

MINUTES
WAR MEMORIAL BOARD OF TRUSTEES
REGULAR MONTHLY MEETING

Thursday, June 9, 2011

The Board of Trustees of the War Memorial of San Francisco met in regular session at 2:00 p.m. on Thursday, June 9, 2011, in the Trustees' Board Room, War Memorial Opera House, President Shultz presiding.

ROLL CALL

Present: President Shultz, Vice President Myatt, Trustee Bashford, Trustee Bechtle, Trustee Jarman, Trustee Moscone, Trustee Pelosi, Trustee Stafford, Trustee Wilsey;

Absent: Trustee Davis, Trustee Horn;

Staff Present: Elizabeth Murray, Managing Director
Jennifer Norris, Assistant Managing Director/Executive Secretary

APPROVAL OF MINUTES

President Shultz called for approval of the minutes of the May 11, 2011 meeting of the Veterans Building Project Committee of the Board. On motion of Trustee Wilsey, seconded by Trustee Moscone, the minutes were unanimously approved.

President Shultz called for approval of the minutes of the May 12, 2011 meeting of the Building Committee of the Board. On motion of Trustee Moscone, seconded by Trustee Bashford, the minutes were unanimously approved.

President Shultz called for approval of the minutes of the May 12, 2011 regular meeting of the Board. On motion of Trustee Bechtle, seconded by Trustee Wilsey, the minutes were unanimously approved.

PRESIDENT'S REPORT

San Francisco Opera Summer Season: President Shultz reported that the San Francisco Opera opened its 2011 Summer Season presentation of "The Ring of the Nibelung" on May 29, and will present three four-opera cycles of the Ring beginning June 14, 2011. On behalf of the Board, President Shultz extended best wishes to the Opera for a successful Summer Season.

San Francisco Symphony European Tour: President Shultz stated that the San Francisco Symphony will return this week from its three-week European tour, where they performed 15 concerts in 8 countries, and received rave reviews. On behalf of the Board, President Shultz extended the Board's congratulations to the Symphony on a tremendously successful tour.

San Francisco Veterans Memorial Project – Finalist Proposals: President Shultz stated that on Tuesday evening, the San Francisco Veterans Memorial Project Working Committee, headed by Vice President Myatt and Trustee Bashford, held a preview reception in the Green Room, unveiling the three final design proposals for the San Francisco Veterans Memorial. President Shultz noted that several Trustees attended this very successful and moving reception. She stated that the three final proposals are now on public display in the Veterans Building main lobby through June 26, 2011. On June 27, the selection panel will reconvene to adopt a

selection recommendation, which will be presented to and considered by the Board of Trustees at the July 14 meeting.

On behalf of the Board, President Shultz commended Vice President Myatt and Trustee Bashford for their hard work and perseverance over the last 14 months in bringing this project to the forefront and for making a San Francisco Veterans Memorial a reality after 79 years.

MANAGING DIRECTOR'S REPORT

Rental Requests: Ms. Murray requested approval of rental requests submitted. On motion of Vice President Myatt, seconded by Trustee Moscone, the following resolution was unanimously adopted:

RESOLUTION NO. 11-23

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco that the following rental requests are hereby approved:

WAR MEMORIAL OPERA HOUSE

Pop-Up Magazine Pop-Up Magazine, Issue 5	July 15, 2011	\$2,500.00 vs. 10% \$4,650.00 maximum
Allstate Insurance Company Lobby Dinner	July 26, 2011	\$6,750.00
Asian Art Foundation Shen Yun	January 3-8, 2012	\$20,000.00 vs. 10% \$37,200.00 maximum

LOUISE M. DAVIES SYMPHONY HALL

Allstate Insurance Company Private Performance & Lobby Dinner	July 24, 25, 26, 2011	\$13,950.00
UCSF School of Pharmacy Graduation Ceremony & Reception	May 4, 2012	\$3,900.00
UCSF School of Dentistry Graduation Ceremony & Reception	June 8, 2012	\$3,900.00

