

## Meeting Minutes

West Central Ohio

Port Authority

August 19<sup>th</sup>, 2021

### **Members Present**

David Carr, Gene Baumgardner, Richard Flax, Marcia Bailey, Dr. Richard Henry, Wes Bahan

### **Others Present**

Louis Agresta, WESTCO

David Faulkner (listened via phone)

Caleb Bell (via phone)

Todd Winnenberg, Sutphen (via phone)

Tammi Angle, CAHD

Devesh Kamal, CSH

Greg Mallon, Sutphen (via phone)

The meeting was called to order by Chairman Baumgardner at 9:00 am and the roll was called. Having a quorum, the Board proceeded with the agenda.

### **I. Minutes**

A motion was made by Director Carr to approve the minutes from the July 15, 2021 meeting. The motion was seconded by Director Bailey. The motion carried without opposition.

### **II. Financial Report**

Louis stated that during the month of July WESTCO received \$163,141.50 in receipts and paid \$15,952.84 in disbursements. Louis reported that the July receipts were high because WESTCO received overhead payments for the months of April, May, and June. He stated that the railroad is still having issues with their system being able to generate accurate reports. He said that the railroad paid WESTCO the average of the Q1 overhead. He said that once the system is fixed, WESTCO and the railroad will reconcile and process any underpayments or overpayments moving forward. In addition to the overhead payments, there were also maintenance fees, rents and leases as well. Louis stated that the \$15,952 in disbursements were general admin expenses. Louis stated that for the year, WESTCO has received \$1,014,438.03 in receipts and had paid \$515,724.96 in disbursements. He stated that before the meeting he and Richard just wrote almost a half million dollars in checks to Wintrow for the final 2020 track rehab invoice and the first 2021 track rehab invoice. The August financials will have the receipts and disbursements for 2021 more evened out.

A motion was made by Director Henry to approve the financials for July 2021. The motion was seconded by Director Bailey. The motion carried without opposition.

### **III. Administrative Report**

#### **A. Virtual Meeting Policy**

Louis reminded the board that the virtual meeting provision was not renewed by the State of Ohio General Assembly. He stated that because of that, public bodies can no longer meet virtually. He stated that Bricker and Eckler notified him of a provision in the code that does allow Port Authorities in particular to meet virtually. Louis stated that at a prior meeting the Board authorized Bricker and Eckler to draft a virtual meeting policy so that WESTCO could utilize that in the future. Louis stated that the draft policy was forwarded to the board in the meeting materials. He turned it over to Tammi Angle to give her comments on the policy. She stated that in paragraph A, the statute reads that the policy must state how many board members must be present at the physical meeting location. She stated that the policy, as currently drafted, states that at least 1 board member must be at the physical location.

She stated that paragraph E describes a pin process that identifies each board member that is attending the meeting virtually. She stated that it appears a bit cumbersome and is something that we need to discuss. Louis added that he isn't sure he has the capability to even do that. Chairman Baumgardner asked if we had to have that provision in there. Tammi stated that paragraph A, or some iteration of it was required, but paragraph E wasn't. She stated that we would just need to method of identifying who was on the call, but a pin wasn't necessary. Louis stated that he they had been doing this throughout all of 2020 and early 2021 and just calling people worked well. He said that the member is verified because that phone number is unique to the specific person. Tammi also encouraged the board to think about how the public would have access to the meeting. Louis stated that currently, agendas aren't posted on the website. He stated that meeting materials and information are sent via email to all WESTCO stakeholders. He stated that any member of the public is welcome at any time to request to be on those email distribution lists.

Louis stated that he would like to see the provision work just like it has been since the pandemic started. He stated that if a board member would like to attend virtually, they need to let Louis know and he will call them prior to the meeting starting. He stated that the same thing could be done via Zoom if the member would like to attend via teleconference. The board agreed with that and Tammi stated to just revise paragraph E to line up with that process.

The group then turned to how best handle allowing the public to attend a meeting virtually. Louis again requested that the process line up with what they do now. He stated that now, agendas are uploaded to the website. Rather they are sent out via email to WESTCO stakeholders. He stated that anyone can be on those email lists, so long as they reach out to Louis and request it. Tammi stated that would be fine, as long as it is on the website that if they would like to be added to the stakeholder list they need to contact the Secretary Treasurer and request it. Louis said that he could get that on the website. Louis stated that if a meeting was ever going to be remote, he

would add in the email notification that if anyone would like to call or video in to let Louis know and they would make arrangements.

Tammi stated that her final comment was that on page 2, section III in her opinion gives the Chair too much authority to implement or rescind the policy in their discretion. Louis asked if we could change Chair to Board and if that would be more appropriate. Everyone agreed that would be more amenable. Louis stated that he would work with Tammi and Bricker and Eckler on implementing these changes so that it would be ready for approval at the September board meeting.

