

**DENVER UNION STATION PROJECT AUTHORITY**

**MEETING OF THE BOARD OF DIRECTORS**

*July 23, 2009*

**MINUTES**

**BOARD MEMBERS PRESENT**

**BOARD MEMBERS ABSENT**

Claude Pumilia

Elbra Wedgeworth

Mario Carrera

Michael West

Peggy Catlin

Tom Gougeon

Terry Howerter

Jennifer Schaufele

Judy Montero

Marla Lien

Jerry Glick

Don Hunt

Robin Kneich

**I. CALL TO ORDER**

The Meeting of the Board of Directors of DUSPA was called to order at 1:31 p.m. by Jerry Glick, DUSPA Board Vice President.

**II. WELCOME AND INTRODUCTION OF GUESTS**

Jerry Glick welcomed the Board Members and Guests to the meeting.

### **III. PUBLIC COMMENT**

There was no public comment.

### **IV. ROLL CALL**

At the request of Jerry Glick, Dawn Bookhardt called roll. Please see above.

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

Jerry Glick called for comments or amendments to the July 9, 2009 meeting minutes. There were no comments. Mario Carrera moved to approve the July 9, 2009 meeting minutes. Robin Kneich seconded the motion. The motion carried unanimously. [\[1\]](#)

## **VI. DISCUSSION ITEMS**

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

Chad Fuller reported that he has participated in three conference calls with RRIF. He stated that the first call was an overview of the application and plan of finance; that the second call was RRIF's detailed inquiry regarding the flow of funds and capital structure which gave RRIF good insight into the project's revenue sources and; that the third call included CB Richard Ellis which informed RRIF of the tax increment suggestions and assumptions contained in the revenue model. Mr. Fuller reported that Scully was very pleased with the interaction from the conference calls and with the CBRE feasibility study.

Mr. Fuller also reported that he has been obtaining insight in the TIGER/TIFIA process and that the information he has obtained from the FTA has been very positive and insightful.

Mr. Fuller handed out a summary of the first DUSPA Finance Subcommittee meeting yesterday (see attachments). The agenda and discussion of the meeting included the following:

- Core Attendees
- Frequency of Meetings
- TIGER and TIFIA Strategy
- Next Steps

Jerry Glick stated that the Finance Subcommittee will set a date to begin looking at additional options in the event we don't get a response regarding the TIFIA "self payment" of the credit subsidy plan.

Chad Fuller stated that, although the Subcommittee is looking at alternative funding sources, DUSPA is not considering abandonment of the RRIF / TIFIA loans plan, he is just responding to the current lack of information from TIFIA.

B. Owner's Representative Agreement Update

Jerry Glick stated that work is continuing on this agreement and there will be discussion in executive session and another update at the next meeting.

C. USNC Agreement Update

Cole Finegan stated that a multi-layered black line version of the USNC agreement had been distributed to the Board late last week and that he is handing out a clean version for today.

Mr. Finegan stated that the talking points in the current version are Articles 3.4, 8 and 11. He stated that an additional component to the negotiations includes issues that have been raised by RTD.

Mr. Finegan identified Article 8 and stated that the triggers for payment provision have been discussed in depth and that the current version is simplified from the version distributed last



Friday. He stated that Bill Mosher suggested the payment to USNC be tied to a notice to proceed rather than a particular funding source, which simplifies the language in the Agreement.

Marla Lien clarified that the previously executed LNTP does not represent accrued obligations of DUSPA to the developer.

Mr. Finegan suggested that the intent today is for the Board to vote to delegate authority to a limited number of people, including Marla Lien, to finalize the negotiation of this agreement.

Diane Barrett stated that the current thought process also allows for the possibility of a second LNTP that will not create payment obligations to the developer.

Cole Finegan agreed with Ms. Barrett and stated that 50 LNTP's would be a devious way to deal with the developer.

Peggy Catlin asked, with respect to Paragraph 8.2, what the effective date is.

Bill Mosher responded that it will be the date of execution of the agreement.

