

BALD HEAD ISLAND TRANSPORTATION AUTHORITY
Board of Trustees
Tuesday, December 8, 2020, 9:15 am
Meeting Held Remotely with Simultaneous Communication
Pursuant to N.C.G.S. § 166A-19.24
Minutes of Special Meeting

ATTENDEES

Trustees – Via Teleconference

Susan Rabon, Chair
David Jessen, Treasurer
Andy Sayre
Michael Brown
Rex Cowdry
Jim Powell
Jed Dixon
Robert Howard
Claude Pope
Landon Zimmer
Paul Cozza

Counsel and Clerk – Via Teleconference

Hal Kitchin, McGuireWoods LLP, Counsel to Authority
Dickson McLean, McGuireWoods LLP
Mary Nash Rusher, McGuireWoods LLP
Daralyn Spivey, Clerk for the Village of Bald Head Island, Acting Clerk

Other Participants – Via Teleconference

Ted Cole, Davenport & Company, LLC
Mitch Brigulio, Davenport & Company, LLC
Eric Golynsky, UBS Financial Services, Inc.
Jim Leonard, Mercator
Chad Paul, Bald Head Island Limited

I. Call to Order and Welcome

Chair Rabon called the meeting to order at 9:15 a.m. reading the following statement:
Today, once again, we are meeting fully remotely with simultaneous communication, pursuant Section 166A-19.24, a statute enacted by the General Assembly in May. There are a few requirements for conducting a remote meeting pursuant to this statute, and I've been advised by our counsel to explain these at the outset of the meeting.

- i. *This type of remote meeting can only occur when a declaration of emergency has been issued under Section 166A-19.20 of the General Statutes. In Executive Order 116, dated March 10, 2020, the Governor*

declared a state of emergency based on the public health emergency posed by COVID-19, and that state of emergency remains in effect.

- ii. *In order to hold this type of remote meeting, board members are participating by what the statute calls “simultaneous communication,” and the board must have provided the public with notice of the means by which the members of the public can access the remote meeting as that remote meeting occurs. Such notice has been given with respect to this meeting.*
- iii. *Except for trustees who are visible by video, each trustee must identify himself or herself before speaking and when voting. All votes will be taken by roll call.*
- iv. *The statute requires our minutes to reflect when each member joins or leaves the remote meeting. So if you are going to step away from the phone or computer, or are going to leave the meeting, it is important that you let us know so that the Clerk can note that for the record.*
- v. *Any chats, instant messages, texts, or other written communications between members of the board regarding the transaction of the authority’s business during the remote meeting are considered a public record,*
- vi. *Because a remote-only meeting is not consistent with our previously-approved regular meeting schedule, in that the location of the meeting is remote-only instead of the Community Center, which is currently closed, this meeting has been properly noticed as a special called meeting of the Board. If anyone has a question at this point about our procedure, I’m sure our counsel can try to answer it.*

With no questions posed to Counsel, this completes the opening remarks.

- II. **Roll Call:** Ms. Spivey called the roll with those listed above as present and confirming the existence of a quorum.
- III. **Ethics Statement:** Chair Rabon read the following ethics statement: *Under the State Government Ethics Act, the Board Chair is required to remind all members of their duty to avoid conflicts of interest or appearance of conflicts of interest. If any member has a conflict or appearance of a conflict of interest with respect to any item on the agenda, please state this for the record and refrain from inappropriate participation on that item. Does any member of the Board have anything to state for the record?*
No conflicts of interested reported.
- IV. **Approval of Minutes from November 18, 2020 Regular Meeting of the Board of Trustees:** Mr. Zimmer made the motion to adopt the minutes included as Attachment 1 to the Agenda Packet as written. Mr. Powell seconded the motion with the roll call

vote as follows: Mr. Brown: Aye, Mr. Cowdry: Aye, Mr. Cozza: Aye, Mr. Dixon: Aye, Mr. Jessen: Aye, Mr. Howard: Aye, Mr. Powell: Aye, Mr. Pope: Aye, Mr. Sayre: Aye, Mr. Zimmer: Aye, Chair Rabon: Aye. Motion carries (11-0).

