



MINUTES Approved 10/19/2010

**OF THE PORT OF TILLAMOOK BAY
BOARD OF COMMISSIONERS
REGULAR MONTHLY MEETING**

**HELD
TUESDAY, SEPTEMBER 21, 2010
6:00 P.M.
at
Port of Tillamook Bay
4000 Blimp Boulevard
Tillamook, Oregon 97141**

1. Call to Order

- a. Board President Jerry Dove called the meeting to order at 6:00 p.m.

2. Recognition of Persons Present; Public Comment

- a. Commissioners: Jerry Dove (President); Jim Young (Vice President); John Ficher (Secretary); Bill Baertlein (Treasurer); and Georgine Beveridge
- b. Staff: Michele Bradley (General Manager); Joshua Balmer (Operations Manager) Karin Gitchel (Office Administrator); Richard Jones (Chief Mechanical Officer)
- c. Media: Samantha Swindler – Tillamook Headlight Herald
- d. Public: Carolyn H. Decker (Realtor); Alene Allen (Private Citizen); Denny Pastega (Blue Heron); Gus Meyer (Private Citizen); David Rangel (Modoc); Scott Wickert (OCSR); Aaron Zorko (OCSR/POTB); Stephanie Hurliman (MTC Works); Dave Anderson (Modoc RR Academy); John O'Leary (City of Garibaldi); Rob Lewis (Private Citizen); George Hickok (PNWC –NRHS); GK "Pat" Patterson (PR&N Company); Jack Graves (Private Citizen); Dan Huffman (Mt Scott Motorcycle Club)
- e. There was no public comment

3. Introduction of Karin Gitchel, new Port Staff

- a. Ms Bradley welcomed Ms Gitchel as the Office Administrator for the Port of Tillamook Bay.

4. Consent Agenda

a. Port Financial Report

- i. Ms. Bradley and the Board discussed the financials. Commissioner Baertlein worked with the Finance Committee to create a new combined financial report which the Board reviewed had no additional comments or changes.

b. Railroad Financial Report

- i. Commissioner Baertlein clarified the need to budget for the capital outlay and transfer outs; He indicated that there is a need to do a resolution transferring an appropriation so as to maintain compliance. Ms Bradley stated that a resolution would be forthcoming.

c. Minutes from 08/17/10 and 9/7/10

- i. No comments or changes
- ii. **Commissioner Ficher made a motion to approve the Minutes from 08/17/10 and 09/07/10. The motion was seconded by Commissioner Baertlein. The Motion was carried by unanimous vote of all Commissioners present (5-0).**

5. Presentation from Dave Rangel, Modoc Rail Academy

- a. Mr. Rangel provided an overview of the Memorandum of Understanding (MOU) of Modoc Rail Academy's desire to relocate their school to Tillamook County. The school is actively pursuing funding from second and third sources, not impacting the Port with funding. Mr. Rangel stated that they had yet to secure funds. Modoc's goal at the Board meeting was to ask for a lease. Mr. Rangel expressed their intent for total responsibility of railroad, expressing to bring the railroad up to current federal law Code of Federal Regulations (CFR) 49 subtitles 200 to 300, ODOT mandates and MRA's. Intent to operate in stricter accordance to federal law, and ensured that there would be no liability to Port.
- b. Commissioner Young posed the question that the MOU did not address the Oregon Coast Scenic Railroad (OCSR) currently using the tracks. Mr. Rangel stated that Modoc has no intention of interfering with their program and that they have no intent to run passengers. Commissioner Beveridge queried who would be in charge of dispatch. Mr. Rangel indicated that he did not see OCSR as a conflict and was willing to work with them.
- c. Commissioner Young clarified that Modoc was asking the Port to give up total control of the railroad for \$100/mo., and assuming the minor maintenance but not total liability, in addition to total dispatching powers. Mr. Rangel reiterated that running the dispatch would in theory not affect OCSR, but he was not in control of when the track would require repair and that they would put priority on safety and maintenance.
- d. Commissioner Dove questioned whether they had had any discussions with OCSR. Mr. Rangel stated they had not. Commissioner Beveridge queried what their intent given control of the railroad, what was their action for working with OCSR? Mr. Rangel expressed again that they had not spoken to other parties, their focus was on the lease at this time, but

did express a desire to work with other parties using the rail.

Commissioner Young indicated that the expression of that willingness should be in their MOU. Mr. Rangel agreed.

