

**MINUTES OF THE OHIO RAIL DEVELOPMENT COMMISSION  
REGULAR BI-MONTHLY MEETING  
JULY 9, 2009**

**CALL TO ORDER**

The meeting of the Ohio Rail Development Commission was called to order by Acting Chairman Thomas McOwen at 10:10 a.m. on Thursday, July 9, 2009.

**MEMBERS PRESENT**

Members present included: Acting Chairman McOwen, Commissioners Solomon Jackson, Herk Wolfe, Rob Greenlese, Barbara Bennett, Bill Lozier, Mandy Bishop for Jolene Molitoris and Jordan Plottner for Representative Robert Hagan and Nick Bruskey for Representative Terry Boose. Commissioner Larry Sowers arrived just after roll call. There were eight voting members present therefore a quorum had been obtained.

**APPROVAL OF THE MINUTES OF THE MAY MEETING**

Chairman McOwen asked for a motion to approve the minutes of the May 21, 2009 meeting. Commissioner Bennett moved to approve the minutes and Commissioner Greenlese seconded the motion. Roll call was taken. The minutes were approved as presented with eight votes in the affirmative.

**EXECUTIVE DIRECTOR'S REPORT**

Matthew Dietrich presented his Executive Director's Report to the commissioners. He spoke about ORDC's budget which is currently an interim budget of one week at a time until deliberations have concluded. Director Dietrich reported ORDC's Safety Funds and Loan Funds were both passed in the Transportation Bill earlier this year so we are able to utilize those programs at this time.

Director Dietrich spoke about Commission membership. He reported he has been in continued contact with the Governor's Office of Boards and Commissions regarding the new member representing manufacturing as well as a final placement of a Chairperson. He indicated the Boards and Commissions Office hopes to have candidates for these positions very soon.

Director Dietrich reported Ohio Central and Dennison Depot have already come to an agreement to operate the Polar Express this season. ORDC is currently reviewing the proposal, which is very similar to the 2008 Agreement, and upon completion of the review expects to approve the agreement.

Federal Stimulus Funds for Rail have been awarded to eleven projects. Director Dietrich reported the following projects will receive ARRA funds:

- City of Medina; Medina Owned Line Rehabilitation - \$950,000
- Wheeling & Lake Erie Rail Akron/Canton Track Rehabilitation - \$1,200,000
- Camp Chase Railroad Bridge over West Broad Rehabilitation - \$300,000
- West Central Ohio Port Authority; Track Rehabilitation - \$1,000,000\City of Jackson Rail Line Rehabilitation - \$2,000,000
- Cleveland Commercial Railroad, LLC - \$67,000
- RJ Corman Western Ohio Line Rehabilitation - \$1,300,000

- Licking County State Route 79 rail crossing resurface - \$100,000
- Minerva – Warning Device Improvement - \$250,000
- Delphos Warning Device Improvements (five locations) - \$778,600

Director Dietrich reported there are still some projects in the process for approval. They are as follows:

- State-owned Panhandle Line - \$7,000,000
- NS Airline Intermodal (City of Toledo) - \$6,500,000
- NS Doublestack Clearance (Cincinnati – Columbus) - \$3,600,000
- CSX Double Stack Clearance - \$20,000,000
- North Ridgeville – Safety Upgrades for Quiet Zone - \$800,000
- WLE Hartville – Safety Upgrades - \$600,000
- Macedonia-Twinsburg Road Warning Device Upgrade - \$168,323
- Railroad Safety Upgrades Montgomery/Warren - \$1,000,000
- Signal Preemption - \$2,500,000
- City of Youngstown V&M Steel Expansion - \$20,000,000

Director Dietrich reported that despite the down-time with ORDC's grant budgets (i.e., freeze on any use of funds) we have been able to concentrate on these projects involving federal stimulus. As a result, Director Dietrich commended both Megan McClory and Lou Jannazo with their involvement in the entire stimulus projects effort.

The State of Ohio targeted \$57 million for planning and design work to advance some of Ohio's long-term projects. Within that budget was \$7 million for the Programmatic Environmental Impact Statement for 4 corridors for Ohio's passenger rail plan. Director Dietrich reported these funds have now been shifted to capital projects; therefore ORDC staff has been working closely with ODOT to identify other eligible funding resources to accommodate this effort. Director Dietrich indicated he does not expect this to be a problem.

The Federal Railroad Administration (FRA) issued interim guidance on June 16<sup>th</sup>. Within this guidance is a pre-application for funding required by the FRA by July 10, 2009. Director Dietrich reported Don Damron will be ORDC's lead on this effort and Leonard Evans will be the lead on ODOT's involvement.

Director Dietrich reported Wilbur Smith and Associates was chosen as the vendor to work on the State Rail Plan. Commissioner Bennett, Chairwoman of the Commission's Economic Development -Long-Term Strategy Sub-Committee, will work closely with Wilbur Smith, ORDC and ODOT staff members in this effort. A kick-off meeting is scheduled for sometime the following week.