- V. **Closed Session:** At 9:22 a.m., Chair Rabon entertained a motion to convene in Closed Session, based on the following: (i) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or the United States, including without limitation Section 132-1.2 of the North Carolina General Statutes, or not considered a public record within the meaning of Chapter 132 of the General Statutes; or (ii) to consult with an attorney employed or retained by the Authority in order to preserve the attorney-client privilege between the attorney and the Authority or (iii) to discuss the Authority's position in negotiating price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease. Mr. Dixon made a motion to enter Closed Session with Mr. Mr. Jessen seconding the motion and a roll call vote as follows: Mr. Brown: Aye, Mr. Cowdry: Aye, Mr. Cozza: Aye, Mr. Dixon: Aye, Mr. Jessen: Aye, Mr. Howard: Aye, Mr. Pope: Aye, Mr. Powell: Aye, Mr. Sayre: Aye, Mr. Zimmer: Aye, Chair Rabon: Aye. Motion carries (11-0).

- VI. **Consideration of a Proposed Resolution Approving Asset Purchase Agreement and Operating and Transition Services Agreement:** Ms. Rusher gave a historical update on the creation of the Authority from 2017 to current. The statute required the Authority to acquire the ferry system at or below the appraised value. The legal team of the Authority has been working to negotiate the asset purchase agreement with the Seller and to assist in the transition the operator of the system will remain under an Operating and Transition Services Agreement for approximately eighteen (18) months. Additionally, the financial team and underwriter are working to determine the structure of the financing. Mr. Jessen reported there has been a significant amount of financial due diligence to include the reviewing of historical financial information, financial models, bond feasibility, surveys of the vessels, the infrastructure of the Marinas, title surveys and system evaluations leading to a total value of \$50.94M. A purchase price of \$47.750M has been negotiated. Mr. Cole reported specific to the financing a bond feasibility study was created and is currently ongoing but near completion. Bond documents have been created to include how the bonds are sold, terms and conditions, and various covenants specific to the bond revenues. Offering document is under development and is ongoing. There have been meetings with the Local Government Commission (LGC) recently. Actual approval of debt issuance is expected at the next meeting of the LGC on January 5, 2021. An application has been sent to the LGC and we will continue to have regular interaction between now and the January 5, 2021 meeting. Rating agencies have not provided the ratings as of today. Once preliminary indicative confidential ratings have been received, the Board will decide whether to proceed with a rated or non-rated issuance. There will be a need for the Board to hold a special meeting early in January to discuss a bond resolution or approving resolution

to be considered to establish bond pricing parameter as it is premature to do now. The targeted date to get the bonds on the market will be January 27, 2021 through UBS and PNC Bank. The current estimates on the indicative ratings may be available as early as the week of December 14, 2020. Mr. Golynsky explained his primary role is to assist in the marketing and pricing of the bonds and to get the bonds out into the market. The financial models and metrics have been estimated over the next thirty (30) years with various funding lines accounted for. The public marketing of the bonds would be ideal to allow for the broadest availability increasing the demand and lowering the interest costs. The Resolution reads as follows:

**BOARD OF TRUSTEES OF THE BALD HEAD ISLAND
TRANSPORTATION AUTHORITY RESOLUTION
APPROVING ASSET PURCHASE AGREEMENT AND
OPERATING AND TRANSITION SERVICES AGREEMENT**