- e. Commissioner Dove read the lease term proposed in MOU, “Both parties agree to an industry standard lease term of twenty years, automatically renewable under the same terms as the original agreement. Yearly charge will be \$1200 per year due each year on the anniversary of the lease agreement.” Commissioner Dove expressed discomfort at the same terms for 20 years, with no inclusion on inflation. Mr. Rangel stated that he just used an industry standard of terms, though the figure was not. He reiterated that Modoc is a non-profit and that their funding goal is focused on repairing the railroad.
- f. Commissioner Dove asked about their intent stated in MOU to purchase some equipment from the Port. Mr. Rangel stated that while that was their intent they were unable to do it right away, as the focus is to move and establish academy and then target repair of the railroad.
- g. Commissioner Dove questioned whether they were planning on using POTB equipment. Mr. Rangel stated that they would like to, but it was not guaranteed due to condition of equipment.
- h. Commissioner Dove again read directly from MOU, “The Academy will not be responsible for any Port of Tillamook Bay or any other company’s, legal entity’s or private person’s railroad equipment or personal property or possessions that should may be damaged or destroyed in any way from any source or cause.” Mr. Rangel clarified that this specifically alluded to storm, flood, fire damage, events uncontrolled, but that if Modoc did lease equipment and cause the damage that then he guessed that then they would be responsible.
- i. Commissioner Beveridge asked Modoc to clarify what the option to purchase meant and what Modoc wants. Mr. Rangel stated that they would like to eventually purchase the entire railroad right away. If the Port wants to keep the easements, then Modoc would agree to back that out of the option. Their intent was not to make income on the property, that they are interested only in railroad right away.
- j. Commissioner Young questioned whether Modoc would be interested in the rails and not the right away? Mr. Rangel stated that they would consider that.
- k. Commissioner Baertlein inquired what the word ‘cooperatively’ meant as stated in the fiscal responsibilities section of the MOU, which stated “If at a future time during the process of obtaining or pursuing private or public funding, both parties would agree to work cooperatively toward a mutually satisfactory outcome.” Mr. Rangel responded that because the Port is the legal entity, there might be a need if Modoc was to pursue a grant that required cooperation. He stated that the goal was to have Modoc go out and “shake the bushes and have you guys go out and shake the bushes and see what we can come up with”. Commissioner Young then asked if Modoc was asking the Port to go out and pursue grants for them. Mr. Rangel responded that he was not and that they would not look at the board as a mechanism for money.
- l. Commissioner Dove asked Mr. Rangel if Modoc was asking the board to have action on this MOU. Mr. Rangel clarified that they were simply

asking the board to review it and allow them to proceed to the next step which would be to obtain a lease with the Port.

- m. Commissioner Baertlein asked whether Modoc was a 990 filing, 501 c3, and whether it would be possible to get Modoc copies of the 990 filings, the IRS forms, for the last three years before giving further thoughts on this MOU. Mr. Rangel stated that he could do that.
- n. Commissioner Dove asked Mr. Rangel to clarify their plan of action. Mr. Rangel stated that the goal was after making minor changes to their MOU, and hammering out the bugs here, and then they would like to sign a five year lease. Mr. Rangel stated that they needed the lease to go out and 'wrangle' the money for this project. They need to have a confirmed lease to get money that they have not been able to confirm at this point.
- o. Commissioner Dove asked whether there were options to change the lease terms to less than five years for Modoc to procure the financial money to use the rails. Mr. Rangel stated that though their intent was to be fully running and financed by third quarter of 2011, they were unable to state that firmly. He was unable to reduce the lease term time because they have no confirmation on their financing and want the ability to take the five years if needed.
- p. Commissioner Young queried who would take care of the maintenance of the railroad once the lease was signed and Modoc was still trying to procure funding? Mr. Rangel responded that they would probably have to work with that in their control. That while they were not operating trains, they should be able to begin working on the maintenance.
- q. Commissioner Beveridge asked if we could add verbiage to the lease to for allowing an out if this was not going to go on. Mr. Rangel agreed that this would also give them an out on the lease, so it would work both ways.
- r. Commissioner Young offered the option of a two year lease to which Mr. Rangel was not comfortable with despite their goal on third quarter 2011. Five years was chosen in the event of catastrophes that might come their way, thus the inability to limit the lease time.
- s. Mr. Rangel shared that he had been thrown some issues prior to meeting and that he was asking the board to count on his professionalism to let them know if he could not continue with this program. That they would be following the letter of the law, answering to both the Federal and Oregon laws on their product.
- t. Commissioner Dove asked where they were in their goal of obtaining \$6.8 million dollars. Mr. Rangel stated that they were about half way there. Commissioner Dove asked if there was some sort of proof that they had some financing in place, to which Mr. Rangel said no. Commissioner Dove again asked what the Board had to go on with this plan, Mr. Rangel stated nothing.
- u. Commissioner Dove asked Ms. Bradley for her comments. Ms. Bradley expressed concerns with the existing agreements already pending from other clients that were critical to the communications in Tillamook County. She also expressed concern over the financial discrepancies in the MOU that she wanted to talk further with the Modoc members. She stated understanding of Modoc's need to have a lease to prior to

procuring funding. Commissioner Dove then reiterated that if the lease was approved by legal counsel specifying the disintegration of the lease without it costing the Board or any litigation.