HERBST THEATRE

The Litquake Foundation Dennis Lehane	August 18, 2011	\$825.00
Evolution Promotion Ludovico Einaudi	November 7, 2011	\$1,400.00
Reality SF Christmas Eve Service Easter Service	December 24, 2011 April 8, 2012	\$1,650.00
KPIX CBS 5 2011 Jefferson Awards	January 12, 2012	\$1,400.00

SECRETARY'S REPORT

Revenue, Appropriations and Housekeeping Expenditures Reports for May 2011: Ms. Norris referred to the Revenue, Appropriations, and Housekeeping Expenditures Reports for May 2011, and requested approval of housekeeping expenditures as submitted. On motion of Trustee Bechtle, seconded by Trustee Wilsey, the following resolution was unanimously adopted:

RESOLUTION NO. 11-24

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco that Purchase Order Nos. WM11000273 through WM11000290 are hereby approved.

COMMITTEE REPORTS

Veterans Committee:

Feasibility of, and operational, administrative and procedural requirements associated with, permitting the American Legion War Memorial Commission to establish a Veterans Resource Center in Veterans Building space currently allocated for use by the San Francisco Posts of the American Legion:

Vice President Myatt, Chair of the Veterans Committee, stated that the Committee held a second meeting on May 31, to continue consideration of this matter, noting that at an earlier meeting of the Committee, the War Memorial Commission and War Memorial staff were asked to investigate possible use of Veterans Building room 205 for the Commission's proposed resource center.

Vice President Myatt stated that Beth Murray advised the Committee that electrical support for the 20+ computer training work stations desired by the Commission would require a minimum of 4-5 dedicated electrical circuits, which is not currently available in any of the Veterans Building 2nd or 3rd floor rooms. She reported to the Committee that the War Memorial was proceeding with upgrading electrical service in room 205 to a total of 5 circuits. Beth Murray also reported on her telephone conversations with two organizations which the Commission said would be users of the resource center room. The State EDD stated they would be limited to working in the Veterans Building due to its deficient seismic rating, but they could use a room with computer access for job fairs or other sessions for larger groups that would include both veterans and non-veterans. The San Francisco County Veterans Service Office advised that computer training equipment is not needed for their uses, but they could possibly use a Veterans Building room 2 or 3 times per month for sessions on VA entitlements.

Vice President Myatt reported that Committee members noted it is still unclear as to the need for the proposed center, and who the Commission sees as their customer base as opposed to those veterans being served by existing services. The Committee also noted that should the Commission permit any non-American Legion Post veterans service organization to utilize the room for training purposes, the Commission must notify the War Memorial in advance, and that organization must enter into a short-term license agreement with the War Memorial setting forth use conditions, rules and regulations, indemnification and insurance requirements.

Vice President Myatt stated that following discussion, the Committee voted unanimously to recommend to the Board of Trustees that it approve the request of the American Legion War Memorial Commission to establish a veteran's resource room in Veterans Building room 205 subject to:

1. The Commission providing a certificate of insurance with the City's standard insurance limits naming the City and County of San Francisco as additional insured;
2. All users of the resource room must be scheduled in advance with the War Memorial, and the Commission will provide a monthly report to the War Memorial of room uses and veterans served;
3. Any outside veterans service organization authorized by the Commission to use the room for training purposes must enter into a short-term license agreement with the War Memorial and must provide the necessary insurance certificate in advance.

Following discussion, and on motion of Vice President Myatt, seconded by Trustee Pelosi, the following resolution was unanimously adopted:

RESOLUTION NO. 11-25

RESOLVED, By the Board of Trustees of the War Memorial of San Francisco that it hereby adopts the report and recommendation of its Veterans Committee, and approves the request of the American Legion War Memorial Commission to establish a veterans resource room in Veterans Building room 205, subject to the conditions recommended by the Veterans Committee.

REGULAR ITEMS

Certificates of Participation – Financing for the Veterans Building Seismic Upgrade Project: President Shultz stated that Trustees have received a draft resolution approving the execution and delivery of Certificates of Participation to finance the Veterans Building Seismic Upgrade and Improvements Project as well as an Executive Summary describing Certificates of Participation financing. She asked Beth Murray to provide information on this item.