Peggy Catlin then asked where the \$700,000 comes from.

Bill Mosher responded that the money is part of the \$3,000,000 in loans from the City and RTD and the funds are both budgeted and in the DUSPA bank account.

Jerry Glick inquired as to what happens if we issue a notice to proceed to Kiewit, and then stop or suspend work.

Bill Mosher stated that there is no specific provision addressing that situation, however a suspension of work after a full notice to proceed would be a huge event requiring renegotiation of several agreements.

Tom Gougeon stated that, other than the partial payment contemplated for 2009, there are two events that must occur for DUSPA to have to pay the developer. He stated that the first condition is a notice to proceed and the second condition is DUSPA having possession of available and eligible funds. He suggested that if construction is stopped because of a lack of available and eligible funds, DUSPA has no obligation to pay the Developer.

Bill Mosher agreed with Mr. Gougeon and further stated that if a work stoppage occurs due to a dispute with Kiewit, then DUSPA still has an obligation to pay the developer.

Jerry Glick stated that there has been considerable discussion of the meaning of financing.

Cole Finegan responded that, since it could be RRIF plus TIFIA or some other model, the language requiring a notice to proceed to Kiewit removes obligations to pay the developer if portions of the financing are secured, but the project is not funded to an extent where a notice to proceed is issued. He further suggested that DUSPA will not issue a notice to proceed until it either has full funding or is confident that the funding will occur.

Jerry Glick suggested that because a vote is sought today, it is appropriate to highlight the fact that the first \$700,000 payment to the developer was specified as one of the purposes of the loans from the City and RTD and that the Board should be comfortable with this payment.

Robin Kneich asked to see the budget again.

Bill Mosher did not have a budget handout available, but he read from his copy and identified the line item that included payment to the developer.

Robin Kneich confirmed that the intended \$700,000 obligation from the \$3,000,000 in loan funds has not changed.

Jennifer Schaufele suggested that additional flexibility may be appropriate because of issues like the tail tracks that are not resolved.

Cole Finegan agreed that flexibility is appropriate, but because the original LOI and this

agreement have a fixed amount for the public space budget, changes to the triangle parcel would not change the overall public space obligations.

Marla Lien stated that she considers the triangle parcel an open item and that if the public space obligation at that parcel goes away, it is her view that the public space budget should be adjusted.

Tom Gougeon suggested a clarification to the position of the developer regarding the triangle parcel. He stated that the public space is adjacent to the planned 2011 purchase of the triangle parcel and that the only way to use the parcel is to put parking under the area of the tail tracks. He suggested that the early thoughts on the public space over the intended parking structure is not elaborate.

Mr. Gougeon stated that the intent under the agreement is that we created a 2011 notice date for the start of construction. If the developer decides to not build on the parcel at that time and does not cause the parking structure to fit within the critical path of the project with Kiewit, the public space becomes the responsibility of the developer and the public space funds from DUSPA planned for this space would go back into the pot of money dedicated for the remainder of the public space at the project. He concluded that the worst case scenario is that the developer adds to the overall public space budget for the project if it does not follow the schedule.

Bill Mosher stated that Mr. Gougeon's description was correct and that the \$28 million dedicated by DUSPA to public spaces arises from the commitment in the LOI.

Tom Gougeon further explained that the \$28 million is about 5 percent of the total project cost and that the developer negotiated for it in a simple manner with the EOC to ensure that the public space would meet a minimum expectation for the environment that USNC feels it needs for a successful development. He further stated that \$30 per square foot is the average amount budgeted for the public spaces and that this is considered mid-level quality for public spaces.

Jennifer Schaufele stated that she is not opposed to the budget structure for open space but that she can not visualize how it will be managed or be confident that it will not result in something untenable.

Robin Kneich requested additional discussion of the \$3 million development incentive.

Cole Finegan stated that the incentive is in paragraph 5.2.