WHEREAS, the Bald Head Island Transportation Authority (the “Authority”) is authorized to acquire, own and operate the ferry and ground transportation assets and services provided to Bald Head Island, North Carolina (the “Island”) including, but not limited to, (i) the transportation of passengers via ferry to and from the Island and Southport, North Carolina; (ii) the on-island tram transportation of ferry passengers; (iii) the vehicle parking operation at Deep Point Marina in Southport, North Carolina, and (iv) the tug and freight barge operation which carries supplies and equipment to and from the Island (collectively, as further defined herein, the “System”); and

WHEREAS, the Authority and Bald Head Island Transportation, Inc., a North Carolina corporation (“BHIT”), and Bald Head Island Limited, LLC, a Texas limited liability company (“BHIL”, and together with BHIL, collectively referred to herein as “Seller”) are in the process of negotiating an Asset Purchase Agreement (the “APA”), pursuant to which the Authority will purchase the real and personal property, structures, improvements, buildings, equipment, maritime vessels, vehicles, vehicle parking, trams, shuttle buses, docks, terminals, and other facilities used in the operation of the System (the “Facilities”); and **WHEREAS**, in connection with the purchase of the Facilities, the Authority expects to enter into a Ferry and Barge Facilities Operating and Transition Services Agreement with Seller, acting as the Management Company, pursuant to which Seller will continue to operate the System for a period of time after the closing of the transaction contemplated by the APA until such operations can be transitioned to the Authority (the “Transition Operating Agreement”); and

WHEREAS, the Authority proposes to issue its Transportation System Revenue Bonds (the “Series 2021 Bonds”) (a portion of which may be issued as taxable bonds) pursuant to the Ferry Transportation Authority Act, Article 29 of Chapter 160A of the General Statutes of North Carolina, as amended (the “Enabling Act”) and The State and Local Government Revenue Bond Act, General Statutes of North Carolina Section 159-80 et seq. (the “Revenue Bond Act”), and a bond order to be adopted by the Authority (the “Bond Order”), and to apply the proceeds of the Series 2021 Bonds to (a) pay the purchase price for the acquisition of the Facilities from the Seller; (b) fund a debt service reserve and operating

and maintenance reserve fund; (c) fund working capital for the Authority; (d) pay capitalized interest on the Series 2021 Bonds; and (e) fund certain costs of issuance of the Series 2021 Bonds (collectively, the “Project”); and

WHEREAS, the proposed form of the APA and the Transition Operating Agreement have been presented to the Board;

NOW, THEREFORE, the Board of Trustees of the Authority, in a special meeting duly called and held on December 8, 2020, does hereby resolve as follows:

1. The APA and the Transition Operating Agreement, and all other exhibit documents attached and to be attached to the APA, are hereby approved, and the Chairman, the Vice Chairman, the Secretary and the Treasurer of the Authority (each, an “Authorized Officer,” and collectively, the “Authorized Officers”) are authorized to execute the APA and the Transition Operating Agreement, and all other exhibit documents attached and to be attached to the APA, in substantially the form presented to this meeting, with such changes as the Authorized Officers, with advice from counsel to the Authority and the Authority’s financial advisor, may approve, their approval to be evidenced by their execution of such documents. The APA and the Transition Operating Agreement and any other exhibit documents attached and to be attached to the APA will not be effective until the Series 2021 Bonds have been issued.

2. All actions of the officers of the Authority in furtherance of this resolution are hereby ratified and confirmed. This resolution shall take effect immediately.

The foregoing resolution was adopted by the Bald Head Island Transportation Authority Board of Trustees, at a special meeting duly called and held on the 8th day of December, 2020.

Mr. Jessen made the motion to approve with Mr. Cozza seconding the Resolution Approving Asset Purchase Agreement and Operating and Transition Services Agreement found as Attachment 3 of the Agenda Packet with a roll call vote as follows: Mr. Brown: Nay, Mr. Cowdry: Nay, Mr. Cozza: Aye, Mr. Dixon: Aye, Mr. Jessen: Aye, Mr. Howard: Aye, Mr. Powell: Aye, Mr. Pope: Nay, Mr. Sayre: Nay, Mr. Zimmer: Aye, Chair Rabon: Aye. Motion carries (7-4).

