



Meeting of the PHPDA Governing Council
January 13, 2015 5:30-7:00 p.m.
 Quarters 2 Building, Beacon Hill
 1200 12th Ave South Seattle, WA 98144

MEMBERS PRESENT		ALSO PRESENT	
Tony McLean	Judy Tobin	Jeff Natter	Michael Finch (until 7:12)
Nancy Sugg	Ellie Menzies	Christina Bernard	Steve Wood (until 7:12)
Mike Heinisch	Doris Koo	Tom Dixon (until 7:12)	Denise Stiffarm
Nate Dreon	Rich Nafziger (until 7:10)	Several members of the public (until 7:12) – sign-in sheets on file at PHPDA office	
Rhonda Berry			

Mike Heinisch called the meeting to order at 5:30 p.m. A quorum was present.

The three new members of the Governing Council (Ellie Menzies, Doris Koo, and Rich Nafziger) introduced themselves.

The Governing Council voted to amend the agenda to make the item on updates to Policy 05-2010 an action item (Moved/2nded by Tobin/Dreon. 9 of 9 in favor).

The Governing Council discussed a proposed amendment to the agenda to make the item on the Nondisturbance and Attornment Agreement a discussion item with no action and to remove reference to Resolution 01-2015 (Moved/2nded by Tobin/Sugg). The Executive Director reported that a final document wasn't available for consideration and, without a final document, the resolution was not ready for consideration. Chair Mike Heinisch noted that the absence of a final document prevents the PHPDA from completing its fiduciary responsibility by reviewing final terms and determining the amount of acceptable risk. Rich Nafziger and Doris Koo stated their opposition to amending the agenda based on their understanding that the proposed agreement has been under discussion for some time and the timing is important for the PHPDA's tenant. Judy Tobin noted that it would be better practice to get a final document, review it, and consider it at a special meeting. The Council amended the agenda to make the item on the Nondisturbance and Attornment Agreement into a discussion item and to remove reference to Resolution 01-2015 (6 of 9 in favor; Nafziger, Koo, and Menzies opposed).

The Council voted to amend the agenda to move the discussion of the Nondisturbance and Attornment agreement to immediately follow the consent calendar (Moved/2nded by Tobin/Berry. 9 of 9 in favor).

Public Comment

The following people spoke during public comment:

- Speaker Frank Chopp, Washington State House of Representatives
- Dan McConnon, Deputy Director, Department of Commerce
- David Loud, Congressman McDermott's Office
- Jill Wakefield, Chancellor, Seattle College and Steve Hill, Trustee, Seattle College

The speakers all encouraged approval of the Nondisturbance and Attornment Agreement, stating that it would help Commerce with its funding challenges and would support the important programs planned in the Tower. Speaker Chopp presented a letter in support signed by the Mayor, City Council Member Licata, Congressman McDermott, Speaker Chopp, and Chancellor Wakefield. Several speakers also stated that the risk to the PHPDA would come only in the very unlikely event that Commerce defaulted on the Pacific Tower lease.



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The Chair closed the public comment period and reminded those present that, while they were welcome to remain at the meeting, there would be no further opportunity for public comment.

The Governing Council approved the December 9, 2014 Governing Council minutes (Moved/2nded by Tobin/Berry. 9 of 9 in favor).

The Governing Council accepted as information the Finance & Audit Committee minutes from December 9, 2014 and the Planning Committee minutes from December 3, 2014.

Property Management/Tower Update

Discussion of proposed Nondisturbance and Attornment Agreement

Before the discussion, several potential conflicts of interest and recusals were noted. Mike Heinisch identified his conflict and recusal based on his membership on the board of a Tower subtenant, Community Center For Educational Results (CCER). He noted that he would not participate substantively in the discussion, but would facilitate the discussion as Chair of the Governing Council. Nancy Sugg identified her conflict and recusal based on her employment with the State of Washington. Rhonda Berry identified a potential conflict of interest in her role as a County employee given a potential County action related to the Tower. She recused herself pending clarification of the matter and discussion with the PHPDA's legal counsel. Counsel Denise Stiffarm noted that she has a conflict as well, based on her firm's work for the Seattle College Foundation. She will advise only on procedural matters, not substantive matters, in regard to this topic.

The PHPDA's real estate advisors and real estate counsel introduced themselves to the new Governing Council members. Real estate counsel Tom Dixon explained the proposed terms of the Nondisturbance and Attornment Agreement (NDA). Mr. Dixon noted that, under the terms, if Commerce defaults on its lease, the PHPDA would be required to recognize the sublease between Commerce and the Seattle College Foundation, which has \$1 per year in rent and no obligation for sub-leasing tenants to pay operating costs. He noted that, while it is unlikely Commerce will default, this event would leave the PHPDA with obligations to maintain the building but no income stream to cover these costs. The PHPDA would retain the right to sue Commerce for payment, but legal proceedings could take several years and the ongoing financial obligations could lead the PHPDA to bankruptcy before being able to collect on any damages. The Executive Director noted that everyone at the PHPDA wants to see the Tower project succeed, but that it is important to consider the risks to the PHPDA.

