

**DENVER UNION STATION PROJECT AUTHORITY**

**MEETING OF THE BOARD OF DIRECTORS**

*June 11, 2009*

**MINUTES**

**BOARD MEMBERS PRESENT**

**BOARD MEMBERS ABSENT**

Elbra Wedgeworth

Mario [Carrera](#)

Judy Montero

Peggy Catlin

Tom Gougeon

Terry Howerter

Jennifer Schaufele

Mike West

Marla Lien

Claude Pumilia

Jerry Glick

Robin Kneich

Don Hunt

**I. CALL TO ORDER**

The Meeting of the Board of Directors of DUSPA was called to order at 1:30 p.m. by Elbra Wedgeworth, DUSPA Board President. Ms. Wedgeworth noted that there was no Board Meeting on May 28, 2009.

**II. WELCOME AND INTRODUCTION OF GUESTS**

Elbra Wedgeworth welcomed the Board members and guests to the meeting with specific welcome and congratulations to Robin Kneich.

### **III. PUBLIC COMMENT**

There was no public comment.

### **IV. ROLL CALL**

At the request of Elbra Wedgeworth, Dawn Bookhardt called roll. Please see above.

### **V. APPROVAL OF MEETING MINUTES**

Elbra Wedgeworth called for comments or amendments to the May 14, 2009 meeting minutes. There were no comments. Jerry Glick moved to approve the May 14, 2009 meeting minutes. Robin Kneich seconded the motion. The motion carried unanimously.

## **VI. BOARD BUSINESS**

### **A. Plan of Finance/Schedule and Update**

Chad Fuller handed out a draft matrix showing the progress, next steps, status and due dates of funding sources for DUSPA for update and presentation purposes.

Mr. Fuller stated that he is following the lead of Bill Mosher and Mike Sullivan and will provide a similar format for his and Alex Brown's monthly updates for critical issues. He stated that the biggest next step is getting RRIF approval of the loan application.

Mr. Fuller stated that another step is for him and Mr. Brown to allocate the various pots of money (shown on the left side of the matrix) to various aspects of the project to provide a timing analysis and balance funds that DUSPA receives with the schedules of expenditures. He

suggested that allocation of grant funds to line items in the project budget is critical.

Mr. Fuller also suggested that the Department of Housing and Urban Development (HUD) and the Colorado Housing Finance Authority (CHFA) may have funds available. He stated that HUD has funds that may be used for environmental remediation issues and that both agencies have funds that could be available for the historic building. Mr. Fuller stated that he will provide a cover letter to the applications for signature by Board President Wedgeworth.

Mr. Fuller stated that there are other possible sources that he is researching, including a BEDI grant (Brownfields Economic Development Initiative) and a new market tax credit. Mr. Fuller suggested that the new market tax credit is complicated, but that it may be possible.

The next grant program that Mr. Fuller discussed is the TIGER Grant through TIFIA. The Transportation Investment Generating Economic Recovery discretionary grants must be submitted by September 15, 2009 and are for projects that have a significant impact on the Nation, a metropolitan area, or a region.

Mr. Fuller stated that the next steps for TIFIA are to revise the letter of interest by June 12 and then file two separate applications, one for TIFIA and one for TIGER.

Mr. Fuller reported that he is waiting for RRIF to hire its financial consultant, his hope being that this would occur by the end of May. However, a few extra weeks are required in order for RRIF to follow through with the engagement of its F.A. He stated that DUSPA will need to wire the funds to RRIF for payment of its F.A. upon the selection of the F.A. Mr. Fuller stated that it appears realistic that approval of the RRIF loan could occur by the end of September.

Robin Kneich asked Mr. Fuller for details about the TIGER Grant.

Mr. Fuller responded that it is a \$1.5 billion grant under the Economic Recovery Act and that up to \$200 million of TIGER may go to TIFIA, which can then be loaned at a 10 to 1 ratio, resulting in the potential that up to \$2 billion in loans through TIFIA would become available.

B. Owner's Representative Report



i) DUSPA Organizational Budget

Bill Mosher referred to the proposed organizational budget in the Board packet and stated that the costs and expenditures shown are anticipated because we don't know when funding will be available to DUSPA. He stated that he has been working with Chad Fuller, Diane Barrett and Claude Pumilia and it appears that the financing fees will be approximately \$756,000.

