

**THE PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY
BOARD MEETING
THURSDAY, MARCH 7, 2002
5:00 p.m. at the Office of the Port Authority**

I. CALL TO ORDER

Jack Rouse called the March meeting of the Port of Greater Cincinnati Development Authority to order at 5:13 p.m.

II. BOARD MEMBERS PRESENT:

Bailey, Clifford
Budig, Otto
Corathers, Robin
Fonner, John
George, Lou
Hale, Joe
Hull, Betty
Humes, Tom
Kearney, Eric
Kull, Ron
Love, Steve
Muller, Paul
Reid, Janet
Rouse, Jack
Siebenburgen, Dave
Vehr, Nick

EXCUSED:

Martin, Greg
Otto, Charlotte

STAFF:

O'Hara, Annette
Sharp, Tim
Satzger, Kim

Carr, Laura	L.A. Carr Communications
Dober, Philip F.	Arthur Andersen
Jones, Bruce	Squire, Sanders & Dempsey
Klepal, Dan	Cincinnati Enquirer
Williams, John	Gonzalez, Saggio, & Harlan, LLP

III. APPROVAL OF MINUTES

Following a correction to the minutes, the board passed the following motion.

MOTION: Eric Kearney moved that the minutes of the Thursday, February 7, 2002 meeting be approved. Nick Vehr seconded the motion. The motion was carried unanimously.

IV. ORDER OF BUSINESS

A. Organizational Update

Introduction of New Board Members – Jack Rouse introduced new board members Otto Budig and Betty Hull.

Finance Report – Phil Dober provided an overview of the Port Finance Report.

B. Economic Inclusion Policy

Jack Rouse stated that the focus of the meeting would be the Port's Economic Inclusion Policy. He explained that an ad hoc work group had been working on the policy, which addressed a very complex issue involving legal, ethical, and moral considerations. Attorneys Bruce Jones (in attendance) and Fred Nance (via telephone) of Squire, Sanders & Dempsey and John Williams of Gonzalez, Saggio & Harlan had been asked to join the meeting to facilitate the discussion.

Steve Love thanked the members of the work group who worked on drafting the policy and agreed that they had dealt with a very complicated issue.

Attorney Fred Nance outlined his legal experience with the issue of economic inclusion. Jack Rouse then invited the board members to express their thoughts regarding the policy draft.

Nick Vehr commended the work group for their work and then questioned the extent to which board members will be exposed to legal ramifications and individual financial responsibility. He also expressed concern about the policy's inclusion of numerical goals.

Fred Nance provided an overview of the legal ramifications and individual responsibility. He referenced a court case involving Judge Pearlman of the U.S. District Court regarding trustees' potential liability. In general, as long as we have a program with reasonable or rational criteria, personal liability is not well founded.

Fred Nance said that there is no guarantee with regard to the issue of liability. This proposal does not include penalties or inducements. There must be a reasonable evaluation of who is available to do the work. The question to be asked is if what we have done is reasonable based on this criterion.

Nick Vehr asked what counsel would recommend that we do to remove doubt as to the reasonableness of our numbers.

Fred Nance responded that there are no quotas included in the policy, just aspirational goals. What is left to do is look at the number of businesses capable of and ready to do the work. He suggested that we look at other cities and counties to see what they are doing and examine our market to see who is available to carry out the work.

John Fonner said that he does not have concerns about why this is important but asked how we look at appropriate rewards and if that would include how we weight our scoring criteria when looking for a developer.

Tom Humes said that we have explained to the developers that this is important for the Banks project, but we have not quantified it. We believe this is just the right way to do business.

Bruce Jones emphasized two words: encourage and facilitate. The policy does not include penalties or rewards.

John Fonner asked how it relates to our original policy. Bruce Jones responded that it is consistent with the original policy.

John Williams stated that no courts have challenged this to date.

Tom Humes said that this is the first time numbers have been set for aspirational goals.

Nick Vehr said that the City would not give minimum standards and did not have numbers. Tim Sharp responded that they have an SBE program.

John Williams explained the definitions of SBE (Small Business Enterprise), MBE (Minority Business Enterprise), and WBE (Women Business Enterprise). Then Bruce Jones explained that the advantage of using an SBE approach in the policy would be that many MBE and WBE businesses would be SBEs anyway and that the SBE program is racially and gender neutral, but can achieve the same goal.

Fred Nance said that most SBE programs are race neutral. The City program is a race neutral program but keeps track of race and gender numbers. He said that the Cleveland Brown Stadium project did not use a race neutral approach.

Eric Kearney asked Fred Nance about his work on the Cleveland Stadium project. Fred Nance said that that project did not use an SBE approach but that the statistics for MBE and WBE participation were 28% and 7% respectively in relation to a goal of 30% and 10% respectively.

Fred Nance explained that goals cannot be set higher than the numbers of businesses available to do the work and that penalties would have to be very specific and have a lot of analysis behind them. He stressed that goals need to be reasonable if no penalties are established.