Tom Gougeon stated that the early development incentive arose when USNC and the EOC revised the land purchase structure such that the developer would be motivated to provide early deposits on the land. He suggested that in return for USNC putting cash into the deal early, USNC negotiated a method to get dollars back from the project if the criteria were met.

Mr. Gougeon added that the reality today is that the developer will not meet the criteria for the early development incentive, but the parties decided to leave the provision in the agreement to reflect the LOI and we simplified it so that other issues tied to the early development incentive would not have to be reworded.

Diane Barrett confirmed that there is a low likelihood of DUSPA's obligation to pay.

Mark Falcone expressed his hope that the DUSPA board is still rooting for the developer to meet the criteria for the early development incentive payment.

Mario Carrera inquired as to the costs of formation of the metro districts, that the language does not appear to cap the costs and also says that DUSPA will pay \$400,000.

Tom Gougeon stated that the agreement is for the costs to be capped at \$400,000.

Bill Mosher stated that the clean version of the agreement states that DUSPA will pay up to \$400,000 and that he would be happy to delete the remainder of the sentence regarding additional costs over \$400,000.

Mario Carrera expressed that deletion of language regarding additional costs is his preference.

Jerry Glick requested a resolution for authorizing a group to finalize negotiation of the Master Development Agreement.

Don Hunt stated that it appears that the Board does not have a substantially final form of the agreement and, pursuant to his prior requests, that he would prefer an additional meeting before there is a vote on this agreement.



Jerry Glick stated that the issue is that the longer we take on these agreements, the more comments we receive from the Board and from stakeholders and that it seems to be a never ending process. He suggested that if the Board does not drive this process to a conclusion, we will be in the same position in two weeks as we are in today.

Bill Mosher stated that he understands the frustration of not having a substantially final document, however, six months ago the Board received a presentation and term sheet regarding this agreement and that two weeks ago the components of the agreement were presented to the Board with the same terms as presented six months ago. He stated that as of two days ago, he has received a whole new set of comments to the agreement and that the process continues to get extended.

Don Hunt acknowledged the process and stated that although the Board has seen the key terms, it still has not seen the actual agreement in final form. Mr. Hunt suggested that he will not vote to approve this agreement at this time.

Mario Carrera asked for the issues to be identified if we wait for two more weeks.

Jerry Glick stated that this is what the Board did two weeks ago.

Mario Carrera and Robin Kneich stated that two weeks ago they did not have the document.

Jerry Glick stated that the negotiation process has been very expensive because of all of the time spent by everyone's attorneys, that the process has taken too long and that he believes the process is in conflict with the spirit of the LOI wherein the developer was supposed to continue to receive its monthly payments.

Tom Gougeon suggested that the "two more weeks" has been going on for a long time. He stated that, as developers, we inquired as to what we should do to help the process. In February the developers created the scope of services, which the Board saw in March. He suggested that USNC reasonably believed that this agreement would be finalized in April. Mr. Gougeon stated that it is the Board's decision, but the process has been very expensive and the agreement has already gone through at least 30 iterations.

Claude Pumilia suggested that the volunteer board members should be completely comfortable with the process on these agreements and that the members who want to be involved should not be pressured merely to close the deal.

Marla Lien agreed with Mr. Pumilia.

Judy Montero stated that the requests of Don Hunt, Mario Carrera and Robin Kneich are reasonable and that the Board should honor the requests.

Jerry Glick informed the board that it appeared the consensus is to wait two more weeks and continue to wordsmith the Master Development Agreement.

Cole Finegan requested that tomorrow or Monday July 27, 2009 be scheduled to resolve the final issues in the agreement. He further suggested that he needs direction and commitment as to when he will receive comments from the Board Members.

Marla Lien agreed that a date certain for comments from Board Members is critical.

Don Hunt stated that he will turn in his comments to the agreement within two days of his receipt of the revised draft of the agreement.

Cole Finegan asked for comments to be forwarded to him by July 31, 2009.

