



APPROVED 10-20-2009

**MINUTES
OF THE
BOARD OF COMMISSIONERS
MEETING**

HELD ON

**Tuesday, September 15, 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 6:00 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).

Staff: Michele Bradley (General Manager); Aaron Palter (Project Coordinator).

Port Counsel: Mr. Jeffrey Bennett (Jordan Schrader Ramis PC).

Public: Daniel Patsula (ISI/The Bunkers Group); Gerald "Butch" Parker, Director, Tillamook County Department of Community Development; Alene Allen; Lenora Lawrence and husband; Georgine M. Beveridge.

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3. Public Comment

There was no public comment.

4. Port Financial Report

Ms. Bradley provided the financial report to the Board: The museum had a good month. Septage receiving has had a great month with over \$45,000 in revenue; they are typically \$17,000 to \$20,000 a month. Year to date is \$56,000. Electrical sales were \$9,200; fiber sales were almost \$13,000. Maintenance/supply costs refer to landfill maintenance. Overall the year to date and last month is good.

5. Railroad Financial Report

Ms. Bradley provided the railroad financial report: Banks has shipped 64 cars to date; last month they shipped 16 cars. The railroad is back up to a positive balance this year, due to a sale of assets for scrap; Jerry Everhart is handling this. All the Port has in this process is wages. She said the ODOT reimbursement has come in for the recent rail crossing project at Latimer Road.

6. Approval of Minutes from meetings 8/18/09 (Special), 8/18/09 (Regular)

Commissioner Riedel made a Motion to approve the Minutes as presented. Commissioner Ficher seconded the Motion. The Motion was carried by a unanimous vote.

7. Resort Report

(a.) Monthly Status Report (August 2009)

There were no comments on the report.

Ms. Bradley referred to ISI's September 14, 2009 letter. Commissioner Bell asked if Port's Counsel has reviewed the letter and agrees with it. Mr. Bennett responded he has reviewed the ISI letter and does not agree with it.

There was a discussion of the ISI letter: The letter requests the Port request a 120-day extension of the upcoming September 24th Planning Commission Hearing on the Conditional Use Permit Appeal, and it also requests negotiations with the Port in accordance with Section 4.2.4 of the Development Agreement. Section 4.24 of the Agreement refers to negotiations specific to an Agreement Amendment. This Amendment has never been created. Dan Patsula said ISI intended this letter to request a 120-day extension of the hearing in order to negotiate the Plan of Finance with the Port.

Mr. Bennett discussed his earlier contact with Mr. Parker regarding County's position on the request; and he said there are some issues.

Commissioner Dove discussed the Board's previous action in support of ISI's request to appeal the conditional use permit.

Mr. Bennett discussed the options to proceed and said the Port needs to consistent. He said that ISI is the party who has historically has made these requests. However, technically this is the Port's

permit. Commissioner Dove said that ISI has agreed to “carry the water” for the appeal, at their expense, with the Port’s support.

There was a discussion about who would make the presentation before the Planning Commission if they deny the extension request. It was discussed that ISI would have to be ready to present their case on the appeal. Mr. Bennett said that Mr. Condit (ISI’s attorney) told him someone from his firm would be appearing at the hearing.

Commissioner Dove asked Mr. Parker for his comments. Mr. Parker responded he has contacted Mr. Condit and that he [Condit] said he would be providing in some info for the Planning Commission packets expected to be going out tomorrow with the Staff Report. He discussed the history of the Conditional Use Permit from 2001 to now and the benchmarks to show progress for the continued extensions. He said it would be his recommendation to the Planning Commission to go ahead with the Hearing and get a yes or no answer on the Appeal. He said the decision to extend the Hearing is up to the Planning Commission.

Commissioner Dove suggested a good faith effort to support the 120-day extension request of ISI.

Commissioner Bell made a Motion to support ISI’s request for a 120-day extension of the Planning Commission Hearing. The Motion was seconded by Commissioner Riedel. Discussion: Mr. Palter discussed the 120-day extension timeline’s potential effect on the outstanding FEMA funding question and the deadline for filing FEMA Alternate Project Requests. Commissioner Dove requested to table the Motion pending discussions during Executive Session. There was no objection. The Motion was tabled for later discussion and action.

8. Railroad Division Reports

(a.) ODOT Inspection 8/26/09

Ms. Bradley said there were no issues with the recent track inspection.