Ms. Murray introduced the following guests attending today's meeting to assist the Trustees in their consideration of this item: Ken Roux, Deputy City Attorney, Nadia Sesay, Director of the City's Office of Public Finance, and William Doyle, attorney with Orrick, Herrington & Sutcliffe, outside bond counsel.

Ms. Murray stated that the proposed resolution before the Board concerns financing of the Veterans Building Seismic Upgrade and Improvements Project by the City with Certificates of Participation, as provided in the City's 10-year capital plan approved by the Mayor and the Board of Supervisors. She stated that the City uses Certificates of Participation ("COPs"), also referred to as 'lease financing,' to finance capital projects as an alternative to issuing general obligation bonds. Ms. Murray said that in order to initiate the COPs financing process for the Veterans Building Project, the War Memorial Board of Trustees, which under the City Charter has exclusive charge of the trusts and all other assets under its jurisdiction, must adopt a resolution approving the execution and delivery of the Certificates of Participation.

Ms. Murray stated that the proposed resolution before the Board does the following:

- Confirms that the Board of Trustees recommends to the Mayor and the Board of Supervisors the approval of the Veterans Building Project and the approval of the execution and delivery of the Certificates of Participation and the related financing documents.
- Approves the War Memorial Opera House and the War Memorial Veterans Building as the lease financing assets for the Certificates of Participation and approves the related financing documents.
- Authorizes the War Memorial Managing Director to approve, execute and make modifications to the financing documents upon consultation with the City Attorney, and to deliver such documents and carry out other title work as necessary to carry out the provisions of the resolution.

Following discussion, and on motion of Trustee Pelosi, seconded by Trustee Moscone, the following resolution was unanimously adopted:

RESOLUTION No. 11-26

RESOLUTION APPROVING THE EXECUTION AND DELIVERY OF CERTIFICATES OF PARTICIPATION TO FINANCE THE VETERANS BUILDING SEISMIC UPGRADE AND IMPROVEMENTS PROJECT, APPROVING THE FORMS OF VARIOUS FINANCING DOCUMENTS, AND AUTHORIZING THE LEASE OF ONE OR MORE PORTIONS OF THE SAN FRANCISCO WAR MEMORIAL AND PERFORMING ARTS CENTER.

WHEREAS, the War Memorial Board of Trustees (the “Board of Trustees”) is the governing body of the San Francisco War Memorial and Performing Arts Center, which consists of four City-owned buildings: the War Memorial Veterans Building, the War Memorial Opera House, Louise M. Davies Symphony Hall, and Zellerbach Rehearsal Hall (collectively, the “War Memorial”); and

WHEREAS, the War Memorial is a charitable trust department under Article V of the City Charter and as such, the Board of Trustees has exclusive charge of the trusts and all other assets under its jurisdiction, which may be acquired by loan, purchase, gift, devise, bequest or otherwise, including any land or buildings set aside for its use; and

WHEREAS, the Board of Trustees has authority to maintain, operate, manage, repair or reconstruct existing buildings and construct new buildings, and to make and enter into contracts relating thereto; and

WHEREAS, the Board of Trustees desires to finance the costs of the seismic retrofit, construction, reconstruction, installation, equipping, improvement or rehabilitation of the War Memorial Veterans Building (the “Project”) through the execution and delivery of one or more series of certificates of participation by the City (the “Certificates”), as provided in the City’s FY 2012-2021 Capital Plan approved by the Mayor and the Board of Supervisors; and

WHEREAS, the Board of Trustees has been presented with the form of a Trust Agreement between the City and a trustee to be named therein (the “Trust Agreement”) relating to the execution and delivery of the Certificates; and

WHEREAS, the Board of Trustees has been presented with the form of a Property Lease (the “Property Lease”), pursuant to which the City will lease to the Trustee one or more portions of the War Memorial (the “Leased Property”) located on the real property (the “Site”) at 301 Van Ness Avenue and 401 Van Ness Avenue in the City; and

WHEREAS, the Board of Trustees has been presented with the form of a Project Lease (the “Project Lease” and together with the Property Lease and the Trust Agreement, the “Financing Documents”), pursuant to which the Trustee will lease the Site and the Leased Property back to the City, NOW THEREFORE,

