

Minutes of the Special Meeting of the Board of Commissioners of the Lake Charles Harbor and Terminal District held at 3:00 P.M., Thursday, August 11, 2011, in the Board Room of the Port of Lake Charles located at 150 Marine Street, Lake Charles, Louisiana.

In attendance and constituting a quorum, were:

- Walter M. Sanchez, President
- Harry C. Hank, Vice President
- John L. LeBlanc, Secretary/Treasurer
- Elcie J. Guillory, Assistant Secretary/Treasurer
- Daryl V. Burckel, Commissioner

Absent:

- Barbara M. McManus, Commissioner

Also Present:

- Bill Rase, Port Director
- Michael K. Dees, General Counsel
- Richert Self, Director of Administration and Finance
- Todd Henderson, Director of Operations
- Dan Loughney, Director of Marketing and Trade Development
- Michelle Bolen, Executive Administrative Assistant

Mr. Sanchez called the meeting to order at 3:04 P.M. and asked Mr. LeBlanc to give the invocation. Mr. Hank led the Board and audience in the Pledge of Allegiance.

Mr. Sanchez made a statement reminding the Public of the Port's procedure for the Public to address an agenda item to the Board.

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1. Submission 2011 – 048 authorizing the Port Director to enter into cooperative agreement with Creative Casinos, City of Lake Charles, Calcasieu Parish Policy Jury and an amended ground lease with Creative Casinos.
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Mr. Dees stated the request before the Board is to make some changes to the current option agreement which they are still in the phase of option only. They have not exercised the option and entered into the ground lease. The option agreement has a lease form that is attached to it. As has all been the case when potential financiers of a project get involved, they have their own attorneys that look at the documents. Creative is no exception. Mr. John Pohorelsky, Mr. Dan Lee's counsel, can confirm this. Just about any attorney that looks at any document can have subtract names that he sees that he would prefer a particular type of wording. In the option agreement and the ground lease there are

a lot of small changes that do not make substantive changes in the arrangement they agreed to back in September 2010.

There are two substantive issues that have arisen as part of the process of getting all of the changes made. One is the original agreement with Creative which provided for a deposit. Once the option was exercised and Creative entered into the ground lease and commenced construction there is a provision in the original document that provided for a \$15 million deposit. The reason for that at the time, although they new Mr. Lee personally, and his qualities and his ability to execute a project, the entity that the Port actually entered into the deal with is Creative Casinos, LLC. At that point they would give the Port a piece of paper. So it would be like an 18 year old with no credit history renting your nice new apartment. You want to be sure you have someone there financially capable of keeping up with the rent and following through on their obligation on the lease agreement. In those negotiations, staff was aware the Gaming Board required Pinnacle, on their Baton Rouge project, to post a \$25 million bond to secure the execution of that project. That is where the Port started but through negotiations they ended up with \$15 million. As a result of discussions with the potential financiers on this job and the attorneys that were reviewing things on the financial aspect, Mr. Lee has asked the Port to consider reducing that bond. His proposal is to substitute for that deposit a deposit of \$1,308,835.80, which would represent two years of construction.

In addition to that there would be some changes to the document that would assign over to the Port the development of pertinent plans and all the things that go on in case there was a default by Mr. Lee and the Port went to look for another developer. The Port would have access to all of his plans and studies.

That is one issue. Should the Port grant Mr. Lee the relief he is asking for in the deposit? Apparently, the problem it is causing him with the financial people is that \$15 million is viewed by financiers a direct expenditure right at the beginning. Even though the money has not been expended the accountants treat it as expended because Mr. Lee has no access to it. It shows on his bottom line and affects his pro forma and what finance people want to see as the expected result from the project.

The second issue relates to the development agreement. That agreement is with the City, Parish, Creative and the Port. It has been approved by the other three entities but has not been approved by the Port. It provides very little obligation from the Port. There are a few minor things, such as the Port would grant the utilities and other easements on property they currently own. In the event of a default, if any of the roads are dedicated for City maintenance, Creative wants to maintain those areas.

Mr. Dees stated on Article 5, there is a section on page 14 of 28 that makes reference to a Head Tax agreement. That initially that raises an issue and he wants the Board to be clear about it. The issue is the Port negotiated with Creative initially that has rent. The Port would receive a certain amount calculated by the Head Tax. Exhibit #3 of the Ground Lease has that laid out. Creative is going to pay the Port about \$1.3 million as fixed rent. The second section under Section B says as rent they will continue to pay the Port a 16.6% of 4.2% of the minimum \$20 million a month. It is net gaming revenue as defined by the

Head Tax statute. He was worried there might be a misunderstanding between the development agreement and that language. Staff proposed, that to be sure there is no conflict or doubt that the Port is going to receive that amount, there is an added Section C on the Exhibit #3 that says the ability of the Port to receive that additional rent is not going to be affected by any other agreement that involves the City or Parish.

Mr. LeBlanc asked if the \$15 million would be detrimental to Mr. Lee's financing of the project. Mr. Dees stated it would make it more difficult for him in convincing the financing people to give him as favorable terms as possible.

Mr. Rase stated it is not just the \$15 million, Mr. Lee already has \$25 million into the State and the financiers look at him being \$40 million out already.

Mr. LeBlanc proposed a \$5 million deposit. Five million would be one-third of what was originally agreed to, but would still provide the Port some with a deposit to address construction site cleanup and related expenses if the project did not proceed. A reduction of \$10 million would give Mr. Lee significant financial relief in his negotiations with financiers.

Mr. Hank stated he would favor that.

