

DENVER UNION STATION PROJECT AUTHORITY
MEETING OF THE BOARD OF DIRECTORS

June 10, 2010

MINUTES

BOARD MEMBERS PRESENT

Jerry Glick
Elbra Wedgeworth
Mark Smith
Don Hunt
Jennifer Schaufele
Claude Pumila
Marla Lien
Bill James (for Kent Bagley)
Russell George

BOARD MEMBERS ABSENT

Robin Kniech
Mario Carrera
Michael West
Judy Montero

I. CALL TO ORDER

Elbra Wedgeworth, DUSPA Board President called the Meeting of the Board of Directors of DUSPA to order at 1:32 p.m.

II. WELCOME AND INTRODUCTION OF GUESTS

President Wedgeworth welcomed guests.

III. PUBLIC COMMENT

Ms. Wedgeworth asked for public comment. There was no public comment.

IV. ROLL CALL

Dawn Bookhardt called roll. Please see above.

V. APPROVAL OF MEETING MINUTES

Elbra Wedgeworth asked for comments to the May 13, 2010 meeting minutes. Jerry Glick had one comment. Jerry Glick moved to approve the May 13, 2010 meeting minutes as amended. Russell George seconded the motion. The motion carried unanimously.

VI. DISCUSSION ITEMS

A) Vote to Approve Mark Smith as Director to DUSPA Board of Directors.

Elbra Wedgeworth asked for a motion to approve the appointment of Mark Smith as the USNC designee to the DUSPA Board. Jerry Glick made the motion. Russell George seconded the motion. The motion carried unanimously.

B) TIFIA / RRIF Progress Report and Update

Claude Pumila reported that the DOT is engaged with DUSPA on negotiations of the RRIF Loan agreement and the Master Trust Indenture. He suggested that the process has manifested as a situation wherein the new lawyers have the best intentions but it is difficult without the lawyers knowing the deal. He reported that DUSPA is working to bring the new lawyers up to speed on the project and that DOT is still committed to a closing date at the end of June.

Cole Finegan reported that a four page schedule of documents necessary for closing has been generated and that the DUSPA group has brought clarity to the DOT group regarding the deal and issues that can or can not be accommodated. Mr. Finegan suggested that he is still optimistic and that the next round of comments to the Master Trust Indenture will be telling as to whether a June 30 closing date is still realistic.

C) Documents Requiring Approval

Dawn Bookhardt stated that approval of the following documents in substantially final form is requested:

- i) Second Amendment to the DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement (Compliance Responsibilities Agreement)

Dawn Bookhardt reported that the Compliance Agreement has been a long time coming and she thanked Bill Mosher, Terry Howerter, Marla Lien, Susan Cohen and everyone else who participated with DUSPA in order to complete this compliance agreement. The second amendment will accomplish this purpose and also provide for the loan of SB-1 dollars to the project.

ii) Asset Ownership Agreement

Dawn Bookhardt stated that this agreement was required by the Auditor and responds to the material deficiency found by BKD during the audit process. She reported that the majority of the assets will be transferred to RTD.

Jerry Glick inquired as to where the split of 90 percent to RTD and 10 percent to the City came from.

Marla Lien responded that the 90/10 split is an estimate of the value of the assets after construction rather than based upon real estate square footage.

Jerry Glick inquired as to whether it is clear in the agreement how the 90/10 split of assets is made.

Bill Mosher responded that as the WBS process is undertaken, the assets will be booked accordingly and the exact asset ownership will be established. He reported that the 90/10 split is only an estimate at this time.

Dawn Bookhardt reported that Peter Baertlein is reviewing the Asset Ownership Agreement and may have comments.

Bill Mosher suggested that the agreement sets up the framework for asset ownership and that the accounting process will finalize the actual asset ownership.

C) Owner's Representative Report

i) Update Regarding Project Progress

Bill Mosher reported that Mike Sullivan is at a different meeting today. He reported that the biggest issue with project at this time is the dewatering program and trouble with the iron in the ground water. He reported that the filtering system can not keep up with the amount of iron and that dewatering has been suspended.

Mr. Mosher reported that Kiewit expects to go from two to nine dewatering tanks and expects \$1 million to \$1.5 million in additional costs for dewatering. He reported that there will be a delay in getting the State to issue the revised NPDES permit and suggested that Russell George may be able to assist in the process through the State with the people at the Colorado Department of Public Health and Environment (CDPHE). He reported that Nicole Rolfe at the CDPHE is the point person that DUSPA has been working with on the discharge permit.

Mr. Mosher reported that DUSPA has been working with the City on the 18th Street pedestrian bridge and that DUSPA will not go to the Planning Board during the month of June. He reported

that the expectation is to go before the Planning Board in late July and this is a delay in the process, but that this bridge is not on the critical path.

Mr. Mosher reported that representatives from Amtrak were in town and that the meeting and site visit went well.

Diane Barrett reported that Peter Baertlein and Councilwoman Boigon hosted the Amtrak executives and that Amtrak was very impressed with the site and the efforts to accommodate them.

Bill Mosher reported that DUSPA has been working on the Lot G overbuild issue. He reported that RTD has informed DUSPA that a threat and vulnerability report must be completed and that a progressive collapse structural system may be required. He reported that this will double the cost to DUSPA. He suggested that DUSPA does not have this money and recommended that DUSPA suspend the design work and not spend any more money on this overbuild.

Jerry Glick suggested that if DUSPA does not build this structure at this time, nothing will ever be built at this location.

Bill Mosher responded that he can still work with RTD on the criteria and asked Jerry Nery whether there is flexibility on this issue.

Jerry Nery responded that RTD needs the threat report completed first. Mr. Nery also suggested that the overbuild will certainly cost more than a surface parking lot.