Be it RESOLVED by the War Memorial Board of Trustees, as follows:

1. The Board of Trustees recommends to the Mayor and the Board of Supervisors the approval of the Project and the approval of the execution and delivery of the Certificates and the Financing Documents.
2. The Board of Trustees approves the leasing, pursuant to the Project Lease and the Property Lease, of all or a portion of Leased Property.
3. The Board of Trustees approves the forms of the Financing Documents, as presented to this Board of Trustees.
4. The Board of Trustees hereby authorizes its Managing Director to approve, execute and make such modifications, changes or additions to the Financing Documents, upon consultation with the City Attorney, as may be necessary or desirable and in the interests of the City, including the War Memorial and the Board of Trustees, and which changes do not materially increase the obligations of the City under the Financing Documents.
5. The Board of Trustees hereby authorizes and directs its Managing Director to take such actions and to execute and deliver such certificates, agreements, requests or other documents as she may deem necessary or desirable to accomplish the proposed financing through the execution and delivery of the Certificates, to enter into the Financing Documents, to facilitate the execution and delivery of the Certificates, and carry out other title work and otherwise to carry out the provisions of this Resolution.

Request from American Legion District 8 – Use of Memorial Court on 9/11/11: President Shultz stated that Trustees have received a copy of the e-mail request from John Forrett, Commander of District 8 of the American Legion, requesting to use the Memorial Court on September 11, 2011, for a 10th year remembrance of the

September 11, 2001 attacks on the World Trade Center She noted that typically any request from an American Legion Post for use of space is first considered and acted upon by the American Legion War Memorial Commission before coming to War Memorial staff for review and then to the Board of Trustees for consideration and approval. President Shultz stated that as these preliminary steps have not occurred, this item will be deferred for one month pending receipt of a request from the War Memorial Commission and War Memorial staff review of event details.

MISCELLANEOUS CORRESPONDENCE

President Shultz stated there are two items of miscellaneous correspondence on the agenda provided for the Trustees' information.

1. Letter dated May 19, 2011, from Roger Dong, Chair of the American Legion War Memorial Commission, requesting to enter into negotiations with the Board of Trustees regarding the American Legion Posts' space requirements in the Veterans Building following the Veterans Building Seismic Upgrade Project and requesting to establish a written agreement with the Board of Trustees regarding the rights of the San Francisco American Legion Posts in the Veterans Building.

President Shultz stated this letter is provided for the Trustees' information only; it is not an action item before the Board. She stated that the Board of Trustees has previously taken action and adopted resolutions concerning the allocation of Veterans Building space after the Veterans Building Seismic Upgrade Project.

Vice President Myatt made remarks in response to the May 19, 2011 letter from Roger Dong. These written remarks were distributed to Trustees and members of the public and are attached to these minutes as Addendum A.

Mr. Paul Cox, on behalf of the American Legion War Memorial Commission, submitted an additional memorandum to the Trustees to expand on the Commission's request for negotiations concerning post-retrofit space in the Veterans Building.

2. Letter dated June 1, 2011, from Gail E. Neira, regarding the American Legion District 8 and American Legion War Memorial Commission.

ADJOURNMENT

There being no further business, President Shultz adjourned the meeting at 3:00 p.m.

Jennifer E. Norris
Executive Secretary

Addendum A: Minutes War Memorial Board of Trustees June 9, 2011

Vice President Myatt comments regarding letter dated May 19, 2011 from American Legion War

Memorial Commission:

I read the 19 May 2011 letter signed by the current Chairman of the American Legion War Memorial Commission in which the Commission requests its negotiation committee meet with the Trustees to discuss and resolve veterans space allocations in the Veterans Building for post-retrofit usage. The apparent basis for the request is a statement as follows: "...impending increase in our American Legion, and other veterans' organizations, membership from the large number of veterans now studying on several college/university campuses including San Francisco City College, San Francisco State University and the University of California, Berkeley."

I am making this statement for two reasons. First: the ALWMC is asking to 'negotiate' after we have already made decisions regarding the usage of the spaces in the building following the retrofit. Second: the stated increase in 'demand' for veterans' usage of the building is not substantiated.

