



APPROVED 09-15-09

**MINUTES
OF THE
BOARD OF COMMISSIONERS
MEETING**

HELD ON

**Tuesday, August 18, 2009
6:00 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 6:04 p.m.

2. Recognition of Persons Present

Commissioners: Jerry Dove – President; Ken Bell – Vice President; John Ficher – Secretary; Arthur Riedel – Treasurer; 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: Dolores Boquist, Martha Walker, Berta Bell, Toots Zwald, Alene Allen, Ken Wynia, Daniel Hettenbach (Lotus Solar Manufacturing, LLC), D. Hellweg, James Gregory, Rozanne Vick, Jill Williams, Linnea Burden, William Sargent (Tillamook County Counsel), Ray Hart, Gus Meyer (Private Sector, SWCD), Gerald Butch Parker (Director, Tillamook County Department of Community Development), Georgine Beveridge, Ed Gorzynski, Todd Hartman (Hartman Strong Hartman).

3. Public Comment

Mr. James Gregory said he has not received the information requested from Commissioner Bell at the last meeting. Commissioner Bell responded he would provide this and asked for Mr. Gregory's email address.

Mr. Ed Gorzynski said he is not against this project if FEMA funds are not a part of it.. He related to the Board and audience some project facts as he understands them and said the facts should be put in the paper so everyone knows them. He said the Board should be embarrassed to go ahead with this project. Commissioner Dove responded that many of Mr. Gorzynski's statements are not reflective of the facts.

Ms. Roxanne Vike read a letter to the Board. She offered her opinion on ideas such as bussing people from the Port to the Alderbrook Golf Course and construction of a concert hall. She said the project should include a walking trail and equestrian center and a spa facility. She said the Port is excluding the public from this process and asked that the Port give the public something it can support. Commissioner Dove responded that many of Ms. Vike's requests are actually included in the resort project.

There was no further public comment at this time.

4. Guest – Ken Wynia, South Prairie Water Board Request. (a.) Request to consider water easement change

Mr. Wynia said the South Prairie Water Board is requesting an easement from the Port for the replacement of its steel water line. He discussed the current location of the line in relation to fiber optic lines and discussed the proposal. It was discussed the only concern would be the lease with The Bunkers Group. Mr. Bennett said the Port could grant the easement with The Bunkers Group's permission. There was a consensus of the Board to have staff proceed on the request.

5. Guest – Daniel Hettenbach, Lotus Solar

Mr. Hettenbach said Lotus Solar is requesting a Letter of Support from the Port for its funding opportunity award application. He discussed the Smart Grid Demonstration project for renewable energy from solar panels. He would also be looking to the Port to provide about 30 acres for the installation of a solar farm should the project be funded.

Commissioner Young asked where Lotus Solar would be going if the project is funded. Mr. Hettenbach responded that Lotus Solar looks to become a manufacturing facility for solar panels. Commissioner Riedel asked how the Port could get Lotus Solar to locate at the Industrial Park rather than in Bay City, and he said there are many more opportunities for companies such as this at the Port. He said the Port is in a better position to assist ventures such as this. Mr. Hettenbach discussed Lotus' idea of partnerships with many entities. Lotus is currently looking to purchase some land near Neah-Kah-Nie High School, but if that did not work out, Lotus would look at locating at the Port. A discussion was held about the status of the project and the background of Lotus Solar.

Commissioner Young made a motion to accept the request for a Letter of Support for Lotus Solar's concept. Commissioner Bell seconded the motion. Discussion: Commissioner Riedel

said he would like to see something more in writing about the project and said that Lotus is passing up an opportunity for startups at the Port. The Board's consensus was that it is not putting its name on anything for funding with the letter of support. The motion carried by a unanimous vote.

6. Resort Report

(a.) Monthly Report

Ms. Bradley said that Section 3A on Page Two of the July report is inaccurate. The Board took no action at its last meeting on the Purchase and Sales Agreement. There were no other questions on the monthly report.

