

## ECONOMIC DEVELOPMENT COMMISSION

### MEETING MINUTES

October 9, 2019

8:30 a.m. – 1:30 p.m.

#### MEETING DATE

October 9, 2019

1600 Broadway, Suite 2500

Denver, CO 80202

#### MEETING PARTICIPANTS

##### **A. Commission Members**

Carrie Schiff, David Dragoo, Benita Duran, Rob Brown, Chris Franz, Jandel Allen-Davis, Becky Takeda-Tinker, Wendell Pryor, Denise Brown, and Lisa Reeves.

##### **B. Guests**

Bob Cope, Jariah Walker, Nick Ragain, David Neville, Laura Neumann, and Kurt Kaufman.

##### **C. Staff**

Betsy Markey, Jeff Kraft, LeeAnn Morrill, Ken Jensen, Che Sheehan, Jill McGranahan, and Virginia Davis.

##### **A. Meeting Called to Order**

Schiff called the meeting to order.

##### **B. Strategic Fund (SF): Jeff Kraft**

Kraft said the SF/COFTM request will be presented at the October 17, 2019 meeting. The request was tabled.

##### **C. Regional Tourism Act (RTA): Jeff Kraft**

Kraft said, the reason we are having this meeting today is that we are at a very critical stage or fortunately the Colorado Springs Regional tourism act projects both the Air Force Academy Visitor Center and the Colorado Sports and events center they need to commence substantial work by December 16th of 2019 of this year and there's just a issues need to work through to get them into a place where the commission, hopefully will be comfortable that they've commenced.

So we're adding some extra meetings in there to get this work done because if they don't commence by December 16 2019, and this is their one-year extension. It's their sixth year and the awards get cancelled if they don't commence in time. There's a lot at stake here. These are really critical, important projects that are meaningful to the state and to Colorado Springs and too many stakeholders so thank you for being on the call this morning.

Cope thanked everyone for taking the time to be on the call. At the September 19<sup>th</sup> meeting, we had left a bond schedule for the Visitor Center project. I want to report today, October 9<sup>th</sup>, every item on the schedule has been completed, and including two City Council meetings and each of the items presented were approved by the City Council. That is an expedited process where we had some items introduced on Monday at the work session and then approved at the regular session the next day and that's not typically the way it's done but we have expedited this process. Also following up on some guidance we received, the Mayor is finalizing a letter to the EDC stressing the overall importance and the high priority status of the Visitor Center project. Also assuring the commission that every possible action has been taken and

will continue to be taken to expedite the project and the issuance of bonds. Also in that letter we will be providing a date certain as to when bonds can and will be issued.

We have also scheduled a meeting for the mayor to meet in the OEDIT offices with the OEDIT staff and some of the Commissioners on October 24<sup>th</sup>. We are coordinating with Carlos Cruz Gonzalez at the Air Force Academy to try and get the superintendent to that same meeting. In my conversations with Carlos yesterday the superintendents schedule is really challenging but we are trying to target the 24<sup>th</sup> if that doesn't work they will be working on a separate meeting with the OEDIT staff. They've also brought up the idea of some type of a teleconference, as an option, to try to adapt to everyone's schedules. But the Academy and the superintendent committed to doing that. The linchpin in getting the Visitor Center completed and commenced in time is completing the site development lease. Everyone understands that it's a top priority. I know that members of the blue and silver team spent two days in San Antonio Texas last week in a room with the Air Force and their attorneys working out language with a couple of the remaining issues there and it's my understanding they do have a meeting of the minds on that. The under Secretary of the Air Force is very aware of the importance of the site development lease and getting it executed by October 15<sup>th</sup> is a priority so that is the target and band that's what we are shooting for. We've also asked for a copy of the draft when they feel like it's in final form ahead of the 15<sup>th</sup> so we can get that to OEDIT staff so they can begin that review ahead of the execution on the 15<sup>th</sup>. That is my quick update on the Air Force Academy project a very complex project with a really great team working on it a lot of hard work has been done in there still more to do.

Kraft asked, the site development lease being targeted for signature on the 15<sup>th</sup>, we know that there's sort of a congressional subcommittee review process that's needed before there's authority to sign that lease. So is that still potentially on track for the 15<sup>th</sup> unless there are any concerns from that committee?

