

**NORTH COAST RAILROAD AUTHORITY (NCRA)
Property Committee Meeting**

Wednesday, December 10, 2008 ~ **9:45 a.m.**
Petaluma Community Center
320 North McDowell Blvd
Petaluma

Approved Minutes

A. CALL TO ORDER

Property Committee Chairman Kelley called the meeting to order at 9:48 a.m.

B. ROLL CALL

Committee Members Present: Simonson, Ziedrich, Kelley, Meyers

Committee Members Absent: None

Also Present: Executive Director Mitch Stogner, Legal Counsel Christopher Neary,
Recording Secretary Heather Lindsteadt

C. AGENDA APPROVAL

Upon Motion by Director Meyers, seconded by Director Ziedrich Agenda item E.1 was deferred until after consideration of agenda item G.1. Motion carried unanimously (4-0).

D. PUBLIC COMMENT

None

E. CLOSED SESSION

Closed Session was deferred until after Conduct of Business Item G and subsequently postponed until the next Property Committee meeting.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS.

Government Code § 54956.8

Property: At-Grade Crossing MPM 70.85

Negotiators: C.J. Neary, Mitch Stogner

Under Negotiation: Timing of negotiations, price and terms.

F. ANNOUNCEMENT OUT OF CLOSED SESSION

G. CONDUCT OF BUSINESS

1. Consideration of Proposed Policy for Conversion of Licenses to Crossing Easements and Possible Recommendation to the Board of Directors.

Legal Counsel Neary updated the Board on the Draft Property Policy Section 801.4(2) "Conversion of Crossing Licenses to Crossing Easements". He said that in October 2008 the Committee provided comments on the Draft Policy. He said that he has attempted to make the changes requested. He summarized the reason for a policy to provide staff with direction when crossing conversion requests are submitted to NCRA for review by developers.

He said that the revised draft agreement contains the following components: Requires the applicant to pay a substantial application fee, such as \$100,000 which would cover staff time, engineering fees, and the reserved value of the easement; NCRA would have give the developer a reserved easement which would allow the engineer to determine the alternatives to an at grade crossing; compensation fee would be determined according to 25% of the value of the cost of the alternative; Applicant would not be required to pay the compensation until final land use approval which would allow financing for the crossing to be included in the total project costs.

Director Kelley asked what would happen if there were no alternatives (under crossing, over crossing) upon which the 25% fee could be based. He said that perhaps the policy should contain a "No Alternative" or "Reasonable Alternative" clause included in the policy that would include a maximum fee applicable in the event there were no practical alternatives to an at-grade crossing.

Director Ziedrich asked if assigning costs to the developer that are unrelated to NCRA's actual costs are legally permitted.

Legal Counsel Neary said that NCRA needs to be careful that the fees are not construed as a User Fee because User Fees are restricted by specific legislation. He said that the substantial application fee would be used to cover the actual expenses and time for the Executive Director review, Legal Counsel review, and engineering review along with any other staff time that may be necessary. He said that it is a real estate transaction and would need to be coupled with the guarantee that the applicant would be entitled to a permanent easement.

Director Meyers said that NCRA needs to decide if it wants to readily grant at grade crossings to developers. He said that certain crossings might create safety hazards as well as other issues for the public.

John Williams, NWP Co said that most railroads are opposed to at grade crossings. He said that because NCRA is a public agency it is very difficult to adopt the policy that there shall be no at grade crossings. He said that as the Operator, he does not like crossings. He said there is a liability issue and in some cases new at-grade crossings restrict operations. He said that NCRA should charge fair market value for the crossing and said that he concurs with the fees outlined in the draft policy. He asked that the

policy include a clause regarding maintenance and liability for the crossing once the developer has completed the crossing. He suggested the following wording “future maintenance and liability responsibilities must be agreed upon both with NCRA and its Operator/s”

Director Meyers said that he faxed his notes to the Property Policy and requested staff to email his edits to the Committee Members. He said that it is important to see what other railroad policies are. He asked if there is a time limitation included in the policy and said that the specific language should state that no interest be accrued against the application fee in the event that the application fee needs to be returned to the developer. He also said that the developer should be required to submit any arguments to NCRA before NCRA seeks an arbitrator to resolve disputes between NCRA and the applicant.

Director Ziedrich requested that the proposed policy be sent to all interested public agencies along the rail line so that NCRA has the benefit of other views.

Mike Kirn – City of Healdsburg Public Works Director – He said that NCRA does not have the authority to arbitrarily charge an application fee. He said that a retainer might be more appropriate. He said that the position that NCRA will not entertain new at-grade crossings would also be inappropriate when an applicant seeks to change the use of an existing crossing license.

Craig Harrington – Quaker Hill Development – He said that NCRA already has a policy that discourages new crossings. He said that NCRA needs to keep in mind that the applicants for at-grade public crossings will be the municipalities along the rail line and that the PUC has already established guidelines for such crossings.

Due to time constraints Closed Session was postponed until the next Property Committee Meeting.

H. MATTERS FROM THE COMMITTEE

No Matters

I. ANNOUNCEMENT OF NEXT MEETING

December 10, 2008
Regular Board of Directors Meeting
Petaluma Community Center
320 North McDowell Blvd

J. ADJOURNMENT

Committee Chair Kelley adjourned the meeting to the regularly scheduled NCRA Board Meeting at 10:30 a.m.