John Fonner asked if these are all certified designations. Fred Nance replied that they were and that Cleveland had an office of equal opportunity to track MBE and WBE participation.

Tom Humes said that participation depends in part on who is out there ready, willing, and able to take part. Fred Nance agreed that goals need to be tied to the WBE and MBE marketplace and have some basis in reality.

Steve Love asked how far geographically we would need to look for available business to do the work. Fred Nance responded that there is no "right" answer to that question but that the radius set needs to be reasonable.

Jack Rouse asked if we have to continually monitor this. Fred Nance said yes.

Steve Love commented that the networking sessions for small businesses, held in February, drew from outside the local area. Jack Rouse suggested that a crucial issue is how we track and monitor participation. Fred Nance agreed.

John Fonner raised the concern of what we open ourselves up to legally and politically if we fail. Fred Nance and Bruce Jones both explained that repercussions would be political rather than legal.

Ron Kull asked about the monitoring process. Fred Nance responded that the Port should have a consultant or dedicated employee for this role to collect data and check up on compliance. Jack Rouse said that the Port budget now includes a Director of Economic Inclusion.

Nick Vehr asked what we should do to get where we need to be. Fred Nance responded that he is comfortable with what he has seen in the policy document and suggested that we keep looking at what is going on elsewhere, including the City. He emphasized that the written policy is secondary to outcomes, or actual performance.

Nick Vehr asked what court precedent there is for defense of reasonable versus aspirational goals. Fred Nance said that reasonable predominates if there are no penalties.

Eric Kearney asked if there are any other projects that would be helpful for comparison. Fred Nance suggested the Cleveland Public Schools, the Rock and Roll Hall of Fame, and the Gateway project.

Bruce Jones suggested that the public schools projects are significant. Fred Nance agreed that the same types of programs and policies apply.

Eric Kearney asked if there have been any port authority projects. Bruce Jones said just the Rock and Roll Hall of Fame, but it was done in a different climate from that at present.

Robin Corathers asked how this policy would pertain to Brownfield properties, especially concerning projects we own versus projects we play a smaller role in. She questioned how much control we would have. John Fonner reviewed last month's discussion about the Center Hill Landfill project.

Bruce Jones said that the wording of the document emphasizes the words "encourage" and "facilitate," not "mandate" or "require." Jack Rouse emphasized that this is a policy statement, not an operational plan.

Robin Corathers said that she would like to see the policy expanded because there are economic impacts in disadvantaged neighborhoods other than construction, such as job training and recycling. She also said that she would like to include a Brownfield implementation plan.

Paul Muller stated that we should be willing to assume some level of risk rather than not move forward with the policy.

John Fonner asked if the numbers included in the policy are what make it controversial. John Williams responded that the numbers must be backed up with reasonable expectations based upon what businesses are available to do the work.

Nick Vehr asked if board members could be sued individually and who would provide representation. John Williams responded that the Port Authority would have to back up the board members, and Fred Nance agreed.

Bruce Jones stated that the Banks is a very large project producing a lot of interest and creating a real possibility of disappointment from businesses that are not chosen to participate. He indicated that litigation is possible and that this is not a risk-free endeavor. Jack Rouse said that it was important to note that risk.

Janet Reid commented that the board could be sued for a lot of reasons and asked if that concern was what the decision should be based on. She suggested that we focus on achieving the goals rather than failing to do so.

Tom Humes stated that we are all committed to the concept of inclusion, but that the developers would be the ones to make it happen. He emphasized that the Port Authority must be an advocate for the developer and provide support.

Janet Reid said that people follow an effective leader and that the Port Authority would need to lead the developer, set goals, and help them achieve them. She further stated that we will be judged by our conduct, not our intent. Fred Nance agreed.

Robin Corathers said that the Entrepreneurial Fund mentioned in the policy should apply to the Port rather than just the Banks.

John Fonner asked if we might be creating political difficulties for other groups, such as the Cincinnati Public Schools. Steve Love wanted to know why that was a concern. Mr. Fonner replied that it was because we have a leadership role in the community and could create difficulties for our co-leaders. Clifford Bailey responded that he believes in this issue and believes that we must "raise the bar" and stop excluding businesses from participation.

Steve Love said that we need to move forward regardless of what others do. Jack Rouse suggested that we must compare apples to apples.

Nick Vehr said that we are going to define what will be accomplished in seven to ten days. Tom Humes suggested that we use the time before the next meeting to learn baselines and define reasonableness.

Paul Muller suggested that we must remember our basic commitment and not get bogged down in the details.

Jack Rouse said that the board will meet again to discuss this matter further.

IV. OTHER BUSINESS

Jack Rouse announced that discussion of other business items would be tabled until another meeting of the board.

V. ADJOURNMENT

MOTION: Janet Reid made a motion to adjourn the meeting at 6:36 p.m. Eric Kearney seconded the motion. The motion was carried unanimously.

Respectfully submitted,

Kimberly A. Satzger
Assistant Secretary