Cope said, that should be on track and remember that congressional notification was given on September 13<sup>th</sup> when we had hoped to execute the site development lease on the 27<sup>th</sup> of September. There a 14 day waiting period. And of course staffers somewhere in the Pentagon or somewhere found out that the Congressional notification kicks in the first day of the month following the month that its submitted so that's what pushed it out to October.

Kraft said, one thing we can plan for at the EDC meeting on the 17<sup>th</sup> is to have you all walk us through that lease. We obviously won't have much time to review it between the 15<sup>th</sup> and 17<sup>th</sup> but I think walking it through at that meeting will be part of the conversation we have as sort of a deep dive follow up on the Air Force Academy.

Cope said, we would hope on the 17<sup>th</sup> to have everything that is required per the proposed motion that we had discussed on the 19<sup>th</sup>. We need may not be in a position to have the Commission vote on the 17<sup>th</sup> about we believe that we should have all the elements necessary for that to happen so maybe that could happen at a subsequent meeting.

Kraft said, just to follow up on that at the November 4<sup>th</sup> phone meeting OEDIT hopes to get through hopefully any issues that remain for the Air Force Academy Visitor Center and the sports and events center. I really appreciate the commission some willingness to serve do this and help this project forward I don't think we could get to commencing without some of these extra meeting so thank you again so much for that and if we could plan on that November 4<sup>th</sup> I think that that we can make a lot of progress through the next couple meetings to move toward commencement.

Sheehan provided the below Commencement update.

Colorado College Robson Arena

Milestones Toward Commencement	Expected Documentation	Milestone	Complete?
After a competitive process, CC selected JLG Architects to design the competitive ice hockey arena. The contract between JLG and CC was signed following the November 2018 action by the Board of Trustees.	OEDIT to obtain copy of RFP and key pages from contract including signatures.	14(i)	X (See RFP in Board book)
The Colorado Springs Stadium Authority is formed.	EDC to verify that the Articles of Incorporation and By-Laws of the Colorado Springs Sports Authority were signed and filed with copy of documents	18(i)	X

\*the "(i)" denotes milestones related to the Colorado College Robson Arena.

Colorado Springs Switchbacks Weidner Stadium

Milestones toward Commencement	Expected Documentation	Milestone	Complete?
In March of 2018, Switchbacks FC (SFC) and Weidner Apartment Homes (WAH) partnered via of Letter of Intent to propose a combined \$60,000,000 mixed-use stadium and complementary housing & retail development at the City Gate property in downtown Colorado Springs. In June 2018, SFC and WAH signed a Letter of Intent to form a new partnership to build the stadium and develop a sustainable business plan for the stadium. In February 2019, a final binding contract was signed.	OEDIT staff to review executed documents and maintain confidentiality of business proprietary information.	3(o)	X (See memo included in board book)
In October 2018, after a competitive process, the Colorado Springs Switchbacks selected Design/Build team GE Johnson / Perkins & Will Architects to construct the stadium as part of a design/build process for design and administrative costs of \$1,000,000.	OEDIT to obtain copy of RFP and key pages from contract including signatures.	9(o)	X
In November 2018, UMB agreed to finance the stadium project utilizing a pledge of two thirds of the CSEC MEAP, approximately \$18.5 million, to secure the issuance of bonds or the encumbrance of debt (subject to final underwriting).	OEDIT to obtain copy of bond documents.	10(o)	X

Cope reviewed the provisions in the Key Development and Operations agreement between the Stadium Authority and the Switchbacks Holding Co. The purpose of these agreements are to assure compliance with Resolution No. 3 and the EDC approved Business Plan. The focus is based upon compliance with those two documents. In drafting those we have followed the Resolution and guidance from OEDIT and the EDC and guidance set forth in the March 14th Milestone letter. So we very intentionally set out to make sure that these agreements satisfy the requirements and keeping front in mind is compliance with a business plan and then directly answering that question making sure that there is a process for securing the events that were laid out in the business plan that attract and that generate the net new out of state sales tax increment so that's very intentional in the document.

