

**THE SPORTS AUTHORITY OF THE
METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY**

**BOARD OF DIRECTORS
MEETING MINUTES**

Thursday, October 19, 2023 | 10:30 am | Geodis Park – Multipurpose Room

Attendees

Attendees: Cathy Bender (Chair), Jad Duncan (Vice Chair), Aaron McGee (Treasurer/Secretary), Kim Adkins, Don Deering, Melvin Gill, Frank Harrison, Winston Justice, Anna Page, Emmett Wynn

Staff: Monica Fawknorton (ED), Valda Barksdale, Brandon Little, Melissa Wells, Josh Thomas (Metro Legal), Lexie Ward (Metro Legal)

Visitors: Adolpho Birch (Titans), Michell Bosch (Metro), Herbert Brown (TBA), Danny Butler (Predators), Katie Cafiero (Predators), Brittany Campagna (Anison Young), Kyle Clayton (Predators), Tom Cross (Metro Law), Haley Davidson (Titans), Wally Dietz (Metro Legal), Ron Gobbell (GHP), Kate Guerra (Titans), Don Hardin (DHG), Keith Hegger (Predators), Michelle Kennedy (Predators), Michelle Lane (Metro Purchasing), Paul Lawson (TBA), Roger Ligon Jr (TBA), Adam Nuse (Titans), Reggie Polk (TBA), Doug Scopel (Sounds), Katy Sheesley (GHP), Cassandra Stephenson (The Tennessean), Obi Ukwu (Public), Susan Vanderbilt (TBA), Ben York (NDOT),

Call to Order

Chair Bender called the meeting of the Sports Authority Board of Directors to order and welcomed all to Geodis Park. She recognized, Bob Mendes, Chief Development Officer for the Mayor's Office, and thanked Nashville SC staff for hosting.

Public Comment Period Pursuant to Tennessee Open Meetings Act, Tenn. Code Ann. § 8-44-101

There were no sign ups for Public Comment.

Report from Wally Dietz, Metro Director of Law

Mr. Dietz reported that the Metro Law Department filed a lawsuit last week in Chancery Court asking the Court to declare unconstitutional the state's legislation to replace six of the thirteen Sports Authority board members with appointments by state officials. The lawsuit will go before a three-judge panel to be appointed from the three Grand Divisions by the Supreme Court. It is hoped that Chancellor Myles will be the presiding judge. This is Metro's 4th lawsuit filed against the state within the last several months with similar legal claims.

Under the Home Rule Amendment of 1953 State Legislature may not pass a law that affects only one local government without voter or Council approval. This amendment was violated by the state when it passed a law regarding only the Metro Sports Authority. Additionally, the law purports to disband the Sports Authority Board of Directors completely by ripping six board members out of office which violates the Ripper Bill in that legislature cannot rip local officials out of their office. There is confusion in this law as statements made on the legislature floor conflict with the statute. The third violation is based on equal protection clauses of the Tennessee Constitution in that legislature cannot treat Nashville differently than other governments without a rational basis. This clause was violated in that there is no rational basis to impact Nashville's Sports Authority only.

Metro is asking the Court to grant a temporary and permanent injunction blocking the implementation of the state legislation and to declare it void. Given the new law goes into effect January 1, 2024, it is anticipated that the hearing will be held either the second or third week in November to allow ample time for the court to hear arguments and make a ruling.

The following questions and responses were asked/given:

Q1: It doesn't seem feasible to have representatives from outside of Davidson County appointed to this board to vote on how Metro Davidson County money should be spent. (Director Deering)

A1: This is certainly one of the defects in the law and we will make that argument. (Mr. Dietz)

Q2: It also appears that the new law will appoint all board members with terms that begin July 1 and end June 30 which will result in an entire new board starting simultaneously. (Director Deering)

A2: In best practices and in this case, the legislation will stagger board terms with subsequent terms of six years to avoid such a scenario. (Mr. Dietz)

Q3: What is the next step should we lose the lawsuit? Can this go before the State Supreme Court? (Director Harrison)

