



ABAG PLAN CORPORATION

101 8th Street
Oakland, CA 94607-4656

Minutes
Special Meeting
Executive Committee
June 8, 2009, 10:00 A.M.

City Hall
City of San Mateo
Redwood City, CA

Teleconference Locations

701 Civic Center Blvd, Suisun City, CA	Herb Lester
31 Sir Francis Drake Blvd, Ross, CA	Gary Broad
101 8 th Street, Oakland, CA	Kenneth Moy

Committee Members Present

Laura Allen
Shawn Mason
Jim Steele
Emma Karlen
Jeff Killian
Jeff Maltbie
Bronnda Silva
Gary Broad

Colma
San Mateo
South San Francisco
Milpitas
Millbrae
San Carlos
American Canyon
Ross

Staff Present

Henry Gardner
Kenneth Moy

ABAG Executive Director
ABAG Legal Counsel

1. Call to Order

Meeting called to order by Emma Karlen at 10:05 a.m.

2. Public Comments

None.

3. Transition Plan

Karlen said that the purpose of the meeting was to discuss a transition plan that would be presented to the board at its meeting of June 11, 2009, and she was concerned that there was no transition plan.

Gardner responded by laying out the transition plan that he had prepared and that the plan would be presented to the board at its meeting on June 11, 2009. He said the plan has three key elements:

- (1) How issues would be handled for normal ongoing operations including claims, coverage questions, accounts payable and billings and insurance issues
- (2) Extraordinary circumstances, identifying resources, needs, special projects and advance planning for committee meetings
- (3) Recruitment process and time line for Risk Manager

Gardner said the transition plan is intended to ensure that there are no gaps in responses and services. The plan identifies outside resources if necessary. He said that a survey would be developed to identify any major projects or extraordinary needs that members are currently needing assistance or any that they anticipate over the next six (6) months.

Gardner mentioned that a pending major project staff is engaged in is the new iVOS claims and billing system. Angela Salisbury has been the day to day lead for PLAN and will continue in that role. The Information Technology Director and Finance Director are actively engaged in the project.

A review has been conducted to estimate staffing needs for the board meetings and all committee meetings. Except for the Claims Committee that normally meets by teleconference, all of the other committees have normally met only once a year. Currently there are no committee meetings scheduled between the June board meeting and the October retreat. If there are other meetings, staff is prepared to staff them and make sure reports, staff support and consultants are available if needed.

Ralph Anderson and Associates has been engaged to assist in the recruitment. The President and CEO, Heather Renchler, will conduct the recruitment. The search will be nationwide and candidates will be solicited from both the public and private sectors. Gardner said he would ask the Executive Committee to identify 3 or 4 members of the committee to assist in the process, including developing the job description, screening and ranking applicants, serving on an interview panel, and ranking interviewees for selection. He said he estimates that the process would take approximately 4 months.

Karlen inquired about the transition plan. She said that her jurisdiction has no extraordinary needs but does ask for advice from time to time regarding contracts, what to include with respect to insurance matters, and she has sought that advice from the Risk Manager. She needs to know who at the outside resource agencies would she call. Gardner said that those questions should first be referred to Angela Salsbury, and if she cannot answer she would know where to refer them.

Lester raised a question regarding conflicts of interest with respect to legal representation and the recruitment process.

Gardner said what he had laid out was an inclusive process regarding the recruitment and selection; however, this position is an ABAG employee. What he was trying to achieve was a process that balances the needs and interests of PLAN with his responsibilities as ABAG's Executive Director. This is the same process he had used in a previous recruitment where a department manager worked closely with a board or committee and the process met mutual expectations. He said it was not unusual to seek outside counsel when a conflict or the appearance of a conflict exists. Many city attorneys have done this when an issue of conflict has arisen, either by the attorney or by some other party.

To ensure that members of the committee have ready access, Gardner provided all of his contact information.

Brief discussion followed regarding the special board meeting in October. The Executive Committee approved the hiring of a facilitator for the retreat at its meeting in May. The facilitator plans to meet with members of the committee and other board members as suggested to get acquainted with the issues around inverse tail claims as well as expected outcomes. Those one-on-one meetings are expected to occur in early September.