(b.) Board Discussion on the Request for Information

Mr. Dan Patsula (Bunkers Group) discussed the recent discussions between their attorneys, financial folks and the Port's attorney Ann Sherman regarding the issues of Oregon law. He cited the recent memo from Pat Ray entitled Financial Summary for Tillamook Bay Bunkers Project and the cover letter of Ken Margala. He said that Bunkers is now proposing the idea of the 63-20 non-profit corporation be set aside; the Port would now issue Build America Bonds as non-recourse obligations to the Port. He referred to the recent first Oregon State issue of a Build America Bond by Dayton School District. Ms. Ann Sherman said she was bond counsel on this. Mr. Patsula said the project now becomes 100% publicly owned, a requirement of the Build America Bonds program with no private funds being used. The bonds would not appear on the books of the Port and is not a debt of the Port. The bonds would be secured only by the assets of the project itself.

Commissioner Dove made reference to an earlier Executive Session of the Board and said that the project assets is one of the questions needing to be answered. Does the term "project assets" include the Port property? Mr. Patsula responded no. Ms. Sherman described the memo recently received seems to indicate a pledge in the property saying the letter outlines a first mortgage of the project. This is a financial determination of what the investor wants. She said usually a mortgage means the property and improvements. She said it could be that this has not been clarified yet. Commissioner Dove reminded Mr. Patsula that these questions needed to be answered tonight, that this was the drop-dead date for answers to be provided to the Board on its previous questions. Mr. Patsula responded that this does not include the land. Bunkers still wants to go with the lease because this would be how the Port would be reimbursed. The lease term would be the mortgage on the payback of the bonds. Bunkers still needs to see what the bond buyers would prefer. He said the Port must retain ownership of the land and the land must be unencumbered for the securities of the Build America Bonds. He said that when Pat Ray talks about the mortgage, he [Patsula] takes it as relating to the non-recourse obligation secured by the project and the revenues generated and any other monies pledged to the project.

Mr. Bennett said that it seems odd for the Port to own all aspects of the project but to be leasing it to a third party in effect with a leasehold mortgage. He said it would be inappropriate for Bunkers to have interest in a lease without any other interest in the project. He said the Port could grant a leasehold mortgage to the trustee as security, but questioned what would happen in the event of a default. He said a default could allow the trustee to foreclose the interest and take the land; the trustee will want to be in a position to liquidate the asset and pay the investors. He said a leasehold

perhaps could be devised to work, but this would need to be a detail to get real clear if the Port is inclined to approve this idea. The impact on the buyers is unknown.

Ms. Bradley questioned the ability of the Port to receive rental income as a part of this discussion. Mr. Patsula responded the agreements would need to be revised. All monies would come from the trustee.

Commissioner Dove discussed the question of the conditional pledge of the Port's taxing authority; would this be the Port's \$40,000 per year or would the Port be asked to go out for a levy of the taxpayers? Mr. Patsula responded this does not mean Bunkers wants the Port's taxing authority. He said the Port agrees to give a conditional pledge to the entity which the Port would transfer all of the agreements over to. The Port's taxing authority is a conditional pledge with no liability attached to it. He said the underwriters want this pledge and he discussed the scenarios to finance any shortfalls. He said the project's projections predict more than enough money to pay for the debt and return an income stream. There are a lot of protections built in. Commissioner Bell asked Mr. Patsula to provide the statutory authority showing the Port's authority for the pledge. Commissioner Young asked counsel to clarify the non-recourse scenario.

Ms. Sherman said there is confusion with the conditional pledge request as to whether it seeks the Port's ability to levy its permanent tax rate or whether it includes a full faith and credit pledge. She said the Port needs to know what the underwriters are looking for and whether it is just the \$40,000 which results in its permanent tax rate but any of the general fund money available, which is a much larger number. There was a brief discussion on the effects of a default. Ms. Sherman said the effect on the Port would depend on how the financial documents are structured. Mr. Patsula said the conditional pledge requirement is a go/no-go item for the project.

Commissioner Ficher asked if this new plan still includes FEMA funds. Mr. Patsula responded yes, it does. There was a brief discussion about the Port's FEMA funds and what may or may not be available. Mr. Patsula said they would still like to go with \$20 million. Commissioner Dove said the Board has not agreed to anything yet.

Commissioner Dove asked the Board's permission to question an audience member who has been taking many notes and providing a lot of reaction during the conversation. There was a Board consensus on the request.