VII. Consideration of a Proposed Resolution Providing for Application to the Local Government Commission for Approval of Bald Head Island Transportation Authority Transportation System Revenue Bonds and Making Certain Findings:

Ms. Rusher advised the LGC will approve the revenue bonds as they would any other revenue bonds. Certain findings must be met found in Item 5 of this Resolution. These are the same findings the LGC will make to approve the financing. As a requirement of the LGC, PNC is the second underwriter for the process. The next steps will include the approval of bond documents and to set parameters to include interest rates and maturity which are similar to the parameters set by the LGC on January 5. Mr. Howard made the motion and Mr. Powell seconded the motion to approve the Resolution Providing for Application to the Local Government Commission for Approval of Bald

Head Island Transportation Authority Transportation System Revenue Bonds and Making Certain Findings included as Attachment 4 in the Agenda Packet.

Mr. Golynsky commented the goal is to provide the lowest cost possible and maintaining a safe and reliable service. Historically the ferry system became under the purview of the NC Utility Commission in 1993 and is a regulated utility with all the state requirements that apply. There has been one rate increase since 1993 moving from \$15 to \$23 with an expected rate increase to \$27 on July 1, 2021. That increase will need to be approved by the Authority. Consumer Price Index (CPI) from 1993 to present equals an increase of 83%. The increase for fares over that same time frame including the proposed increase shows an 80% increase. Mr. Brown has concerns with using the CPI as it is large grouping of different products and services and would like to use gas prices or wages over the last 10 years. The barge fees from 2006 have increased 30%. Mr. Sayre does not believe all the debt has been accounted for in the due diligence. Mr. Cowdry has concerns with the lack of modeling for the rate increase assumptions that have been presented in the last week. The possibility of postponing the Resolution until next week when the preliminary indicative ratings are available would better allow for sound decisions should be considered.

Mr. Cowdry made a motion to postpone consideration on Feasibility and Affordability until at least one of the indicative ratings are in hand at the Special Meeting of December 16, 2020 meeting. Mr. Brown seconded the motion. Mr. Pope has concerns if the Board pushes the approval of the Resolution out one week will that affect the other items on the schedule going forward. Mr. Cole confirms it will not likely affect the scheduling or any approvals. A roll call vote as follows; Mr. Brown: Aye, Mr. Cowdry: Aye, Mr. Cozza: Nay, Mr. Dixon: Nay, Mr. Jessen: Nay, Mr. Howard: Nay, Mr. Powell: Nay, Mr. Pope: Aye, Mr. Sayre: Aye, Mr. Zimmer: Nay, Chair Rabon: Nay. Motion Fails (4-7). Mr. Brown clarified that his Nay vote was to have more information before he proceeded.

Discussion returned to the original motion made by Mr. Howard and seconded by Mr. Powell to approve the Resolution Providing for Application to the Local Government Commission for Approval of Bald Head Island Transportation Authority Transportation System Revenue Bonds and Making Certain Findings included as Attachment 4 in the Agenda Packet. The Resolution reads as follows:

**BOARD OF TRUSTEES OF THE BALD HEAD ISLAND
TRANSPORTATION AUTHORITY RESOLUTION PROVIDING
FOR APPLICATION TO THE LOCAL GOVERNMENT COMMISSION FOR
APPROVAL OF BALD HEAD ISLAND TRANSPORTATION AUTHORITY
TRANSPORTATION SYSTEM REVENUE BONDS AND MAKING CERTAIN
FINDINGS**

WHEREAS, the Bald Head Island Transportation Authority (the “Authority”) is authorized to acquire, own and operate the ferry and ground transportation assets and services provided to Bald Head Island, North Carolina (the “Island”) including, but not limited to, (i) the transportation of passengers via ferry to and from the Island and Southport, North Carolina; (ii) the on-island tram transportation of ferry passengers; (iii)

the vehicle parking operation at Deep Point Marina in Southport, North Carolina, and (iv) the tug and freight barge operation which carries supplies and equipment to and from the Island (collectively, as further defined herein, the “System”); and