Chairman McOwen inquired about the status of ORDC's projects and asked if any projects are currently delayed as a result of the budget crisis. Director Dietrich responded he was not aware of any projects that were to the point where they were finished enough to be waiting on funding.

Chairman McOwen inquired about the status of the stimulus funds for the passenger rail effort. He asked Director Dietrich to explain the timelines involved. Director Dietrich reported the pre-application to apply for the funds is due the following day (July 10). He stated there are individual Tracks involved with the pre-application and part of this process with the pre-app is to identify which Track Ohio's project fits into. This will help to facilitate the application process. Discussion followed.

Commissioner Greenlese added he was very much in support of the 3C project and encouraged ORDC staff to do its due diligence in working with ODOT to locate other monies to fund the corridor study which is required to keep the project moving forward.

Mandy Bishop, ODOT's Deputy Director of Planning, reported she is confident that this "issue" will be resolved and all funding required for this study will be obtained so the project can continue moving forward. She cited some alternate funding sources ODOT has looked into and indicated it should not be a problem to identify what is needed.

### **FINANCE REPORT**

Megan McClory, ORDC's Secretary-Treasurer, presented the Finance Report to the Commissioners. Megan's report can be found on page 8 of the commission packet. Ms. McClory reported ORDC was successful in its move to ODOT. Effective June 22 ORDC is now located within ODOT's Headquarters at 1980 West Broad Street in Columbus.

Ms. McClory reported the FY 2009 budget closed on June 30, 2009. She indicated the grant budget had been zeroed out with nearly \$2.6 million in grant awards being approved last fiscal year. Of this amount only \$135,000 was awarded for economic development projects. She reported this is an indication the rehabilitation program is in high demand. Two loans were closed at the end of the fiscal year:

- Maumee & Western – hot start units for 3 locomotives
- West Central Ohio Port Authority – track rehab project in Springfield area

Ms. McClory spoke about the FY 2010/2011 Budget. She reported there is an interim budget currently in place for July 1 through July 7. Discussions between the Governor and the General Assembly are still on-going so an additional interim budget (week by week) may be necessary.

Ms. McClory reported that Tom Burns, who was previously ORDC's Safety Section Intern, has filled the intermittent position created to provide assistance with ongoing safety and federal stimulus project activities. She indicated Tom is providing valuable support in this area.

Commissioner Bill Lozier inquired about an update on the Rail Inspector position previously discussed at Commission meetings. Ms. McClory stated that all entities involved with ARRA funding will individually be responsible for reporting. She stated that on certain projects a Rail Inspector will be required to be on-site at all times during construction. With this circumstance ORDC will partner with ODOT and the community involved to fund that position. In all other projects requiring inspection Ms. McClory stated ORDC is confident staff can handle this duty. Commissioner Lozier expressed his concern about the ability of current ORDC staff to adequately monitor and inspect the number of projects ORDC is involved in. He asked

Commissioner Jackson to offer his comments. Commissioner Jackson went on record again stating the need to employ a full-time person to perform the inspection duties; not only for projects involving state tax-payer dollars but especially given the critical nature of oversight when using federal funds (i.e., stimulus money). Commissioner Jackson reported the issue of oversight was a clear message in the recent Ethics Training.

Chairman McOwen stated he feels the addition of an employee to cover the duties for ORDC is “easily justified.”

## **PROJECTS**

### **Resolution 09-16 – LWR Ohi-Rail First Right of Refusal Amendment**

Lou Jannazo, ORDC’s Chief of Project Development, presented Resolution 09-16 to the commissioners. The briefing can be found on page 9 of the commission packet. Mr. Jannazo reported ORDC staff is requesting approval to enter into an amendment to the First Right of Refusal Agreement with LWR, Inc. regarding the Piney Fork Rail Line. Mr. Jannazo stated in July of 1994 ODOT entered into an agreement with LWR in order to protect the State’s access to the Piney Fork property. LWR is now reporting that the First Right of Refusal Agreement with Ohio is limiting the company’s ability to borrow funds and invest in the Minerva Yard and Bayard Line property due to the agreement’s language which grants the State of Ohio the right to purchase the property for \$75,000 (the original purchase price) in the event LWR accepts any third party offer to purchase the property. Mr. Jannazo reported the proposed amendment maintains ORDC’s right to purchase the LWR/Ohi-Rail property for \$75,000 in the event Ohi-Rail ceases to use the line or files to abandon the line. Should there be an offer to purchase the property, however, ORDC would NOT have the right to step in and purchase the property for the \$75,000 price. Mr. Jannazo introduced Richard Delatore, Vice President of Ohi-Rail Corporation, who was present for any questions. Mr. Delatore thanked the commission for its consideration of this amendment and reported that Ohi-Rail is seriously considering purchasing the Piney Fork Line. Mr. Delatore introduced Mr. Powell Felix, Ohi-Rail’s General Manager, who was also present to answer any questions.

