project. The 3,600 pages of design documents have been submitted to OSHPD for review on November 1, 2005. On March 15, OSHPD came back with very positive comments on the project. The contractor and estimator have reviewed the project every five weeks to re-estimate the associate costs and with the comments from OSHPD they were re-estimated again and were found to be right on budget. The hospital then went to its subcontractors and asked for guaranteed maximum price with the first six major subcontractors coming back pretty much on budget. The second half, however, came back \$47 million over budget. This is what caused the hospital to re-examine the scope of the project to determine how it could be managed. He advised that most of the overage in costs is coming from plumbing and mechanical sub-contractors and what drove their numbers is a change of assumptions over productivity and inflation rates on supplies. Mills-Peninsula at this point does not feel they have a budget problem as they feel these estimates are grossly inflated. Mr. Merwin stressed and emphasized that the proposed changes that may be changed in the project are not at the 15% margin level of change, which requires District approval. However, in the event there is a budget problem, Mills-Peninsula felt it appropriate to examine what they could do to reduce the scope of the project or the amenities of the project. The exhibit list consists of items that could be deferred as listed. The other component of the list is items that are nice but non-essential. He noted

that Mills-Peninsula does not wish to make any one of the proposed changes on the list. However they would be imprudent if they did not have a plan to manage the budget for the new hospital over the next four years. Mills-Peninsula thinks they will not have to reduce any of the listed items because they feel there is enough in the contingencies as well as within the conservative estimates now being given by the subcontractors.

Mr. Merwin advised that the Mills-Peninsula Health Services Board of Directors approved this project at \$488 million dollars about two weeks ago. The Sutter Health Board of Directors approved the project last Thursday night with the contingency that District approval is received tonight. If the District Board approves the project this evening, it is anticipated to have a mail-in ballot to occur in August of 2006 with a closing date of the mail-in ballot of August 29, 2006. Excavation for the new hospital building would commence in September. Timing is of the essence and is critical in keeping the project on track. Mr. Merwin extended his thanks to the board for calling the Special Meeting and its consideration of the items on the agenda this evening. Director Newman inquired as to what the approximate cost is for the shelled upper space with Oren Reinbolt advising a cost of \$40 million for the shelled space together with the medical office building. There were no questions by the board for Mr. Merwin.

Chair Newman then called for any Public Comments.

Dan Andersen, Burlingame: Mr. Andersen commented that he understands the need for the meeting tonight in order to have a feeling of transparency on the negotiations. He does question the logic in reducing the hospital to a less than stellar facility as it was presented originally. He is concerned on the possible elimination of the helipad as it is the only other helipad between here and Palo Alto. San Francisco has not approved a helipad for the City as yet. Additionally, he is concerned on the possible elimination of the top floor, which would result in less beds than today. Mr. Andersen asked if the costs involved and associated with the possible items on the list have been verified and has the City of Burlingame ok'd the changes? He additionally inquired if there would be later cuts or other items changed or is this a final list?

Mr. Merwin stated Mills-Peninsula does not want to see any changes in the original project. They would go back to the City if required and if changes are to be made. He emphasized that Mills-Peninsula is not saying the changes will be made. It is the least painful solution to a budget problem that may or may not exist. The changes will only be made if Mills-Peninsula finds during construction, probably two years from now, that the project is running over budget. At that point they will make a decision necessary within the construct of the submitted list tonight. Mills-Peninsula does not anticipate the need to go beyond this (list). They do not want to change or impact the functionality of the building in any way, either clinically or patient safety-wise, or capacity. He noted they are not suggesting any of these cuts impact the capacity of the building as they have proposed it at 243-beds. Mills-Peninsula does not believe it is a problem, but the numbers they have received this week from subcontractors tell them it 'might' be a problem.

Director Ullyot noted since we are dealing with many hypothetical issues and as he understands the project if the election is called for August and the public gives its approval, then the hospital will be built. Chair Newman concurred. Director Ullyot noted in the Definitive Agreements approved by the District there was a clause that stated a 15% magnitude for cutting back on the project in which Mills-Peninsula would not have to seek District approval. Director Ullyot then inquired if there is a timeline when Mills-Peninsula might have a solid idea of a final price for the project. Mr. Merwin responded that they should know between August 1st to August 15th when all the major subcontractors are locked into a guaranteed maximum. Mr. Merwin advised by the time the voters have voted, Mills-Peninsula will know exactly what the worse case scenario is. Director Ullyot asked if the worst case occurs, are all the cuts listed within the 15% maximum that do not require District approval? Mr. Merwin responded in the affirmative, indicating it represents about half of the 15%. Director Ullyot indicated this information should be very comforting to the board and public.

