

Approved

**Route 460 Corridor Improvement Project
Independent Review Panel
Meeting #2, April 9, 2007
City of Suffolk, Council Chambers Meeting Room**

VDOT PROPOSAL REVIEW PRESENTATIONS

Meeting Minutes

The meeting of the Route 460 Corridor Improvement Project Independent Review Panel (IRP) was held in the City Council Chambers of the City of Suffolk on April 9, 2007. The Chairman, Mr. Alan Witt, presided and called the meeting to order at 5:00 pm.

Independent Review Panel Members in Attendance

Mr. Alan Witt, Chairperson
Mr. Dana Dickens, III,
Mr. Gerald P. McCarthy
Mr. Kenneth S. White
Mr. Raynor A. K. Taylor
Mr. Floyd M. Brown
Mr. Steven Mondul
Mr. Mal Kerley
Ms. Barbara Reese
Mr. Jeff Florin
Mr. Dennis Heuer
Mr. Dwight L. Farmer
Mr. Dennis K. Morris
Mr. Michael D. Fontaine

Welcome

Mr. Witt opened the meeting. Mr. Witt reminded everyone that the contents of the notebooks for tonight's meeting contain important information and additional background on the Route 460 project for panel review. Mr. Witt identified a change in the agenda to accommodate the request of Ms. Reese for her financial presentation to the IRP be made prior to the called closed session of the meeting. This session will be solely for the discussion of financial information deemed confidential (Agenda Item 7 will precede Items 4 and 5).

Meeting #1 Minutes – motion to approve, motion seconded, noted name correction amendment for Mike Fontaine. Minutes approved as amended.

Tonight's meeting presentations from VDOT Directorates will help us understand the project better. Mr. Witt then introduced the first speaker, Mal Kerley.

Presentation by VDOT's Chief Engineer

Mr. Mal Kerley made a presentation to the IRP which included VDOT's analysis of the proposals relative to engineering aspects.

A copy of the presentation was made available at the meeting, and is included by reference.

Mr. Witt moderated a question and answer session as follows.

MR. McCARTHY: What the CTB has done so far is to say, if a project were to be built, it would be along the route we have suggested, but no decision has actually been made to build any project yet. Is that correct?

Mr. KERLEY: Yes.

MR. McCARTHY: Do any proposals include bicycle lanes on the project as per our policy.

MR. KERLEY: Itinere has included bicycle accommodations. Refer to slide 15 of the presentation.

MR. McCARTHY: That shows crossings, what about on the alignment? The policy states that it must be included unless CTB says otherwise.

Mr. KERLEY: The appropriate requirements will be included in the project.

MR. FONTAINE: In referring to your slide comparing 2006 to 2007 dollars. Why does VCP show a loss of \$300+ million?

MR. KERLEY: We have requested clarification for the difference and will forward to the IRP when satisfactorily explained.

MR. TAYLOR: To prepare a standardized scope, what does VDOT think are the greatest scope issues of concern?

MR. KERLEY: The biggest scope issue is establishing the interchanges. There are some different approaches to consider: do we build all the proposed interchanges; do we stagger the construction; do we consider freight movement and an evacuation route and only build the interchanges at each end? We will need to decide which approach to pursue. A second scope issue is a determination of the level above the floodplain that structures should be built. The key is to establish and specify in a detailed proposal which options are preferred.

MR. WITT: Please clarify what is meant by +/- 5 feet when discussing level above the floodplain.

MR. KERLEY: This is relative to the height of the structure above the water (expected floodplain) such as 4' 10' or 5' 1", not above or below the normal water level.

MR. BROWN: When discussing the experience of each developer you mentioned that VCP has tremendous experience but spread out. What did you mean by that?

MR. KERLEY: I was referencing the project manager's experience. In the proposal, he is identified as having many roles in their organizational chart, but it is likely that this would be spread out with other people likely to assume some of these responsibilities as the project moves forward.