Marla Lien reported that Dave Genova, RTD's Manager of Public Safety will make the decision on the overbuild issues and that she will speak with him.

Mark Smith suggested that surface parking lots are not an allowable zoning use for property at DUS.

Jerry Glick asked Mr. Mosher to pursue the threat report in an attempt to not lose the opportunity to construct the Lot G overbuild structures at DUS.

Bill Mosher responded that he will temporarily suspend design on the Lot G overbuild until the threat report is completed.

ii) Financial Report

Bill Mosher reported that there have been questions regarding change orders and tracking of the amounts. Mr. Mosher handed out a Change Order Cost Tracking spreadsheet in addition to copies of the Organizational Budget and Project Budget (see attached).

Mr. Mosher reported that the Project Budget that was approved by the Board on April 10, 2010 showed the first eight change orders with \$8.5 million used from prior allocated contingency. He reported that the approved Design Build contract is \$345 million, up from \$336 million. He

reported that Change Order #9 moved \$807,000 from allocated contingency and returned \$247,000 back into contingency for a net change of \$553,000 and a new GMP of roughly \$345 million.

Mr. Mosher reported that Change Order #10 will address additional general conditions and will be about \$436,000.

Mr. Mosher referred the Board to the “Variance” column on the Project Budget spreadsheet that shows \$1,750 item for the Peer Review group stipend. Mr. Mosher reported this variance is from unallocated contingency, versus an allocated contingency.

Mr. Mosher reported that the Change Order Cost Tracking handout is strictly for construction and asked for questions either now or by email.

Marla Lien inquired about the temporary relocation of the chiller at the Historic Building and stated that there must be a permanent location for the chiller. She stated that a permanent location for the chiller must be identified or RTD will not be able to close on the North Wing parcel.

Bill Mosher responded that he has read the emails regarding the chiller and reported that his recollection is that there is \$3 million budgeted for initial work at the Historic Station including the chiller. He reported that he understands that a permanent location for the chiller must be established and that the issue is being worked on.

Marla Lien suggested that Mr. Mosher’s response may be enough of a commitment from DUSPA to serve the purpose of RTD and inquired as to whether a vote from the DUSPA Board is appropriate to require a commitment to establishing a permanent location for the chiller.

Bill Mosher responded that his intended approach was to put \$3 million in the budget for DUS and that the chiller relocation would be included in this expenditure. If the actual required amount is different, then DUSPA Board approval would be sought.

Don Hunt inquired as to whether the DUSPA Board has delegated its authority to Bill Mosher or RTD or the City to approve change orders.

Marla Lien replied no, the DUSPA Board has not delegated its authority.

Mike Schneider stated that his recollection of the approved budgets from earlier Board Meetings is that there were categories of anticipated change orders that were approved by Board as a part of the budget approval.

Bill Mosher stated that the approved budgets include “Allocated Contingency” and “Unallocated Contingency” wherein the Allocated Contingency is for change orders for work that is necessary, but that the final budgets for the work had not been established. He stated that when a budget for an item in the Allocated Contingency category is established and the budget is within tolerance of the Allocated Contingency item, then the change order is deemed to be already approved by

the DUSPA Board. Mr. Mosher reported that RTD and City approval is also required for all change orders.

Mr. Mosher reported that the expenditure of Unallocated Contingency must be approved by the Board.

Claude Pumila stated that that this discussion is the subject of his earlier inquiry and answers his question as to the handling of change orders.

Bill Mosher asked the Board if there were any questions regarding the short form budget.

VII. ACTION ITEMS

- A) Vote to Elect Mark Smith as Secretary of the Board.

Elbra Wedgeworth stated that the Board needs to elect a new Secretary and asked Mark Smith if he would accept a nomination for the position. Jerry Glick nominated Mark Smith to serve as Secretary of the Board of Directors of DUSPA. Don Hunt seconded the motion. The Board vote to elect Mark Smith as Secretary of the DUSPA Board was unanimous.

- B) Approval of Second Amendment to the DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement

Elbra Wedgeworth asked for a motion to approve the *Second Amendment to the DUSPA/RTD Initial Funding, Reimbursement and Project Coordination Agreement* (Compliance and other Responsibilities between RTD and DUSPA) in substantially final form. Jerry Glick moved to approve this agreement. Don Hunt seconded the motion. The motion passed unanimously.

- C) Approval of Asset Ownership Agreement

Elbra Wedgeworth requested a motion to approve the *Asset Ownership Agreement among the City, RTD and DUSPA* in substantially final form. Jerry Glick moved to approve this agreement in substantially final form. Mark Smith seconded the motion. The motion carried unanimously.

VIII. EXECUTIVE SESSION

Elbra Wedgeworth requested a motion to enter an Executive Session in order to discuss certain matters as permitted under the Colorado Open Meetings Law (C.R.S. § 24-6-402 *et. seq.*) related to financial and contract negotiations, financial management negotiations and litigation.

Jerry Glick made the motion to enter an Executive Session. Jennifer Schaufele seconded the motion. The motion carried unanimously.

The Board entered into executive session at 2:12 p.m.

Jerry Glick moved to exit Executive Session at 2:26 pm. Jennifer Schaufele seconded the motion. The motion carried unanimously.

IX. ACTION ITEMS RESULTING FROM EXECUTIVE SESSION

None.

X. CARRYOVER AND FUTURE AGENDA ITEMS

Bill Mosher will discuss the use of approximately \$100,000 of unallocated contingency and request Board approval for the use of these funds.

XI. ADJOURNMENT

There being no further business, the meeting was adjourned at 2:26 p.m.

Approved by Vote of the Board and
accepted by:

Elbra Wedgeworth, President