

PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY
BOARD MEETING MINUTES
Tuesday, June 22, 2010
7:30 AM, 3CDC Conference Room, 1014 Vine Street, Suite 1420, Cincinnati, OH

I. CALL TO ORDER

Mr. Budig called the Port of Greater Cincinnati Development Authority Board of Directors meeting to order at 7:34 a.m.

Mr. Budig thanked the Board for its flexibility to meet as there are a number of items requiring formal action.

BOARD MEMBERS PRESENT:

Budig, Otto
Dunn, Marty
Greiwe, Rick
Handy, Clark
Marmer, Lynn
Smith, David
Wright, Shane

EXCUSED:

Jacobs-Horton, Lydia
Williams, Tom
Zimmer, Joe

STAFF:

Karimi, Marjorie
Laird, Tiffany
Satzger, Kim
Schafer, Ray
Thomas, Susan

GUESTS:

Engel, Mark – Bricker & Eckler, LLP
Martin, Shannon – Bricker & Eckler, LLP

II. APPROVAL OF MINUTES

Motion: Marty Dunn moved to adopt the minutes of the May 14, 2010 Board of Directors meeting. The motion was seconded by Lynn Marmer, and was approved unanimously.

III. BROWNFIELD PROJECTS UPDATE

On behalf of Christine Russell, Kim Satzger provided the Board with the following brownfield projects update.

5025 Carthage Avenue, Norwood, OH (Linden Pointe) – All comments on the No Further Action (NFA) Letter, as well as the Operations and Maintenance (O&M) Plan have been resolved. The property owner is working to get all the required signatures on the Environmental Covenant prior to the Ohio EPA issuing the Covenant Not to Sue (CNS).

320 South Anthony Wayne Avenue, Lockland, OH (Hamilton County Regional Business Park) – Remediation of this site is complete, and the No Further Action Letter was submitted to Ohio EPA on February 26, 2009. The Environmental Covenant has been signed by the property owners. It is anticipated that Ohio EPA will issue the CNS in the near future.

4101 Spring Grove Avenue, Cincinnati, OH (American Can Building) – The property owner continues to pursue two sources of financing – New Markets Tax Credits with a conventional bank loan and a U.S. Department of Housing and Urban Development (HUD)-insured loan. They met with HUD on April 7, 2010, and have been invited to submit a loan application. Two above-ground storage tanks and one underground storage tank were removed at the end of May. The project team is working with the environmental consultant to prepare documentation for Ohio EPA in preparation to implement the remedial action at the property.

3241 Spring Grove Avenue, Cincinnati, OH (Former Kahn's/Sara Lee Site) – The Clean Ohio Council awarded \$3 million to the Former Kahn's/Sara Lee project on May 27, 2010. The lead applicant is Hamilton County, and the Port Authority is the co-applicant.

105 West Fourth Street, Cincinnati, OH (Former Federal Reserve Building) – The Port Authority has been asked to submit a Clean Ohio Assistance Fund (COAF) application to assist in the cleanup of the Former Federal Reserve Building at the corner of Fourth and Main. This mostly vacant office building will be converted into residential apartments, while the basements and first three floors will remain commercial space. The developer received final approval from HUD for the project financing. The Port Authority is working with the developer and the environmental consultant to prepare the application for submittal to the Ohio Department of Development. The City of Cincinnati is supportive of the application and City Council has passed a resolution of support. The Board previously provided approval for the submission of the grant application in February 2010 through Resolution 2010-03.

The Port Authority submitted the application on June 18, 2010 and a public meeting will be held on August 4, 2010.

U.S. EPA Brownfield Assessment Grant – In October 2009, the Port Authority formed a partnership with the City of Cincinnati and Hamilton County, and submitted an application to U.S. EPA for \$1 million in brownfield assessment funding with the Port Authority being the lead applicant. On April 19, 2010, U.S. EPA announced that the application was selected to receive a \$1 million grant. On June 1, 2010, the Port Authority submitted a documentation package to U.S. EPA, including a technical work plan. This information will be used to prepare a Cooperative Agreement that will govern the grant. U.S. EPA has indicated that it expects that the Cooperative Agreement to be executed and effective in August 2010.

Motion: Lynn Marmer moved to approve Resolution No. 2010-04 authorizing the Port Authority to enter into a Cooperative Agreement with U.S. EPA. The motion was seconded by Marty Dunn, and was approved unanimously.

