

Meeting Minutes

January 11, 2023

Madison County Port Authority Board

The Madison County Port Authority meeting was called to order at 9:02 a.m. by Chris Wallace, Port Authority, Chairman. The meeting began with a roll call from all individuals participating in the meeting.

The following board members were present at the meeting: David Kell, Executive Director, Steve Hermiller, Steve Lelonek, and Sissy Wiseman. Scott Sims and Chris Wallace attended virtually.

Subject: Meeting Minutes Revision – Approval – December 1, 2022

Steve Lelonek made a motion to approve the December 1, 2022 meeting minutes to include two revisions. The first revision is to change the bolded from one to on and the second is to change Porth to Port.

Scott Sims, seconded the motion.

All members voted in favor to approve the December 1, 2022 meeting minutes.

Revision December 21, 2022 Meeting Minutes **Port Authority Assistance Discussion**

David Kell proceeded to say that there are two recommendations. The first recommendation is to partner with Warren County Port Authority and Madison County Port Authority would be sharing the fees with Madison County managing the project, and then Madison County Port Authority would be **on** their own for future projects. The second recommendation is that Madison County Port Authority takes on the project themselves without assistance from Warren County Port Authority. David Kell feels he is fine with either recommendation.

According to Chris Wallace, the Madison County Commissioners are focused on only using Madison County **Port** Authority without assistance from Warren County Port Authority. Chris also strongly feels that using Caleb Bell's leadership and advise on the Madison County Port Authority projects is sufficient enough

Future Port Authority Meetings

David Kell wanted a good discussion to establish 2023 Port Authority meetings. David is uncertain if projects will be picking up in 2023 but more than likely 2024. David suggested that the Port Authority Board meet monthly or bi-monthly. David proceeded to inform the board that meetings on a bi-monthly basis for the time being would be sufficient. Chris Wallace suggested to continue the scheduled meetings on the second Wednesday of the odd months. Steve Hermiller, Steve Lelonek, and Scott Sims was also in favor to meet on odd months on the second Wednesday. Steve Hermiller also recommended to continue using the Doodle Pool for notifications. David Kell also noted that the ORC allows Port Authority members to join meetings virtually to provide flexibility of schedules.

David Kell asked Caleb Bell, Legal Representative from Bricker & Eckler, if the Port Authority Board needs to formally adopt the meeting schedule or if something can be set up and be posted? According to Caleb the Secretary can post the meeting schedule and that would be sufficient. The only other rule under the bylaws is that the Secretary would need to notify any media that has requested the regular meeting calendar.

Old Business

Establishment of a bank account.

David Kell reported that a few banks were contacted to set up a bank account for the Madison County Port Authority. The Savings Bank was the only institution that responded. David Kell and Steve Hermiller, Madison County Port Authority Treasurer, opened the bank account and the seed money was deposited. David Kell will be making sure that Bricker & Eckler is paid for their 2022 services. Therefore everything is established for the bylaws.

New Business

Project Updates

Exter

David Kell spoke with Nate Green from The Montrose Group. Nate informed David that Exter pulled out of the 250 acres referenced from the CORE 5 map across the street from Fed Ex and others along 70. Exter pulled out because they could not agree on a purchase price for the acreage; however there will be a Loves Travel Stop going in front of the property.

SRG

A new project that has come to the County is SRG. David Kell and Rob Slane has had discussions about this. David Kell referenced the map along State Route 161, and that there is approximately 252 acres that SRG is looking to move forward into a mixed use type of development. SRG is focused primarily on multi - family use, commercial use, and perhaps single usage.

Currently at this time SRG has development in Jerome Township that is why they are looking to move forward to acquiring this property to continue their development. SRG is trying to figure out what type of zoning, water and sewer source for this project. This project is in the beginning stages but it may be an opportunity for the Madison County Port Authority to get involved.

Steve Hermiller asked what SRG is asking? David Kell answered nothing right now, but it's on the table now for SRG to work with the Madison County Port Authority on some other structures to this property to help bring some cost savings to them, and then in return to bring some fees to the Port Authority to do more in the community. Chris Wallace commented that SRG is just doing their early due diligence looking into water and sewer and potential JED and exploring their options. Steve Hermiller asked if all of this acreage is in Madison County? David Kell responded it is but believes there may be a very small portion in Union County.

Fayette County – Honda Battery Factory

In December 2022 David Kell met with a group and attorneys. This group has ~ 100 acres of land in Fayette County close to the outlet mall. There was discussion about the Honda battery plant and what may come from that for Madison County. This group has expressed interest and has been following up with David by email, at this time there is no potential projects.