I am communicating to the Trustees as a fellow Trustee who happens to be a veteran with 33 years of active military service, including 2 combat tours in Vietnam, expeditionary service in Beirut, Lebanon and combat service in the Gulf War, as commander of the 1st Marine Division. Along with the other Trustees, I have frequently endured the lectures and criticism by representatives of the American Legion during the public testimony of the War Memorial Board of Trustees. Often, I sense that the Trustees are reluctant to speak up for fear of appearing anti-veteran. I think it is time to 'push-back' with some fact-based discussion.

To start my fact-based research, when I first was appointed to the Board, I read the Memoirs of Charles Kendrick. This was the Charles Kendrick who served in World War I. He was wounded twice and decorated with a Silver Star for Valor. He was one of the original founders of the American Legion. He was elected to represent California on the Executive Committee for the first regularly constituted National Convention and was chosen to be the American Legion's first Vice Commander.

In his Memoirs, Charles Kendrick dedicates a chapter to the vision, funding and construction of "THE WAR MEMORIAL". The chapter is fascinating regarding the challenges that faced supporters who wanted to create an Opera House and an Art Museum. It was Charles Kendrick who conceived the idea of involving the war veterans from World War I to assist in the fundraising, so as to capitalize on the popularity of the veterans, following the "war to end all wars." He enlisted the support of the "five Legion Posts of San Francisco" to assist in the fundraising. His memoirs describe some of the issues that surfaced with those he described as the "professional veterans," whose motives were for "personal or partisan advantage."

Most interesting and relevant to our current discussion is Kendrick's discussion about how the veterans seized more of the Veterans Building than intended. I have quoted the paragraph describing this action below:

"...The War Memorial was completed in the Fall of 1932, and the veterans took possession of their space at once. However, the Art Museum was not ready to open for nearly two years because of lack of money; and during this time, the veterans so encroached upon the space allotted the Museum that, by the time it was ready to open, it was found that the veterans had occupied the entire main floor. This despite an ironclad agreement that the Museum had equal rights to use both this floor and the Grand Salon on the second floor, and that the entrance to the Museum would be through the main lobby on Van Ness Avenue. In the end, in order to avoid another row with the veterans, the Art Museum had to use a small side door on McAllister Street as its entrance..."

From my readings of the various City Attorney opinions over the years, the veterans' push to take more space in the Veterans Building has been a continuous theme. This fact is worth repeating. It was never intended that the veterans would have the entire building, and the reason for building the War Memorial Complex was to have facilities to celebrate the arts!

Now for some facts on the efforts of the Board of Trustees to ‘negotiate’ with the American Legion War Memorial Commission regarding how the building should be configured to meet their post-retrofit needs.

At one of my very first meetings as a Trustee, the Board was in receipt of a letter dated December 28, 2007 from the Chairman of the American Legion War Memorial Commission. Let me quote from that letter:

“About five months ago, your President, Tom Horn, your Vice President Nancy Bechtle, accompanied by your Managing Director, Beth Murray, asked the members of the War Memorial Commission to state their long term needs for space in the Veterans Building. To make it clear, our future plans and needs require us to have the entire War Memorial Veterans Building. ...”.

Signed by LeRue Grim, Chair Person, War Memorial Commission

This rather strident position was reinforced in 2008. After repeated attempts by Beth Murray and by me, as chair of the Veterans Committee, for the Commission to sit down and discuss the post-retrofit plans for the veterans, the Trustees received a letter dated November 11, 2008, in which the Commission requested a 90 day extension for the:

“...determinations, approvals or like kind consent associated with space allocation or renovations of the War Memorial Veterans Building....”

Signed by Michael Gerold, Chairman, American Legion War Memorial Commission; Commander, District Eight; Commander Emeritus, American Legion Post 911

On June 6, 2009, a letter dated March 31, 2009 was delivered to the Trustees stating that the American Legion requires the entire building, post-retrofit. This letter was signed by Michael Gerold, Commander.