238 Shepherd Avenue, Lockland, OH – The Port Authority has been asked to be a co-applicant with Hamilton County on a Clean Ohio Revitalization Fund (CORF) application to assist in the cleanup of the eastern half of the Stearns and Foster site in Lockland. The site requires demolition and soil remediation,

and will require approximately \$2 million in grant funding. The deadline for the CORF applications is July 21, 2010.

Mr. Budig asked what the role of the Port Authority is in this process.

Mr. Satzger stated that the Port Authority will use its expertise in facilitating the process with Hamilton County, the lead applicant.

Motion: Rick Greiwe moved to approve Resolution No. 2010-05 authorizing the Port Authority to act as a co-applicant on the CORF grant application for the Stearns and Foster site. The motion was seconded by Clark Handy, and was approved unanimously.

3603 Kemper Road, Sharonville, OH (Former Green Industries) – This former brownfield property was owned by the Port Authority, remediated through a Clean Ohio Revitalization Fund grant program, and was subsequently sold to the owner of the adjacent business park, Kemper Crossings, LLC, in May 2005. Kemper Crossings, LLC purchased the property with the intent to incorporate it into its adjoining office park to establish an office/flex space campus. With this expanded site, Kemper Crossings, LLC worked together with the City of Sharonville and was able to attract a high-density standardized test-grading company that needed 500 parking spaces to the office/flex campus. The 500 jobs brought to the City of Sharonville by Data Recognition Corporation would not have been possible without the availability of remediated, adjacent vacant land on which to construct the needed parking for the 500 employees.

At the time of the sale of the property, Kemper Crossings, LLC entered into with the Port Authority a “Declaration of Restrictions and Easements” that specified the details and schedule for the redevelopment of the former Green Industries property. This document was amended in December 2007 to extend the timeframe to construct the required redevelopment. This extension has now expired. The Port Authority has discussed various options with the City of Sharonville and Kemper Crossings, LLC with regard to modifying this agreement. Because the City of Sharonville has the final approval on the type and schedule of development at the property, its preferred option is that the Port Authority amend and assign the “Declaration and Restrictions and Easements” document to the City of Sharonville, and allow it to enforce and modify the agreement in the future, if required. This amendment and assignment will ensure that the document reflects the vision, goals, and schedule of the City of Sharonville.

Mr. Budig inquired if there were any negative implications to the Board by authorizing this action.

Mr. Satzger stated that the Port Authority’s legal counsel was involved in the process, and that there were series of discussions with both the property owner and City of Sharonville. All participants are supportive of the resulting approach.

Motion: David Smith moved to approve Resolution No. 2010-06 authorizing the Port Authority to amend and assign the “Declaration of Restrictions and Easements” for the property located at 3603 East Kemper Road to the City of Sharonville. The motion was seconded by Lynn Marmer, and was approved unanimously.

IV. FINANCING PROJECTS UPDATE

Susan Thomas provided the Board with the following financing projects update.

Cincinnati Mills Mall, Forest Park and Fairfield, OH – In February 2004, the Port Authority issued \$18 million in Tax Increment Financing (TIF) and Special Assessment backed revenue bonds to acquire,

construct, equip, and improve public infrastructure improvements to meet additional demands at the Cincinnati Mills Mall. The facilities owned by the Port Authority include a public parking garage, a public parking lot, a public ring road, and two detention ponds.

The Cities began collecting TIF service payments resulting from increases in the assessed valuation of the Mall in 2006. However, because the incremental value did not fully support the payments on the Bonds, the Cities have also certified Special Assessments for collection by the Counties in each of the last four years. The Special Assessments carry a tax lien and generally cannot be “primed” by a mortgage lender. The TIF service payments and Special Assessments through tax year 2007 (collection year 2008) were paid.

The amount of TIF service payments due in 2009 and 2010 has been virtually eliminated as a result of the property owner’s challenges to valuation. The Special Assessments certified, if paid, should be sufficient to support required payments on the Bonds.

Ms. Thomas indicated that, as discussed at the last Board meeting, the owner had previously advised the Trustee, in writing, that it intended to provide funds to the Trust by May 1st to make the unpaid principal payment (and related interest), pay Administrative Expenses, including current legal fees, and reinstate the Bond Reserve Fund. The owner did not provide funds to the trust by May 1st, but representatives of the owner indicated that the owner anticipated making a partial payment by Friday, May 14, 2010. The owner did not make this payment.

As of May 31, 2010, taxes, service payments, and special assessments, including taxes owed as manager on the Port Authority property, remain delinquent. Representatives of the owner have indicated to the Port Authority that the owner is evaluating its options and is trying to balance the multiple requests for payment that they have received, but no decisions have been made.