MR. DICKENS: As the project moves forward, will it be built in the corridor as prescribed or is there an option/opportunity for the corridor to change at a later date?

MR. KERLEY: That would be up to the CTB. My job, right now, would be to build it in the approved corridor.

MR. DICKENS: Would there be additional opportunity for public hearings?

MR. KERLEY: The project would follow the normal project development process, with design public hearings, but the location is established by the CTB.

MR. McCARTHY: A lot of responsibility, in effect, is being handed over to VDOT. How does that impact costs?

MR. KERLEY: Refer to presentation slides 18 and 19, these identify who will do what. If there is a task, someone will have to do it. Assignment of tasks/risk can be adjusted, negotiated. Yes, that will impact costs. (Tasks performed by VDOT would result in a transfer of costs to the department from the proposer.)

MR. McCARTHY: What about Right of Way costs? Is that a cost that the Commonwealth is expected to pick up. That is a large amount?

MS. REESE: They would pay for R/W but our staff would do the acquisition of the R/W.

Mr. Kerley reminded the IRP that the notebooks include additional sources of information.

Presentation by VDOT Chief Financial Officer

Ms. Barbara Reese made a presentation to the IRP which included VDOT's analysis of the proposals relative to financial aspects.

Ms. Reese referenced the Governor's Talking Points on HB3202 (handout to IRP), and specifically the spreadsheets attached to HB3202. She stated that the Hampton Roads

Planning District Commission (HRPDC) will play a critical role in this project, since the Route 460 is a listed project, if the Hampton Roads transportation authority is approved. The Hampton Roads transportation authority could be a contributor of resources or other things to this project. This is likely to change the dynamics of the project over the next year and the financial implications will have to be considered.

Ms. Reese also referenced the Toll Feasibility Study conducted by Parsons for the Location Study as well as the toll study completed by the HTPDC. She indicated that VDOT would provide a copy of the Toll Feasibility Study to the IRP. Ms. Reese stated that before this project could be financed, an investment grade toll study will be conducted.

Ms. Reese proceeded with her presentation. A copy of the presentation was made available at the meeting, and is included by reference.

Mr. Witt moderated a question and answer session as follows.

MR. McCARTHY: What is the \$2.34 billion in the VCP proposal?

MS. REESE: The \$2.34 billion is the total cost of the project including the construction costs and adding in the finance costs.

MR. McCARTHY: Do we have comparable costs for the others?

MS. REESE: Yes, this is shown on slide no. 13 which shows both the cost to construct and the total project cost. [Ms. Reese has updated the presentation and provided to the IRP.] Currently, the total project costs for each proposer is as follows.

\$1.44 billion for Cintra
\$1.95 billion for Itinere
\$2.43 billion for VCP

MR. WHITE: That is a huge difference. What is the explanation for this swing?

MS. REESE: This swing can be the result of several assumptions that are not detailed in the proposals. For example, when would the proposer begin repaying debt? How do they take out equity? How fast are they assuming repayment? What is the cost of financing the deal? All of these become project costs.

MR. FLORIN: Could you explain what is meant by “uncommitted funds” referenced in Itinere’s proposal?

MS. REESE: This assumes that the Commonwealth would provide additional funds of approximately \$52 million per year for 40 years to enable the proposer to issue additional debt to fund the project.

MR. McCARTHY: With respect to the financing costs and wide variance as asked by Mr. White, does it have a comparable wide variance in how we should evaluate the risk and feasibility of these proposals?

MS. REESE: We should use caution in evaluating these costs. For example, if you look at construction cost for the Cintra proposal, you see that they are about \$500 million lower than the other two, but you see this same gap when you compare financing costs. This will be discussed more in the closed session.

MR. WITT: Going back to the public investment difference that we are looking at. You said one proposer is at \$52 million per year for the concession period?

MS. REESE: For the Itinere proposal there is a billion dollars that includes two assumptions about public investment. The first includes the \$300+ million which was included in the HR study of major projects and the second includes the \$700+ million, which is the \$51 million per year.