The main Provisions in the agreement have to do with the implementation of the business plan but specifically making sure that the facilities are available for business plan programming and as I believe it was Jeff that touched on the fact that the agreements require the outdoor venue Widener Stadium to have a minimum of 80 Days available for business plan programming and the indoor venue Robson Arena 50 days for a business plan programming. Again those are minimums. We are expecting the actual number of days of availability will be much greater than that and those number of days are consistent with some of the projections that were put in the business plan that was approved. In the event that the venues were not made available or met the availability requirement, there is a liquidating compensation provision

that would require any venue that didn't make the venues available liable for either 180th in the event of Widener Stadium or 150th in the event of Robson Arena of the dedicated revenue received for that year for each day the venues weren't made available. So there is a penalty and incentive to make sure that over the long haul that the venues will continue to both implement the business plan and make the venues available. Throughout the document their references to coordinate and cooperate with the Sports Authority in implementing the business plan in good faith in addition to making the venues available so you'll see that throughout that document.

A couple of the provisions that were looking at right now will need to be resolved and I think we're very close. I don't think they're any conceptual difference of opinion it's just how we put that on paper and how from a mechanic standpoint you put this into effect. One is the term of the agreement so the comments coming back from OEDIT staff provided for a term I believe through 2044 and we originally put in the agreements that the term would be consistent I think with the financing term of Resolution No. 3 which was the date bonds are paid or the date that the last payment of dedicated revenues received. So we'll be working through that with OEDIT staff. I think some of the concerns are we just want to be consistent with a Resolution No. 3 and also looking out into 2044. Resources have to be dedicated to the administration and oversight reporting associated with all those things so we just want to make sure that you know that it's appropriate and fair and reasonable on that term and I'm sure we'll get that worked out with OEDIT staff in the next few days.

Kraft said, that is one of the things that we will want to take the temperature of the Commission on and maybe get a little legal counsel for the Commission on subject but thanks for bringing that up.

Cope said, the other thing just has to do with some of the details and the calendars that will be provided by the stadium in the arena to the Sports Authority the timing of that and what is included in those calendars so without getting to a whole lot of detail both of these venues would have kind of an in-season and an offseason calendar. For the Switchbacks in season is obviously while they're playing their soccer games and for CC it is a matter of when they're playing their division 1 hockey but also it would revolve a little bit around their academic calendar as well. Some of those calendars aren't known until prior to the calendar year that we would be doing programming. Others are going to be known many years in advance. So in the offseason they're going to know that these venues are available. The Authority and the venues will be collaborating on programming events years and years into the future. The detail they have to get into is that in-season calendar and the timing and the details of that since the USL Championship soccer schedule doesn't come out until I believe the fall. I believe Division 1 hockey is in a similar situation for CC. But from a practical matter we're in full agreement. We've already secured the division 2 soccer championships for 2021 at Widener stadium and that was done more than two years in advance. So from a practical matter that will be done we just need to get the detail in the agreements that all sides are comfortable with. I expect to have the a call with the stakeholders that are directly impacted by these agreements and OEDIT staff to get these two issues resolved in the next few days.

Hearing no questions we moved to the next item.

Kraft said, we have been collaborating with Bob to draft a proposed resolution that will make sure everything lines up and will ultimately confirm what has to happen for commencement. It'll make Kurt Kaufman comfortable that he knows everything that's in the amended Resolution No. 3 so we can make sure the indenture is consistent. We're not going to ask you to approve that draft resolution or motion for the Commission today but we wanted to share it with you so you can kind of see where it's going and if you have any questions or concerns so this is sort of a working draft that we've been working on collaboratively and we thought we'd have Bob walk us through that document as well.

