

**Hampton Roads Transportation
Accountability Commission (HRTAC)
Summary Minutes of the January 8, 2015 Regular Meeting**

The Hampton Roads Transportation Accountability Commission (HRTAC) Regular Meeting was called to order at 8:24 AM in the Regional Board Room, 723 Woodlake Drive, Chesapeake, Virginia, with the following in attendance:

HRTAC Voting Members in Attendance:

Alan Krasnoff, Chair	Senator Louise Lucas
Rex Alphin	McKinley Price
Paul Fraim	William Sessoms *
Eugene Hunt	Tom Shepperd
Delegate Johnny Joannou	George Wallace
Linda Johnson	Kenneth Wright *
Delegate Chris Jones	Delegate David Yancey

HRTAC Ex-Officio Members in Attendance:

Charlie Kilpatrick
John Malbon
Andrew Sinclair (Alternative)

HRTPO Interim Executive Director:

Camelia Ravanbakht

Other Participants:

Deputy Secretary Grindly Johnson
James Utterback
Tom Inglima

HRTAC Voting Members Absent:

Clyde Haulman
Michael Hipple
Raystine Johnson-Ashburn
Dallas Jones
Senator Frank Wagner

HRTAC Ex-Officio Members Absent:

Jennifer Mitchell

* Denotes Late Arrival or Early Departure

Others Recorded Attending:

Tatiana Connell, Rick Correa, Richard Dillahunt Jr., Reid Greenmun, Kathleen McCarthy, Frank Papcin, Philip Rinehart, Donna Sayegh, Austin Taylor, Connie Walton (Citizens); Jan Proctor, Earl Sorey (CH); Randy Martin (FR); Brian DeProfio (HA); Brittany Forman, Joe Howell, Marcus Jones, Bryan Pennington, Jeffrey Raliski (NO); Jim Bourey, Bryan Stilley, Jerri Wilson (NN); Bob Baldwin, Sherri Neil, John Rowe (PO); Rob Catron, Selena Cuffee-Glenn, Eric Nielsen, Pat Roberts (SU); Bob Matthias, Brian Solis (VB); J. Mark Carter (YK); Bill Cashman (AECOM); Jim Long (CBBT); John Herzke (Clark Nexsen); J. Elias O'Neal (Daily Press); Scott Forehand, Don Quisenberry, (eScribeSolutions); Ryan Banas (HNTB); Jonathan Nye (HRPTA); Paul Holt (JCC); Stephen Brich (Kimley-Horn and Associates); Tracy Baynard (McGuire Woods Consulting); Karen McPherson (McPherson Consulting); Rhonda Murray (Navy Region Mid-Atlantic); Deborah Brown, Ronald T. Nicholson (Parsons Brinckerhoff); Mark Geduldig-Yatrofsky (PortsmouthCityWatch.org); Ken Yarberry (RK&K); Dianna Howard (TLP, VBTA, VBTP); Robert K. Dean (Tidewater Libertarian Party); Susan Clizbe, Tony Gibson, Paula Miller, Rick Walton (VDOT); Martha McClees (Virginia Beach Vision); David Forster (Virginian-Pilot); Amber Randolph, Brett Spain (Willcox & Savage); Kelli Alredge, Melton Boyer, Jennifer Coleman, Nancy Collins, Randy Keaton, Mike Long, Joe Turner, Chris Vaigneur (HRPDC); Robert Case, Danetta Jankosky, Mike Kimbrel, James McNamara, John Mihaly, Brian Miller, Joe Paulus, Dale Stith, Chris Wichmin (HRTPO)

Public Comment Period (*limit 5 minutes per individual*)

Ms. Dianna Howard read some sections of the Code of Virginia that addressed elected officials and conflicts of interest. She read passages that focused on defining “personal interest” and how an individual having a financial benefit or liability in a business that could benefit from decisions made may constitute a conflict. She continued reading a segment discussing situations where a conflict of interest did not exist.

