



## **SPECIAL MEETING**

### **MINUTES**

**APPROVED 07-21-2009**

**Date: Wednesday, July 8, 2009, at 5:00 p.m., Port of Tillamook Bay Office, 4000 Blimp Boulevard, Tillamook, Oregon.**

#### **1. Call to Order**

The Meeting was called to order by Board President Jerry Dove at 5:00 p.m.

#### **2. Recognition of Persons Present; Public Comment**

**Commissioners:** Jerry Dove – President; Arthur Riedel – Vice President; Ken Bell – Secretary; John Ficher – Commissioner; and Jim Young, Commissioner.

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

**Port Counsel:** Mr. Andy Jordan (Jordan Schrader)

**Public:** Butch Parker – Director, Tillamook County Department of Community Development; Lee Ann Neal, Headlight Herald; Les Gardner, Tillamook Gun Club; Lenora Lawrence; Mary Sause; Senator Betsy Johnson; Mike Weitman, Tillamook Gun Club; C. Wayne Cook, Tillamook Gun Club; Ed Gorzynski; James Gregory; Marshall Doak, Director, Tillamook Economic Development Council; Vicki Goodman, VLG Consulting; Kathleen Whitten; Ken Margala, Howard Keim, Dick Carr, and Dan Patsula, The Bunkers Group; Jeffrey Condit (Miller Nash), Counsel for The Bunkers Group.

#### **3. Installation of Commissioners-Elect**

Ms. Bradley administered the Oath of Office to Commissioners-Elect Ken Bell, John Ficher and Jim Young. Commissioners Bell, Ficher and Young then signed the certificate and took their respective seats on the Board.

## **2. Public Comment (Continued from above)**

Ms. Lenora Lawrence commented on increased unemployment and foreclosures in the County and indicated that many people feel indifferent about the Port's Resort Project. She said FEMA monies could have a great impact on the area and commented on the project's impact on the Port to date, including the loss of Spath Industries. She asked the Commissioners to make the Port an area which would bring in more industry.

C. Wayne Cook commented on the economy and the history of the project. The Port should not be investing public money into something private money could have paid for. He indicated concerns about the elk and the smell of manure.

Mike Weitman said he has not heard anything about the background of the Bunkers Group and asked why the Port is affording them public money and time.

Mary Sauer said she has serious concerns with the Port's decision. She said the project needs to provide more jobs.

Ed Gorzynski said the Board is supposed to support the people. He has taken a survey which has not shown one person who supports this project. He spoke about elk issues and his involvement in public projects. He asked the Port if it has performed its due diligence and questioned Mr. Carr's references and past projects. He asked the Board to not approve this project.

There was no further public comment.

Senator Betsy Johnson provided a report to the Board on the final actions of the State Legislature. She has been able to achieve \$7.8 million in state match money for the Port's projects on her list. This amount leverages \$31.2 million in projects to Tillamook County. She thanked everyone who helped with this, including Representative Boone.

## **4. Discussion of Resort Project**

Dove asked the Bunkers Group if they had any reply to the public's commentary. Bunkers gave no reply.

Bunkers requested a private discussion at the end of the meeting with the Board and introduced their counsel to provide a legal discussion with the Board.

Jeff Condit, attorney for The Bunkers Group, discussed the recent letter decision of the Director of Tillamook County Community Development relating to the Conditional Use Permit for the golf course. He has reviewed the June 27 letter and documents, and is asking the Port to file an appeal of the Director's decision

to the Planning Commission. He said Bunkers believes they have a good legal argument to appeal the decision. He discussed a February 26, 2008 letter of Bill Campbell, former Director of Community Development. As a part of the conditional use, construction was to begin by 2008. He said the County has agreed that this has occurred. Bunkers' belief is they are vested in the conditional use. He said Bunkers has been proceeding with financing efforts, although they have had problems with lack of available funding. Currently, they feel they are in a position to obtain financing. They need additional time and are preparing written comments.

Howard Keim (Bunkers) said he is empathetic to the public's comments.

Port's Counsel Mr. Jordan said that Bunkers' request for executive session to negotiate with the Board would not be a lawful use of the statute. Executive sessions are reserved for staff to discuss items with the Board. He discussed the appropriate procedure for the Bunkers Group to negotiate with the Port.

