

DENVER UNION STATION PROJECT AUTHORITY

MEETING OF THE BOARD OF DIRECTORS

August 6, 2009

MINUTES

BOARD MEMBERS PRESENT

BOARD MEMBERS ABSENT

Claude Pumilia

Mario Carrera

Peggy Catlin

Tom Gougeon

Terry Howerter

Jennifer Schaufele

Judy Montero

Marla Lien

Jerry Glick

Don Hunt

Robin Kneich

Elbra Wedgeworth

Michael West

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.

II. WELCOME AND INTRODUCTION OF GUESTS

Elbra Wedgeworth welcomed the Board Members and Guests to the meeting.

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 July 23, 2009 meeting minutes. Mario Carrera requested that the draft RFQ for the public outreach consultant attached to the minutes be exchanged for the RFQ final version. Jerry Glick moved to approve the July 23, 2009 meeting minutes as amended. Mario Carrera seconded the motion. The motion carried unanimously.

VI. DISCUSSION ITEMS

A. Plan of Finance / Schedule and Update

Chad Fuller began to report on the Finance sub-committee meeting on Tuesday and deferred the credit subsidy discussion to Cole Finegan.

Cole Finegan requested that the credit subsidy conversation be deferred to executive session.

Chad Fuller gave an update on Scully Financial. He stated that he gave a brief presentation to Scully on Tuesday afternoon regarding the RIFF and TIFIA application status. He reported that overall the agency is positive and has provided good feedback. He stated that he has had a conversation with Scully in order to tweak the structure. He reported that Scully is a strong advocate for DUSPA and is helping us see through the issues.

Chad Fuller discussed presenting the SB-1 conversation in August to the Transportation Commission. He stated that the SB-1 funds could be used on a range of costs, including the TIFIA subsidy.

Peggy Catlin stated that there is a need for a specific scope approved for SB-1 through the committee. She stated that because of the changes that have been made to the financing structure, a scope will give the Commission options for the application, including the option to consider a no cash flow credit support.

Chad Fuller stated that documents will need to be completed over the next several weeks to submit to the Rating Agency. He suggested holding the TIGER Grant issues for a later discussion. He discussed the possibility of using New Market Tax Credits and was optimistic providing that despite its complexity, most think it will work. He emphasized that the Board needs to stay focused on RIFF and TIFIA over the next six to eight weeks.

Alex Brown stated that we have started with S&P on the TIFIA process. He stated that S&P has

a general overview of the project and we will proceed with the formal rating process. He stated that RIFF is under active review and we will be able to shape the process because the RIFF loan has been approved. Mr. Brown explained that the TIFIA process is a bit more complicated because TIFIA will require an investment grade rating. He stated that we are asking S&P to provide a credit assessment on the loan without having all of the details of the loan as the full application process requires such a preliminary credit assessment. Mr. Brown stated that he will be going back to S&P to ask for a full rating and would submit all application documents electronically the next day. He stated that a conference call is scheduled with S&P for the next week and the Board should see something the following week.

Dawn Bookhardt stated that we will need a schedule going forward for the list of documents for rating agency review, other documents needed for the RIFF and TIFIA process and the list of DUSPA contracts. She stated that we will need to move forward quickly and will need the Board's support.

B. Owner's Representative Agreement

Jerry Glick stated that everyone has received the most recent draft of the Owner's Representative Agreement and that he would be soliciting comments for circulation in two weeks for final approval. He provided that if issues needed to be negotiated the discussion could be held for executive session.

Dawn Bookhardt stated that she has received only one set of comments and indicated a need for further discussion with Bill Mosher.

Don Hunt asked about entering into a comprehensive scope management agreement with USNC and Bill in order to protect the Board and cover all responsibilities including federal reporting. He asked whether the legal team is comfortable with the document and DUSPA's overall protection.

Dawn Bookhardt stated that we are getting comfortable, especially after having received excellent federal requirement language from Marla Lien. She stated that she needed to schedule a time with both RTD and CDOT to discuss aspects of responsibility regarding reporting, tracking and accounting.

Bill Mosher stated that his real concerns are the federal requirements for FTA, CDOT and federal highway groups. He stated that regarding how to report, the respective Partner Agencies have more control. He suggested the agencies be responsible for compliance – the how of federal compliance – and he would be responsible for the format. He stated that he would take on tasks assigned by the partner agencies in order to ensure compliance.

Jerry Glick asked for further comments and stated that sooner than later we will move forward with what we have.

C. USNC Agreement (final draft review)

Cole Finegan stated that he has received several comments which he has tried to address. He stated that several changes had been made to the previous version in order to address those comments, and that additional changes would be made later that day. He brought copies of exhibits to the USNC Agreement and distributed them to the Board. Mr. Finegan went over various changes to the document. Mr. Finegan proffered the date of the DUS Plan of Development Cooperation Agreement on page 10; section B as May 5, 2009. He further provided, in trying to be more realistic, the date on page 6, subpart (i) for the joint development of the Design Management Plan would be September 30, 2009. Mr. Finegan offered to have a summary sent out of the changes.

Jerry Glick stated that the agreement, with the changes is final and ready to go.

Don Hunt stated that it is awkward accepting a document whose form was structured prior to DUSPA establishing a deal structure. He had two questions regarding the economic environment. Mr. Hunt also inquired with regard to the acquisition parcels, if USNC acquires A and not B would there be recourse for DUSPA or RTD.

Marla Lien replied that once the title transfers, no, there would be no recourse.

Don Hunt then asked if (despite a substantial developer payment before closing and in excess of hard money), USNC was unable to close on the land purchases, would DUSPA have any recourse.