Port Authority staff has not yet approved the subcontract of the Management Agreement as staff has not received evidence of the required insurance and proof that the delinquent taxes and service payments relating to the Port Authority property have been paid.

The Cities have indicated to the Port Authority that the new owners are putting money into the Mall, including preparing some additional space for a possible tenant expansion and a significant amount of clean-up work and repair. The Cities also indicated that the owner paid the storm water utility bill.

Mr. Budig asked where the Port Authority is in this process.

Ms. Thomas stated that this is a very challenging situation. The owner acquired the property but has not been able to obtain the additional financing that they anticipated. She believes the property owner is trying to identify what their options are and whether or not they wish to continue to own the property.

Mr. Budig asked what the fiscal danger is for the Port Authority.

Ms. Thomas stated the Bondholders’ claim is to the money in the Trust. The money in the Trust is limited to service payments and special assessment payments paid by the owner to the County and then forwarded to the Cities and then onto the Trust. The owner could also provide funds to the Trust directly. The Bondholders do not have access to the general funds of the Port Authority or the Cities.

Mr. Budig asked if the Bondholders are satisfied.

Ms. Thomas stated the Trustee and the bond Administrator have not been able to locate the Bondholders; therefore, the Port Authority does not know the desire or intention of the Bondholders. If the Bondholders came forward, the Administrator and Trustee could have direction; however, to date, the Bondholders have been silent.

Mr. Smith asked if Ms. Thomas believed that it is an institutional Bondholder as opposed to individual Bondholders.

Ms. Thomas responded that the minimum bond size is large and her best guess is that the bonds are consolidated with one or a handful of investors. The Port Authority does not have any evidence that the bonds are widely distributed. Ms. Thomas stated that it is her belief that these bonds are not the kind of bonds typically found in a retail portfolio.

Ms. Marmer commented that the bottom line is that the Port Authority is in a holding pattern. The Port Authority could pursue foreclosure; however, then the Port Authority could own a huge white-elephant asset.

Ms. Thomas stated that none of the public partners nor the Trustee have reached agreement on their interest in being responsible for the property and related liabilities if foreclosure or receivership is pursued. There are some things the Port Authority would like the owner to do that do not require a huge amount of money. To date, the owner has not taken these actions. The Port Authority continues to be concerned with the owner's repeated indication that it will engage in certain actions which it then does not take.

Mr. Greiwe asked what the legal costs are for the Port Authority.

Ms. Thomas responded that counsel costs are growing. The appropriate source of payment is from the Trust or indemnifications provided by the owner. At this time, there are no funds available in the Trust for this purpose, and, as previously discussed, the owner did not make the payment to the Trust that would have covered current administrative expenses including counsel costs. Counsel, to date, has been willing to let their expenses accrue with the idea that they would be made whole when payments are made to the trust. When there is a service payment or special assessment payment made to the County, which is then forwarded to the Cities and then onto the Trust, that money would be available to pay administrative expenses before interest and principal. Administrative expenses include the Port Authority annual fee, legal counsel expenses, expenses of the Administrator and Trustee, although there may be some other options available to the Trustee for their expenses. The Port Authority does not know how long counsel is willing to wait on those sources for payment, while continuing to have legal expenses increase, with both the willingness of the current owner to make the required payments and the timing and amount of payments into the trust in doubt.

Mr. Greiwe asked if it was understood that the Port Authority is not liable and that counsel is taking this risk.

Mr. Thomas stated the Port Authority has a long cooperative relationship with counsel and has retained counsel to provide services perceived as necessary under the circumstances. Historically, the Port Authority has not paid counsel directly for bond related work out of the general fund as these costs are eligible to be passed through to the Trust or other parties. Historically, counsel has been willing to let legal fees and expenses accrue until funds were available in the Trust. However, at some point, the assumption is that counsel will no longer be comfortable with this situation and will approach the Port Authority for a solution. This topic has not been raised with counsel, but Ms. Thomas does not believe that it is counsel's expectation that the Port Authority would pay the entire bill from its general fund.

Mr. Budig asked about the amount of the Port Authority's potential exposure.

Ms. Thomas stated the Port Authority general fund has no responsibility for the principal and interest payments on the bonds. As explained earlier, there is some potential responsibility related to legal costs. There are also potentially some liability concerns which, in theory, would be covered by insurance.

Mr. Schafer added that the Port Authority does not have any liability currently recorded on its books for legal counsel related to Cincinnati Mills or any other bond-related matters expected to be paid by third parties, as counsel's audit response letters only cover amounts for which a statement has been presented to the Port Authority for payment.