WHEREAS, the Authority and Bald Head Island Transportation, Inc., a North Carolina corporation (“BHIT”), and Bald Head Island Limited, LLC, a Texas limited liability company (“BHIL”, and together with BHIL, collectively referred to herein as “Seller”) are in the process of negotiating an Asset Purchase Agreement, pursuant to which the Authority will purchase the real and personal property, structures, improvements, buildings, equipment, maritime vessels, vehicles, vehicle parking, trams, shuttle buses, docks, terminals, and other facilities used in the operation of the System (the “Facilities”); and

WHEREAS, in connection with the purchase of the Facilities, the Authority expects to enter into a Ferry and Barge Facilities Operating and Transition Services Agreement with Seller, acting as the Management Company, pursuant to which Seller will continue to operate the System and will transition such operations to the Authority; and

WHEREAS, the Authority proposes to issue its Transportation System Revenue Bonds, Series 2021 (the “Series 2021 Bonds”) (a portion of which may be issued as taxable bonds) pursuant to the Ferry Transportation Authority Act, Article 29 of Chapter 160A of the General Statutes of North Carolina, as amended (the “Enabling Act”) and The State and Local Government Revenue Bond Act, General Statutes of North Carolina Section 159-80 et seq. (the “Revenue Bond Act”), and a bond order to be adopted by the Authority (the “Bond Order”), and to apply the proceeds of the Series 2021 Bonds to (a) pay a portion of the purchase price for the acquisition of the Facilities from the Seller; (b) fund a debt service reserve and operating and maintenance reserve fund; (c) fund working capital for the Authority; (d) pay capitalized interest on the Series 2021 Bonds; and (e) fund certain costs of issuance of the Series 2021 Bonds (collectively, the “Project”); and

WHEREAS, the Series 2021 Bonds will be issued under a General Trust Indenture between the Authority and U.S. Bank National Association, as Trustee (the “General Indenture”), and supplemental indentures setting forth for the terms of the Series 2021 Bonds; and **2** **WHEREAS**, it is anticipated that the Series 2021 Bonds will be sold in a negotiated sale to UBS Financial Services Inc. and PNC Capital Markets, as underwriters (the “Underwriters”); and

WHEREAS, the Authority has identified as its financing team UBS Financial Services Inc. and PNC Capital Markets as co-managing underwriters; Parker Poe Adams and Bernstein LLP as Underwriters’ counsel; Davenport & Company as financial advisor; McGuireWoods LLP as issuer’s counsel and bond counsel, U.S. Bank, National Association, as bond trustee; and Mercator International LLC, as feasibility consultant (collectively, the “Financing Team”);

WHEREAS, the Authority wishes the Chair and Treasurer of the Authority, working with the Authority’s financial advisor, to file with the Local Government Commission of North Carolina (the “LGC”) an application for its approval of the Series 2021 Bonds on a form provided by the LGC, to request that the LGC approve the negotiation of the sale of the Series 2021 Bonds, and to make certain findings therefor;

NOW, THEREFORE, the Board of Trustees of the Authority, in a special meeting duly called and held on December 8, 2020, does hereby resolve as follows:

1. The Series 2021 Bonds are to be issued by the Authority for the purpose of providing funds to finance the costs of acquiring the Facilities and paying other costs of the Project. The use of the proceeds of the Series 2021 Bonds is necessary in order to meet the Authority's charge under the Enabling Act to acquire and operate the existing ferry transportation system in its service area. The Series 2021 Bonds shall be a special obligation of the Authority, the principal of, premium, if any, and interest on which shall be payable solely from the revenues of the System, which will be pledged under the Bond Order and the General Indenture.
2. The Chair and Treasurer of the Authority, with the advice of bond counsel and the financial advisor, are each hereby authorized, directed and designated to file an application with the North Carolina Local Government Commission for its approval of the issuance of the Series 2021 Bonds.
3. The Chair and Treasurer of the Authority and the Authority's Finance Officer, working with bond counsel and the Authority's financial advisor, are each hereby authorized and directed to take all actions in furtherance of the issuance of the Series 2021 Bonds.
4. The Board acknowledges that the feasibility studies being developed in connection with the issuance of the Series 2021 Bonds indicate that the rates for the use of the System, including in particular the passenger ferries to and from the Island, the tug and freight barge operation to and from the island, and the parking facility located at the Deep Point Marina will need to be increased beginning in fiscal year 2022, and agrees to implement such fee increases as may be required to meet the financial covenants contained in the documents authorizing the issuance of the Series 2021 Bonds.
5. In connection with the application to the LGC, the Authority hereby makes the following findings:
 - a. The issuance of the Series 2021 Bonds is necessary and expedient to finance the cost of the Project.
 - b. The Project is feasible.
 - c. The amount of debt to be incurred in connection with the Project and the fees to be paid in connection therewith are sufficient but not excessive for the purpose of acquiring the Facilities and the initial operation of the System.
 - d. The increase in rates necessary to pay debt service on the Series 2021 Bonds will not be excessive.
 - e. The Authority has not defaulted on any debt obligation.
 - f. The Authority follows the debt management guidelines of the North Carolina Local Government Commission.
 - g. The Series 2021 Bonds can be marketed at a reasonable interest cost to the Authority.

6. The Authority hereby requests the LGC to sell the Series 2021 Bonds in a negotiated sale to the Underwriters pursuant to § 159-123 of the North Carolina General Statutes.

7. The Authority hereby requests the LGC to approve the Authority's Financing Team in connection with the issuance of the Series 2021 Bonds.

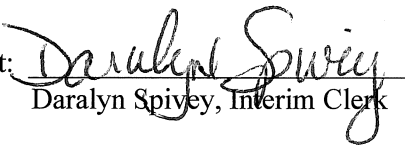
8. All actions of the officers of the Authority in furtherance of this resolution are hereby ratified and confirmed. This resolution shall take effect immediately.

The foregoing resolution was adopted by the Bald Head Island Transportation Authority Board of Trustees, at a special meeting duly called and held on the 8th day of December, 2020.

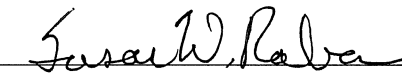
The roll call vote is as follows: Mr. Brown: Nay, Mr. Cowdry: Nay, Mr. Cozza: Aye, Mr. Dixon: Aye, Mr. Jessen: Aye, Mr. Howard: Aye, Mr. Powell: Aye, Mr. Pope: Aye, Mr. Sayre: Nay, Mr. Zimmer: Aye, Chair Rabon: Aye. Motion carries (8-3).

VII. Other Business: Ms. Rusher advises the Board there will be the offering document circulated and to be approved early January and this document is critical. Mr. Cowdry would like to bring attention to the possibility of bringing the information forward to the ridership and communicate the rationale behind the decisions that have been made. The next Authority meeting will be December 16, 2020 and will be held remotely.

VIII. Adjourn: Chair Rabon adjourned the meeting at 11:28 a.m.

Attest: 
Daralyn Spivey, Interim Clerk

(SEAL)


Susan Rabon, Chair



Trustee Zimmer moved to approve the foregoing, Trustee Powell seconded, and the motion was passed by the following vote:

Ayes: Trustees Brown, Cowdry, Cozza, Dixon, Howard, Jessen, Pope, Powell, Sayre, Zimmer and Chair Rabon.

Nays: None

Not Voting: _NA

Board Action Control Number: 2021 - _____