(b.) Rockaway Beach Transportation and Growth Management Program

Ms. Bradley said Rockaway Beach wants to include the Port’s railroad within this program and is requesting a representative be sent to up to four (4) meetings during the process. Ms. Bradley is recommending sending Josh Balmer, Railroad Operations Manager. There was Board consensus to support this.

(c.) Salmon Ranching Update

Ms. Bradley said this is a follow-up from Bill McNiel on his idea for salmon rearing, and it includes an application to ODFW. Commissioner Dove provided a history of the request.

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Agenda Addition: US DOT TIGER Grant Application

Ms. Bradley said the Port received a call from Mr. Berntsen (Railmove Northwest, Inc.) on Monday morning after no contact over the weekend informing he would not be completing the grant application. She discussed some of the details of the grant and application. The filing deadline was today. There was a brief discussion regarding the agreement with Mr. Berntsen.

Other

A brief discussion was held regarding a letter received from IBIS. This will be discussed in Executive Session.

9. Airport Report **(a.) RV Park Sales**

Ms. Bradley said RV Sales has had a stellar year, even on a \$5.00 per use honor system. There was a brief discussion held about transient room taxes associated with the Park. Commissioner Bell asked if taxes would still apply to the Airport Zone. Mr. Parker replied they would. It was suggested staff look into this.

10. Digester Report

Ms. Bradley said we sold 1,767 yards of fiber last month, almost \$13,000. The fiber drier for demonstration should be here within two weeks. The cost for the electrical hookup will be around \$7,000 and won't be started until we know the drier is on its way.

(a.) Production Tax Credits – Lobbyist

Ms. Bradley discussed a recent letter from the lobbyist. She recommended this as something the Port should look into. It would be a separate agreement with Federal Relations. There is no current cost estimate. Agreements will be dependent on cost.

Commissioner Young made a motion to investigate the costs of proceeding. Commissioner Riedel seconded the motion. The motion carried by a unanimous vote.

11. Industrial Park Report

(a.) EDC Planning and Vision

Ms. Bradley discussed results of a recent poll of businesses in an attempt to get a new EDC mission statement.

(b.) Statewide Strategic Plan

Ms. Bradley discussed the ongoing Plan. Commissioner Dove asked about Senator Johnson's issue on the Port's Strategic Plan. Ms. Bradley responded this may be from the timing of the Port's Plan and the State's Plan and said the Port is following the State's plan.

(c.) Business Oregon SPWF Project #L10001 Award for Blimp Hangar Match

Ms. Bradley said the Port has received an award grant of \$89,656 for the local match funding portion of the increased amounts on the hangar repairs. This will include payment of the recent KGA request.

Other

There was a brief discussion regarding a recently evicted tenant. Port staff is handling this.

Commissioner Bell requested a monthly report be presented to the Board on the FEMA Alternate Projects and said there has been little information in recent weeks. Ms. Bradley responded that a workshop still needs to occur with the Board to discuss finalization of the project submissions.

Mr. Palter gave a report to the Board on the status of the FEMA Alternate Projects. FEMA is still in the process of closing out the railroad project worksheet. He said that many of the public seem to think that the money has already been given to the Port and obligated to the Resort Project. However, FEMA has not yet approved the final figures, nor has it passed the congressional approval level nor has the money been obligated to the worksheet. This will not occur until all approvals have been given, both at the public assistance levels as well as the federal legislature because of the amounts involved. Commissioner Bell said he thought the money was already available to the Port. Mr. Palter responded no, that the money is not available to the Port until the funds have been obligated and said it will be quite some time until this occurs. The award process is a lengthy one.

12. Discussion and Consideration of Memorandum of Understanding between the Port of Tillamook Bay, Tillamook School District No. 9 and Tillamook Bay Community College and Authorization for General Manager to sign

Ms. Bradley provided the history of the project, which is also a FEMA Alternate Project. It involves a three-way purchase and sale between the Port, School District and the Community College and will allow the Port to acquire prime industrial land which the School District currently owns on Blimp Boulevard within the Industrial Park. The MOU explains the positions of the parties and has been signed by the School District and the College. Commissioner Dove discussed the benefits of the project.