Ms. Donna Sayegh spoke regarding the language chosen by the founding fathers with respect to the creation of the Constitution. She discussed statements made by James Madison and the current request of HRTAC for guidance from the Virginia Attorney General’s office on the potential for conflicts of interest by voting members of HRTAC. She continued by explaining the origin of the Bar Association and that membership to the BAR Association doesn’t provide the right to practice law, only the right to use copywritten laws. She concluded by saying that attorneys don’t know the law, they know procedure, and then she quoted the Bible.

Mr. Reid Greenmun, from the Hampton Roads Tea Party, stated that if a HRTAC member derives benefit “from an employer or a contract”, that they should not be voting as it is a conflict of interest. He stated that the Commission has done almost nothing with the suggested bylaw changes presented to the Commission previously. He remarked that the changes were necessary to help the Commission stay more true to the intended purpose as the Hampton Roads Transportation Accountability Commission, focusing on voting methods and the continued use of voice voting. He made the statement that the Commission is expected to choose projects that provide the greatest impact on relieving

traffic congestion, and questioned why widening the Hampton Roads Bridge Tunnel widening wasn't on the list. He questioned the benefits package and salary suggested in the budget. He closed by requesting that a roll call vote be used instead of a voice vote.

Mr. Mark Geduldig-Yatrofsky discussed the War of 1812 and the historical significance of the day. He made an analogy that the continued fighting at the end of the War of 1812 due to lack of timely knowledge of the signed treaty that hadn't reached the combatants yet, was akin to planning road projects where feeder roads to the HRTAC-approved projects may be underwater due to rising sea levels, and therefore make the road projects a waste of money.

Mr. Frank Papcin was next to speak. Mr. Papcin remarked that in his opinion, the easiest way to alleviate the conflict problems was to take Towne Bank out of the picture. He continued by giving a brief review of a draft of prioritized projects. He stated that the one project that is the biggest problem, the Hampton Roads Bridge Tunnel, is not on the list. He continued by stating that nothing on the drawing board or in the plans was going to alleviate the problems at the Hampton Roads Bridge Tunnel. He made a statement that it appeared that the Commission was taking money from the local area, and paying for projects that should have been paid for by the State of Virginia. He closed by saying that the funds raised locally should be used for projects locally, and that it was the job of HRTAC to make sure that is the case.

Minutes of the December 18, 2014 HRTAC Regular Meeting

Chair Alan Krasnoff initially asked for questions or comments regarding the December 18, 2014 minutes. No comments or questions were made. Chair Krasnoff then stated that a vote would be deferred until a later time after additional members had arrived.

Upon arrival of Mayor William Sessoms, Chair Krasnoff brought this topic back up. (This occurred immediately before the voting on the Memorandum of Agreement.) He noted before the vote that it would be a voice vote, and that they would move to a roll call vote should any "Nays" be received.

Mayor McKinley Price Moved to Approve the Minutes of December 18, 2014; seconded by Mr. Tom Shepperd. The Motion Carried unanimously.

HRTAC/VDOT Memorandum of Agreement

Chair Krasnoff commended Secretary of Transportation Aubrey Layne, Charlie Kilpatrick, Tom Inglima, and Delegate Chris Jones. He made note of the countless number of hours that had been put into the project. He then invited Mr. Inglima to give information regarding the HRTAC/VDOT Memorandum of Agreement.

Mr. Tom Inglima noted that the terms of the Memorandum of Agreement (MOA) with VDOT had been summarized at the last HRTAC meeting. He gave a brief presentation regarding

the general purpose of the MOA, and noted that the MOA contemplates a model Project Agreement as an exhibit to be used as a template for projects as they arise. He continued by stating that HRTAC and VDOT had not yet agreed on a model agreement to be used for actual construction projects, and the parties would continue to work in good faith to develop a model Project Agreement to be attached as an exhibit. Mr. Inglima stated that the MOA included in the Agenda was the MOA on which the group was being asked to take action today. He offered an opportunity to address any member questions.

Mr. Tom Shepperd expressed understanding of the relationship between the Department of Taxation, VDOT, the collecting of revenue, and the depositing of funds. He then asked for clarification as to who was responsible for the debt. Mr. Inglima answered that HRTAC holds the responsibility of the debt it incurs and would secure the debt by pledging the revenues generated from taxation that are deposited in the fund.