A3: We have the right to petition the Supreme Court to exercise the Drop-Down Jurisdiction where we would skip the Intermediate Court of Appeals by stating the great urgency of this matter. Our strategy will depend on the opinions of the Chancery Court judges. Fortunately, the judges who have heard our similar cases have been extremely sympathetic to our petitions and have expressed concern with the overreaching of state legislation. (Mr. Dietz)

Q4: Is there a way for the board to receive updates regarding procedures, next steps, etc.? (Director Duncan)

A4: Yes, I will share updates with ED Fawknorton who can share them with the board. (Mr. Dietz)

Consider Approval of Meeting Minutes from August 17, 2023

Chair Bender asked if there were additions or corrections to the August 17, 2023 meeting minutes. There being none,

Upon a motion made by Director Deering and seconded by Director McGee, the board unanimously approved the minutes from the August 17, 2023 meeting.

Executive Director's Report

ED Fawknorton called attention to the two agenda action items for the board consideration. She noted that the Sports Authority is close to publishing the RFP for a Construction Representative for the Authority and has been working closely with Metro Procurement. She advised the board to forward any questions regarding the RFP to her attention and she will direct them to Metro Purchasing. Additionally, she reported that she will be touring the new F&M Bank Arena in Clarksville and will also attend the Montgomery Co./ Clarksville Sports Authority meeting.

Personnel Committee Report: Consider a Resolution Authorizing and Approving an Employment Contract with the Executive Director of the Sport Authority

Director Deering reported that the Personnel Committee (PC) voted during the summer for Metro Counsel Joshua Thomas to begin drafting an Employment Contract for the Executive Director. Counsel Thomas and the PC reviewed a draft of the agreement during its Tuesday, October 17 meeting at which time the PC voted unanimously to approve the agreement with a few modifications. The PC also recommends approval of the Resolution.

Counsel Thomas noted that during the Finance Committee meeting this morning, it also approved recommendation for the Contract and Resolution. He noted that the term of the contract is for five years beginning November 1, 2023 and ending October 31, 2028. He also reported as follows:

- **Section 4.1** A 30-day notice prior to the expiration of the Term is required should the Board or Ms. Fawknorton choose not to renew the Agreement. The Agreement shall renew automatically for an additional year should either party fail to notice.
- **Section 4.3** Ms. Fawknorton shall provide a 30 day advance written notice should she desire to terminate the Agreement. The Authority shall provide a 60 day advance written notice should it desire to terminate the Agreement without cause and shall pay a sum equal to six-months of Ms. Fawknorton's gross monthly pay as severance pay. The severance pay shall be paid from revenues available to and controlled by the Authority (such as the Arena Fund), not by Metro. Chair Harrison questioned in the event of a termination or resignation, will the new Executive Director be hired at the same salary? HR typically sets a pay range based on experience and the Board will be responsible for approving the salary, stated Counsel Thompson. Director Deering questioned whether HR or the Board would oversee the process of hiring a new Executive Director. Counsel Thompson noted that the Board will be responsible for selecting the new candidate and Ms. Fawknorton noted that the Sports Authority works in conjunction with HR for new hires including the announcement, publicizing and scheduling of interviews.

- **Section 4.4** Should the Board determine that there is cause to terminate employment, the Authority shall give Ms. Fawknoston at least ten business days advance written notice and she will have five days to respond. The Board can decide whether to take action on the response or move forward with the termination.

Director Deering noted that ED Fawknoston has been involved in the process of bringing the contract to fruition and she is in agreement with the terms. ED Fawknoston noted that she appreciates the support from the board and its confidence in her abilities.

Finance Committee (FC) Chair Harrison noted that Counsel Thomas gave an over of the agreement during the FC meeting this morning and the FC recommends approval of the Resolution and Contract.

Upon a motion made by Director Deering and seconded by Director Harrison, the board unanimously approved a Resolution Authorizing and Approving an Employment Contract with the Executive Director of the Sports Authority.

Finance Committee Report

FC Chair Harrison reported that in addition to approving the Resolution and Employment Contract with the Executive Director of the Sports Authority, the FC also voted to approve the Resolution and Agreement Between Stadco and Tennessee Builders Alliance (TBA) to Serve as the Construction Manager (CM) at Risk for the Construction of a New, Enclosed NFL Stadium.