Cope said, on the motion, what I thought it would do is start on page three because up to page three it's really just some of the background statements if that is acceptable. On number one just talking about how this is consistent with the statute. Number two that is the requirement that all of the milestones in the milestone letter have been complete for establishing commencement of substantial work so that is very important and again we're down to the Sports Authority agreement and the bond documents to satisfy all of that. Number three, just confirmation that the exhibit B requirements resolution are made in other words that the venues are being constructed as laid out in exhibit be subject to the minor modifications that have been mentioned here this morning. So that should be that should be complete. Number four the creation of the Sports Authority that is complete and you have the Articles of Incorporation and certificate of good standing on that. Number five, the separate development operation agreements of which we've been having quite a bit of conversation today. Those we hope to have in the next few days. Item number six is having to do with the teeth of the penalty provision in the separate agreements which provides a high-level overview of the availability requirement of 50 days for the arena, 80 days for the outdoor stadium and the concept of liquidating compensation that is spelled out there. Number 7, adding some reporting requirements. I have not gotten specific feedback from all the stakeholders on this however my reading of this and looking at the reporting requirements of Resolution No. 3, I believe all of the things that are required in this reporting would have had to been done any way to be able to do the reporting that's already required under Resolution No. 3, so I'm anticipating stakeholders won't have a problem with this but we'll get confirmation of that. I believe we received these comments yesterday and they've been distributed so we'll be circling back with the stakeholders on that immediately. Number Eight we have some discussions on that today having to do with the trigger points and the Ragain/Weidner agreement and the formation of Switchbacks FC Holdings LLC. So we've had that conversation around that today. Number nine and ten are just acknowledging cooperation agreements have been executed years ago and approved by the Commission. So nine and ten or taken care of. Number 11, the final opinion of Bond documents and conformity with Resolution Number 3. Number 12 is just certifying that the bond proceeds and the pledge revenues will be appropriately divided into various accounts. And finally, the Commission acknowledging that the indenture is consistent with Resolution No. 3.

Kraft said, obviously this document is in draft mode and OEDIT staff has worked on this. The AG has not yet reviewed this so clearly one thing that will do is work closely with LeeAnn Morrill to get her opinion and make sure she's comfortable because ultimately this motion modifies Resolution No. 3 which is, you know as a Commission, that's your Resolution. Of course it's important work cooperatively with the applicants and the awardees here to make sure it works for them as well. But will make sure to work with LeeAnn and make sure that she's comfortable with whatever language is in here and whatever process we take so that's definitely a big item on our to-do list.

Kraft said, before we go into executive session, Commissioners, at the end of your packet you have a couple of pages of PowerPoint slide which I'm not going to go through every point on here but there's really just one key point that I want to make. When the Commission made its original award to Colorado Springs and you provided a percentage of state sales tax increment Revenue to Colorado Springs to do these projects you looked at analysis by a third-party analyst that the office of State Planning and Budgeting hired. You looked at the recommendations of the economist from the applicant and you said, we're going to give 20.48% of any new Revenue within the Zone would go to the project and that estimate was intended to, over a 30-year period, provide all of the revenue that was generated by the project. So if you got your estimate right and all the analysis was right and the math was right, over 30 years you would pay off pay this Revenue and these folks could bond and use it to make upfront construction costs.

It turns out, like any forecast, there were some things that were not correct and so the estimated base year of Revenue was actually estimated lower than it really was by almost a 2 to 1 factor and the estimated natural growth rate of sales tax in Colorado Springs was estimated at 1.5% when it's really been more like

4%. Now it may not be 4% for 30 years, that's kind of coming out of the Great Recession, but there is really robust growth in Colorado, so because those two numbers were too low in the estimates effectively the percentage was set higher than it should have been. Which really rebounds to the benefit of Colorado Springs in that they're getting their revenue much more quickly than they thought they would.

Now the Commission was smart in that you put a cap on the total amount of Revenue of \$120.5 million dollars so we won't give them more Revenue than we intended but they're going to get it a lot quicker than you intended. Which is good because it'll help the projects get done and built. But what it also means, and we've done a couple of forecasts here, and you'll see some graphs here. On the graph the green line is the revenue we've actually paid the red line is kind of what we predicted the revenue would look like and then the purple line is a forecast that shows if things continue at the current trend, how soon would the \$120 million be paid off and so we're sort of showing that would be around 2028 or 2029. That's only 10 years or so from now. If there's a recession and things slow down, but it's not catastrophic the blue line is a forecast which says around 2031 we be paid off. What that means is, they will have gotten all of their Revenue in Colorado Springs in the next 10 to 12 years or so. The revenue will be fully paid off well before the performance period for the projects end, which I think is important because there's a little risk to the state because they're getting their revenue early, it's good, it allows them to have a higher Net Present Value on their bonds and build their projects but it also means there's maybe a roughly, twenty-year period where they won't be getting any Revenue from the state but they'll still be under sort of an obligation to continue to perform and program these venues the way we want them to.