- v. **ACTION: Commissioner Dove asked to leave this in the talking stages, that there was a need to having something more to go on. The recommendation, as a consensus from the Board, is to ask Modoc to continue to work with Ms. Bradley and that she should work with the Board, Legal and Modoc to see if this could work.**

Ms. Bradley shared with the board that Port of Tillamook Bay received a JAKE Award for safety on the railroad this past year. The Board acknowledged the Port staff members in attendance for this award.

Commissioner Young provided conversation at this point regarding what the Port was committed to doing for railroad clean up. Ms. Bradley responded that with the Port under a discontinuous of service there is no obligation except to maintain where there are passengers and crossings running. This is a topic that should be discussed and a decision made at a later date.

Commissioner Dove moderated for the public visitors a synopsis of what the Port still does with the railroad on the east side, Banks Lumber, and we still have three employees. Port is responsible for the maintenance of that track and signals.

- 6. Power Point Presentation from George Hickok, Treasurer of the Pacific Northwest Chapter (PNWC), National Railway Historical Society (NRHS)
 - a. Mr. Hickok shared the desire of the Pacific Northwest Chapter of NRHS to use volunteers to clean up the railroad on the east side with the goal of eventually allowing passenger operation. Commissioner Young clarified that the cleanup would not be occurring on the heavily damaged portion of tracks. Mr. Hickok concurred that this was for the east railway, between Banks and Cochran. Mr. Hickok is unsure of the condition, but would like to work with Port staff to determine what is needed to be able to use passenger cars on that route. Mr. Hickok requested Port staff involvement in developing an agreement to formalize the process of this project to attempt to get this railroad up and running.
 - b. Commissioner Dove reiterated discussion regarding the need for the POTB to have a long range plan regarding the railroad before making a decision for use. Commissioner Beveridge stated that this plan appeared to have minimal impact on Port. Commissioner Baertlein stated that if it was a minimal cost to the Port, it might be well worth the Port looking into this.
 - c. **ACTION: Board stated its consensus to allow PNWC to work with Port staff to develop an agreement for the development of a passenger excursion program and bring it back to the Board of this time.**

Commissioner Dove asked permission of Board to move action item #14 on the Revised Agenda, Presentation/Request for use of Railroad Right of Way for Motorcycle Event – Dan Huffman to this time, as they pertained to continued discussion on railroad issues. Board agreed.

7. Presentation/Request for use of Railroad Right of Way for Motorcycle Event – Dan Huffman
 - a. Board heard presentation from Dan Huffman of Mt Scott Motorcycle Club requesting permission use one-half a mile of track, to cross over the tracks at the north side of the bridge at Ekroth Road in a race that starts from Old Mill Marina to Murphy’s Track. The track will not be part of the race, it will simply be a method to cross the highway.
 - i. **ACTION: Board agreed to allow the club to work with Ms. Bradley regarding this event asking that they work with the City of Garibaldi and follow up with Ms. Bradley as soon as possible with a prepared plan of use.**
8. FEMA Alternate Projects Update
 - a. Monthly Report
 - i. Ms. Bradley updated Board on the condition of the Project Coordinator and informed them of confirmed meetings with the LRS Architect team the following week.
 - b. Historic District Information
 - i. Ms. Bradley shared an update on the FEMA process of identifying the proposed historic district. Further reports will be shared at next few regular Board meetings.
 - c. Board heard the summary of the action plan regarding Resolution 2010-20111 #5 Accepting the Quitclaim Deed from Tillamook County for all Roads Contained within the Port of Tillamook Bay Industrial Park Complex and Directing that said Deed be Recorded in Tillamook County Deed Records
 - i. **ACTION: Commissioner Ficher made the motion to accept Resolution 2010-20111 #5 Accepting the Quitclaim Deed from Tillamook County for all Roads Contained within the Port of Tillamook Bay Industrial Park Complex and Directing that said Deed be Recorded in Tillamook County Deed Records. Commissioner Young seconded the motion. There was no further discussion. The motion was carried by a unanimous vote of all Commissioners present (5-0).**
 - d. Discussion and Consideration of POTB Order #10-003 Notice of Intent to Award a Contract for the Architectural Engineering Services – Digester Project
 - i. Ms. Bradley shared an overview of the decision making process from committee chosen to select the Architectural Engineering Services. The clear winner was Kennedy Jenks. The Board discussed the process and clarified the process of this intent.
 1. **ACTION: Commissioner Young made the motion to accept POTB Order #10-003 Notice of Intent to Award a Contract for the Architectural Engineering Services – Digester Project. Commissioner Baertlein seconded the motion. There was no further discussion. The motion was carried by a unanimous vote of all Commissioners present (5-0).**