Mr. Shepperd asked for clarification of the use of the word “appropriation” and the meaning as it applies to the use of revenues. Mr. Inglima responded that per the Constitution of Virginia, all state funds (tax revenues) must be appropriated by the General Assembly for use, and this is done via adoption of a biennial budget. He further explained that if a budget is not established, then the appropriation wouldn’t happen, and therefore the funds would not be available.

Mr. Shepperd than asked a question about termination of projects and potential mid-project redirection of funds to other projects. Delegate Chris Jones responded by reiterating that they must follow the Constitution and drew comparative similarity to the use of local government and other agency funds. He discussed the built-in “kill switch” in House Bill 2313 that says dollars cannot be used for anything other than for what it was intended. He discussed the importance of an approved budget and upcoming trip with the Governor to go meet with the rating agencies. He closed by saying the kill switch in House Bill 2313 prevents the General Assembly from spending funds for other than what was intended.

Mr. Shepperd expressed appreciation for the clarification and then raised some questions about the legal language used and the potential for the two organizations, HRTAC and VDOT, to fight with each other.

Mayor George Wallace noted a stipulation in the agreement regarding the inclusion of HRTAC funds into the Governor’s budget and asked what would happen if the funds were not included in the budget. Mr. Inglima responded that there is a provision in the agreement to always cause mechanical presentation for inclusion in the budget, and restated Delegate Jones remark that it would always come up as part of the biennial budget.

Delegate Johnny Joannou asked if certain statutes cited in the recitals of the MOA dealt with tolls, to which Mr. Inglima said they did not.

Mr. Shepperd asked who did the submission to the Governor. Mr. Charlie Kilpatrick explained that VDOT develops its budget and gives it to the Governor, who then makes the presentation for budget inclusion. Mr. Shepperd then asked for clarification of the role of the Secretary of Transportation in the process. Mr. Kilpatrick then explained the connection between the Commissioner of VDOT (Charlie Kilpatrick), his boss the Secretary of Transportation (Aubrey Layne), and the Governor.

Mr. Inglima noted that Agenda Item 5A regarding the Standard Project Agreement for Funding and Administration re: I-64 Widening Peninsula Segment 1 had already been approved by the HRTPO, and VDOT was prepared to move forward without any additional commitments by HRTAC. He also noted there will not be a project agreement required of HRTAC for that work to proceed, and the action taken by the HRTPO predated the formation and creation of HRTAC. Mr. Kilpatrick confirmed the statement by Mr. Inglima.

Mr. Inglima next noted that they had previously intended to come to this meeting with project agreements for Segments 2 and 3. He then said that after additional discussion with VDOT had occurred, it was determined that more time was needed.

Mr. Inglima next explained that HRTAC and VDOT had created an Interim Project Agreement that will allow VDOT to do non-construction work for the other projects listed in the Agenda. He explained the budgeting for these segments, the appendices and the general structure of the agreement. He noted that VDOT was not satisfied with how additional costs associated with unforeseen circumstances were addressed in the draft Interim Project Agreement distributed with the Agenda. He said that since the Agenda had been distributed, HRTAC and VDOT had developed a Summary of Principles (shown on the screens) to address the unresolved issues. He explained the Summary of Principles, and gave examples of what could constitute an unforeseen circumstance.

Mayor Price questioned whether the Program Coordinator was a title or a staff position, to which Mr. Inglima responded that it was only a title and not a required position.

Delegate Joannou questioned why language was included in the Agreement that specifically stated "tolls imposed by HRTAC." Mr. Inglima responded that this was a draft model agreement and the specific project budget would be in the appendix. Delegate Joannou then asked if that verbiage could be removed. Mr. Inglima said that it could be eliminated from agreements that applied to specific projects which were to be voted on today. Delegate Joannou then asked for clarification that each project would be voted on separately. Mr. Inglima responded by saying that they contemplate having a project agreement for each of the three, and clarified that the motion they are recommending is to authorize the Chair to go forward and enter into agreements for the three being discussed.

