

NAHBA Bi-Annual Teleconference Meeting

September 27, 2017 2:00 PM Eastern

Board Members Present:

Melissa Staffeld, Chair from Michigan

Tim Hoesli, Vice Chair from Illinois

Brooks Glasnapp, Sec/Treasurer from Iowa

Gary Bowman, Host-State Chair from Maryland

Melissa Staffeld opened the meeting and Brooks Glasnapp took roll call.

States Represented:

California

Colorado

Florida

Georgia

Hawaii

Illinois

Iowa

Maine

Maryland

Michigan

Mississippi

Missouri

Montana

Nebraska

Nevada

New York

Oklahoma

Oregon

South Dakota

Tennessee

Texas

Utah

West Virginia

Wisconsin

Wyoming

FHWA Represented

Dawn Horan, Headquarters

Joi Singh, Headquarters

Hannah Needleman, Headquarters

FHWA reps from several States

The new board members were introduced:

Melissa Staffeld, Chair from Michigan [staffeldm@michigan.gov]

Tim Hoesli, Vice Chair from Illinois [tim.hoesli@illinois.gov]

Barbara Wessinger, 2nd Vice Chair from South Carolina [wessingerBM@scdot.org]

Rob Jessee, Past Chair from Florida [Robert.jessee@dot.state.fl.us]

Brooks Glasnapp, Sec/Treasurer from Iowa [brooks.glasnapp@iowadot.us]

Gary Bowman, Host-State Chair from Maryland [GBowman@sha.state.md.us]

Melissa provided a general welcome and thanked those who had responded to her recent survey for conference topics and speakers. If anyone is interested in a different topic or has interest in presenting on a topic but would like to discuss apart from this call, please contact Melissa. We anticipate a good conference next year in Maryland.

Barbara Wessinger was scheduled to provide an update on the NCHRP research proposal but was not available at the meeting.

Ken Pye (Florida) provided a brief summary of the final report entitled “Establishment of Effective Control Factors to Achieve Federal Enforcement Consistency with the Highway Beautification Act” compiled by Florida A&M University and Florida State University, as submitted to FDOT. Ken thanked the States for participating in the information-gathering phase and indicated that they obtained responses from all 50 States. As the report was just recently received, FDOT staff were still reviewing it. Ken shared a few examples of the “baseline standards” recommended for nationwide application. It is anticipated that Rob Jessee will present an overview, or perhaps the highlights or takeaways from the project at the 2018 NAHBA Conference.

Rob Jessee was scheduled to provide an update on the ANPRM but was not available at the meeting.

Tim Hoesli provided an update on the efforts in Illinois to examine all options with respect to administering the provisions of the Bonus Act. Illinois legislators had passed laws that were more permissive than those listed in the Federal-State Agreement. Illinois is now updating their Federal-State Agreement. Tim indicated that several other states were interested in the process. While it is

possible that the work on the Bonus issue may trigger repayment, it was hoped that this is not necessary. FHWA is working with Tim on these issues.

Joi Singh was introduced as the new OAC regulator for FHWA headquarters. Joi, an attorney by trade, came on board in early July. Among other experience, she served as the realty chief for the District of Columbia.

Dawn Horan covered two topics; Bonus Act and School Property. Regarding the Bonus Act, FHWA offices were asked to look for program areas to streamline (possibly to incorporate into an infrastructure bill) and the elimination of the Bonus Act was one suggestion that seems to be “sticking” in the draft versions. It is recognized that it’s an unfunded mandate and that elimination might ease some administrative burdens for the participating States. Pay-back options are being looked at, and it’s possible that it may just be considered awash (paid is paid; owed is no longer owed; it’s done). Again, this is just a possibility. However, Dawn is urging those States to thoroughly examine the effects (of eliminating it) locally to see if there may be unintended consequences from such an action. Better yet, if those unintended consequences can be mitigated by some conditional language that you wish to propose, that would be helpful information for FHWA to consider. However, please route this feedback through your local FHWA Division - not directly to headquarters.

Regarding signs on school property, Dawn said that FHWA has received a plethora of questions regarding this matter, as cash-strapped public entities and schools look for more ways to generate revenue. Generally speaking, the first question would be whether the zoning classification is commercial or industrial, or an equivalent (i.e., Business). Other classifications such as “Public Institutions/Education” are probably not going to work, unless upon examination, they are indeed constructed like a standard commercial or industrial type of classification (which is probably unlikely). Rezoning for the purpose of securing a billboard permit is, of course, not going to work either. Declaring that a school property is on its own unzoned island in the middle of a zoned jurisdiction is also not going to work. If the jurisdiction is in fact not zoned, then application of the unzoned rule can occur. The existence of a school doesn’t necessarily preclude the issuance of a billboard permit, provided that commercial activity is indeed occurring in the area in accordance with that State’s unzoned rule. Such commercial activity should not be mere token or contrived arrangements for the purposes of qualifying the area. Disclaimer: These are minutes taken by a state regulator and should not serve as an official FHWA position.

Hannah Needleman provided an update on the Scenic America lawsuit. Hannah has replaced Bob Black in FHWA’s Office of Chief Counsel. Scenic America had petitioned the U.S. Supreme Court to review whether the D.C. appellate court correctly applied the legal doctrine of Chevron deference. SCOTUS spent a long day on Monday reviewing hundreds of petitions. Only 8 cases were accepted

last year; up to 20 can be accepted in a year. Unfortunately, the result was not available at the time of this meeting. However, results are expected by tomorrow (September 28th) at 10:00AM Eastern.

In other business, the Caltrans rep - Velessata Kelley – brought three issues to the floor; MAP-21 and its unintended consequences, Customary Maintenance definition, and whether FSAs could be made easier to revise. Regarding MAP-21, it's no secret that the additional miles/routes that were added for OAC control was an unintended consequence. Dawn has presented this issue more than once to a Transportation Infrastructure Committee. Unfortunately, it is the law, so the law would have to change. Regarding the customary maintenance definition, there are no plans at FHWA to resume work on this project [note from minute-taker; a workshop took place in Denver, Colorado in 2009 in which draft customary maintenance guidelines were developed by a panel of FHWA and State regulators. The draft was then shared with representatives of scenic groups and the outdoor advertising industry, as well as the rest of the State regulators. It was also vetted at the 2010 NAHBA conference in Wisconsin. However, State regulators and stakeholders were too far apart on some key issues in order to assimilate these into a standardized set of criteria. Due to this, or other possible reasons, the draft never matured into guidance at the federal level.] Regarding updating FSAs, Dawn said that FHWA is not looking to streamline this process [any further than the effort conducted several years ago]. Due to the many and varied stakeholders involved and to avoid showing deference to any of these stakeholders, a robust public involvement process is necessary.

In other business, Tim Hoesli (Illinois) reported that he is dealing with a construction project that has impacted two billboards. The billboards were located in one city, but the area was later annexed into another city. This city does not allow billboards, which complicates a relocation option. Furthermore, this city amortizes out the value after five years. The billboard is currently not legal under local ordinance, yet the city has not enforced the removal. The State is questioning whether the just compensation requirements in the Highway Beautification Act apply. Tim didn't elicit any good feedback but if any State has a similar experience, please contact Tim in Illinois. The State of Mississippi has a statute for amortizing out billboards after five years but it is not enforced. In 1973, the State of Vermont (not present at this meeting) was reported to have incurred the ten percent penalty for not paying just compensation (funds were restored after problem was corrected).

Meeting was adjourned. Minutes taken by Brooks Glasnapp (Iowa).