Commissioner Riedel made a Motion to approve the Memorandum of Understanding and request to authorize the General Manager to sign it. Commissioner Ficher seconded the Motion. The Motion was carried by a unanimous vote.

Commissioner Dove said the Board will be going into Executive Session for the purpose of discussing certain real estate transaction items with the Port's attorney as well as exempt public records and said the Board intends to come out of Executive Session to make some decisions.

(Whereupon Commissioner Dove read the appropriate statute for the Executive Session under ORS 192.660 (2)(e) and (2)(f), and the meeting was recessed into Executive Session between the hours of 6:55 p.m. and 8:33 p.m.)

Commissioner Dove said the Board has discussed a lot of things in Executive Session; and the Board is now ready to make some decisions.

Commissioner Dove asked the Board about their willingness to use any FEMA money for the Resort Project. Mr. Bennett asked to clarify why the issue was being raised and referenced the motion previously placed on the table.

Commissioner Young made a Motion that no FEMA funds be allocated towards the Resort Project. Commissioner Ficher seconded the Motion. There was no discussion. Commissioners voting aye were: Dove, Ficher and Young. Commissioners voting nay were: Bell and Riedel. The Motion was carried by a vote of 3-2.

There was Board consensus to take the previous Motion regarding the support of ISI's 120-day extension request for the Planning Commission Hearing off the table for further action. The Motion was called for a vote. The Motion was carried by a unanimous vote.

Commissioner Dove asked the Board if they were willing to obligate any of the Port's property to the Resort Project. Commissioner Bell responded there was no point because the project was dead. Commissioner Dove disagreed. Mr. Bennett discussed the Plan of Finance with the Board.

Commissioner Young made a Motion that the Port Board reject the Plan of Finance. Commissioner Ficher seconded the Motion. There was no discussion. Commissioners voting aye were: Dove, Ficher and Young. Commissioners voting nay were: Riedel. Commissioner Bell said he would abstain from the vote saying he hates to make a decision on lack of information. The Motion was carried by a vote of 3-1 with one abstention.

Mr. Bennett discussed the September 14, 2009 letter from ISI to the Port requesting approval of a 120-day extension of the September 24, 2009 Planning Commission hearing and also a request for negotiations in accordance with the Development Agreement. He said the Board should respond to the letter and recommended the Board authorize a response letter explaining why the Port does not agree it is obligated to grant ISI's requests. A Motion to direct Port representatives to offer ISI negotiations to amend the Development Agreement that would reflect the current conditions under which the Port would continue with the Resort Project could also explain any unacceptable terms.

Commissioner Dove said he would entertain a Motion to authorize a response letter be sent to ISI to open up negotiations on an amendment to the Development Agreement. Commissioner Young so moved. Commissioner Ficher seconded the Motion. There was no discussion. Commissioners voting aye were: Dove, Ficher, Riedel and Young. Commissioner Bell abstained from the vote and provided no reason. The Motion was carried by a vote of 4-0 with one abstention.

Mr. Bennett said there could be a Motion to include the appointment of Port representatives for negotiation of the amendment to the Development Agreement and it could also recommend a deadline for these negotiations to take place and conclude not later than a specified date.

Commissioner Young made a Motion to authorize negotiations with ISI on an amendment to the Development Agreement. Commissioner Ficher seconded the Motion. Discussion: Commissioner Dove clarified the motion should include the Board's unwillingness to provide the following towards any Plan of Finance offered for the Resort Project: The Port's taxing authority; any financial obligation on behalf of the Port including FEMA funds; any of the Port's property. Commissioner Young agreed and said that ISI should understand the Port is

still willing to proceed with the Project, but the current method of financing is not comfortable for the Port. Commissioner Ficher agreed. Commissioner Riedel said there was no reason to comment.

Commissioner Young asked to amend his Motion to include a 45-day deadline from the date of the letter for any negotiations to be concluded within that 45-day timeframe. Commissioner Ficher seconded the Amendment to the Motion. Commissioners voting aye on the Amendment to the Motion were: Dove, Ficher and Young. Commissioner Bell abstained and provided no reason. Commissioner Riedel abstained and provided no reason. The Motion Amendment was carried by a vote of 3-0 with 2 abstentions. Commissioners voting aye on the Amended Motion were: Dove, Ficher and Young. Commissioner Bell abstained and provided no reason. Commissioner Riedel abstained and provided no reason. The Amended Motion was carried by a vote of 3-0 with 2 abstentions.