Commissioner Jackson inquired about the original intent of the 1994 Agreement. Mr. Delatore reported the low price was an incentive to Ohi-Rail to purchase the property. Commissioner Jackson asked if the agreement was in place to prevent LWR from walking away from the Line. Mr. Delatore indicated it was never their intent and the only change in the agreement is the State’s ability to purchase the property for \$75,000 at any time. This amendment limits that ability by only allowing the State to purchase the Line for \$75,000 **IF** Ohi-Rail ceases use of the Line or abandons it.

Commissioner Sowers moved to approve Resolution 09-16 and Commissioner Wolfe seconded the motion. Roll call was taken with 8 votes in the affirmative.

## **APPROVED PROJECT BRIEFING**

### **New Horizons Baking Company – Loan**

Beverly Lee, ORDC Planner, presented the New Horizons Baking Company Approved Project Briefing to the commission. She reported ORDC will loan up to \$50,000 toward the costs for a new rail spur to serve the company’s Norwalk plant. This project is critical to help the company obtain a better market price on flour by saving on fuel costs. Currently flour is trucked from mills in Kansas, Nebraska and Cleveland. Ms. Lee introduced Mike Porter, Operations Manager

for New Horizons; Aaron Brown, Assistant Vice President of New Horizons; and Ellen Hines, Director of the Norwalk Economic Development Council who were present and available to answer any questions.

All three individuals spoke to the commissioners to offer their appreciation for the commission's support of this project. Mrs. Hines reported this project was critical to the employment in the area. Commissioner Jackson inquired why ORDC offered a loan over a grant. Director Dietrich answered that ORDC grant funds were not available (end of the fiscal year) and given the fact that the Ohio Department of Development was participating in this project with a grant, a loan from ORDC seemed to be the best option and met the timing needs of the company.

Chairman McOwen thanked the representatives for coming and wished them the best.

### **PANHANDLE LONG-TERM LEASE COMMITTEE REPORT**

Committee Chairman Tom McOwen reported the committee has not met lately due to so many other commitments. He stated the Genessee & Wyoming has a number of years left on their lease so it is not critical the committee meet at this time. He reported the company has been very understanding about the situation.

### **STANDING COMMITTEE REPORTS**

#### **Human Resources – Chairman Jackson**

Committee Chairman Solomon Jackson reported the committee intends to meet during the month of July. He reported two concerns the committee has identified: is staff handling the workload okay and meeting the challenges presented; and the recommendation of hiring a full-time Track Inspector to perform duties the current field staff is required to do but has difficulty at times completing due to the amount of work being generated.

Chairman McOwen commended the staff on their ability to keep things running smoothly with: the reduction in staffing levels that we are not able to replace at this time, the reduction in their paychecks (cost savings days) and moving their offices from LeVeque into ODOT's Headquarters. He offered recognition to each and every staff member for their contribution.

#### **Economic Development and Strategic Planning Committee – Chairwoman Bennett**

Committee Chairwoman Barbara Bennett reported a kick-off meeting is taking place mid-July to discuss the elements of meeting the minimum federal requirements of the state rail plan.

#### **Budget & Finance Committee – Chairman Tom McOwen**

No report.

#### **Legislative Committee – Commissioner Molitoris**

No report.

### **OLD BUSINESS**

None.

**NEW BUSINESS**

Director Dietrich spoke about the location of the commission meetings and inquired if the commissioners would like to try having the commission meeting out at ODOT. A short discussion followed with the commissioners opting to have the September commission meeting at ODOT.

**PUBLIC COMMENT**

Rich Delatore echoed Commissioner Jackson and Chairman McOwen's comments on the abilities of ORDC staff. He stated he is very appreciative of Lou Jannazo's efforts in particular.

**MOTION TO ADJOURN TO EXECUTIVE SESSION**

Chairman McOwen made a motion for Commissioners and staff to adjourn to Executive Session at 11:40 a.m. for the purpose of "discussing legal matters pertaining to the ORDC-CCPA Loan." Commissioner Sowers moved to approve the motion and Commissioner Bennett seconded the motion. Roll call was taken with 8 votes in the affirmative.

**RECONVENE FROM EXECUTIVE SESSION**

ORDC Commissioners and staff reconvened from Executive Session at 12:23 p.m.

**MOTION**

Commissioner Bennett made a motion to "give staff the authority to undertake a workout of the CCPA-ORDC loan and report back to the Commission at its November meeting." Commissioner Sowers seconded the motion. Roll call was taken with 8 votes in the affirmative.

**ADJOURNMENT**

Chairman McOwen called the meeting of the Ohio Rail Development Commission adjourned at 12:25 p.m.