Tom Cross, Metro Deputy Law Director noted that the CM agreement for the new stadium is very similar to the one used for Geodis Park. One of the biggest differences is that the Geodis Park contract was between the builder and the Sports Authority, while this one is between the Titans and the builder. The fixed limit of construction cost is established in the contract at \$1.55B. The design phase is anticipated to reach 50% of the construction design in May 2024; at this point the CM will provide a proposal for a Guaranteed Maximum Price (GMP). The construction price will include an additional fee equal to 2.6% of the cost of the construction work. In addition to CM expenses, this fee will also cover potential changes during the scope of the construction project.

Adolpho Birch, Chief External & League Affairs Officer noted that Timeline of the project includes the May 15, 2023 posting of the RFP, July 7 was the deadline for responses, final interviews were conducted July 19-20 and on August 17 the Sports Authority approved the selection of TBA. He further noted that the evaluation committee was comprised of representatives from the Sports Authority and Metro and final decisions were based on their input.

To protect the key personnel/project team from a bait and switch scenario, the composition of the team was negotiated with a true personnel provision. Penalties will be assessed should any of the Project Team members not be involved in the project. Additional project protection includes: 1) TBA is limited to 3% of the cost of the work; 2) Financial penalties will be assessed for missed construction completion dates; and 3) The Titans have established an Owner-Controlled Insurance Program to control costs and mitigate risks. These protections will help to ensure a stadium delivered on time and within budget. The preliminary construction completion duration is 774 days with an anticipated start date of March 1, 2024 and completion March 4, 2027.

The following questions and responses were asked/given:

Q1: Please give/ share highlights pertaining to the change order process. Do the change orders come before the board? (Director Adkins)

A1: Most all construction projects, large or small, require some changes prior to the completion of the project due to discoveries during the construction phase. The CM will typically point out these adjustments to the designer. Most often changes are made due to unforeseen characteristic of the job site and it is possible that changes (including aesthetic) may come from the Titans and/or Sports Authority. The change order clause in the agreement states that once parties agree on the changes to be made, a change order is signed which includes the price, any additional time needed to complete the project as well as any adjustments to the GMP. Change Orders do not come before the board unless there is a change that impacts the performance of the facility. The board will receive monthly design and construction progress reports. (Mr. Cross)

A1b: ED Fawknoston noted that this part process is different from the Geodis Park construction project where there was a Development Committee. One of our board members served on that committee and would provide regular updates and reports.

Director Gill shared several concerns including:

- There appears to be a lack of inclusion of local businesses on the new stadium project and a process that is seemingly exclusive rather than inclusive. Inclusion would benefit and enhance the entire project.
- Efforts have not been sufficient to identify and include other firms to be involved in the project.
- There still appears to be opportunities for other firms to serve as a third-party review team in terms of quality control and quality assurance.
- There also seems to be opportunities for more SMWBE (Small Minority Women – owned Business Enterprises) participation on the project.
- He further noted that he was advised by a firm who stated they expressed an interest and submitted their qualifications to TBA. TBA response was that they favored them as their selection, however, they were advised by the Titans to select another firm. The inconsistencies are unfair and nontransparent.
- He noted that he believes the new facility will be a benefit to the entire city and he is hopeful that the Titans will engage other firms to participate on the project.

Adolpho Birch, Chief External & League Affairs Officer, Tennessee Titans responded that the Titans fundamentally disagree with Director's Gill's assessment of the processes. He shared that he has engaged in several conversations with Director Gill to demonstrate that processes for both the design and construction selection have been inclusive, exhaustive and provided an avenue for everyone to express an interest. The biggest indication of that is the result itself; the selected design team has a 28% plus DBE participation achievement. With regards to firms not being selected, there were several firms that were rolled over from design proposer to AOR proposer based on their experience. I understand your interest, however, the process was fair and consistent and ended with a result that we should all be proud.

Director McGee commented that the board has the responsibility of advocating in the best interest of taxpayers and data reporting from the Titans would be helpful. Mr. Birch noted that reports were provided during the August meeting and they are happy to provide additional information.