Mr. Raymond Hart said he is an independent consultant and is not affiliated with the Port or anyone associated with the project. He said he is aware of what he reads in the paper. Mr. Hart asked if it was true there was no private money in this project. Mr. Patsula responded that he has put a lot of work into the project, the Port has put a lot of money into the project, and he is entitled to be reimbursed for that. Mr. Hart said that if the Port owns the property, and the rest of the project, why doesn't the Port receive all of the project money. Commissioner Dove commented that the agreements currently in place would need to be modified. Mr. Patsula said it is the Port's project. The current proposal has the Port owning 100% of it, with projections showing the Port receiving about \$40 million over the next ten (10) years. The Port will receive about \$4 to \$5 million a year. Mr. Hart asked about the \$400,000 payment in the lease. Mr. Patsula said it is applicable, the Port would receive this in addition. The \$400,000 is part of the pro forma, figured into the debt service over the life of the project. Mr. Bennett commented that the lease payments would be the Port, in effect, paying itself, unless there is a default and the new owner would have to pay the Port the lease

fee. Mr. Hart asked how The Bunkers Group makes money from the project. Mr. Patsula said they make their money by management, construction and development, and all of the fees are part of the pro forma. He said during the 30-90 days prior to bond closure, the figures will be reviewed and approved or not approved. Bunkers will provide the design plan, the construction management and the run up of operations. There is a management fee during the entire design-build process. There is no management fee after construction depending on how it's structured. Bunkers has a five-star hotel which has said they will come in and manage the hotel. Ms. Sherman said that one of the caveats is that Build America Bond proceeds have to be used on a governmental facility, and so it is important to ensure that any agreements follow the management contract rules. This is another federal tax implication which would affect management contracts and hotels.

Commissioner Bell discussed the Davis-Bacon Act provisions and asked if Bunkers has added this back into their financial figures. Mr. Patsula responded that they would have to. Mr. Bennett said there is absolutely no question that Davis-Bacon would apply. Ms. Bradley said that figures may need to be augmented. Mr. Patsula said that if the project falls under Davis-Bacon, their figures should suffice for Davis-Bacon. Commissioner Dove said there is a very good possibility the project could be done for half the cost; and he discussed a recent county project which went out at half the cost.

Mr. Hart discussed the reasonableness of the \$400,000 land lease amount given the risks involved with the project.

Commissioner Riedel asked Mr. Patsula to provide the figure on how much they have invested in the project so far. Mr. Patsula responded that Bunkers has put about close to 4 ½ to \$5 million invested into the project.

Commissioner Dove asked for questions or comments from the Board. There was no response. Commissioner Dove said we still have the issue of the Conditional Use Permit appeal. He said that whether we agree or disagree on the plans, a lot will depend on the Conditional Use. He asked Mr. Parker for an update on that. Mr. Parker said the Planning Commission Hearing is scheduled for September 24, 2009, at 7:00 p.m., and he said the Staff Report would be discussed at that time. He said he has not talked to the attorney yet, but will get together with him at a later time. Mr. Patsula said that Bunkers' attorney Jeff Condit feels they still have a valid permit. Mr. Bennett asked if ISI intended that the two agreements referred to in the Pat Ray memo were intended to replace the existing agreement. Mr. Patsula responded that he could not answer that question. Mr. Bennett said the current agreements do not suffice. Mr. Patsula referred to the contract with Mr. Abbot, a FEMA law attorney. Mr. Palter said this agreement was placed on hold at the agreement of the Board and Bunkers Group until financing was worked out and the project was filed or not to OEM as an alternate project. The agreement was discussed. There was a discussion held about the design-build process and environmental review timelines relating to FEMA. These questions remain unanswered. Commissioner Bell said the first question should be the environmental questions. Commissioner Dove asked if the project was dead if FEMA required an environmental impact study, which could add one and a half to five years to the project. Mr. Patsula agreed. It was discussed to have Mr. Bennett contact Mr. Abbott to inquire on his hourly rate for answers to the environmental and design-build questions.

Commissioner Dove suggested that the Board take no further action on the project until the Conditional Use Appeal process is decided.