It was decided that the Executive Committee invite non-committee members who might be interested to assist in the recruitment process.

There was discussion about the desirability of having a follow-up Executive Committee meeting on June 11 prior to the board meeting to have a report out from the sub-committee and the recruitment process.

Mason said he wanted to recommend to the Executive Committee that the committee would make to the board to look into the circumstances regarding Beverly's leaving and the board not knowing what happened; to shed light on issues the board never had to think about. He said in the meeting in Colma the fiscal issues raised regarding ABAG and PLAN, whether accurate or not, it makes sense to have checks and balances. There is a need to figure out what checks and balances would look like. Need to look back at cost allocations historically and Steele and other finance directors are planning to address that with ABAG staff. The Executive Committee needs to act on that.

Mason said that the relationship between the Risk Manager and the President of the Corporation has worked for 23 plus years. The Confidentiality Agreement between Beverly and ABAG prevents Beverly from talking about why he is leaving, suggesting there are things going on that the board should know about.

He said he was recommending that a sub-group of the board investigate/inquire into the circumstances leading to Beverly's resignation.

Gardner responded that Beverly has resigned effective June 30, 2009, and everybody has been informed of that. The question has been raised and answered on at least three occasions: the parties entered into a Confidentiality Agreement, mutually. It is what it says it is: it is a Confidentiality Agreement. Gardner asked Mason what is it that he was in search of?

Mason said he was in search of, from Gardner's perspective and Beverly's, why did Beverly resign? Gardner said Beverly resigned. Mason said but he doesn't know why. Gardner responded because the parties entered into a Confidentiality Agreement. Gardner asked Mason how do we over come that? Mason said the parties can waive it. Gardner asked Mason if Beverly had indicated on advice of his counsel that he is willing to waive it? Mason said not yet. Gardner said when we get that we can come back and revisit the subject. Mason said the question is do we visit the subject now that we know we will be doing it if we get the waiver?

Mason said he looks at the issue as similar to the financial relationship issue: what steps can we take looking forward to not have the same thing happen again. The other question is do we look back to find out why he left? My recommendation to the question is "Yes".

Steele said he sees three issues, and he is not agreeing or disagreeing with Mason:

- (1) Was Beverly in some way forced out?
- (2) Was the Executive Board notified in a timely way?
- (3) Are there any organizational issues between PLAN and ABAG Executive Director that they want to address over next 6 to 12 months?

This leads back to the personnel issue--not sure it is fruitful to go there. He asked if anyone had approached Beverly?

Mason said he had but Beverly has not responded yet.

Karlen asked Mason if his concern was PLAN may be facing or could be facing some liabilities?

Mason said there may be some possibility but that is not his greatest concern. That possibility is very remote given the unique relationship between ABAG and ABAG

PLAN. PLAN has no employees; all work and labor is performed by ABAG employees. He said to the extent activities might lead to liability, PLAN's assets would not be exposed, that would be an internal ABAG issue. His greater concern/interest is from the perspective that we have a Risk Manager who has publicly stated that there is concern over charge-backs between ABAG and ABAG PLAN and that the Risk Manager is now gone and as to why person is gone, we don't know and can't ask the question.

Gardner responded that if that is your central question I would suggest that you ask Beverly that question directly. And if the question is whether that issue had anything to do with his resignation, the answer is "No".

Mason said he just wanted to ask people from their perspective what is going on. He said under the facts, and he was not accusing anyone of anything, as the owners of the corporation they are put on duty to inquire.

Gardner responded that you have an agreement with ABAG, for better or for worse, that says how services will be provided to PLAN, and that is what we provide.

Lester asked if the Confidentiality Agreement is part of Beverly's employment or part of his being let go.

Gardner said neither.

Lester asked when was the agreement entered into?

Gardner said around May 4, 2009.

Lester said his concern is that this was dropped into their laps with no input regarding performance or discipline. There is anxiety about where to go for assistance.