CORE 5

Scott Sims asked David Kell if the Port Authority Board has talked about the CORE 5 Project specifically as to if that should be shared or where that discussion is at? David Kell replied that at the last meeting they wanted Caleb to be present to lay everything out to the Board and staff to approach the organization about using the Port.

David referenced from the map one or possibly two industrial buildings on the property. Warren County Port Authority was used for the first building and the second building would be used from Madison County Port Authority. This leads to the conversation from the previous Port Authority Meeting if Madison County Port Authority partners with Warren County Port Authority or if Madison County will do this on their own. It was recommended by Chris Wallace, Chairman to move forward without any assistance from Warren County.

David Kell asked Caleb for guidance on how to approach CORE 5? Does the Madison County Port Authority approach to reach out to CORE 5 directly or does the Port wait to hear from CORE 5, or does Caleb get involved from a legal perspective? Caleb

suggested that David Kell reach out to CORE 5 to let them know what the Port Authority's direction is. In addition David needs to reach out to Warren County Port Authority about not partnering with Madison County Port Authority. Caleb recommended to do a deposit agreement and a due diligence list that gets them to start producing information about the property and then the Port needs to propose a term sheet. David Kell will reach out to CORE 5 and start this process.

Caleb Bell provided options talking about the Madison County Port Authority and what the Port Authority can expect.

According to Caleb – The nature of the Port Authority sales tax exemption program results in transactions for individual projects such as CORE 5. These transactions are like mini real estate transactions. The Port Authority has to unground or take a long term lease holding interest in order for the structure that's built to be equal to access the sales tax exemption available to the Port Authority. This transaction involves the real estate, the sponsor, or investor.

The developer seeks their own financing in order to build their assets. The developer lender is another party that gets involved in the transaction. The Port Authority represents the government side, the project sponsor, and the projects sponsors lender are the three parties that come together for these mini real estate transactions.

The bulk of financing the transaction for a new building is going to be taken on by the lender and the borrower and their respective councils. The Port Authority does not get much involved in, this type of transaction, however this needs to come together with the real estate transaction on the Port Authority side in order for it to be effective to pass the exemption law. Part of the job of the Port Authority staff and council is to explain the Port Authority Program to the sponsor, lender and to answer questions and address documentation issues.

Caleb continued with the following information. When the transaction closes there are a number of things that become post - closing or transactional management issues.

1. First when the transaction closes the lease gets recorded in the County Recorder's office. Then payments are made typically at closing as well as annually on the leases. Which may take up to a number of years. Which then leads to the Port Authority staff having a tracking system for all the various payments that come in on the leases and with payments that requires the bank account and banking details. This requires the Port Authority Treasurer to track all of those items as income, no tax return is required however tracking is necessary because all of the different payments that come in are going to be audited by the State Auditor's Office when they perform their annual audit for the Port Authority.

2. With this audit compliance the tracking and payments is clearly an action item for staff. Caleb recommended to put payments and audit compliance as post - closing. There is also compliance activity necessary in respect to the sales and use tax and exemption certificate.
3. The exemption certificate gets passed along to the company. The company tends to take the certificate and provide it to the general contractor, then it gets used the same way it would be if building a structure. The project is noted as exempt and doesn't pay sales or use tax of what is being incorporated in the building. This tracking is all done by the company and the General Contractor however the Port Authority staff tends to be available to the company or team if any questions arise.
4. When the transactions terminates, the Port Authority staff needs to be available to address issues about terminating leases, and cancellations of payments. Sometimes assignments occur where a builder builds a building and then sells or assigns it to another party and the transaction needs to be looked at again due to the company's business.

Steve Hermiller asked Caleb Bell if the Madison County Port Authority has to subscribe to Davis Bacon to be compliant with Prevailing Wage for the transaction? According to Caleb, none of the Port Authority's transactions and sales and use tax exemption program requires any Federal or State Prevailing Wage compliance. The Port Authority is exempt from Prevailing Wage because they are private projects.

Steve Hermiller also asked, how the release of the waiver is reassigned if the Port Authority is lending the money? Caleb responded that the Port Authority is not taking mortgage interest. The regular rules that apply to a bank that's taking a commercial loan and all the different lien priorities follow. It's still analyzed under the private mechanic lien statute. A contractor that is working on a project needs to get a lien waiver to the bank for the bank to transfer or sell and this is going to take place on the private lender side not an issue for the Port Authority side. This transaction is structured for the Port Authority to not put any public funds in the building.

Steve Lelonek then asked Caleb Bell if at any point does the Port have to purchase or own the real estate? According to Caleb, some Port Authorities set up their structures as a fee structure. This allows the developer to then build on the Ports fee. These economic issues are managed by the private sponsor and whatever lender or investor they have in their asset.

