



APPROVED 08/18/2009

**MINUTES
OF THE
BOARD OF COMMISSIONERS
SPECIAL MEETING**

HELD ON

**Monday, August 10, 2009
3:00 p.m.**

AT

**Port of Tillamook Bay
4000 Blimp Boulevard
Tillamook, Oregon**

1. Call to Order

Board President Jerry Dove called the meeting to order at 3:26 p.m. and apologized to those present for the late arrival of the Bunkers Group representatives.

2. Recognition of Persons Present

Commissioners: Jerry Dove – President; Ken Bell – Vice President; John Ficher – Secretary; Arthur Riedel – Treasurer (appeared by telephone); and Jim Young – Commissioner.

Port Staff: Michele Bradley – General Manager; Aaron Palter – Project Coordinator.

Port Counsel: Mr. Jeff Bennett (Jordan Schrader); and Ann Sherman (K&L Gates) (appeared by telephone).

Public: Daniel Patsula, Howard Keim and Ken Margala – The Bunkers Group; Lenora Lawrence; Lee Ann Neal, Headlight Herald; Jill Williams; James Gregory; C. Wayne Cook; Gerald “Butch” Parker, Director, Tillamook County Community Development; Ed Gorzynski; and Gus Meyer.

3. Public Comment

Commissioner Dove said that due to a time constraint by the Port's attorney, he will hold public comment until later unless someone has something important to say. There was no response.

4. Discussion of Resort Project with The Bunkers Group

Mr. Daniel Patsula (Bunkers) said the Bunkers Group is here today to discuss their August 3 letter response to the Port's July 31 letter on the Bunkers Group's proposed Plan of Finance.

Mr. Bennett discussed the July 30 letter of the Bunkers Group's attorney Jeff Condit. The Port's bond attorney, Ann Sherman, has provided some questions to Mr. Condit in response to the Condit letter. He asked Bunkers if Mr. Condit has responded to those questions. Bunkers has not yet received a response from Mr. Condit, but they would work to get a response by the end of this week.

Ms. Sherman said she reviewed Bunkers' comments. She advised the Port can pledge its taxing authority to its own obligations; the Port is constitutionally prohibited from a pledge of its taxing authority to a 63-20 corporation, which pledge is proposed as a requirement of the Plan of Finance. She cited Article 11, Section 9 of the Oregon Constitution as the authority. She said the Port can issue the debt on its own and pledge its authority as a part of that debt, or the 63-20 can issue the debt without the Port's pledge.

Commissioner Young asked Bunkers why this type of pledge is necessary in order to sell the bonds. Mr. Ken Margala (Bunkers) responded their investment bank is requiring this pledge of the Port's taxing authority as a part of the financing package. He said their bond counsel will need to look into the issues being raised and will provide a response to the constitutional authority question by the end of the week.

Commissioner Bell asked Ms. Sherman about the liability to taxpayers if the project fails. Ms. Sherman responded this would depend on how the original package is structured.

There was a discussion on the types of pledges the Port can make and their effects. Ms. Sherman said the Port should be cautious how it decides to structure the financing package. She added that there are multiple other issues which need to be worked out as the project moves forward. She added that Mr. Condit did not address the 63-20 corporation in his letter. Mr. Margala responded that as soon as their attorney addresses the issues, Bunkers will provide those answers to the Port.

There was a discussion about Question #24. The answer to this question was inadvertently omitted from the August 3 letter. Mr. Bennett stated Question 24: "Will the land and its improvements be pledged to the bondholders?" Mr. Patsula responded the land would not be pledged, it would be encumbered by the lease. Mr. Margala added that bondholders would probably want the lease subordinated to them as a part of the financing package.

Commissioner Dove asked what would happen if the Board decided not to provide FEMA funding to the project. Mr. Margala responded the Plan of Finance will not work without the FEMA money. There was a discussion about the FEMA money and the list provided to Senator Betsy Johnson. If the Port is only willing to put up \$13 million towards the project, which represents the balance of the unmatched money, will this work for the Plan of Finance. Bunkers responded this will probably not work. Commissioner Bell suggested removing some of the projects from the list provided to Senator

Betsy Johnson, specifically the car storage project, which he said could add an additional \$5.5 million to the FEMA money for the resort project. He asked Bunkers if this \$18.5 million figure could work. Bunkers responded this could work. Mr. Margala said whatever FEMA money the Port would put towards the project, Bunkers will match, and he said the Board needs to do what is best for the Port as it looks at its projects list.