MR. WITT: Should there be present value calculation to compare better?

MS. REESE: These costs are in gross dollars, but with conceptual proposals it may not be needed for this level of review. These numbers will change dramatically. If all three proposals move Itinere, term sheet would not allow that level of public investment. We could do present value work for the next meeting.

MR. TAYLOR: Does VDOT have a preconceived notion of the level of public investment? Such as 90/10%, 80/20%, 75/20%? What is the anticipation?

MS. REESE: No anticipation.

MR. TAYLOR: Are their boundaries?

MS. REESE: Some history on this, up until 2002, there was very little private investment. We have worked diligently with CTB and others to increase private investment. If the toll feasibility study stands up, 57% could come from tolls (repayment source for debt). The remaining 43% could be from other sources, such as pay as you go public money, private investment earned back over time once all the money is paid off.

MR. TAYLOR: So if private side is 57%, public is 43%, you are trying to swing it more toward 90/10?

MS. REESE: The assumption then in the 57% of tolls being paid that the revenue goes to the private sector. In the deals we have negotiated so far, there is cost sharing of toll revenues. They may receive the toll revenue for the first 30 years then share in the revenue, depends on if you want to pay back public funds. There are different ways to structure it.

MR. TAYLOR: What are your ideas that you would seek to further clarify from the proposers at the next phase?

MS. REESE: What we would do is prepare a term sheet that includes specific items, such as performance and payment bonds equal to 30% of construction costs, or requiring financing of all operations and maintenance costs. Each proposer would bid on same thing at the detailed proposal phase.

MR. McCARTHY: I thought someone just said that the 57% from the toll study was private investment, is that right?

MS. REESE: No, the toll study suggests that 57% of project could be paid for by tolls and could be used to pay back private debt. And what I said is that typically there would be sharing of the toll revenue if there is a significant public investment.

MR. McCARTHY: But it's the public that's paying the toll.

MS. REESE: Yes it is; the users of the facility.

MR. McCARTHY: Whether they pay as toll, a gas tax, sales tax or whatever.

MS. REESE: Yes, I would like to point out each proposal talks about other ways to generate revenue. With the passage of HB3202, will need to work with HRPDC at a detailed proposal stage to figure out what is feasible as another potential source of revenue for this project as well as other project in Hampton Roads.

MR. KERLEY: This was a solicited proposal with no identified public funds. We were asking the private sector to fund as much as they possibly could, is that correct?

MS. REESE: Yes.

MR. DICKENS: On slide 15, talking about Cintra's financial risk allocation. Under VDOT piece says pay damages for competing facilities. We have concerns about the existing 460 competing with the toll road. How does that fit damages for competing facilities?

MS. REESE: In the term sheet we would put out there will not be a competing facility clause. They will have to weigh that risk in what ever they bid.

MR. FARMER: What would happen if there was a default on a Private Activity Bond?

MS. REESE: I don't know. The question is: Who is at risk for repayment?

MR. FARMER: What happens to the private equity funds, if in one of the tiers of financing, there is a default? Would you expect them to protect their equity?

MS REESE: We would have some protection against that. There would be some sharing of risk.

MR. FARMER: Would VDOT be willing to discuss the issue of taking on the cost of normal operations and maintenance? For example, VCP does include that as a cost, but if we find ourselves close to narrowing the gap in an agreement, would VDOT discuss that?

MS. REESE: As we proceed we will look at risk allocation and each deal is different, but we would consider it.

Ms. Reese provided an example using Capital Beltway relative to maintenance and operation that are being negotiated.

Availability payments would pay for these functions but it is too early to commit to anything for this project.

MR. WITT: Regarding the PABS, bonds could be structured so that the recourse is limited to the cash flow that is otherwise available; the recourse does not have to be our owning the roads.