The discussion continued regarding verbiage that allowed VDOT to provide its own funding and the presence or absence of an obligation for HRTAC to reimburse that funding. Mr. Inglima clarified by stating that HRTAC obligations are limited to those stated in the Appendix of the agreement. Mr. Kilpatrick confirmed that HRTAC obligations do not go

beyond what HRTAC had approved. Delegate Joannou then asked about the disposition of funds requisitioned by the state for an expense that never materialized. Mr. Inglima stated that the funds would then be returned to HRTAC.

Delegate Joannou then questioned a clause in the contract that referenced VDOT's use of outside legal counsel VDOT could use, and who would pay for that counsel. Mr. Kilpatrick then stated the Office of the Attorney General is the legal counsel for VDOT. He continued that this clause was there to prevent conflicts and that he has never known this clause to be used by VDOT.

Delegate Joannou then asked for clarification that HRTAC will not have any responsibility or obligation to operate or maintain the projects. Mr. Inglima and Mr. Kilpatrick agreed that was the case and HRTAC would not bear any obligation or responsibility to operate or maintain any project post completion.

Next, Delegate Joannou requested clarification regarding personal liability and third party rights. Mr. Inglima explained the reciprocal nature of the clause and that it protects members from being sued individually. He then explained that the agreements are solely contractual in nature, and disclaiming that a partnership was created. It was also mentioned that this is a standard clause. Mr. Inglima then followed by stating that HRTAC obligations are those stated under the contract. Delegate Joannou questioned whether members of HRTAC or HRTAC could get sued. Mr. Inglima responded that privity of contract did not exist with the contractor, but that no one can control what a third party does. He further explained that if they were named in a suit, they would have to defend and seek to dismiss it for lack of basis or other appropriate reason. Mr. Inglima continued that VDOT contracts require that contractors have insurance that lists HRTAC as an additional insured.

Delegate Joannou then questioned the use and meaning of a clause disclaiming strict construction against a drafter. Mr. Inglima and Mr. Brett Spain gave clarification. Delegate Joannou then requested information regarding the case where the Supreme Court held the meaning of the terminology as discussed.

Mayor Eugene Hunt asked whether adding a footnote identifying additional sources of funding for the projects was always going to be done. Mr. Inglima responded that in this case VDOT had provided them enough data and schedule to add it to the document. Dr. Camellia Ravanbakht added that they had received the revised versions of the appendices showing the non-HRTF funding.

Mr. Kilpatrick gave discussion summarizing the reasons why they have been working on the agreement. He focused on the need for VDOT to maintain scope, schedule, and budget. He also stated that VDOT understands that they were not being given a blank check. He explained the meaning of a contractor filing a Notice of Intent to File Claim, and the processes that are in place to make sure that "no surprises" occur.

At the conclusion of Mr. Kilpatrick's comments, Chair Krasnoff gave discussion regarding the types of voting utilized, noting specifically that in the case of a voice vote, the votes are unanimous of those present, and requested that the minutes reflect that.

Next a motion to approve the Commission's entry into a MOA with VDOT was brought up for discussion. Delegate Joannou asked for clarification that the MOA did not contain any language about tolls. Mr. Inglima responded that there was not any tolling obligation under the agreement.

Mayor Hunt Moved (i) to approve the Commission's entry into a Memorandum of Agreement with VDOT in substantially the form presented with the Agenda for today's meeting, and (ii) to authorize the Chair to finalize, execute and deliver on behalf of the Commission such Memorandum of Agreement with VDOT in accordance with the foregoing; seconded by Mayor Paul Fraim. The Motion Carried unanimously.

Mr. Inglima summarized the upcoming motion to adopt the Interim Project Agreement. Delegate Joannou asked for clarification on the agreement and the motions. Mr. Inglima stated in summary that the motion on which they were voting on was a motion to approve the Agreement included in the Agenda in substantially the form in the Agenda, conformed to comply with the Summary of Principles presented in the meeting today.