Mr. Keim introduced the Bunkers Group team and spoke of the history of the project. He said their group has spent four and a half to \$5 million, and they are anxious to see the project get going. It is impossible to get the project going in this economy. The project would provide 300+ jobs. Kutak Rock has provided a bonding package for the project which will provide the Port with money. Issues can be worked through. Bunkers would like to sit down with the public at a future time to address concerns. He spoke of Dick Carr's day-to-day operation and said the project will bring a lot to the community.

Dove asked about the recent removal of the equestrian center from the project scope. Bunkers responded this has not been removed from the project.

Dick Carr commented on the elk on golf courses. The issue is of properly constructed courses. This project has an eco-tourism feature. There is no conflict with the elk.

Mr. Keim asked to have a discussion of a Plan of Finance with the Board in private. Port's Counsel Mr. Jordan responded that executive sessions are not appropriate for this purpose. Dove asked if the Plan of Finance Bunkers seeks today is different from the Plan of Finance brought before the Board on June 4. The response was yes. Riedel commented it should be discussed. Dove stated the public should understand all the facts and asked Bunkers to provide a statement on how financing of the project would be accomplished.

Ken Margala (Bunkers) said a non-profit corporation would have to be set up by the Port which would then sell Build America Bonds to generate funding for the project. The bonds will fund about 65% of the project. The Port puts in no money. A debt reserve of \$8 million would be established. He said nothing is committed to yet. Mr. Keim added that with the Port's support, financing is 90%

possible. Dan Patsula (Bunkers) said, once the mortgage is paid, the resort would revert back to the Port. He said the value of the improvements are estimated to be \$150 million and could be a fantastic economic engine for the county with the design-build contract. There was a discussion about what the Port gets out of the project. The Port does not put in the \$8 million; the \$8 million comes from the sale of bonds.

Dove asked about the condition of the resort after the 20-30 year period and what guarantees it remains in good condition. Bunkers responded that the debt reserve fund and non-profit corporation would be responsible for maintenance.

Bell asked Bunkers if this Plan of Finance was back to a lease and no longer included a purchase of the property. Bunkers responded they are no longer looking to purchase the property. Under this new Plan of Finance, the Port would continue to own the property and the infrastructure improvements.

**5. Discussion and Consideration of Third Amendment to Lease Agreement between the Port of Tillamook bay and The Bunkers Group, LLC**

Michele Bradley said the amendment was recommended and prepared by legal counsel to affirm the lease payment due date. Mr. Jordan advised the Board to discuss the amendment in executive session; although Bunkers should be asked if they have any comments on the terms of the amendment. Bunkers had no comments.

**6. Discussion and Consideration of Second Amendment to Agreement for Purchase and Sale and Joint Escrow Instructions dated April 7, 2008 Between the Port of Tillamook Bay as Seller and The Bunkers Group, LLC as buyer**

Aaron Palter said the amendment was recommended and prepared by legal counsel to establish a new closing date of escrow for the property sale. Bell said the amendment may be moot because Bunkers no longer is looking to purchase the property. Mr. Margala said that if the financing package works, Bunkers does not need the sale. Young asked if the sale was discussed with the Board and asked which members were a part of the negotiations. The response was that the sale was brought before the Board at a prior meeting date. Dove recommended discussing the amendment in executive session.

Dove asked the public for any further comments.

Mike Weitman asked Bunkers for what they are getting out of the project, and what would happen if the project went belly-up in ten years. Mr. Keim responded the Bunkers gets a reimbursement of monies spent towards the project and the management of the project through a future operating agreement. He discussed

occupancy statistics and the running of the project through Crowne Plaza Hotels. He said the non-profit corporation would end up with the debt should the project fail.

C. Wayne Cook commented on the input received from Bunkers and commented on their nonpayment of lease rents. He said he is not sold on the idea of using stimulus money for the project. He said that if the Port will not get the sale of the property, the Port should not go further with the project.

Ed Gorzynski asked about the bond issuance process and asked if any taxing would be involved. Bunkers responded no.

Mike Weitman commented on hazardous waste issues at the Port and asked who would bear the cost of its cleanup. Dan Patsula responded the Corps of Engineers addressed this issue and any waste would be handled accordingly.

Lenora Lawrence discussed her assessment of facilities such as these, and, as a former conference facility operator, she commented on the smell being a concern for conference attendees. She said the figures used should be checked out and said Mr. Carr has a history over overstating figures. She said this is a declining industry. She said people are using computers more for meeting purposes. Bell responded that two local businesses, Shilo Inn and Fred Meyer, continue to have repeat customers in spite of the smell.