Mr. Mosher suggested that the fees for Legal, the Owner's Representative and for the developer are based upon the funds currently held by DUSPA and that no additional fees will be paid until funding occurs. He stated that an additional line item is related to the historical access grant and that Ellen Ittleson is here to answer questions about the access grant. He suggested that the fee for applying for the grant is expected to be \$30,000 to \$33,000.

Mr. Mosher concluded his summary of the proposed organizational budget by stating that a \$461,000 contingency is currently provided and that the biggest concern is ensuring we have enough to cover the application fees for RRIF and TIFIA.

Mr. Mosher recommended to the Board that it approve the organizational budget and asked for questions.

Robin Kneich stated that there is no line item for public process and asked whether that budget is under the Owner's Representative.

Bill Mosher responded that it is not in the Owner's Representative scope and that he needs to prepare an RFP for retaining a consultant to assist with the public process. He also stated that RTD has some money budgeted for public process, and that DUSPA should be able to use contingency moneys for a consultant to assist us with this.

Judy Montero stated that she does not recall making a decision to issue an RFP for the public process, but that she is aware of firms that have reached out to provide services to DUSPA. She stated that she has an issue with the RFP decision.

Elbra Wedgeworth stated that DUSPA agreed to a public process and that Mario Carrera volunteered to chair a subcommittee. She stated that the recommendation is to hire a consultant to run this program.

Don Hunt commented on the financial statement and asked whether \$3 million is all of the DUSPA funds or whether the \$40 million from RTD should be included.

Bill Mosher responded that the \$3 million is all that DUSPA has for its interim organizational budget.

Don Hunt stated that he does not see obligations to vendors on the balance sheet.

Marla Lien stated that DUSPA has a project budget, but that an organizational budget is necessary to develop the overall umbrella budget for DUSPA's activities.

Mr. Mosher agreed with Ms. Lien.

Jerry Glick stated that the Board is not being asked to approve payments at this point, we are only being asked to approve the budget.

Mr. Mosher agreed with Mr. Glick and stated that this organizational budget is necessary to tie back into the overall project budget line items.

Mario Carrera stated that he has not reviewed the Owner's Representative Agreement.

Bill Mosher responded that a draft of the agreement is in the Board packet as well as the USNC agreement. He further stated that if, for some reason, the agreements don't match the line items in the organization budget, the Board will be asked to revisit the line items.

Terry Howerter asked if the Board can approve the budget with a vote or whether a written resolution is necessary.

Cole Finnegan responded that a motion and vote is adequate.

Mario Carrera stated that if there are agreements that are not yet in place, he will have trouble approving the budget.

Jerry Glick stated that this is a chicken and egg problem. It is difficult to finalize agreements when the payment terms are not approved and that approving the budget first seems to make more sense.

Bill Mosher responded that DUSPA needs to spend more than \$3 million, but this amount is all we have. He stated that this interim budget is necessary to guide him on how the available funds will be allocated.

Peggy Catlin stated that this is how CDOT operates, CDOT starts with the best guess and estimates, then updates its budgets monthly. She stated that she is comfortable with the process proposed today.

Elbra Wedgeworth stated that today's organizational budget is a benchmark and that actual costs and expenses will come later.

Judy Montero stated that she is still stuck on the public outreach program because there is no line item for it in this budget and we have had no formal discussion of the process.

Elbra Wedgeworth responded that Mr. Mosher needs to perform due diligence on the public process before he can provide a formal recommendation to the Board.

Dawn Bookhardt stated that this discussion is a good topic for the best practices and the decision making process of this Board that was discussed in the last meeting.

Bill Mosher stated that he would be pleased to put a \$50,000 line item for public outreach in the organizational budget.

Mario Carrera stated that the Board had discussed public outreach and public relations in conjunction with the discussion of the excavation of the bus box.

Elbra Wedgeworth stated that the Board has been focused on making sure that we have a project before we begin spending money on public outreach.

Claude Pumilia stated that it is important to focus on the financing aspects of this Project, and that we could easily take money from all of the line items in the budget and put it under financing. Mr. Pumilia asked whether the Board has to approve the organizational budget or whether we just approve the budget process.

Dawn Bookhardt stated that the format for the organizational budget is called flex budgeting. Ms. Bookhardt addressed Judy Montero's comment about the public process and suggested that the Councilwoman is requesting a placeholder in the budget for the public process.