Mark Falcone stated that this is a great project with numerous creative ideas. He suggested that, from the developer's perspective, the challenge has been the lack of capacity for the other side of the table to make a commitment and that the Board will need to learn to be committed to the project and have some level of trust because, without the Board's commitment to the project, the developer and everyone else will lose the ability to keep it moving forward. He emphasized that this is a critical moment for the project.

Robin Kneich replied that she does not want the developer or other Board members to think it is just Mario and Don that are requesting more time. She stated that she supports their positions and their desire to participate in the process as volunteer Board members. She suggested that, since the Board is settling in on its governance structure, it is gaining momentum in its decision making processes. She stated that, however, when trust is discussed, she gets concerned because the Board has a fiduciary duty to view the agreements and transactions with skepticism and when someone says "trust us", it is her view that trust is not the job of the Board. She suggested that the transparent process is the goal of the Board and that, because many of the Board members are seeing this agreement in its entirety for the first time, thorough review and discussion of the agreement is an appropriate part of the process.

Claude Pumilia suggested that the Board is at a turning point regarding its governing style. He stated that he agrees with both Robin Kneich and Mark Falcone regarding the priorities of the

project, however the Board is doing what it is supposed to do for the decision process.

D. Owner's Representative Report

Bill Mosher handed out two sketches for the east end of the project showing the ventilation stack and canopy configuration at the light rail station. Mr. Mosher stated that the designers on this project are moving forward and that this type of decision is what this Board will be judged on rather than agreements that DUSPA enters.

Mr. Mosher informed the Board that the peer design review team has already helped with the design process and that the team has focused first, on transit architecture and second, on the horizontal landscape of the project.

Mr. Mosher described the two sketches and the key components of the project at the west end of the bus box, which include the light rail station, the canopies, the shuttle turn around and two ramps at the LRT station for wheeled access to the trains. He described the concept of the original layout as a mish mash of canopies that does not coordinate the landscape with the key elements. He suggested that the peer review and public meeting process came up with the

“boomerang” canopy that creates a much larger covered public space along with the following:

- The bus box access gets smaller
- The ventilation stacks become the centerpiece of the space
- The multiple canopies merge into the boomerang and it becomes a 30,000 square foot covered public space

Mr. Mosher stated that the new design was very well received at the public meeting and that several follow up emails contained positive feedback. He suggested that the Board is not being asked to make promises regarding the revised design or for a vote today. He said the design team has informed him that the new design would be a scope change, but that the preliminary view indicates that there will be an overall savings for the project if the change is adopted.

Mr. Mosher requested feedback from the Board to get a general idea of which direction to give to the design team.

Peggy Catlin stated that she thought a design estimate would be obtained.

Mike Sullivan responded that he has asked for an estimate for the team to get to the 30 percent design stage, including an estimate of the impact on the overall cost of construction.

Bill Mosher suggested that the peer review process followed by obtaining estimates for design costs and construction changes are how this Board will make the best impact on the project.

Peggy Catlin stated that the new sketch looks like a good idea.

Mike Schneider asked what the new canopy material would be.

Mr. Mosher responded that it would be the same as the train room canopy near the historic building.

Jerry Glick stated that the Board's objective with this design matter and remaining elements of the project is to learn what issues the Board has a say over and other issues over which that the Board has no say.

Mike Sullivan stated that this coming Monday, RTD will get the 60 percent design drawings for the LRT platform with the old canopies.

Jerry Glick suggested that this means the Board should take no action.

Bill Mosher stated that he feels the Board should see the pricing for the new design before the Board makes a decision.

Don Hunt stated that it is unusual to get peer review results this fast and that the Board should take advantage of it.



Mike Schneider asked if there was an order of magnitude estimated on the design change.

Tim Makin responded that it should be less than \$10,000 for the design and evaluation of the impact on construction, but that since no estimate has been generated, it is best to wait and see the numbers.

Tom Gougeon stated that the new canopy design would be great for public space, but that the final design could result in uses that could be good or bad depending on how the space is managed.