Commissioner Riedel questioned which other projects on the list could be left out. Commissioner Dove said the Port needs to do what is best for the Port and Tillamook County, and he said constitutional questions need to be answered at this point.

Commissioner Young discussed Question #26, and asked what difference the 99-year lease makes when the project is a 25 to 30 year bond life. Mr. Margala responded the investors like to be extra conservative in their assumptions. Mr. Bennett referred to Bunkers' answer to this question and asked they provide a letter citing what federal tax law they were referring to in the answer. Bunkers responded they would provide an answer to that request.

There was a discussion about the securitization of monies as a part of the Federal Build America Bonds program. Bunkers said that many projects have been done using Build America Bonds. Ms. Sherman said she has not seen securitization done yet and that it will be interesting to see what will happen in the markets.

Mr. Bennett asked Ms. Sherman to clarify the 63-20 corporation issue. Ms. Sherman responded that the 63-20 corporation idea will not work if it requires a pledge from the Port. Bunkers responded the 63-20 is still the intended financing structure.

Ms. Sherman said she had to leave the meeting for another appointment. She ended her telephone contact with the meeting at the hour of 3:59 p.m.

Commissioner Dove discussed the appeal of the conditional use permit. Bunkers said their counsel believes they have a valid conditional use. A discussion was held about the upcoming hearing before the Planning Commission on September 24, 2009 and its effect on the project. Mr. Patsula said without the conditional use permit, Bunkers couldn't build the golf course and the project would be dead.

Commissioner Young discussed the importance of using local contractors for the project. Mr. Howard Keim (Bunkers) said that Bunkers would probably use a contractor of general quality and subcontracting of locals, saying you want a major builder for the project but also try to bring in some local talent. A discussion was held about incorporating a percentage requirement of local contractors (i.e. 10 percent) into the construction process to satisfy the local population on this issue.

Commissioner Dove discussed Bunkers' belief that the non-profit corporation would allow them to take not use Davis-Bacon contracting provisions. Bunkers responded their belief that this would be the case. There was a discussion of FEMA's contracting requirements and construction strategies and community benefits. Commissioner Dove said he is still a firm believer in this project, but there remain many questions from FEMA on how to get it done. He said he had contact with 200 people at the County Fair last week about this project. All but a few have problems with the FEMA money.

Mr. Keim said this project anticipates a three-year plan. A discussion was held about the project and its completion. Bunkers said they would not spend the FEMA money until the bonds were sold.

A brief discussion was held about the project and its competitive effects on other local businesses such as restaurants and Alderbrook Golf Course, which is undertaking much the same project.

3. Public Comment (CONTINUED)

Commissioner Dove invited public comment at this time.

Mr. C. Wayne Cook said he would hope the project would be put up for a vote of the public. He said he is against using public money for it.

Mr. Ed Gorzynski said the majority of people he has polled do not like the project. He reminded the Board they said at their last meeting no public money would be used. He discussed the recent editorial in the paper and discussed the fiduciary responsibilities of the Port Board. He said the Bandon Dunes Golf Resort is down forty (40%) percent in their business operations. He said don't use public money. Commissioner Dove clarified that his statement was that no state matching money would go to the project.

Mr. James Gregory said that if the project is so great, why isn't Bunkers using their own money to fund it. He asked why the project is using government money and said it is very interesting there is talk about getting around Davis-Bacon. He asked the Board if they have Googled any of the Bunkers folks besides Dick Carr. Commissioner Bell responded the Board performed their due diligence on this issue years ago.

Ms. Lenora Lawrence asked if the Port will lose the FEMA money if it goes forward with the project but something happens in the process. She does not believe the economic turnaround will occur in three years' time. She questioned the ten percent figure of local contractor inclusion for the project saying this is not enough. She asked Commissioner Bell if he has been communicating with the Bunkers Group outside of public meetings. Commissioner Bell responded that he is talking to the Bunkers Group all the time and said he is on the committee.

There was a discussion about the percentages of monies for project management and construction. Mr. Bennett said that there has been no approval of a budget for the project yet.