Dove asked Bunkers for their explanation of the recent name change for the project and why it was changed from Resort Project to Business Center and Conference Facility. Mr. Carr responded this was done based on the amount of comments received by the public. Dove stated this is misleading to the public and should not be occurring. He requested the project name remain the same.

Senator Betsy Johnson commented on the role that FEMA will play in the project and asked what Bunkers' role is. Mr. Margala responded that Bunkers is putting up \$5 million in match funds and they are asking the Port to put up \$15 million of its FEMA funding. Senator Johnson discussed the \$44 million total figure the Port is receiving and inquired about the impact on those funds when taking into account the state match money that is available. She discussed the leverage amount of the FEMA funding, where the \$7.8 million she secured represents \$31.2 million of Port projects and how those numbers would pan out. Bell responded that the Port has never negotiated this with Senator Johnson.

Dove assured Senator Johnson that not one cent of this money would be used towards the Resort Project.

It was discussed and decided to go into Executive Session under ORS 192.660(2)(e) to discuss real property transactions and to discuss which

decisions will be made and the issue of the Conditional Use Permit. Members of the public were excused.

**(The Board went into Executive Session at 6:15 p.m.; and the regular meeting reconvened at 7:04 p.m.)**

Commissioner Bell made a motion which was subsequently withdrawn. No action was taken on the Second Amendment to the Purchase and Sale Agreement.

**Commissioner Bell made a motion to approve the Third Amendment to the Lease Agreement. Commissioner Riedel seconded the motion. Commissioners voting aye were: Dove, Riedel, Bell, Ficher and Young. The motion carried. The Third Amendment was then signed by the parties.**

There was a discussion of the Board related to the request of ISI/Bunkers for the retention of FEMA Law Associates. The Port agrees to a maximum indebtedness of \$3,000, and Bunkers/ISI's responsibility is to work with Aaron Palter under the General Manager's leadership to get the agreement executed.

**Commissioner Bell so moved. Commissioner Riedel seconded. Commissioners voting aye were: Dove, Riedel, Bell, Ficher and Young. The motion carried.**

The Commissioners discussed the Port's appeal of the Conditional Use Permit. By a consensus of the Board, it was decided to authorize the General Manager to sign a Notice of Appeal on behalf of the Port and that The Bunkers Group would act as agent on behalf of the Port to foster the appeal process along. Bunkers, through their attorney Jeff Condit, is solely responsible for all fees and legal deadlines associated with the appeal. The Port has no responsibility for the appeal beyond the authorization of Bunkers as agent for the appeal. Michele Bradley signed the Notice of Appeal. Mr. Condit will file it tomorrow to meet the July 9 deadline.

Dove requested Bunkers disclose their Plan of Finance in an open session of the meeting. Bunkers responded they are not prepared to do so at this time, but they would like to set up a meeting at a future date to come back and present it to the Board. They will contact Port staff with a date request.

## **7. Commissioner Comments**

Bell said that, at 15%, the incubation of \$100,000 for the resort is a good investment. He said the project will be a good benefit to the community. Dove agreed; but said he would like to see it done with private financing.

Ms. Bradley discussed the FEMA Alternate Project submittals with the Board. Bell asked if Port Staff had followed the Board's direction to put placeholders into the Resort Project submittal. Mr. Palter responded that in direct contradiction of the Board's previous motion and direction, Mr. Carr took it upon himself to file the request to OEM without affording staff the opportunity to follow through with the Board's directive.

Mr. Carr said he would like to see the contact with Mr. Abbott signed to be able to get answers.

Young asked Bunkers, if the \$5 million is not available and the project is submitted to OEM/FEMA, how could the Port file without the bond ability. Mr. Margala responded that this needs to be answered before the project is filed with FEMA.

Dove said the Port will work with the Abbott firm and said there could remain a public benefit through the use of Mr. Abbott's services even if the project does not move forward.

Ms. Bradley asked the Board if they would like to schedule a public official training session with Mr. Jordan. Bell commented he would like to see as many people benefit from the training and that we should invite others to attend.

It was decided to hold an all-day training session with Mr. Jordan on Monday, July 20, 2009, at 9:00 a.m. at the Port Offices. All Port Commissioners are encouraged to attend.

## **8. Adjournment**

The meeting was adjourned at the hour of 7:21 p.m.

Respectfully submitted by Aaron Palter, Project Coordinator.