Chair Newman reminded the public there is a 3-minute time-limit for public comment.

Glenn Mendelson, Burlingame: Mr. Mendelson stated he was a former member of the board of directors and a member of the Hospital Guardians. He inquired if an independent expert working for the District reviewed the documents this evening? Has the list submitted been reviewed to ascertain and verified that the percentage of change that might occur represents 15% or less to the project? Chair Newman indicated the board is not only relying on the information provided by Mills-Peninsula, but on the board's own judgment and that of its legal counsel. If there was any information in the submitted documents that warranted further discussion with consultants that would have been accomplished. Mr. Mendelson asked if Mills-Peninsula can reduce the scope of the project any further than is being presented at this time in the Modification Agreement? Chair Newman responded, yes. Mr. Mendelson further asked if the list as approved under the agenda item, can Mills-Peninsula go forward with any or all projects listed on the Exhibit A without the District's approval? Chair Newman responded in the affirmative. Mr. Mendelson asked if any items on the Exhibit A list of potential project changes can be replaced at a later date with other project changes? Mr. Merwin responded that almost all of the listed changes can be replaced with the exception of the shelled-floor, which would be impossible to replace afterwards and the medical office building. Chair Newman noted that Mills-Peninsula has the right to reduce the project by 15% without district approval. Attorney Coffey pointed out this is a list of very specific scope of changes and from that list the District has a baseline of what has been proposed to be changed to-date. If more changes/improvements to the project should occur, case by case, Mills-Peninsula or the District would have to assess what the implications of those changes are under the contract terms. He noted whether they are material enough or changes in improvements to trigger the need to come back to the District Board to obtain consent under the agreement, or whether they implicate the 15% trigger.

Chair Newman asked that discussion be moved forward with Mr. Mendelson relating this is important.

Chair Newman asked Mr. Mendelson to rapidly come to his conclusions. Mr. Mendelson inquired as to what the Women's Outpatient Services is on the Exhibit A list? He also asked if there would be fewer beds in the new proposed facility? Mr. Merwin indicated the proposed new hospital is for 243 beds. The current hospital is licensed for 280 beds, but its capacity is only 235 beds. Mr. Merwin commented that given the fact that the new hospital will be all private rooms, they believe the 243 beds should be enough.

Chair Newman advised the District Board looked at the list very carefully. He noted that this list is detail that the District never thought of going through and was never expected to go through. This list is giving every item on the list. The list is of detail that none of the District's consultants dealt with nor did the District Board deal with nor will they deal with it. The District had an overall vision of what they wanted in terms of the kinds of services and they are all carefully listed. None of them can be changed without the District's approval. He noted that the lighting fixtures and some of the outpatient things on this Exhibit A list were not part of the Agreement between the District and Mills-Peninsula

Josh Cooperman, Hillsborough; Mr. Cooperman stated he serves on the Senior Focus Board, He commented that there has been lots of discussion over all these years on all aspects of the proposed hospital. He feels that further hearings can only delay and impede the timely building of this new hospital. He would urge the board to take more of a macro view and proceed in a timely fashion.

Pat Giorni, Burlingame: Ms. Giorni noted over all the discussions we have heard commitment to a state of the art hospital, but now we are hearing about having a hospital we can afford. However, she noted there is only 3 months until the November general election. There is still no final approval by OSHPD. If you wait, maybe by that time there should be final approval by OSHPD. In the interim why not proceed and get all the guarantees from the contractor and subcontractors and go for a November election. Mr. Merwin related that Mills-Peninsula has already committed \$90 million to the project. In the next phase, if they were to proceed and commit to excavation and foundations for the proposed hospital, they would be looking at expending another \$35 to \$40 million dollars. They do not wish to proceed or commit any further money without a vote by the public on this hospital project. The need to proceed cannot be over-emphasized. Chair Newman pointed out that this special mail-in ballot election is not costing the district any money. He related the biggest mistake would be for Mills-Peninsula to proceed with excavation for a new hospital without approval by the voters.

Director Smith noted her receipt of the documents and her review of same. She noted the project changes and did not see any that would impact us in not having a first class hospital. There is nothing changed in services. Timing is important and it is critical in order to move forward. She noted that hopefully the possible changes would not happen at all. Director Smith noted the timing element has been present in many presentations by Mills-Peninsula so this is nothing new.