Commissioner Riedel advanced a motion that the Board makes no further decisions on this project until it is seen what happens with the Conditional Use Permit. Commissioner Bell seconded the motion. The motion was carried by a unanimous vote.

Mr. Bennett clarified that he would work with the Bunkers' legal counsel to see what is permitted with regard to the FEMA issues.

Ms. Sherman left the meeting at 7:27 p.m.

7. Port Financial Report

Ms. Bradley discussed the report with the Board. The Port had a good fuel purchase this month; and the museum is at \$14,000 for the month, slightly above average for this time of year.

8. Railroad Financial Report

Ms. Bradley discussed the report with the Board. There were 16 cars at Banks Lumber this month, more than average but down from last month. Commissioner Bell questioned the \$1.00 in miscellaneous assets. Ms. Bradley said this closes out the rock crushing equipment agreement. Commissioner Ficher questioned the \$3,300 PUD figure. Ms. Bradley said this represents three months' worth of electric power for the signals. The signals must remain active until abandoned.

9. Approval of Minutes from 7/21/09, 7/28/09 and 8/10/09 meetings

Commissioner Dove noted one correction in the July 21, 2009 Minutes. He entertained a motion; he did not make the motion. Commissioner Young said he made the motion.

Commissioner Bell made a motion to approve the Minutes, as corrected. Commissioner Ficher seconded the motion. The motion carried by a unanimous vote.

9. Railroad Division Reports

(a.) ODOT Crossing Inspection

Ms. Bradley discussed the recent inspections and deficiencies. The Roadmaster is correcting these.

(b.) Tourist Train Request

Ms. Bradley discussed the recent letter request of Brad Congdon who seeks to retrofit a van with a Hi-Rail and run a tourist train along the Port's rail lines. ODOT's response has not been very positive. The matter will be reviewed by the feds. There was Board consensus to leave this to staff.

(c.) Angora Peak

Ms. Bradley discussed the recent installation of radio equipment at Angora Peak. The pictures show what has been installed. There is electricity to the radio as well as battery backups.

(d.) STB Status

Ms. Bradley discussed the status of the Discontinuance of Service application to the STB for the affected rail line. The requested information is being provided. The Port is requesting a waiver of the \$6,400 filing fee.

(e.) More ODOT Requirements

Ms. Bradley discussed some of the new requirements of ODOT and their financial effect on the Port. One new requirement is the assignment of crossing inventory numbers on both sides of a railroad crossing with individual identification numbers and an emergency contact telephone number. Another new requirement will be yearly hearing tests for rail operators.

Commissioner Young asked about the status of the car storage request by Greenbrier. Ms. Bradley responded they have not contacted us back on the recent offer, even at a lower price. Commissioner Bell indicated that there should be more follow up on this.

11. Airport Report

(a.) PMP Update

Commissioner Dove commented on the well-written Tillamook Pilots Association Newsletter.

Ms. Bradley said that the Oregon Department of Aviation (ODA) was at the airport today for an inspection of the recent work. Commissioner Bell indicated that he would like to see the Port move forward with the Airport Master Plan.

(b.) RV Park

There was no discussion on this item.

Other

There was a brief discussion on the status of the Near Space project. The Port is looking into a lease price for the project. Ms. Bradley said she is hoping to see a standard set of land lease prices coming out of the present strategic business plan process.

12. Digester Report

(a.) Environmental Defense Fund – Alex Schay, Carbon Solutions Northwest opportunity

Ms. Bradley discussed the recent visit of Mr. Schay to the Digester facility. Mr. Schay's company, Carbon Solutions Northwest, has recently been contracted by the EDF to perform a study on carbon outputs. The study of the Digester will be performed at no cost to the Port.

(b.) Misc.

Ms. Bradley discussed a recent request from a gentleman in Malawi for George Devore (Digester operator) to assist them with digester design and construction.

Commissioner Ficher clarified that the Port sold \$10,000 in electricity to the PUD this last month.