Commissioner Young made a Motion to appoint General Manager Michele Bradley and Port Counsel as the Port's negotiators for the purpose of negotiating the amendment to the Development Agreement with ISI Oregon Facilities. Commissioner Ficher seconded the Motion. Discussion: Commissioner Bell said that as long as Port Counsel was involved in the negotiations, he has no problem with it. The Motion was carried by a unanimous vote.

It was discussed that no action be taken on the Purchase and Sales Agreement at this time. Mr. Bennett said it would be appropriate to leave this issue open as part of the upcoming negotiations.

Ms. Bradley clarified that Mr. Bennett will be providing the response letter regarding negotiations to ISI; Mr. Palter will be drafting the Board's letter of support for ISI's 120-day extension request of the upcoming Planning Commission Hearing and will send it to Counsel for review.

Mr. Patsula asked the Board if they would support the 120-day extension request. The Board replied that this is what they have just authorized.

13. Lease Orders

Commissioner Bell made a Motion to approve the lease orders. Commissioner Riedel seconded the Motion. The Motion was carried by a unanimous vote.

14. Reports and Communications

Ms. Bradley gave the following report: OPPA will meet October 12. Tillamook Lightwave will meet Tuesday at the Courthouse. The Planning Commission Hearing on the Appeal of the Conditional Use Permit is next Thursday, September 24, 2009, at 7:00 p.m. The Port received a notice regarding the upcoming Johnson Bridge repairs.

15. Public Comments

There was no public comment.

16. Commissioner Comments

Commissioner Dove requested the General Manager contact Commissioners by phone regarding early afternoon meetings; some Commissioners do not always get the chance to check their emails throughout the day.

Commissioner Dove said it is wrong for commissioners to contact the Port's attorney. He would like to have the manager contact the attorney by direction of the Board. Commissioner Ficher agreed. Commissioners Riedel and Bell disagreed. Commissioner Young asked why. Commissioner Riedel responded he has had a lot of experience talking to attorneys and he might have a different interpretation. Commissioner Bell said he thinks the Board needs to be represented. Commissioner Young responded the Board is represented by a manager. Commissioner Bell said sometimes we don't always agree and you have to get an opposing idea like what Commissioner Riedel is talking about.

Commissioner Dove said that if individual commissioners are going to call, it should be by the Board's approval. He said that if the Board does not trust its manager, it should fire her. Commissioner Ficher said it's micromanaging; and Commissioner Dove agreed. Commissioner Ficher continued that the general manager is paid to be given direction.

Commissioner Riedel commented to Commissioner Ficher that this is the most active he has been in a meeting. Commissioner Ficher responded it is about time he was more active.

Commissioner Young said that in his opinion if a Commissioner has a request, they should go to the manager and ask that the question be forwarded to counsel for an answer; and that individual Commissioners taking it upon themselves to get in the middle of things is going beyond the role of a Commissioner. He referenced the recent Board training session where the Board was informed that each Commissioner is nothing by themselves and only collectively does the Board count for anything. He continued that if each Commissioner tries to be a partial manager of the Port, it's not going to work. Commissioner Riedel responded that just because a Commissioner contacts the lawyer does not mean he disagrees with the manager, commission or anything else. Commissioner Young responded this may be true, but probably is not.

Mr. Bennett said it would be a good idea to have set parameters on how questions are asked of counsel. He said he would prefer to have a straightforward line of communication, for example, through managers or directors and said that in his other representation of many municipalities usually there are parameters and not a carte blanche approval. He said it is usually a conscious decision as to who is authorized to contact counsel.

Mr. Palter referenced the Board's Resolution #1, adopted annually, which authorizes only the General Manager to contact Port Counsel. However, this Resolution does not address how Commissioners are authorized. Commissioner Riedel responded that in his sixteen (16) years as a Port Commissioner, this issue has never come up. Commissioner Dove responded this has not been an issue in the past except in the last two months.

Commissioner Young made a motion that individual commissioners are not allowed to contact the attorney. The Motion died due to lack of a second.

Commissioner Bell said that a policy should be drafted. It was discussed that Staff should direct the matter to SDAO for advice.

17. Adjournment

The meeting was adjourned at the hour of 9:04 p.m.