MS. REESE: Using Pocahontas Parkway as an example, the concession for that project said in the case of default, VDOT had the right to take over operations and we would pay bondholders. The bonds could be structured that way. A key decision point is if it will become tax supported debt of the Commonwealth. It is likely that it is structured more like TIFIA, and in the case of default, TIFIA becomes senior. In such case the feds get repaid first. The feds may say that federal funds have to be repaid first, maybe taking funding from other projects in the six year plan.

The meeting was recessed for dinner at 6:15 pm.

The meeting was reconvened at 6:45 pm.

Motion for Closed Meeting

Mr. Witt called for a motion to conduct a closed meeting of the IRP to discuss confidential financial information.

The motion was seconded and motion carried with a unanimous vote.

The meeting was recessed for the closed meeting at 6:50 pm.

Closed meeting conducted in accordance with required guidelines. Ms. Ann Purdue, Senior Assistant Attorney General, from the Office of Attorney General, was in attendance in an advisory role.

The meeting was reconvened at 7:25 pm.

Certification of the Closed Meeting

Mr. Witt moved to record vote certifying that only exempted materials were discussed. The motion was seconded and the motion carried with a unanimous vote.

Presentation by VDOT Chief Policy, Planning and Environment

Mr. Chris Collins made a presentation to the IRP on behalf of Mr. Richard Walton, Chief of Policy, Planning and Environment, which included VDOT's analysis of the proposals relative to environmental and planning aspects.

A copy of the presentation was made available at the meeting, and is included by reference.

Mr. Witt moderated a question and answer session as follows.

MR. McCARTHY: What are the implications of the transportation bill with respect to land use and transportation as proposed by HB3202? How will that change what has been conceptually proposed?

MR. COLLINS: When the study was performed, land use is considered as part of the location study and is included in the land use section of the EIS. VDOT coordinated with localities along the corridor to include proposed land use changes in the location study. All of this is folded into the Location study process.

With regards to what is negotiated between VDOT and the proposer, this is not as clearly defined and gives latitude to ask for more information.

MR. FLORIN: Please describe what the multi-modal benefits are in the proposals?

MR. COLLINS: This was addressed in the location study with a primary concern to moving freight traffic out of the port area and through the corridor. The proposals were consistent with the study.

Presentation by VDOT Chief of Systems Operations

Ms. Mena Lockwood made a presentation to the IRP on behalf of Ms. Connie Sorrell, Chief of Systems Operations, which included VDOT's analysis of the proposals relative to systems operations and management.

A copy of the presentation was made available at the meeting, and is included by reference.

Mr. Witt moderated a question and answer session as follows.

MR. MONDUL: What do we mean by commercial truck stops? Is the contractor building them?

Ms. LOCKWOOD: We would encourage that the R/W be leased for a commercial venture.

MR. MONDUL: Has VDOT considered what impact the new facility will have on the highway safety service patrol?

MS. LOCKWOOD: VDOT will look at this as the project develops but it is not included in the current budget.

MR. MONDUL: Is the Department prepared to conduct a theoretical study of the flood plain and look at actual flood data over the last 50 years? Then the Department could specify some level above that in the request for detailed proposals. This seems like a prudent thing to do.

MS. LOCKWOOD: Definitely a good consideration for the detailed proposal phase.

MR. McCARTHY: If the traffic projections don't come close to what the revenue sources say they ought to be, what are we going to do about maintenance? Do we have a contingency plan?

MS. REESE: On recent agreements we have included maintenance standards and requirements, which required the contractor to put money aside in a reserve account – if they don't do the maintenance, then we could access that money and perform the maintenance ourselves. This ensures that the road is maintained. One thing about a concession agreement, the concessionaire wants the facility to be well-maintained as that is what attracts riders. They want to attract users, not detract users.

Adjournment

Mr. Witt requested follow-up questions or comments:

1. What happens in the case of PAB default?
2. 100 year flood plain question
3. Variation on costs for VCP for 2006 to 2007 dollars.

Next meeting April 30, Public Meeting with citizen's invited to share their thoughts regarding the proposals and the process.

The meeting was adjourned at 8:00 pm.