It's Steve Lelonek's understanding that the Port acts as a conduit and does or does not handle the financial aspect, and the draw is requested from the contractor and then goes through the Port, then the Port goes to the bank. Caleb answered that no the Port does not touch that element of construction management. Steve Lelonek also asked Caleb if the Port does not guarantee the debt, and that is a separate transaction between the developer and the bank? Caleb replied "correct."

Steve Hermiller asked at what point is the Ports obligation to stop if it's reassigned? Caleb replied that the obligations stops when the transactions ends up being terminated. The State Tax Commissioner has done some rulings on this structure. The Tax Commissioner said to get the benefit, they want to see the local government get in the deals five years following construction. An assignment of a sale or a transfer occurs in the five years or when the five year period is past and the transaction is terminated on either side. The compliant period is essentially five years following the completion of the construction for any projects, unless there is a special deal.

Structure is potentially designed and has been used also to the do the two things.

One - To get the Port Authority property records to be called a public project but assign financial and construction responsibility to the people who would do that anyway.

The bank would handle the construction activity and the financial risk issues if the Port Authority was not involved. Steve Lelonek asked if the Port takes title to the real estate during the construction phase and if that's the Ports interest in the real estate? Caleb replied that it's a long term ground lease which is usually 35 – 40 years. The fee owner is the sponsor, and the ground tenant is the Port Authority. The Port Authority has access to all of the ground. Caleb provided an example - The ground tenant leases that interest back to the project sponsor, and says I'm going to give back the ground interest but in return you are going to build an asset that is going to bring jobs to the County, and that's your responsibility to pay the fees that is associated with the benefit that is being passed along to you with having this ground interest.

Two - From the sales and use tax perspective there is some case law that describes ground lease interest. If ground lease interest is long enough it gets treated as if you own the asset. There is one other item that is done and is helpful for our evidence. The owner of the building which would be the developer provides a bill of sale and a deed for the structure to the Port Authority when they complete construction. When the construction is over the Port Authority has a long term ground interest, a bill of sale, and a deed that says we the Port Authority are actually the primary owner of this structure and allowing all of the benefits and perks and ownership to be passed to the tenant which is the developer that enables enough for the Tax State Commissioner to say that is fine you can pass along the exemption because you have the property interest in the structure. Steve Hermiller asked Caleb at what point does the 21 year adverse possession laws effect any part of this? Caleb replied it's all done by acknowledgment.

Caleb continued to say that – There are other action things to keep the Port Authority in a situation where it's not subject to liability. For example – The Port Authority has the need to get insurance. In every one of these deals the sponsor indemnifies the Port Authority for any risk or claims associated with this structure. The indemnification is important if there were construction issues. Therefore if a claim does come about the sponsor is required to step in and take over.

Steve Hermiller asked what the financial limits are on the insured on the indemnification. Caleb answered the indemnification is without limit. Steve Lelonek asked if the Port Authority has protection in the event of a default? Caleb answered yes. One of the benefits of this structure, is that if the bank wants to foreclose because the developer is not paying, the Port Authority can then tear up the structure and tenure all of the courts rights over to the bank. You put the rights to the bank if the bank is really going to go through the process of foreclosure.

Steve Hermiller mentioned that some of the protection is to not to jeopardize a situation when using a JED or TIFF and Caleb will have a watchful eye on these situations. Steve Hermiller asked who is doing the studies to see what the needs are? David Kell has had experience with some of these situations with his association with the Madison County Chamber, and will contact Caleb for advice when needed.

Caleb mentioned that he will send information to the Board that outlines the post - closing issues. Caleb also encourages any of the Port Authority members or others involved to follow along to see and how the transaction works.

Caleb believes one of the Madison County Port Authority goals is to encourage capital development with the County in a way that helps support job creation and additional capital investment for the County. Caleb thinks one the important roles of a County level Port Authority is to serve the communities. Caleb suggested to consider collaborating with the County, Townships and Municipalities by reaching out to them to assist them with their goals to build a partnership upfront.

Subject: Meeting Adjourned

Steve Lelonek made a motion to adjourn the meeting.
Steve Hermiller, seconded motion.

This meeting adjourned at 9:52 a.m. All members voted in favor to adjourn the meeting.

Meeting Attendance Sheet

Those Present

Sign In Sheet
Port Authority
January 11, 2023 9:00 a.m.

1. Steven Hermiller
2. Steve Lelonek
3. David Kell
4. Betsy Luciano
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21. _____
22. _____

Signatures

Chris Wallace

Ray Martin - Not Present

Steve Hermiller

Steve Lelonek

Scott Sim

Referenced Map