It is worth mentioning that numerous requests were made to the Chairman of the American War Memorial Commission for meetings to discuss future use of the Veterans Building. Time and time again, appointments would be made and the Chairman would either not show up for the meeting or call to cancel at the very last moment. This point is worth noting. The Chairman of the American Legion War Memorial Commission never kept a single appointment to meet to discuss the post-retrofit plans in the years 2008 and 2009.

Meanwhile, at the Direction of the Board of Supervisors, data on how much the American Legion Posts are using the designated meeting rooms has been collected for the past 5 years. The most consistent point about the American Legion use of the spaces currently allocated to the Posts is how little use they make of the spaces.

Perhaps we can just look at the usage of the spaces in the months of March and April of this year. In March, there were 279 potential all-day room meetings. (Keep in mind that few meetings last all day...there is a potential, actually, in each meeting room, to have several meetings in one day!). Of the 279 potential all-day room meetings, there were 34 meetings. Twelve of those meetings were held by non-American Legion Posts. There were 15 days in March that no meetings were held at all.

In April of this year, there were 270 potential all-day room meetings. There were 45 meetings. Twenty-seven of those meetings were held by the Posts. There were 13 days in April that no meetings were held at all.

The point here is that most of the time in the Veterans Building, there is very little, if any, veteran presence at all.

Meanwhile, the Trustees provide space in the Building for the State office of the American Legion. In fact, 5,500 square feet of space is provided to the State office for 10 employees. Compare this allocation of space to the space provided for the War Memorial staff: 3,880 square feet is provided for 19 employees.

It is because of the lack of usage of the currently-allocated spaces by the American Legion Posts and because of the refusal to even meet to discuss the post-retrofit allocation in 2008 and 2009, the Veterans Building Project Committee made an allocation independent of the Commission’s input so that we could proceed with the retrofit planning in 2010. The square footage allocated to the Posts was reduced from 32,285 square feet to 22,870. That is a lot of space...more than 1/2 of a football field! The post-retrofit space allocation for the American

Legion Posts provides meeting room space which exceeds their current needs by over 300%, and actually increases their number of private office workstations by 65%.

During my time on this Board, the Commission has consistently forecast an increase in San Francisco American Legion membership and a large increase in the veteran population in San Francisco. It is true that the veteran student population in the local colleges and universities has increased since the implementation of the new GI Bill in July 2009. However, there is no evidence that the young student veterans are flocking to become members of the Posts in San Francisco. The college and university veterans are more likely to participate in student veteran groups. According to a report of the American Legion Department of California, the size of American Legion District 8 membership (San Francisco district) since 2009 has decreased by 38%.

Furthermore, the overall veteran population for San Francisco had declined by 40% since 2000 according to the VA report in 2007, and is projected to decrease another 36% by 2022. This is logical as we see the veterans of World War II, Korean War and Vietnam pass away. As we look at the size of the U.S. Military over the years, in WWII, we saw 16 million serve. During Korean and Vietnam, the size of the military averaged 3.4 million. Tours of duty were two years long and many more veterans cycled through their active duty period. With the all-volunteer force we see today, tours of duty are 4 years, and the size of the military is ca. 1.5 million serving in the active force.

One in 9 of those serving in the U.S. military are from California. Roughly 30,000 Californians enter the military each year, and, in years where the overall size of the military is stable, roughly 30,000 Californians are discharged...most after 4 years of service, far fewer after 8 years and the balance would be retired military having served between 20 and 30 years.

Some would want you to think that all of these veterans are coming to San Francisco and we need to give the American Legion more space to take care of the veterans. Data does not support such claims. The veterans who do return to California more likely return to their home towns. Not many come from the City and County of San Francisco.

In summary, it is my view that we have allocated more than enough space for the veterans for the post-retrofit period. Assuming that I am still a Trustee when the building reopens, and it turns out that the veterans will need more space in the building, I will lead the charge to make sure that the space is provided. However, I will oppose the idea of offering space in this building to other government organizations that are funded by those governments and are looking merely for free space as their budgets are reduced.

Lastly, as a tax paying citizen of the City and County of San Francisco, I am quite fatigued by the berating and lecturing from the American Legion Post members who do not even live in San Francisco.

This concludes the remarks of Vice President Myatt on June 9, 2011.