Ms. Jill Williams said she has received many comments from local folks about her recent commentary in the paper. She is against the project because of the inclusion of FEMA money, and said she does not see Tillamook as a destination resort.

There was no other public comment.

Commissioner Dove said the meeting will be recessed into executive session under ORS 192.660 (2) (e) to discuss real property transactions. He excused the members of the public from the meeting.

(The meeting was recessed into Executive Session between 4:30 p.m. and 5:13 p.m.)

(Mr. Gus Meyer now present in the meeting room.)

5. Other Business (if necessary)

Commissioner Dove discussed the need to look at the agreements between the Port and Bunkers Group and discussed the Purchase and Sales Agreement, the Lease and the Development Agreement.

Mr. Bennett discussed the Purchase and Sales Agreement. The closing date was September 30, 2008; but this did not occur. The Port is currently out of contract. It now appears from the records that the purchase will not happen. The Port had looked at extending the contract because of the sale. Mr. Margala said it would be better to leave the agreement in limbo; but the 99-year lease currently works as the option for the project. Mr. Keim added that until the bond issue is resolved, Bunkers would like to delay the other issues. Mr. Patsula said the appraised price right now is a good one and discussed the financing history and Plan of Finance. Commissioner Dove said the Port Board has not yet accepted any Plan of Finance for the project. Bunkers agreed.

Mr. Bennett discussed the Lease Agreement. The current Rent Schedule (4.1.2) is not reflective of the current project. Housing is no longer a part of the project. He said it would be appropriate for the Port to look at amending the figures. Bunkers said they have no objection to this.

Ms. Bradley requested the answers to the Board's questions be provided by Friday (August 14) for the Port's counsel's review prior to the upcoming Board meeting on August 18. Bunkers said they would have the answers to the Port's questions by the end of this week.

Commissioner Dove discussed the idea of an independent third-party review of the Plan of Finance's figures and said there may be a potential to lower the overall project cost, which is now at \$115 million. Mr. Margala responded the figures reflect \$13 million for putting together the financing package, a \$5 million match for the FEMA funds and an \$8 million reserve fund and said if the Port is looking to have these figures blessed by their own consultant, it should know that these figures will be reviewed by the investment banks and would be thoroughly reviewed for accuracy and the project would not proceed to financing if not accepted.

The status of the markets was discussed. Mr. Keim said that timeshares are in worse shape than hotels right now. The numbers on the hotel are at today's construction rates. He added that Bunkers rates are below the 60% break-even point and said that Bunkers' investors, bank operators and staff have reviewed and blessed the figures.

Commissioner Dove discussed the Board's consensus to not give up its taxing authority and FEMA monies to the project. Commissioner Bell disagreed about the FEMA money. There was a brief discussion on this. Mr. Margala responded that if the project did not receive the conditional pledge on behalf of the Port, Bunkers will not ask for anything else.

Mr. Bennett discussed the Development Agreement. There are provisions of the agreement which have not been met. Currently, the agreement is in the financing phase with the Port not even having approved preliminarily the Plan of Finance. The Port needs to continue to look at this agreement.

A discussion was held about how to proceed. The consensus of the Board is to wait on making any decisions at this time. The Bunkers Group is to provide in advance of the upcoming Tuesday, August 18 meeting their attorney's responses to Ann Sherman's questions regarding the non-profit

corporation and bond issuance, the question of the constitutional authority of the Port to pledge its taxing authority to the non-profit corporation and a citation of the federal tax law requested by Mr. Bennett from Question 26 of the August 3 letter.

Bunkers responded that the project seems to be at a do or die point depending on the answers to the questions about financing.

The Board said they expect to have these answers for the August 18 meeting when they will make a decision on the future of the project.

6. Commissioner Comments

Commissioner Dove asked Commissioner Bell to verify whether or not a committee was formed for the purpose of negotiating with the Bunkers Group. Commissioner Bell said he does not know; he and Commissioner Riedel were asked to be the talkers with the Bunkers Group. Commissioner Dove said that attorney Andy Jordan has said that if two (2) commissioners meet in this manner it needs to be handled as a public meeting.

7. Adjournment

The meeting was adjourned at the hour of 5:37 p.m.