

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

MEMORANDUM

TO: Martin E. Nohe, Chairman
Members of the Northern Virginia Transportation Authority

FROM: David Snyder

SUBJECT: NVTA Legal Working Group Fourth Interim Report

DATE: September 10, 2013

ISSUE: August 20, 2013, NVTA Legal Working Group Meeting

INFORMATION:

On August 20, 2013, the NVTA Legal Working Group held a meeting in the City of Falls Church.

I presided at that meeting. In attendance were Steve MacIsaac, Angela Horan, Ellen Posner, John Mason, Tom Biesiadny, Todd Wigglesworth, Arthur Andersen, Rob Dickerson, Cindy Mester, Mark Pohl, Corinne Lockett, Rob Whitfield, and Noelle Dominguez.

I called the meeting to order and participant introductions were made.

Tom Biesiadny delivered a brief update on the ongoing activities of the NVTA's Financial Working Group.

There was then a short discussion with regard to the next scheduled September, 2013, meetings of NVTA's Organizational Working Group and Project Implementation Group. During that discussion, it was noted that there may be a status update from the state during mid-September regarding VDOT's development of a 'rating process' as prescribed by HB 2313 for NVTA's use in future project selection for funding.

Ellen Posner then delivered a status update on NVTA's bond validation proceeding. As authorized and directed by NVTA at its July 24, 2013, meeting, the bond validation suit was filed in the Fairfax Circuit Court on July 25, 2013. As per the Circuit Court's Order of Publication, all requests for intervention by third parties were required to be filed by August 16, 2013. As of August 20, 2013, only Fairfax County, the City of Falls Church, and Delegate Robert G. Marshall had submitted requests to intervene in the case. A pre-trial hearing is currently scheduled for September 10, 2013, and a final hearing is currently scheduled for September 30, 2013.

Steve MacIsaac then advised the Legal Working Group with regard to a proposed, draft Memorandum of Agreement (“State/NVTA MOA”) that he had received from the Commonwealth with regard to project funds transfers and the use of matching funds. Having only recently received the draft “State/NVTA MOA” and because the draft “State/NVTA MOA” appears to contain significant operational procedures as between the State and NVTA and NVTA’s constituent localities, impacting revenue transfers, expenditures, and use of matching funds under HB 2313 , the Legal Working Group was of the opinion that it should be forwarded to NVTA’s Financial Working Group and NVTA’s Project Implementation Group for their respective reviews and that NVTA’s Council of Counsels should conduct a thorough legal review of the draft “State/NVTA MOA” before it’s presented to the NVTA for consideration.

There was also a brief discussion on the status of the development of a global MOA as between NVTA and its constituent counties and cities regarding distributions of the localities’ 30% shares under HB2313. A joint sub-committee of the NVTA’s Legal and Financial Working Groups had been created to help develop and prepare a draft MOA. That sub-committee is currently scheduled to meet on September 6, 2013.

The Legal Working Group then briefly discussed the carry over issue regarding town revenue distribution. There was consensus among Legal Working Group members to support the Financial Working Group’s recommendation that NVTA’s affected counties and towns use the existing school age population method as the basis by which the towns’ revenue distributions should be calculated.

The Legal Working Group then discussed the issues of NVTA’s liability and insurance coverage. Tom Biesiadny advised that a sub-committee comprised of NVTA’s Financial Working Group, its Council of Counsels, its Executive Director, and local Risk Management professionals had been formed to analyze NVTA’s potential liability in conjunction with NVTA’s contemplated business model. That sub-committee was scheduled to meet in late August, 2013, analyze the overarching liability issues, and make recommendations to the Financial Working Group and NVTA’s Executive Director. The Legal Working Group supported this approach.

Arthur Andersen then delivered a brief update on NVTA’s letter to the Treasury Board. He advised that that letter had been sent to the Treasury Board for review and action. He expects that the Treasury Board will take up the matter during the third week of September, 2013.

The next meeting of the Legal Working Group is tentatively scheduled for September 13, 2013, at 9:30am in the City of Falls Church.

FISCAL IMPACT: None

ATTACHMENTS: None