I just wanted to point that out so the Commission to understand that dynamic. The reason it's important is that we need them to program the venues in ways that drive net new out-of-state visitors because that's the whole rationale behind the RTA is that these net new out-of-state visitors pay the state back for the money that the state is diverting from our general fund to these venues. So effectively they're creating extra revenue for the state they get the benefit of that extra Revenue hopefully the venue's continue beyond 30 years to generate net new revenue in the future and the state does get the benefit of that net new revenue but we definitely want to make sure that they're operating performing and driving net new visitors over a thirty-year period.

Cope said I remember back in 2013 having this conversation and the difficulty of forecasting in the future and I remember having a discussion that for all of our sides for everyone's sake we hope it does come in a lot faster than its projected to. I think it's to everyone's benefit that it's done that. It's certainly better than the alternative. The other thing I would say is with the approval City for Champions and the construction of the Olympic Museum, the amount of development that has triggered in her downtown and the real economic activity that has already spurred before the Museum's even open and with the optimism around the other projects, I really think it changed the psychology of the community and the willingness of investors to invest. I think that there is a partial impact on the improved rate of sales tax revenue in part due to City for Champions even before it was open.

There is risk in any of these projects not only the Colorado Springs projects but the other RTA projects throughout the state. I think every one of them is being developed in good faith with the full intention and expectation is going to develop the net new out-of-state visitors and the net new state sales tax increment that was projected. But there's really no guarantee with any of those. With the Sports and Events Center we have added extra thresholds over and above what any project has. We have developed a business plan that has been approved by the EDC. We have to demonstrate the implementation of the business plan through the agreements that are set forth and we also have this notion of liquidating compensation that will be paid as a financial penalty or inducement to make sure that the business plan is implemented and the facility is available for programming and that the venues are cooperating in good faith to have that done. So we already have some extra protections. I just would like to throw that out

there when you're having that discussion about putting additional requirements on the project when you're having those discussions.

Schiff thanked Cope for all his hard work and partnership on this project.

R. Brown said, pursuant to Colorado Revised Statutes Section 24-6-402(3)(a)(II), I move that we go into executive session with our attorney for the purpose of receiving legal advice about the Colorado Springs RTA Project. Allen-Davis seconded the motion. Motion passed unanimously.

The EDC is now in Executive Session.

Reeves moved the Commission exit Executive Session. Duran seconded the motion. Motion passed unanimously.

The EDC is now in Open Session.

Kraft said to Cope, a couple of things that we wanted talked about and dig a little deeper on. One is, we want to understand the survivability of the obligation to program the stadium in different scenarios like if the Switchbacks move out of Colorado Springs, or if they go bankrupt and some other entity ends up controlling or owning the stadium, we want to make sure that we feel comfortable and that LeeAnn can sort of have a look at this and think about it that the obligation for programming the stadium survives for a 30-year period.

I think there's some language that talks about the liquidated compensation after the bonds are paid off and it's just a little less clear who decides how that money is paid off, whether it's withholding the state sales tax revenue or gets paid through some other fashion, we want to make sure that it is at the EDCs discretion as to how the liquidated damages gets paid off. We just want to clarify that.

One thing we want to explore, the state doesn't have a direct relationship through the Resolution with the Switchbacks but right now they owe us liquidated compensation so I think we want to have some conversations with both the City as the applicant and CSURA about whether they should have that obligation and you guys would wrangle with the Switchbacks to get any money paid off.

We also do want to talk about extending the timeline for which the obligation for liquidated compensation goes beyond potential payout for the bonds. We are also cognizant of the fact that 30 years might be a really long time so I think there's room to talk about like an intermediate period, like maybe a minimum of a 20 year period. We're also open to basing the liquidated compensation on a fixed flat amount that might be less than the typical annual RTA payments you're going to get so it might be more like an average payment on an average expected payment of a smaller amount so we're open to talking about that.

We also want to talk about any kind of financial and or moral willingness of the City as the applicant to backup any liquidated damages should the Switchbacks entity go out of business. All of those factors are things we want to talk to you about and maybe engage with you and or the mayor to just really understand the city's support for this project and what the city could do to make the EDC feel a little bit more comfortable at how this thing will pay off.

**With all items discussed, the meeting was adjourned.**