13. Industrial Park Status Report

(a). Maintenance Update

Ms. Bradley said that Port maintenance staff is trying to keep up with the weeds. The recent warm weather makes this a challenge. The fire hydrants have been repainted. It was noted that this work is being performed by railroad personnel, but these personnel are not being paid railroad wages for this purpose. Ms. Bradley discussed the PUD's recent energy audit of the Port's facilities.

Other

There was a brief discussion about what the Board wishes to do with the Nelson Property. There was no action taken.

Addition to the Agenda: Discussion and Consideration of Resolution 2009-2010 #5 A Resolution Authorizing an Expenditure for the Port's Application Through Business Oregon for Additional Funds to Pay for Blimp Hangar Repairs

Ms. Bradley said the resolution authorizes the District expenditure for the hangar repairs and is required by Business Oregon, previously known as OECDD.

Commissioner Bell made a motion to adopt the Resolution. Commissioner Ficher seconded the motion. The motion carried by a unanimous vote.

Ms. Bradley said there is associated paperwork which the Board President would need to sign.

Commissioner Bell made a motion to authorize the Board President sign the paperwork. Commissioner Riedel seconded the motion. The motion carried by a unanimous vote.

14. FEMA Update

(a.) PW 759 & PW 912 Update

Ms. Bradley said the extension requests have been granted. The new completion date for PW 759 is October 8, 2009; and August 8, 2009 for PW 912.

(b). RR PW Update

Ms. Bradley discussed the railroad project worksheet with the Board. The final figure available for FEMA Alternate Projects is \$44,574,750.93. This is broken down into the buckets, which amounts have come pretty close to our previous estimates.

(c.) Alternate Projects Update

Ms. Bradley said the extension has been granted. The new deadline for submission of alternate projects is December 31, 2009.

Commissioner Bell commented on the siding and grain reload project and asked on what basis or experience Mr. Carswell is providing his figures and assumptions. Ms. Bradley said that Mr. Carswell is the former president of PNWR.

15. Lease Orders

Ms. Bradley discussed the lease orders with the Board.

(a.) Margaret Moore – Manufactured Home Storage on circle

This will be stored at the Port for about 4-6 weeks at \$50.00 per week; and no one will be living in it.

(b.) Clay McRoy – Hangar #35

Mr. McRoy wants to re-lease the hangar.

(c.) M & M Trucking – Building 26A

M & M Trucking has taken over GP's chip haul operation for Stimson. They will be located in the former Spath building. They are requesting to widen the doors for their trucks. The Port is sharing the expense with M & M in the form of a rental credit.

Commissioner Dove said he would entertain a motion to approve the lease orders. Commissioner Young so moved. Commissioner Riedel seconded the motion. The motion carried by a unanimous vote.

16. Reports and Communications

(a.) TLW board meeting 8/26/09 at 11:45 am at Tillamook PUD

Commissioner Dove said he would not be able to attend the TLW meeting.

17. Public Comment

Mr. Ed Gorzynski discussed the idea of a trail for the railroad. He asked where the money was coming from to pay the bonds for the resort project. He also discussed the reimbursement of monies to the Bunkers Group. Commissioner Dove responded that revenue from the project would be used to pay the bonds.

Ms. Jill Williams commented on the presentation by Lotus Solar and said she supports the concept.

Ms. Roxanne Vike said she questions how the project would pay for itself during the bad months of the year.

Mr. Gus Meyer spoke in favor of the fly-in resort project as one that could bring a lot of money into the county through the hosting of conventions which the county has previously lost due to its lack of a facility such as this. He said this would be an economic boon to the county.

Mr. Todd Hartman discussed the need for a third party analysis of the financial figures associated with the resort project.

Mr. James Gregory said he also supports the Lotus Solar concept, and he questioned the projections for the resort saying that these folks have a history of not holding to their projections.

Ms. Delores “Dolly” Boquist asked about the FEMA funds for the Digester. A brief discussion was held about the project. Ms. Boquist said she is not in favor of the project and said that the county already has a lot of offerings for golf and hotels. She called Tillamook a drive-through town.

Mr. Hartman asked about the FEMA process for the projects. A brief discussion was held on the question.

18. Commissioner Comments

Commissioner Bell said he would like to have an OTRA meeting next month.

19. Adjournment

The meeting was adjourned at the hour of 8:10 p.m.