Alex Brown responded no.

Robin Kniech asked whether it was accurate that early payment compensation for the design team has been paid to date for FTA purposes.

Cole Finegan stated that when the LOI and the LOI Supplement were negotiated, a number of factors went into that negotiation, and the design work and effort of the developer was an enormous phenomenon. He stated that they figured out issues such as the 18th Street solution and the price of land parcels at Market Street Station. He stated that in deciding how to move forward they negotiated with the developer in good faith, which the document reflects.

Alex Brown stated that when only one source is providing project management it is different moving forward with federal versus non-federal costs.

Marla Lien stated that nothing has been offered to the FTA and that DUSPA needs to resubmit to the FTA reflecting the early payment provision.

Jerry Glick moved to approve the Master Development Agreement with Cole Finegan's amendments.

Elbra Wedgeworth seconded the motion. Tom Gougeon abstained from voting and the remainder of the Board unanimously passed the motion...

D. Owner's Representative Report

Bill Mosher handed out the following financial documents: (1) the Project Budget; (2) the Project Cost Tracking worksheet; (3) a Task & Developer Fee Payments – as of 8/1/09 worksheet; (4) an Organizational Budget; and (5) a Statement of Net Surplus in Assets.

In reviewing the Project Cost Tracking worksheet, Bill Mosher stated that the City needs to obligate funds to write the \$700,000 check for USNC. He stated that the financial advisor has been paid and that legal has been paid through April 30th and for May. He stated that the payments made take care of all of DUSPA's financial obligations until it receives more money. He stated that the only change has been a \$3000 savings in the peer design review; the \$33,000 was changed to \$30,000, and all checks have been written.

Bill Mosher stated that the status of the Project budget is paid to date, except that the insurance has been paid through the RTD Advance, and no other changes have been made.

Mr. Mosher stated that the budget that was handed out had been adjusted and asked whether DUSPA should adopt a new budget.

Jerry Glick stated that the budget is the budget and adopting a new budget would not be correct.

Bill Mosher acceded and stated that he has added to the total budget amount the need to put in financing costs of \$700,000. He stated that he managed to make the change without changing the overall budget. Mr. Mosher pointed out the following changes to the budget:

1. The additional snow melt has been changed from \$500,000 to \$0 for the time being. Mr. Mosher stated that the method had been rejected by RTD and that he will deal with the change in the continuum.
2. The Threat and Vulnerability Requirements amount was changed from \$1,000,000 to \$2,000,000.
3. The additional Amtrak & Ski Train Requirement was cut by ½ to \$1.5 million.
4. The Additional RTD Costs were increased from \$500,000 to \$600,000.
5. The CML Land purchase amount was increased from \$11.1 million to \$11.17 million.

Mr. Mosher stated that he thinks he has resolved the numbers and the big item is the credit subsidy payment.

Jerry Glick requested a column for the changes to the budget for the next meeting, providing that it would be easier to scan the changes.

Bill Mosher stated that such a column exists on the black and white budget, and they would work from that budget to eliminate paper and reflect the changes.

Elbra Wedgeworth asked for critical issues.

Bill Mosher stated that he would like to save that for the next meeting. He stated that he is still working with RTD regarding getting an Amtrak solution worked out regarding the temporary station issue.

Jerry Glick asked if the Board had seen the Ski Train article. He inquired as to whether it was real and what impact it would have on the Project.

Bill Mosher stated that they would have to get Union Pacific approval and would have to restart rights for the track and other issues. He stated that it would need a temporary station which Ski Train would have to pay for.

Marla Lien stated that the Ski Train has no rights.

Bill Mosher stated that DUSPA does have a moral obligation and that we have been saved by our work with Coors Field as they have trains sitting around and that DUSPA might be off the hook financially.

Elbra Wedgeworth stated that we are encouraged to do the right thing on this Project.

Bill Mosher stated that the Planning Board for Peer Design is scheduled for August 19th. He stated that they have approved CCV #4; the boomerang option, of \$49,000. He stated that getting the design to the 30% goal is where we are. He stated that the Peer Review focused on the LRT facility and the impact on the design now.

Ellen Ittelson stated that the peer review August 19th will be at 3:00 in the Webb building on the 4th floor. She stated that notice had been posted for the public meeting with the design team and that a good discussion is anticipated.

Elbra Wedgeworth stated that she planned to attend with questions.

E. Public Outreach

Mario Carrera stated that the Public Outreach committee met this morning and had reviewed the Request for Qualifications. He stated that they were sending out notice to three firms selected and he anticipated conducting interviews within one week.

Elbra Wedgeworth asked if once the firms were shortlisted the committee would come back to the Board with recommendations.

Mario Carrera answered in the affirmative.

Dawn Bookhardt asked how many RFQs had been sent out.

Mario Carrera replied that 20 had been sent out and ten had been selected.

VII. ACTION ITEMS

The USNC Agreement with the changes made and presented by Cole Finegan was approved by a majority of the Board with Tom Gougeon abstaining.

VIII. EXECUTIVE SESSION

Elbra Wedgeworth 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. Jerry Glick seconded the motion. The vote carried unanimously. The Board entered executive session at 2:15 p.m.

The executive session ended at 2:53 p.m. Jerry Glick moved to come out of executive session. Elbra Wedgeworth seconded the motion. The vote carried unanimously.

IX. ACTION ITEMS RESULTING FROM EXECUTIVE SESSION

None.

X. CARRYOVER AND FUTURE AGENDA ITEMS

Alex Brown will update the Board on the S&P ratings progress.

Bill Mosher will provide an update on the project budget with a “changes made” column.

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 2:54 p.m.