Diana Mason, Burlingame: Ms. Mason spoke to the possibility of an August vote and asked why it could not be held in November as part of the general election. She noted that mail-in ballots are new to this county, and you may not get a maximum return during the summer month with vacations. She also thought the District would be paying for this mail-in ballot. Chair Newman indicated the District is not paying for it that Mills-Peninsula will pay for the election costs of this mail-in ballot. Ms. Mason asked about the cost of this mail-in ballot election with Mr. Merwin advising of an estimated cost of \$80,000. Ms. Mason further inquired if there would be an analysis accompanying the ballot with the response that yes, County Counsel would provide such an analysis. Mr. Merwin advised the mail-in ballot in August is a necessity to the timeline so that construction on the new hospital can start in September. He also noted that Sequoia Healthcare District also had a mail-in ballot so it is not unique to this County and they are finding that individuals are more responsive to mail-in ballots. Director Navarro pointed out that mail-in ballots have been done in Oregon for years and work quite well with a higher percentage of the electorate voting than other states.

Ruth Jacobs, Burlingame: Mrs. Jacobs asked for clarification on money expended to-date for the project for the garage, etc. with Mr. Merwin advising \$90 million has been spent by Mills-Peninsula.

Chair Newman noted the need to move forward with the Agenda. Attorney Coffey advised of a technical note for the record. He wished to explain a recommendation he has made to Director Galligan. He noted the Board will recall when Director Galligan was appointed to fill the vacancy, he opined at that time that there would be in narrow circumstances a potential conflict of interest for her in connection with a restructured relationship with Mills-Peninsula by reason of her employer's relationship with the hospital. The narrow area for potential conflict is that her employer has a book of business with the hospital in managed care of the business associated with health plans that often prepay on a capitated basis for a certain volume of patients. Both the hospital and ancillary providers in the community participate in these managed care programs. As he so noted at the meeting of the Board when Director Galligan was appointed, if a decision of a comprehensive significance with regard to the future of Mills-Peninsula and Sutter in the community became before the Board, it would have implications for that book of business in managed care that her employer is involved in. The call for election and the close tie-in with the Modification Agreement is one of those areas of comprehensive significance. He has therefore recommended that Director Galligan abstain on these matters before the board this evening. It was then moved by Director Smith and seconded by Director Navarro to approve the Modification Agreement to the Pre-Closing Agreement together with attachment of Exhibit A as submitted. On roll call the following votes were received: Ayes and in favor: Directors Newman, Smith, Navarro, and Ulliyot; Abstain: Director Galligan. Motion carried.

RESOLUTION NO. 2006-01, APPROVAL OF CALL FOR ELECTION ON MILLS-PENINSULA HEALTH SERVICES RESTRUCTURED LEASE RELATIONSHIP: The submitted Resolution seeking the call for an election on the Mills-Peninsula Health Services Restructured lease Relationship was next addressed. Director Smith moved to adopt the Resolution No. 2006-01 as presented and submitted.

Glenn Mendelson, Burlingame: Mr. Mendelson asked for public comment on this item of the agenda. Chair Newman related that the two items were discussed as one item and there has been adequate discussion on both issues. Attorney Coffey agreed, however, he urged that public comment be taken at this time for the item of the Resolution.

Mr. Mendelson related he is still not clear if there has been a final commitment in writing from Mills-Peninsula and Sutter Health to this project before the District board proceeds in putting a measure on the ballot? Attorney Coffey advised that both Mills-Peninsula and the District signed and executed many Definitive Agreements that commit them to the project. There are ways in which the project can fall through. For instance the voters can turn it down. There are remedies in those agreements for both the District and Mills-Peninsula. He pointed out, however, that Mills-Peninsula in the Modification Agreement addressed earlier and approved has waived its right to walk away from this project.

The motion before the board to adopt Resolution No. 2006-01 was seconded by Director Navarro. On a roll call of the Directors the following votes were cast: Ayes, and in favor thereof: Directors Newman, Smith, Navarro and Ulyot; Abstain: Director Galligan. Motion carried.

Chair Newman congratulated the District Board of Directors and the public and Mills-Peninsula for bringing us to this day and to this moment. He believes we are going to have a hospital and it will be state-of-the art. A loud round of applause ensued from the general audience in attendance.

There being no further business, the meeting was adjourned at 1841 hours.

By: _____
Maureen A. Mignacco-Dutil, Assistant Secretary

Approved:

RICK NAVARRO, Secretary

DONALD E. NEWMAN, Chair