Mike Sullivan (in addressing Jerry Nery) asked if RTD could provide an estimate for the design and construction impact.

Jerry Nery responded that RTD would be able to provide an estimate for comparison to the Kiewit evaluation.

E. Public Outreach

Mario Carrera stated that his subcommittee has adjusted the RFQ according to the comments received by the Board and stakeholders.

Jerry Glick asked if it would be helpful to review the comments on the RFQ.

Mike Sullivan responded that it is not necessary.

Bill Mosher responded that the RFQ has been sent to about 20 firms so far.

Mario Carrera stated that a second aspect of the RFQ is the media consulting.

Dawn Bookhardt stated that coordination with media contacts has been highlighted due to the *Westword* article about the project and that this is a good time to discuss coordination.

Claude Pumilia stated that this is a good example for clarifying roles of the stakeholders in this project. He suggested that the City did not intend to circumvent DUSPA and that the City is sorry for the *Westword* situation.

Jerry Glick stated that his request is that if someone is contacted by the press and makes a comment, to please let the other Board members know of the interaction to prevent surprises.

Claude Pumilia stated that contacts by the press will likely include the City and RTD.

Judy Montero stated that she was asked by *Westword* for comment but that she missed the deadline. She also suggested that there should be a point person for media contacts.

Jerry Glick agreed with the idea of a point person.

Claude Pumilia suggested that as the press gets more interested, the media contacts will be more complicated and one point person may not suffice.

Cole Finegan stated that, from a legal perspective, when anyone on the Board sends emails to the City, RTD or CDOT, the emails are public information subject to FOIA. Mr. Finegan asked that everyone be careful about the content of their emails or other written correspondence and he suggested that using the telephone may be appropriate in many instances.

Mr. Finegan also stated that the City, RTD and CDOT are very big portals for information and that trying to stifle information with the media could have bad results. He suggested that DUSPA would not want to provide the impression that something is being hidden.

Diane Barrett stated that a point person will still help.

Mario Carrera stated that DUSPA is behind in the public relations area, but that the consultant will include liaison duties and press releases.

Marla Lien stated that RTD does not have the ability to not respond to FOIA requests and that the key for these situations would be to let the liaison or point person know what has been requested or when there are inquiries from the media.

Judy Montero suggested that the public relations person must be very mindful of the stakeholders and politically aware of the situation.

Tom Gougeon inquired as to whom requests for information should be referred at this time.

Mario Carrera asked Bill Mosher if he would take inquiries.

Bill Mosher responded that, in his experience, it is always best to get information out right away and any inquiries to CDOT, RTD and City should be responded to as soon as possible. He suggested that it is naïve to think that we can control the press or the flow of information to the press.

Judy Montero stated that she has a meeting tonight with the Mayor and this issue should be discussed with him.

F. Notice of Annual Meeting (September 17, 2009)

Dawn Bookhardt stated that she will send out notices for the annual meeting to be a part of the scheduled Board meeting on September 17, 2009. This annual meeting will involve several issues that will be formalized to create an annual meeting format for DUSPA.

**VII ACTION ITEMS**

There was no vote today on the Master Development Agreement or LRT station and canopy issue.

## **VIII. EXECUTIVE SESSION**

Jerry Glick made 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, financial management and litigation.

Tom Gougeon seconded the motion. The vote was unanimous. The Board entered executive session at 3:01 p.m. The executive session ended at 3:50 p.m.

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

None.

**X. CARRYOVER AND FUTURE AGENDA ITEMS**

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

Mr. Mosher will have an update regarding:

- i) additional construction matters
- ii) critical issues and
- iii) the project budget.

Marla Lien will update the Board on the litigation between CoRail and the FTA.

Mario Carrera will provide an update on the DBE goals and the RFQ for public outreach.

Dawn Bookhardt and Cole Finnegan will continue reporting on transaction movement as appropriate.



**XI. ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:50 p.m.

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[1] Claude Pumilia, Jennifer Schaufele, Peggy Catlin and Marla Lien arrived shortly after this vote.