Mr. Sanchez stated that, if he understood the timing, when the Port originally negotiated with Mr. Lee, the \$15 million was the first commitment that was made. It was subsequent to our agreement that Lee was required to put up an additional \$25 million. Mr. Dees stated that was correct. Mr. Sanchez stated that, in effect, there is still a big financial incentive for Lee to move forward with the project. With a total of \$30 million posted, then he is not concerned. Reducing our required deposit to \$5 million is an excellent compromise.

Mr. Dees stated he wants to be clear. He did not think anyone has any doubts Mr. Lee is not going to do what he says he is going to do. The Gaming Board is 100% sure and that is why he was selected. It is just that in any large development like this in any event that a financial crisis happens like the whole market collapses, the ability to do anything anywhere goes away. He could be six months into construction and the Port could be left with a mess. It is not that they lack any confidence in him at all.

Mr. Burckel stated that even though Mr. Lee has a significant amount in with the State the Port needs to make sure there is a large enough deposit with the District to cover anything that might arise.

Mr. Dees stated that in the beginning when they made the deal for \$15 million it was a piece of paper because his personal assets were not on the line. But since that time that piece of paper has obtained a gaming license approval which has value, he has one an election at great expense and trouble and that has value, he has expended millions of dollars on plans and tests and surveys etc. There is value there and thinks they can reduce down to \$5 million because of that.

Mr. Burckel asked as far as the return of his deposit. When does that take place?

Mr. Dees stated that when he meets his earnings expectations after he is in operation. Mr. Rase stated that it was when he reached two quarters of positive returns.

Mr. Burckel asked that in the Cooperative Endeavor agreement, the \$20 million minimum is going to be from the first month of opening or does it build up? Mr. Dees stated currently it is on a monthly basis. They do a much smaller monthly thing and at the end of the year they true up.

Mr. Rase stated that another thing that makes Creative more viable now is they do have some partnership and they have received some financing.

Mr. Dees stated the Resolution before the Board is broad and generic and gives the Port Director the authority to vary a bit on some of the words. He is still working with Mr. Pohorelsky on the wording. Based on the discussion here they understand what the Board wants done and they will implement that.

Mr. LeBlanc offered a motion to adopt Resolution 2011 – 048 to authorize the Port Director to enter into cooperative agreement with Creative Casinos, City of Lake Charles, Calcasieu Parish Policy Jury and an amended ground lease with Creative Casinos. Mr. Hank seconded the motion and it carried unanimously.

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- 2. Submission 2011 – 049 approving a stevedore license to Federal Marine Terminals, Inc.
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Mr. Rase stated that Arrow Terminals and Gearbulk, customers of the Port, have elected to go with another stevedore company, Federal Marine Terminals, Inc., to provide their stevedore services. The Board is asked to approve a stevedore license for four months. Stevedore licenses are approved annually and Federal Marine Terminals, Inc. will have to reapply at the end of the year.

Mr. Sanchez recognized Mr. Keith Flagg, Federal Marine Terminals, Inc., to address the Board. He stated he was the Vice President of Operations and wanted to introduce himself to the Board. He is looking forward to operating in Lake Charles.

Mr. Sanchez also recognized Mr. Tom Flanagan, J. J. Flanagan Shipping Corporation, to address the Board. Mr. Flanagan stated his company has been in the community for 115 years and remain 100% committed to the Port of Lake Charles.

Mr. Hank offered a motion to adopt Resolution 2011 – 049 to approve a stevedore license to Federal Marine Terminals, Inc. Mr. Guillory seconded the motion and it carried unanimously.

3. Executive Session.

Mr. Sanchez asked for a motion to enter into Executive Session. Mr. Guillory offered a motion to enter into Executive Session. Mr. Burckel seconded the motion and it carried unanimously.

The Board entered into Executive Session at 3:28 p.m. to discuss the item below.

- a. PNK (Lake Charles), LLC vs. Lake Charles Harbor and Terminal District; 14th Judicial District Court; Parish of Calcasieu; State of Louisiana, Case No. : 2010-5508; Division: A
- b. Lake Charles Harbor & Terminal District vs Cheryl K, LLC; 14th Judicial District Court, Parish of Calcasieu, State of Louisiana, Docket No. 2011-3314, Division B
- c. Varco Purden Buildings, Inc. vs Lake Charles Harbor and Terminal District; 14th Judicial District Court, Parish of Calcasieu, State of Louisiana, Docket No. 2007 – 3888, Division G; consolidated with Lake Charles Harbor and Terminal District vs. F. Miller and Sons, LLC, et al; 14th Judicial District Court, State of Louisiana, Docket No. 2007 – 6561, Division F
- d. Alfred Palma, LLC vs Heyl Patterson, Inc.; American Arbitration Association, Case No. 69 110 Y 149 10

The Board Returned from Executive Session at 4:34 p.m. No action was taken in Executive Session.

4. Other Matters which may properly come before the Board.

There being no further business to come before the Board, Mr. Sanchez asked for a motion to adjourn. Mr. LeBlanc offered a motion to adjourn. Mr. Hank seconded the motion and it carried unanimously. The meeting adjourned at 4:34 p.m.

All discussions held on the above items were recorded on Compact Disc Number 1, and filed in the Executive Offices of the District.

Please note that when the votes are shown as unanimous, it is the policy of the Board that the President does not vote except in the event of a tie vote by the rest of the Board and/or unless otherwise indicated.

WALTER M. SANCHEZ, President

ATTEST:

JOHN L. LEBLANC, Secretary/ Treasurer