Delegate Jones Moved to approve the Commission's entry into one or more Interim Project Agreements for funding and administration with VDOT for (a) the I-64/I-264 Interchange Preliminary Engineering and Right of Way Acquisition (b) Third Crossing Environmental SEIS and (c) I-64 Southside High Rise Bridge Preliminary Engineering, in substantially the form presented with the Agenda for today's meeting subject to such modifications and revisions as the Chair, in consultation with the Vice Chair and Counsel, may deem necessary and appropriate to incorporate the principles presented to the Commission at today's meeting and address ancillary matters and to authorize the Chair to finalize, execute, and deliver on behalf of the Commission such Interim Project Agreements in accordance with the foregoing; seconded by Mayor Linda Johnson.

Delegate Joannou asked for clarification regarding the motion, and suggested making an amendment to the motion striking language regarding toll collection from the agreement. Mr. Inglima made effort to explain the language and what it meant. Delegate Joannou reiterated that he was not going to vote for anything that has tolls on or in it. Mr. Inglima suggested that VDOT would not object to the removal of the "Whereas" clause in the Agreement that referenced tolls. Mr. Kilpatrick made effort to explain future voting actions with respect to projects requiring tolls. Mayor Krasnoff suggested amending the motion to eliminate the language at issue. Mr. Inglima pointed out that additional language would need to be incorporated that would define the term "HRTAC Controlled Monies." Delegate Jones proposed that a substitute motion could be made.

Mayor Sessoms added it is possible that tolling would be discussed for future projects. Chair Krasnoff added that the Commission would be coming to that hurdle in the future.

Mayor Linda Johnson asked for clarification that the provision of the Agreement in question required HRTAC to use all of the monies they collect, regardless of the manner which they were collected, for the proper projects. Mr. Inglima confirmed her interpretation. Mayor Johnson continued that she did not interpret anything from the document that suggested tolls of any kind for these particular projects. Mr. Inglima confirmed her interpretation.

Several motions were discussed, with the proposed substituted motion being withdrawn by Delegate Jones. Chair Krasnoff gave notice and confirmed understanding of the original motion on the floor by the Committee members present.

Senator Louise Lucas stated for the record that her interpretation of the Agreement did not imply a toll or approval of a toll on any of the projects. She further stated that she would not be voting "yes" if she thought any of the language in the Agreement implied approval of a toll for any of the projects HRTAC is about to develop.

Chairman Krasnoff asked Mr. Inglima to restate Delegate Jones' original motion, which was to approve the Commission's entry into one or more Interim Project Agreements for funding and administration with VDOT for (a) the I-64/I-264 Interchange Preliminary Engineering and Right of Way Acquisition (b) Third Crossing Environmental SEIS and (c) I-64 Southside High Rise Bridge Preliminary Engineering, in substantially the form presented with the Agenda for today's meeting subject to such modifications and revisions as the Chair, in consultation with the Vice Chair and Counsel, may deem necessary and appropriate to incorporate the principles presented to the Commission at today's meeting and address ancillary matters and to authorize the Chair to finalize, execute, and deliver on behalf of the Commission such Interim Project Agreements in accordance with the foregoing. A roll call vote was conducted:

Alan Krasnoff	Yes
George Wallace	Yes
Rex Alphin	Yes
McKinley Price	Yes
Paul Fraim	Yes
Eugene Hunt	Yes
Kenneth Wright	Absent
Linda Johnson	Yes
William Sessoms	Yes
Tom Shepperd	Yes
Senator Lucas	Yes
Delegate Joannou	No
Delegate Jones	Yes
Delegate Yancey	Yes

The Motion Carried.

Update on Attorney General Opinion

Mr. Inglima noted that there was not a new update to be given. Mayor Sessoms noted that he heard yesterday that the Attorney General's office was putting their opinion in writing and that he heard they were going to be okay to vote; however, he was still going to wait to see it in writing.

Next Meeting

Mayor Linda Johnson Moved to hold the next HRTAC meeting on February 19, 2015 at 12:30 PM; seconded by Mr. Sheppard. The Motion Carried.

Adjournment

Mayor Linda Johnson Moved to adjourn. The Motion Carried.

With no further business to come before the Hampton Roads Transportation Accountability Commission (HRTAC), the meeting adjourned at 9:47 AM.

Alan P. Krasnoff
HRTAC Chair