### **B. Sutphen Economic Development Resolution**

Louis stated that the Sutphen resolution and accompanying documentation was ready for board approval. He thanks Tammi for getting through it all in advance of the meeting, especially since the documents weren't received until Monday of the board meeting week. Louis stated that he had multiple people that he had to get on the phone before the conversation could commence. He called Caleb Bell with Bricker and Eckler, as well as Todd Winnenberg and Greg Mallon with Sutphen. The group began working through some of the concerns that Tammi Angle had.

Tammi stated that her biggest issue with the resolutions were with sections 3 and 4. She stated that that they are authorizing the Port Authority to enter into a ground lease and a project lease that may be approved by officers of the Port Authority. She recommended it be revised to have similar language as sections 5, 6, and 7 or substantially to in the form that it is on file. Caleb agreed with the concern and recommended that when the resolution was up for approval note that it is contingent upon the language of section 3 and 4 being revised to match up with section 5,6, and 7.

She moved onto the term sheet. She stated that because WESTCO has done a lot of these she compares the term sheets from prior projects. On page 2 under project costs, she asked what the "other" costs were. Caleb stated that the company submitted a total amount for the project. The components of that total include the land, total construction, and other. He stated that Other costs include soft costs associated with developing the site. Caleb stated that the other costs and land costs do not have sales tax exemptions to them. It is only the hard materials construction costs. Todd Winnenberg from Sutphen asked if the estimate was off, does the exemption extend to costs over that estimated construction number. Caleb Bell responded that the number is based on a good faith discussion about the anticipated costs and project budget, we are all agreeing that the budget is accurate, if there is a little more in costs, you can have those savings. Similarly if the costs come in under, WESTCO wont be refunding the Port fee to line up with the actual costs that were realized on the project. Caleb did state the project is the four corners of the building and anything else built would need to come back to the Port for approval. Tammi, stated that the deposit of \$5,000 was in brackets. She asked if that number was negotiable, because it seemed

lower. Caleb replied that it was lower because this project is a little bit smaller than some of the other projects, but agreed that it was negotiable.

Tammi asked about page 5, under project lessee, it states that the third sentence begins “except for residual subleases”. Caleb stated that it was from their boiler plate language and could be deleted because this is a new construction with no residual subleases. She also asked about the base rent for this project, she asked about \$1,000. She stated that is different than some prior jobs. Caleb stated that again it was less than prior projects because the project is smaller than some of the bigger projects WESTCO has done in the past.

Tammi asked the Sutphen representatives if they had a lender, to which they replied yes. They said it was First Commonwealth Bank. Tammi asked Caleb about page 6 where the term sheet discusses that WESTCO would agree to provide a lease hold mortgage or other security agreement as reasonably requested by the lender. She asked whether or not it would be requested. Caleb stated that it is becoming customary for the lender to request the Port Authority to join the mortgage. In that form of mortgage, it is clear that there aren’t any performance requirements for the mortgage. He stated it is a convenience to the bank to have complete collateral in the event of economic default on the site. Tammi stated that if the lender was going to require that it would need to be reviewed as soon as possible.

Tammi continued to get clarification on the project documents. She asked about the reference to the infrastructure project under the indemnification section of the term sheet. Caleb stated that they try to make the term sheet format work for all different types of projects. In this clause in the term sheet is irrelevant to our project. Tammi stated that in the list of documents at the end she didn’t see the Notice of Commencement or the Recognition Agreement with the lender. Caleb stated that the Recognition Agreement should be listed. He stated that they typically try to follow the banks Notice of Commencement process, but could still be added to the document list.

Tammi stated those were all the concerns that she had. Sutphen representatives wanted to confirm the term of the lease. Caleb stated that there was a recent ruling from the Tax Commissioner with the State of Ohio that these deals need to be in place for five years. This lease was 30 years, but was cancellable after 5 years.

Louis asked Caleb if there was a way to approve the resolution for the project today contingent upon the edits being made that were just discussed. Caleb said that he thought that type of motion would be fine to approve the project. Tammi stated that she did have some minor edits on the other documents, but those could be addressed offline via email. Todd with Sutphen gave the board an update on their project. He stated that they recently finalized the building plans with the builder. He said they are still on track to begin construction the 2<sup>nd</sup> week of October.

The Sutphen representatives thanked WESTCO for their partnership on the project prior to getting off of the phone. The board clarified that the approval of the project resolution would be contingent upon the edits being made to the term sheet that were just discussed in the meeting.

Director Carr made a motion to approve Resolution 2021-11 in regards to the Sutphen sales tax exemption project, as amended per the discussion that took place in the August 19, 2021 WESTCO board meeting. The motion was seconded by Director Henry. Louis moved forward with a roll call vote.

Bailey: abstain, Faulkner: absent, Flax, Yea, Henry: Yea, Carr: Yea, Bahan: Yea, Baumgardner: Yea.