- e. Discussion and Consideration of IDP (Inadvertent Discovery Plan) for FEMA Alternate Projects during ground disturbing activities as required by FEMA (Action)
 - i. Ms. Bradley provided the Board with a review of this consideration.
 - 1. **ACTION: Commissioner Young made the motion to accept the IDP (Inadvertent Discovery Plan) for FEMA Alternate Projects during ground disturbing activities as required by FEMA. The motion was seconded by Commissioner Ficher. There was no further discussion. The motion was carried by a unanimous vote of all Commissioners present (5-0).**

9. General Business

- a. Discussion of Board Policies – Lease Policy
 - 1. A brief discussion was held amongst Board member regarding the verbiage and set up of the Lease Policy. Once changes have been made this policy will be actively used at the Port.
- b. Industrial Park Matters
 - i. Ms. Bradley provided the Board an update on the final settlement with Tillamook Air Tours and informed the Board of the need for updating signatures with the Port checking account for checks over the amount of \$50,000.00.
- c. Update on Tillamook Lightwave
 - 1. Commissioner Young briefed the board on the last few meetings with no additional comments to add.

10. Railroad Division Reports

- a. Discussion and Consideration of Request for Port Representative to be on Workgroup for the Garibaldi Plaza portion of the City of Garibaldi's Downtown Master Plan
 - i. **ACTION: Board approved action to have a Port staff join the Garibaldi Master Plan. Board invited Josh Balmer to volunteer. Mr. Balmer accepted.**
- b. Ms. Bradley provided a review of the Connect Oregon III information; PNWR Connect Oregon III and POTB prior commitments for the Boards information.
- c. Discussion and Consideration of IGA between the POTB and Tillamook County regarding Salmonberry Road Bridge-Railroad Crossing occurred with Ms. Bradley providing the purpose behind this IGA.
 - 1. **ACTION: Commissioner Young made the motion to accept IGA between POTB and Tillamook County Regarding the Salmonberry Road Bridge-Railroad Crossing. The motion was seconded by Commissioner Beveridge. There was no further discussion. The motion was carried by a unanimous vote of all Commissioners present (5-0).**
- d. Update on Banks-Sellers Realignment Project
 - i. Ms. Bradley shared with the Board that the Banks-Sellers project is behind schedule.

11. Airport Report

- a. The Board members were provided an updated TPA Newsletter, and indicated that they had reviewed it.
- b. Ms Bradley provided an overview of the AIP and Connect Oregon III progress on the Master Plan and the Fencing and Drainage projects.

12. Lease Orders

- a. Deb Sampson, Hangar #9, Starting October 1, 2010
 - i. **ACTION: Commissioner Young moved to accept the lease of Deb Sampson in Hanger #9. Commissioner Baertlein seconded the motion. There was no further discussion. The motion was carried by a unanimous vote of all the Commissioners present (5-0).**

13. Communications

- a. Ms. Bradley invited the Board members to attend a training on “Board Duties and Responsibilities” to be held on October 5, 2010 at 6:30 pm, 2310 Fourth St. Hosted by Tillamook Fire District and sponsored by Special Districts Association of Oregon.
- b. Commissioner Dove provided the Board with notification that the next regular Port Meeting will be held on October 19, 2010 at 6:00 p.m.
- c. Ms. Bradley announced the plan for a Tentative Special Board Meeting on October 8, 2010 at 3:00 p.m.

The regular session was recessed at 8:25 p.m. for an Executive Session per ORS 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

The Board broke from the Executive Session with no decision to be made and returned to the Regular Board meeting at 8:35 p.m.

14. Public Comment

- a. Mr. Meyers asked the Board members if any decision had been made regarding the bio-mass project. Ms. Bradley indicated that the Woody Bio-Mass/JD Ellison group has not come back to the Board regarding funding.
- b. In addition, Mr. Meyers shared that his district had been advised not to even discuss Robert’s Rules as an option for parliamentary procedure.

15. Commissioner Comments

- a. Commissioner Beveridge requested additional information from Ms. Bradley regarding the Railroad payables, to which Ms. Bradley clarified the items and indicated the audit will finalize those issues.
- b. Commissioner Young wanted to indicate that the brief new financial form is very much appreciated.

Commissioner Dove adjourned the Port of Tillamook Bay Regular Board Meeting at 8:40 p.m.

The board minutes were recorded and reduced to typewritten by Karin Gitchel, Office Administrator.