Robin Kneich stated that she supports a line item for public process. She also inquired about the suggestion of Mr. Mosher that if DUSPA has \$5 million in liabilities, but only \$3 million in assets, it is appropriate for the Board to know what liabilities are not covered by the budget and, if payments are being deferred, that the amount of the deferred payment liabilities should be identified.

Bill Mosher responded that DUSPA is not treating these potential obligations as liabilities because they will not become due unless and until DUSPA receives financing. He stated that this is the reason the budget does not show the potential obligations. He concluded that the budget before the Board is a starting point for him to negotiate with the developer and the

attorneys as well as determine a payment structure for the Owner's Representative fees.

Elbra Wedgeworth requested a motion to approve the organizational budget. Marla Lien moved to approve the organizational budget. Jerry Glick seconded the motion. Tom Gougeon abstained from voting on the motion. Nine voting Board Members voted in favor of the motion. One voting Board Member (Mario Carrera) opposed the motion. Tom Gougeon abstained. The motion carried nine to one (9-1) with one abstention.

Chad Fuller suggested that this motion brings up the issue of the process of paying bills.

Marla Lien requested a motion to authorize and approve payments to: (1) TIFIA; (2) RRIF; (3) the RRIF financial advisor and; (4) the rating agency for their application costs and fees (the "financing fees") not to exceed the amounts shown in the budget (\$756,000). Peggy Catlin seconded the motion with a comment that the Board should include an additional ten percent, to ensure that a special meeting will not be necessary if the actual fees exceed the estimate in the budget.

Prior to the vote, Mr. Mosher suggested that the motion be to authorize \$756,000 for financing.



Marla Lien responded that other financing costs that may be incurred are not a part of her motion. She stated that her motion limits the authorization to pay only the four listed entities, not to exceed the amount of \$756,000, with no contingency.

Chad Fuller stated that all of these expenditures will not happen immediately and that if one of the agency fees exceeds the estimate, the approval of the \$756,000 should still get him through to the next meeting wherein he can request another vote to adjust the amount.

Peggy Catlin seconded Ms. Lien's motion with no comment. The vote carried unanimously.

Bill Mosher inquired as to whether these votes authorize Trammell Crow to pay to Alex Brown as long as the invoice is within the budget line item for Mr. Brown.

Don Hunt responded that, since the budget has been approved, Trammell Crow is authorized to pay Alex Brown.

ii) DUSPA Financial Statement as of 04/30/09

Bill Mosher introduced Rob Andrews who prepared the financial statement of DUSPA as of April 30, 2009. Mr. Mosher stated that, as of this statement, DUSPA had not received funds from the City.

Claude Pumilia stated that the funds should now be in the DUSPA account.

Mr. Mosher described the form and format of the statement and stated that, if acceptable, this is the type of statement that will be presented to the Board monthly.

Jerry Glick commented that it would be acceptable to round off to the nearest dollar for presentation purposes.

Mr. Mosher responded that Trammell Crow will track funds to the nearest cent, but that he will round off the numbers for presentation to the Board.

Claude Pumilia stated that, as of May 14, 2009, the City funds were deposited into the DUSPA account and there was a balance of \$1.5 million in the account.

Elbra Wedgeworth stated that it is on the record that the funds are in the account.

iii) DUSPA Critical Issues List

Mike Sullivan stated that he will not discuss the entire list and he will only highlight a few of the items for this meeting as follows:

#3 He stated that the mechanics of the funding process are moving along well and that he had a productive meeting with Marla Lien and RTD regarding the \$40 million provided to fund the limited notice to proceed.

#6 Sales tax exemption certificates. He stated that the Project plan anticipated that we would be exempt from State and RTD sales taxes, but not from the City sales taxes. He indicated that the State is currently not cooperating because we don't have an exemption number.

Mr. Mosher stated that Kiewit needs to get the exemption number.

#11 Partnering session. Mr. Sullivan stated that this is a construction related session and that he anticipates representatives from the City, Trammell Crow, Kiewit and the design team will participate and that the session is tentatively scheduled for September or October. He further stated that partnering sessions are a formal method of ensuring that everyone is committed to the project and that these types of session have become common.

Elbra Wedgeworth asked Mr. Sullivan to provide information regarding the session to the Board so that any member who wants to participate can attend.