Prior to moving on with the agenda, the board entered into Executive Session to accommodate Caleb Bell's schedule to discuss another economic development project.

Director Carr made a motion to enter Executive Session to consider financial and proprietary information considered confidential under Ohio Revised Code Section 4582.091, including trade secrets, on by or on behalf of an employer in connection with relocation location, expansion, improvement or preservation of the business of the employer. The motion was seconded by Director Flax. Louis moved forward with a roll call vote

Bailey: Yea, Bahan: Yea Carr: Yea, Flax: Yea, Henry: Yea, Faulkner: Absent, Baumgardner: Yea

Director Henry made a motion to exit Executive Session. The motion was seconded by Director Bahan. A roll call vote was given.

Bailey: Yea, Bahan: Yea, Carr: Yea, Flax: Yea, Henry: Yea, Faulkner: Absent, Baumgardner: Yea

Upon exiting Executive Session, the board discussing approving the term sheet for Project Hilltop. Director Carr made a motion to approve the term sheet for Project Hilltop, noting that there may be a few minor clerical type edits to the document. The motion was seconded by Director Bailey. The motion carried without opposition.

### **C. Bulk Shipping Credit/ Shipper Credit Discussion 2021**

Louis reported that the 2020 bulk shipping credit and the shipper credit programs were well received by WESTCO shippers and he wanted to discuss renewing the programs in 2021. Louis stated that the \$50,000 shipper credit has not yet been given to the shippers due to his mistake. He said those would be applied in Q3 and maybe in Q4, depending on the maintenance fee

invoices. Louis reviewed the credits that were realized in 2020 through the bulk shipping discount. He stated that in total between the two programs, WESTCO passed along about \$100,000 in savings to the shippers.

Louis reminded the board about prior discussions on the topic. He state that WESTCO is probably in the best financial shape that it has ever been in. With that said, he stated that there is still a lot of deferred maintenance. He also acknowledged that one large bridge repair can wipe out savings in a hurry. He stated that the board had previously identified the fees received from the economic development projects as a place where savings could be passed through to the shippers. Louis stated that the intent wasn't to approve or not approve today, but to get an intention on whether or not the board intends to renew later in the year. The board voiced approval of the Bulk Shipping program. They stated that the two year average should be 2019 and 2020. Louis stated that at the next meeting he will present the 2019-2020 average carload numbers for each shipper and a forecast of who is and isn't expected to be able to take advantage of the Bulk Shipper Credit. The board stated that would be good to see. Louis stated that the intent would be to again discuss the Shipper Credit in December during the budget process. He stated that whatever the board decides, he will make it known that these are programs are approved or disapproved on a year by year basis depending on revenues and anticipated expenditures for WESTCO.

#### **D. Project Updates**

Louis stated that the 2020 track rehab project was completed last month and the contractor moved right on to the 2021 job on the Urbana Line. He stated that WESTCO received the July invoice and it indicated that they were pretty much done installing ties south of Urbana. He stated that they haven't done any work on the alternate bid north of Urbana as of July 31<sup>st</sup>. He stated that the Industrial Bridges project is still being planned. He said that the number did slightly change because an error was identified in the initial scope on the bridge timber components.

Louis stated that WESTCO received a complaint in 2020 on the SR 508 crossing. He said that the road is not heavily traveled, but it is a state route. Louis stated that WESTCO did have it in the budget to rehabilitate the crossing.

Director Carr made a motion to award the SR 508 Crossing Rehabilitation project to Wintrow Construction for an amount not to exceed \$39,833.80 and to amend the budget by this amount. The motion was seconded by Director Bailey. The motion carried without opposition.

#### **IV. Overhead Traffic and Q2 Carload Report**

Louis stated that he didn't need to go into the overhead traffic payments since he already did that when reviewing revenues and expenses. He did state that WESTCO has received \$270,638.26 through July. He stated that that budgeted \$350,000 for the year, so they are on track to hit that. Louis stated that 1,442 carloads were shipped on WESTCO lines during the 2<sup>nd</sup> quarter. He stated that WESTCO billed \$126,920 in maintenance fees. Louis stated that he still hasn't gotten any carloads for Menards. Director Carr stated that he should have because they are operational. Louis stated he would follow up with the railroad on it.

Prior to adjourning, it was determined that the September board meeting should be moved back a week to September 23<sup>rd</sup>. Tammi Angle would be on vacation the week of September 13<sup>th</sup> and the board didn't want to approve such a large project (Project Hilltop) while she was gone. The extra week will also allow an extra week for review on all of the project documents.

Director Flax made a motion to move the September 16<sup>th</sup> meeting to September 23<sup>rd</sup>. The motion was seconded by Director Bahan. The motion carried without opposition.

#### **IV. Adjournment**

Director Bahan made a motion to adjourn the meeting. The motion was seconded by Director Carr. The motion carried without opposition. The meeting was adjourned.

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Louis Agresta  
Secretary – Treasurer