Director Adkins requested an update on the outreach event scheduled for this evening. Mr. Birch responded that outreach at varying levels has been critical to the success of project development. Tonight is the official launch event for those interested in participating on the project. More 1,000 firms and individuals have registered to attend to hear from Tennessee Builders Alliance regarding available opportunities. Metro BAO (Business Assistance Office) will be there to assist with certification; the Titans and Metro Procurement will also be on hand to answer questions; additionally, each of their databases will also be available. An e-news site is under construction for dissemination of information to ensure anyone who has a desire to be a part of the stadium project can do so. Director Adkins suggested that the Sports Authority include the procurement link on its website for those interested in participating on the project. ED Fawknorton agreed and will ensure the link is placed on the Sports Authority website. Director Gill commented that the official launch event should have been scheduled during the design phase. The BAO procurement database would have been beneficial given it includes all the designers and disciplines. This is another example of his observance of exclusion in the process.

Upon a motion made by Director Harrison and seconded by Director Adkins, the board unanimously approved the Resolution Approving the Agreement Between Stadco and Tennessee Builders Alliance to serve as the Construction Manager at Risk for the Construction of a New, Enclosed NFL Stadium

Project Management Report

Ron Gobbell, President Emeritus, Gobbell Hays Partners, Inc. (GHP) introduced Jim Pustejovsky, Capital Projects Solutions (CPS) and Katy Sheesley, GHP. He noted that GHP & CPS are Acting Program Managers for the new Titans NFL stadium project; a similar service that they provided to the Sports Authority and Metro for the GEODIS Park project. He shared the following:

- GHP is reviewing the building systems, design and budgeting as the plans and specifications are being developed.
- CPS, under the direction of Jim Pustejovsky, is reviewing compliance with Metro standards and will monitor the work once the construction phase begins.
- Both firms will review compliance with design documents, pay requests, change orders, etc.
- Both firms are available to the Sports Authority for review, communications, updates and opinions as needed.

- While the responsibilities defined in the development agreement simplify the Sports Authority's role in the new stadium, the new stadium is massive in cost, scale and complexity.
- Both firms are attending monthly design coordination meetings that involve well over 100 professionals designing and estimating various components of the stadium.
- GHP and CPS represent the Sports Authority's and Metro's interest on the project.

Titans' New Stadium Monthly Progress Report

Adolpho Birch, Chief External & League Affairs Officer shared an update on the new stadium project including:

- The Design Phase Timeline
 - Design Development Phase - July 31, 2023 - January 26, 2024
 - GMP Construction Documents - March 18, 2024 - May 31, 2024
 - Construction Administration - Starting in Q1/Q2 of 2024
- The Construction Phase Timeline
 - Initial Stadium Mobilization - End of 2023 NFL season
 - Stadium Earthwork and Excavation - February/March of 2024
 - Projected Completion of Stadium - Mid to late Q1 of 2027
- The Design Team is projected to have 28.2% participation from DBEs (Disadvantage Business Enterprises) firms including: 5 MBE firms, 3 SBE firms & 3 WBE firms.
- Outreach and Engagement includes the official launch event this evening at Nissan Stadium. More than 1,000 firms and entities have registered. Robust websites have been built-out and are linked to Tennessee Builders Alliance webpage. Metro Procurement's database is being utilized to reach potential partners for the project.
- The One Community platform was launched to support small businesses, affordable housing, student scholarship as well as the health and well-being of Nashville's most underserved communities with a focus on three areas: Opportunity, Neighborhoods and Education. Projects will include internship & fellowship programs, sports venue development learning opportunities, an enhanced relationship/partnership between the Titans and TSU, Small Business Masterclass to assist businesses in learning ways to improve their organization. Director McGee questioned whether the duration of One Community would continue beyond construction of the new stadium? Mr. Birch noted that some of the programs are specific to the construction project (e.g. real estate development) while some will be a permanent part of how the Titans will engage with the community.