#16 Amtrak issues. Mr. Sullivan stated that he met with Amtrak last week and that the meeting was productive. He stated that Amtrak is willing to accept slightly less than the Memorandum of Understanding states. He further suggested that Amtrak will be out here again on June 30 and that the temporary platform costs should become quantifiable at that time.

Mr. Sullivan stated that he is making good progress on all items listed on the critical issues list except for #18 where he has been unable to get a legal description for the portion of property necessary for 18<sup>th</sup> Street.

Marla Lien stated that it is her understanding that the legal description needs to come from the design team and that there will be conditions, covenants and restrictions (CC&R's) for all property that needs to be acquired.

Jerry Nery stated that RTD is waiting for AECOM to provide the legal descriptions for the property.

Jerry Glick asked Bill Mosher and Mike Sullivan to be sure to provide updates for the property acquisition at every meeting.

iv) Peer Design Review Process

Bill Mosher conducted a slide presentation regarding the peer review process. He stated that, while the peer review will be a public process, it will not be a substitute for the public involvement discussed earlier in this meeting.

Mr. Mosher's slide presentation and discussion is outlined as follows:

- Roll of the peer review is advisory to DUSPA as experts in the areas of practice.
  
- The participants include facilitators and consultants as well as a panel that will have an architect, a structural engineer and two landscape architects. The proposed participants are Dick Farley, Charles Keyes and Ann Mullins. The fourth panel position has no proposed professional at this time.

Peggy Catlin inquired as to whether someone with historic preservation experience has been

considered.

Ellen Ittleson responded that Ann Mullins is highly regarded for her historic preservation practice.

Judy Montero stated that there does not appear to be any cultural diversity on the list of panelists and asked Bill Mosher to dig deeper before the final panelist selections are made.

Bill Mosher thanked Councilwoman Montero for her suggestion. He stated that his team has been struggling every day to move the project and the design forward and that his goal is to have the peer review process guide the design team. He anticipates that the panel could meet weekly or monthly and a stipend of \$250 paid to each member per meeting was suggested. He stated that the stipend is not much and would not cover the fees for the panelists, but it is a method for DUSPA to show respect and appreciation.

Mr. Mosher then returned to the slide presentation on the peer review process as follows:

- Milestones for the panelists review and comments are the 30%, 60% and 90% designs.

- Public reviews, DUSPA review and public workshops will occur, but time frames for these items are still open.

Ellen Ittleson stated that the peer review process is advisory only, the panel does not make decisions nor does it replace the City or any of the other stakeholders. She also stated that the schedule for the west side of the project is to go before the planning board in August and therefore portions of this process are compressed.

Marla Lien asked who is it that will be the owner on the submittal of permit applications to the City.

Ellen Ittleson stated that the planning board received Urban Design package #1 submittal before DUSPA existed.

Marla Lien stated that RTD must be a participant on all submittals where RTD has land ownership.



Bill Mosher stated that RTD needs to approve the applications prior to submission.

Ms. Lien stated that RTD must be the submitting party for property that it owns.

Bill Mosher stated the property ownership will vary, for example the City owns the 17<sup>th</sup> Street alignment where the bus box will be constructed. He stated that his goal in today's meeting is that, since the design is moving along, the peer review process needs to get organized and be a part of the submittals to the planning board.

Claude Pumilia asked why DUSPA should pay the panelists.

Bill Mosher responded that the peer review panels are done both with and without stipends, but that the participants spend considerable time applying their professional judgments, etc. and that the stipend is a way for DUSPA to show its appreciation to the panelists.

Elbra Wedgeworth asked Ellen Ittleson for the biographies of the proposed panelists that were listed in the presentation.

Jerry Glick stated that the stipend appears small compared to the support and expertise that DUSPA receives.

Bill Mosher returned to the slide presentation and displayed the first slide that was missed. The first slide was as follows:

- Purpose –

1. to provide design expertise and review related to transit architecture, including the train hall, platform and canopies.
2. to provide expertise related to the public spaces.

Mr. Mosher then asked the Board for guidance as to whether DUSPA should offer stipends to the panelists.

Don Hunt responded that he supports providing a stipend to the panelists.

Elbra Wedgeworth asked Ellen Ittleson to provide information on the historic grant application at the next meeting.

Don Hunt made a motion to approve the peer design review process. Jerry Glick seconded the motion. The vote carried unanimously.

Elbra Wedgeworth asked Mr. Mosher to provide the Public Process RFP for the next meeting.