Gardner said he wanted to respond briefly. From Lester's perspective this was dropped into their laps; it was not. He said he was purposeful and deliberate in allowing Beverly to announce his resignation; that he discussed that with Beverly. He said he wanted to handle the matter in as professional and dignified manner as possible--a graceful way was what he intended. He did not want to get ahead of Beverly's own announcement and that was done deliberately. Once the announcement was made, what happened at the Executive Committee's own meeting three weeks ago sent the thing sideways. When the item was put on the agenda regarding Beverly's proposal, and all kinds of explosive comments were made, Gardner said he had no idea any of that was going to be discussed.

Gardner said that clearly it should be readily apparent we are talking about a personnel issue. I don't know how more plainly to say that, and the confidentiality was designed to protect that; and when those are entered into they protect the

employee more than the employer. We have two months notice that Beverly is leaving.

Lester said in his mind there is something that led up to the series of events and it is clear it is a personnel issue. He said he understood that. The way it was delivered to the Executive Committee is here it is. He said he said to Beverly he could have presented it in a better way. His primary concern was how it was delivered--it didn't feel right. He wants to discuss in a fair and professional manner issues regarding PLAN.

Mason said he, too, recognizes that it is a personnel issue. The question is what do we do about it and do we have an interest in that personnel issue? As a representative of San Mateo and its investment, he has a very serious interest in that personnel issue and finding out what happened. He said his recommendation to the Executive Committee is to recommend to the board that they try to inquire.

Gardner said he thought that would be extremely unfortunate.

Mason asked why?

Gardner said it was clear to him and hoped it would be clear to the committee that would not be productive. He said he appreciated the concern about what this means to PLAN. He said without getting into any of the personnel issues, there is no issue regarding cost allocations; no issues regarding fiduciary responsibilities, and that is where your interests are. Beyond that, he said he cannot discuss it.

Lester asked when the new Risk Manager comes on what role will the board have regarding discipline, performance evaluations? Will they be in the loop as to what is taking place regarding relationship between ABAG and PLAN?

Gardner said we can talk about that prospectively. He said he appreciates the good work staff people do; he works with them every day, not 3 or 4 times a year.

Karlen said she shares the concerns regarding checks and balances, and not just on fiscal issues, which will be dealt with in Steele's sub-committee. She said she was not sure she wants to do a performance evaluation of the Risk Manager or be involved in discipline. However, given that the Risk Manager works exclusively for PLAN, shouldn't the board have some input regarding the performance? She said she was interested in the future. If there is an annual performance evaluation, wouldn't you want to hear from the people the employee is providing services to, to know what their opinions are of the service?

Mason said his recommendation is to look forward and backward, to come up with a performance review committee that would address performance going forward. Also would want to look at whether the Risk Manager should be terminated only for cause.

Right now it is at will. Still recommends looking back to inquire as to circumstances as to why Beverly left.

Allen said regarding the Confidentiality Agreement as she understood Mason, the conversation he had with Beverly was a request to waive his Confidentiality Agreement. Is your recommendation we pursue this if Beverly waives, or is it completely separate from that?

Mason said his recommendation is to pursue it regardless; it may be a short inquiry if Beverly does not waive; if he does, it may take a little longer. One step of the process is to acquire a copy of the Confidentiality Agreement to know what people promised to say and not to say. I believe it is a public record and I have made a request and the request was denied.

Karlen asked if Mason was making a motion to do an investigation of the circumstances of Beverly's resignation.

Mason made a motion: "That we do an inquiry into the circumstances leading to Marcus Beverly's resignation."

Seconded by Lester:

On the motion:

Yes - Mason, Lester

No-- Allen, Broad, Karlen, Killian, Steele

Mason made a motion: "Recommend to the Executive Committee to develop a system for performance oversight of the Risk Manager."

Seconded by Lester

Yes-- Allen, Broad, Karlen, Killian, Lester, Mason, Steele

Allen summarized the next steps for the proposed Executive Committee meeting at 10:30 a.m. on June 11, 2009:

- (1) Report out from the sub-committee meeting in Colma
- (2) Develop more details on the recruitment process: who from Executive Committee wants to serve?
- (3) Inform those on Executive Committee not present more about the recruitment process and transition plan;

Gardner agreed to cover in his report to the board:

- (4) Report to board Executive Committee's unanimous approval going forward.

4. Adjournment

Meeting adjourned at approximately 11:40 a.m.

Respectfully submitted,

Henry L. Gardner
ABAG PLAN President

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