V. ECONOMIC INCLUSION UPDATE

On behalf of Deborah Robb, Ms. Satzger provided the Board with the following economic inclusion update.

Queen City Square Tower, Cincinnati, OH – The overall project continues to progress at a steady pace. The tiara is now 100% fabricated, and 40% erected in the field. Some painting problems at the fabricator have slowed the progress in the field. Completion of the tiara is now scheduled for the week of July 11, 2010. The curtain wall enclosure of the building is complete through level 40. Level 41, the final floor, should be complete by the middle of June 2010. The glass and stone enclosure of the lower five floors of the building is complete on all elevations with the exception of Fourth Street. Stone on Fourth Street should be complete by the end of June 2010. Punch windows in these areas will be complete by the end of June 2010, as well. The glass enclosure of the rotunda should be complete by mid-September.

Progress on all elevators continues as planned. The two permanent service elevators will be brought on-line by August 1, 2010. This will allow Turner Construction to take down the two exterior hoists, which is scheduled to be complete by the end of August 2010.

Framing and MEP (Mechanical, Electrical, Plumbing) rough-in for the Lobby and Promenade is in full swing. Drywall ceiling installation should be starting by the end of June 2010. The start of the tenant work on the first eight floors is ready to commence pending finalization of Turner's contract with Eagle Realty. It is anticipated that they will begin construction of the tenant work by June 14, 2010.

Site improvement work around the entire building is just now going out to bid. Awards should be in place by the end of July 2010, with the work in the field beginning in August 2010. This is a City-funded portion of the project; therefore, it is designed for the SBE requirement of the City.

The building will be totally enclosed by the end of August 2010, with the tower crane coming down at that time. The tiara topping-off ceremony is tentatively scheduled for July 13, 2010, to which Board members will be invited. There are a series of community engagement and key stakeholder events that will happen in July.

The Project Team (Eagle Realty, Ellington Management Service, Turner Construction, and Port Authority) continue to meet on a monthly basis to receive project updates, and to insure that companies are following the contracting guidelines established by the team.

Progress on the project may be viewed at: www.queencitysquare.com/construction.htm. There is a webcam at the site that captures photos of the site on a daily basis.

Economic Inclusion Reports

Ms. Satzger directed the Board to the Economic Inclusion Reports. Participation for Total Projects in Process as of June 11, 2010 is: Minority Business Enterprise (MBE) is \$49.7 million or 23%; Women Business Enterprise (WBE) is \$29.3 million or 13%; and, Small Business Enterprise (SBE) is \$219.2 million or 14%.

Mr. Greiwe stated he recently read where the developers who are building the casinos in Ohio made a commitment to economic inclusion. He inquired if there is any way that the Port Authority could generate fees by offering its expertise to the project.

Ms. Marmer commented that she thought this was a good idea.

Ms. Satzger reported that Councilmember Charlie Winburn's Job Creation Committee asked the Port Authority to make a presentation before that committee. Ms. Satzger and Ms. Robb made a presentation on June 21, 2010, providing a status report on the Port Authority's projects and economic inclusion efforts. Ms. Satzger stated that Ms. Robb did a very good job with this presentation.

Ms. Marmer commented that Ms. Robb does a very good job. Ms. Robb's work is solid and appreciated. Ms. Marmer said that the Port Authority needs to find more ways of engaging Ms. Robb in her capacity within our community.

VI. CHAIRMAN'S REPORT

Mr. Budig stated that the Board would now be moving into Executive Session.

Motion: Ms. Marmer made a motion pursuant to Ohio Revised Code Section 121.22 (G)(1) and Ohio Revised Code Section 121.22 (G)(2) to adjourn the meeting of the Board of Directors of the Port of Greater Cincinnati Development Authority and to go into executive session for the sole purpose to consider the appointment, employment, dismissal, promotion and/or compensation of public employees, and considering the purchase or sale of property for a public purpose by the Port of Greater Cincinnati Development Authority. Upon conclusion of the executive session, the Board will reconvene its meeting of the Board of Directors. The motion was approved unanimously by roll call vote.

The Board adjourned into executive session at 8:03 AM. The Board came out of executive session and reconvened its Board of Directors meeting at 8:51 AM.

Metropolitan Sewer District of Greater Cincinnati (MSDGC)

Ms. Satzger presented to the Board a resolution in support of the Port Authority working on some strategic initiatives with MSD in order to facilitate the compliance with its consent decree. The resolution contemplates that the Port Authority could play a variety of roles in terms of assisting MSD implement its wet-weather strategy in Hamilton County.