The Council then discussed the potential agreement. Chair Mike Heinisch asked Commerce Deputy Director Dan McConnon to clarify the timing required for the PHPDA's action. Doris Koo stated that it was admirable to guard the fiduciary duty of the PHPDA, but that there should be no concern that the State will default. Real Estate advisor Steve Wood noted that the concern was not with a State bankruptcy action but rather that the State Legislature would fail to appropriate funds for the Tower rent and operating costs. Dan McConnon stated that any default would risk the credit of the State as a whole, making it extremely unlikely that State officials would ever put the State in such a position.

During the course of the conversation, PHPDA counsel Denise Stiffarm noted that the bio provided by the Mayor's office identified Rich Nafziger as a member of a board of a Tower subtenant (SEIU Training Partnership). Dan McConnon was unsure whether the organization is officially a tenant yet, but



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confirmed that they have a negotiated lease. Ms. Stiffarm noted that, based on this information, Mr. Nafziger has a remote interest in the contract per RCW 42.23.040 and should recuse himself from participating in this discussion as a tenant of a party to a contract with the PHPDA.

The Council discussed how to proceed. The Executive Director proposed a special meeting with the intent to take action on the NDA, assuming the document can be prepared and presented in a timely manner. After reviewing schedules, the Council voted to try to schedule a meeting for Friday, January 16, 2015, at 9:30 am to consider action on the NDA (Moved/2nded by Dreon/Tobin. 9 of 9 in favor). The Executive Director stated that he would need a document from Commerce's attorney no later than Thursday, January 15th, at 9:30 am in order to send it to the Governing Council for review. Doris Koo also asked that the Executive Director and Tom Dixon include with the transmittal to the Governing Council the key points of the proposed agreement and the pros and cons of potential PHPDA action.

Executive Director/Staff Report

The Executive Director updated the Governing Council on the work done by staff in the previous month, including work on the Nondisturbance and Attornment Agreement and other Tower-related items, finalizing Nimble Fund contracts, completing Major Grant site visits, and implementing the PHPDA's new grant software.

Chair Mike Heinisch asked for a motion to extend the meeting. The Governing Council voted to extend the meeting an additional 15 minutes from that time, until 7:25 (Moved/2nded by Berry/Tobin. 8 of 8 in favor).

Executive Director thanked outgoing Governing Council member Marc Provence, who was present at the meeting, for his service with the PHPDA. Mr. Provence stated that he was honored to work with the PHPDA and a Governing Council so dedicated to their work.

The Governing Council voted to remove the Grantmaking and PHPDA Governance items from the agenda for consideration at a future meeting (Moved/2nded by Sugg/McLean. 8 of 8 in favor).

Financial Management

Update Policy 05-2010 Disaster Recovery of Files and Financial Records

The Finance & Grants Manager summarized proposed updates to Policy 05-2010 Disaster Recovery of Files and Financial Records. The policy has been updated to reflect the PHPDA's current practices with regard to backup of electronic files, including onsite, offsite, and cloud backups. Doris Koo requested and received clarification on the onsite drives, which are brought to the office to back up the server, but are kept offsite otherwise. The Council approved the updates to Policy 05-2010 (Moved/2nded by Koo/Menzies. 8 of 8 in favor).

Professional Services

Retention of Pacifica Law Group (Resolution 02-2015)

The Council reviewed a resolution authorizing retention of Pacifica Law Group as the PHPDA's primary legal counsel, effective January 4, 2015. Denise Stiffarm, the PHPDA's long-term counsel, moved from K&L Gates to Pacifica on that date. Because of her historical knowledge and the PHPDA's satisfaction with her work over the years, staff recommends remaining with Ms. Stiffarm and moving the PHPDA's primary legal relationship to Pacifica Law Group.



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Ms. Stiffarm noted that since Pacifica is representing the Seattle College Foundation, the PHPDA's engagement letter will include a conflict waiver. In effect, this carries over the previous conflict from K&L Gates, who also represented a party in these negotiations. For these reasons, Ms. Stiffarm will continue to only advise on procedural matters on these issues and will not participate in substantive discussions.

The Governing Council adopted Resolution 02-2015 (Moved/2^{nded} by McLean/Sugg. 8 of 8 in favor).

The Finance & Grants Manager stated that she would be contacting the new Governing Council members about the three upcoming proposal review panels to find out on which panel they would like to participate. Chair Mike Heinisch noted that the grantmaking is very important work of the PHPDA Governing Council.

The Finance & Grants Manager then stated that she wishes to cancel the PHPDA's Medicaid Administrative Match (MAM) Interpreter Services contract with the HCA. PHPDA's previous subcontractor is not interested in continuing the work and, based upon PHPDA conversations with HCA, it is extremely unlikely a new subcontractor would be approved. Even with the modest administrative expense, it makes sense to cancel since it will be almost impossible to make use of the contract in the future. The Finance & Grants Manager reported that she had discussed this with outgoing Planning Committee Chair Marc Provence, who had more experience with the MAM contract than other Governing Council members, and he agreed. The Planning Committee will discuss this briefly at their February meeting.

Chair Mike Heinisch stated that he will assign the new Governing Council members to their Committees at the Friday January 16 Special Meeting.

Adjournment

The meeting was adjourned at 7:28 p.m.

Minutes approved _____ (Date)