#### C. Transaction Report

i) CORail Complaint

Mr. Finegan generally discussed the complaint brought by Colorado Passenger Rail Association. He stated that one of the key elements of the complaint is that the standard of review for an environmental impact statement is that it must be arbitrary and capricious to be overturned by the court. He stated that further discussion regarding the litigation would occur during executive session.

ii) Draft CDOT agreement

Dawn Bookhardt stated that the CDOT Coordination Agreement has been reviewed by Harry Morrow to ensure that the provisions coordinate with CDOT's ability to release PNRS and SB-1 funds to DUSPA. She stated that she is awaiting additional comments from CDOT, but it appears the agreement may be finalized shortly.

Peggy Catlin suggested that the agreement could be finalized over the next three weeks.

iii) Board Decision-Making Processes

Elbra Wedgeworth suggested that the Board revisit the decision making process with respect to the agreements discussed today. Ms. Wedgeworth asked for suggestions and input on whether the Board Members prefer presentation and discussion of the agreements followed by a decision two weeks later.

Don Hunt stated that he feels one process for agreements or major decisions is to have those decisions submitted to Board Members via committee. If the process is not through a committee, Mr. Hunt suggested that it be presented at one meeting to be followed by a decision at the next meeting. Mr. Hunt also requested a one-to-two page summary of any decision or agreement that the Board is being asked to vote or decide upon.

Judy Montero stated that, last month, the Board discussed best practices and that she would like to pursue the facilitation of establishing best practices.

Elbra Wedgeworth suggested that this discussion is a part of coming to agreement on the best practices.

Dawn Bookhardt asked Claude Pumilia to provide any references that he may have for an advisor on best practices for the Board to discuss. She further suggested that this is still a new Board that has accomplished a great deal of work and that expert guidance is merited.

Elbra Wedgeworth suggested that Peggy Catlin, Jennifer Schaufele and Marla Lien also have board experience and may have references for expert advice.

Jennifer Schaufele stated that Don Hunt's suggestions are good and that she prefers getting copies and presentations of agreements at one meeting and then deciding at the next meeting. She stated that she would prefer the two-meeting process to committees.

Tom Gougeon suggested that the Board is still in catch-up mode and that the two-meeting process would result in a cycle of at least one month for decisions. He stated that this expanded time frame may prevent the Board from catching up on the project.

Marla Lien suggested that the Board consider a "standard" process that would be the two-meeting decision process and that this will work for all of the agreements we have discussed today. The Board could also adopt an "emergency" process to ensure that we are keeping up with the demands of the project.

Don Hunt stated that he fully supports Ms. Lien's suggestions.

Elbra Wedgeworth stated that the Board, the Owner's Representative, the Partnering Agencies and the Developer have worked very hard to get everyone working together.

Don Hunt stated that he has expressed his position and that he believes we can do these things better.

Dawn Bookhardt suggested that the Board's bylaws also allow for telephone conference meetings provided that all Board Members can hear everyone on the call.

Elbra Wedgeworth asked Marla Lien, Jennifer Schaufele and Peggy Catlin to summarize the procedures of their respective boards and give the summaries to Dawn Bookhardt.

- v) Owner's Representative Agreement (to be discussed in executive session)

## **VII. EXECUTIVE SESSION**

Elbra Wedgeworth requested a motion for the Board to go into executive session as follows:  
The Board will enter into an executive session in order to discuss certain matters as permitted under the Colorado Open Meetings Law, C.R.S. §24-6-401 et seq. related to financial negotiations and financial management.

Jerry Glick moved to go into executive session. Don Hunt seconded the motion. The vote was unanimous. The Board entered executive session at 3:06 p.m.



## **VIII. ACTION ITEMS RESULTING FROM EXECUTIVE SESSION**

None.

## **IX. CARRYOVER AND FUTURE AGENDA ITEMS**

- CDOT Coordination Agreement
  
- Ellen Ittleson will provide information regarding the proposed Peer Design Review panelists and the Matching Historic Assessment Grant
  
- Best Practices Expert and discussion regarding committees.

Please look forward to an update/discussion of the RRIF and TIFIA application process.

Mr. Mosher will have an update regarding additional construction matters and critical issues.

Dawn Bookhardt and Cole Finnegan will report on transaction movement.

**X. ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:55 p.m.

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[\[1\]](#) Mr. Carrera arrived at 1:38 p.m., after the May 14, 2009 Minutes were approved.