Ms. Satzger stated that pursuant to Section 1. b. of the resolution, the Port Authority has discussed with MSD that there would be revenue to the Port Authority for its participation. There will be continued discussions.

Motion: Marty Dunn moved to approve Resolution No. 2010-08 authorizing the Port Authority to support sewer enhancements being implemented by the Metropolitan Sewer District of Greater Cincinnati. The motion was seconded by Lynn Marmer, and was approved unanimously. Mr. Otto Budig recused himself from the vote.

VII. PRESIDENT'S REPORT

Financial Report

Mr. Schafer provided the Board with the following financial report update.

The balance sheet reflects \$1,154,000 in cash at the end of May. As previously indicated, this will carry the Port Authority through approximately March 2011. The Port Authority has not received the 2010 annual fee of \$44,200 from Cincinnati Mills. Expenditures for the month of May are \$121,000. Year-to-date expenditures are within budget.

Mr. Schafer stated that with regard to insurance, the Port Authority, in discussion with the Finance Working Group, engaged consultants to assist with reviewing coverage. D&O (Director and Officer) coverage has been increased, effective January 1, 2010, from \$3 million to \$5 million. Employee Practices Liability insurance was added. Restrictive endorsements that existed on the policy were dropped, which improves coverage. Additionally, policies with two separate insurers for liability and fiduciary coverage were consolidated with the D&O insurer, Cincinnati Insurance Company.

Mr. Greiwe inquired that because the Port Authority's revenues were down on fees, does the decrease in revenue impact the Port Authority's reserves.

Mr. Schafer stated that it does. The Cincinnati Mills annual fee of \$44,200 is included in the \$243,000 that the Port Authority anticipated from project fees for 2010.

Ohio Logistics and Distribution Stimulus Program

Ms. Satzger provided a status update with the Board on the Ohio Logistics and Distribution Stimulus Program application. The Port Authority has been working with the City, County, railroads, and various terminal operators on the river to respond to this offer from the State that is essentially a low-interest loan that can be converted to a grant in the future if program requirements are met. A Letter of Intent, which described a river-rail project, was submitted on April 16th and a presentation was made to three state entities on April 29th. Subsequently, the project was invited to make full application.

Ms. Satzger stated that the Port Authority is working with the City of Cincinnati and Cincinnati Bulk Terminals (CBT). The application has been submitted and continues to be worked through. Ms. Satzger presented to the Board a resolution which reflects the Port Authority's support for the application, and gives staff the authority to negotiate agreements as required with the consent and advice of the Chairperson.

Pursuant to the counsel of Ms. Shannon Martin, Bricker & Eckler, the resolution has been amended as follows:

"Section 3 Subject to (1) the approval of the Project by the City of Cincinnati (Council or Mayor), including aspects thereof related to use and ownership of the City-owned portions of the Project Site as are necessary to accomplish the Project as described in the Application, (ii) payment of the

costs and expenses incurred by the Port Authority in connection with the Project by the Developer or otherwise, and, (iii) confirmation by the City as to its commitment to assign the existing property leases with CBT and its affiliate, Port of Cincinnati, LLC, inclusive of the lease revenue thereunder and that such assignment will not reduce the City's existing annual commitment to support Port Authority operations." The resolution would continue as written.

Ms. Marmer suggested that the sentence should read "reduce or offset."

Motion: Rick Greiwe moved to approve Resolution No. 2010-07, as amended, authorizing the Port Authority to ratify the submission of an application to Ohio Department of Development seeking award of Ohio Logistics and Distribution Stimulus Program Funds in support of a rail-to-river improvement project proposed by Cincinnati Bulk Terminals, LLC and its affiliates, and approving entering into a loan agreement and other agreements with Ohio Department of Transportation and others to implement the project. The motion was seconded by Clark Handy, and was approved unanimously.

Mr. David Smith stated that he is on the Development Financing Advisory Council, which reviews Ohio Distribution and Logistics grants prior to going to the Controlling Board. For the record, Mr. Smith will recuse himself at the State Board meeting.

TRAC Application

Ms. Satzger provided a status update on the Port Authority's application to the Transportation Review Advisory Council (TRAC) at the Ohio Department of Transportation (ODOT) for \$1 million to conduct preliminary engineering studies and design for improved capacity through that rail corridor. The Port Authority met with ODOT to discuss the process for moving forward with the project.

VIII. ADJOURNMENT

Motion: Marty Dunn moved to adjourn the Board of Directors meeting at 9:04 AM. The motion was seconded by Shane Wright, and was approved unanimously.

Respectfully,

Kimberly Satzger
Secretary