Report on Debt Obligation Bonds

Michell Bosch, Metro Treasurer reported that her office manages the debt portfolios and investment portfolios for Metro Government and the Sports Authority. They are required to submit a debt report to the issuing body and the state Controller's office. The transactions took place in August, during a time when Fitch Credit Ratings downgraded the U.S. Government credit ratings which caused a concern that there would not be enough investors. Fortunately, this did not impact the transaction and most of the purchasers of the bonds were institutional investors with a weighted average cost of 4.9%. The Sports Authority currently has a whole weighted average cost of approximately 4% which includes all outstanding debt for all venues. The debt obligation bonds issued were:

- A. \$345,795,000 Stadium Project Senior Revenue Bonds Series 2023A**
- B. \$79,630,000 Stadium Project Subordinate Revenue Bonds Series 2023B**
- C. \$59,410,000 Stadium Project Revenue Bonds (Non-Tax Revenues Pledge) Series 2023 C**
- D. \$220,605,000 Stadium Project Revenue Bonds (Non-Tax Revenues Pledge) Series 2023D (Federally Taxable)**

The following questions and responses were asked/given:

Q1: Please give clarity surrounding institutional investors. (Director McGee)

A1: That would include investors such as Met Life Insurance Company who typically prefer to purchase long dated fidelities including bonds and money markets.

Q2: Which part of the tranches are backed by Metro? The subordinate, non-taxable or the non-taxable that is taxed on the federal level? (Director Justice)

A2: Bond Series C and D are backed by a Metro non-tax revenue and were under a mandate to be issued under \$300m. Series A and B are not backed by Metro, however they are insured. (Ms. Bosch)

Q3: During reports given at previous meetings, the board was not informed that part of the debt would be taxable. Taxable debt has a higher debt service. Was this something that evolved? Did part of the issuance become taxable because of fears that a portion of the municipal monies would not be available? (Director Justice)

A3: It was not due to fear, rather it was based on advice from our tax attorneys. Additionally, it is a combination of how the proceeds will be spent and the level of market interest for taxable debt. (Ms. Bosch)

Facility Questions

There were no questions presented.

Geodis Park Report

Ian Ayre, CEO Nashville SC reported that it has been about 18 months since Nashville Soccer Club (NSC) moved into Geodis Park and their expectations for the facility have been exceeded. Ticket sales average approximately 28,000 per game which places Geodis Park in the top four of MLS (Major League Soccer) ticket sales and top three for season ticket sales. Season tickets for the 2024 season have already sold out.

NSC qualified for the Audi 2023 Playoffs for the fourth year in a row and were runner-ups in the first-ever Leagues Cup tournament. The venue transitioned into making the best use of the park by launching a Summerfest which focused on a variety of events including concerts, yoga, pickle ball, Pup Cup, over 200 private events, 5k Run and a Veterans Celebration. These events generated revenue and utilized the facility as many days as feasible.

There were some concert instances that impacted the integrity and quality of the pitch (the field) and required a section replacement at a cost of \$350k. Because perfection of the pitch is essential in soccer, moving forward, staff will take better control and protection of the pitch during concerts.

Community Outreach continues with Back-to-School Initiatives with over 350 backpacks created for students and teachers, TDOT Trash Day Pick-up, Kick Childhood Cancer and Water Walkers Grant.

Soccer activities beyond MLS at Geodis Park include the USA vs Ghana soccer teams in October and continual request from U.S. soccer teams to host games at the venue which is the largest soccer specific stadium in the U.S.

Additionally, staff is growing significantly and has doubled within a year.

Director Adkins commented that she had the pleasure of bringing first time visitors to the stadium who were in awe of the team, concession stands, staff, security as well as the venue. Director McGee commented that he and his wife attended their first event and had a great quality experience. He extended kudos to Geodis Park for the excellent community engagement.

Adjourn

In closing, Chair Bender announced that the next meeting is schedule for 10:30am on Thursday, November 16 at Bridgestone Arena. The Finance Committee will meet prior to at 9:30am. There being no further questions or business, the Board of Directors meeting adjourned.

Respectfully submitted, Valda Barksdale, Metro Nashville Sports Authority

Meeting YouTube Link:

<https://www.youtube.com/watch?v=jj8Na7nKmMA&list=PL70A35525EA40FA72&index=2&t=1813s>