

Board Meeting
Minutes
November 17th, 2020

Present were:

Sarah Godlewski, Board Chair	State Treasurer
Josh Kaul, Commissioner	Attorney General
Doug LaFollette, Commissioner	Secretary of State
Tom German, Executive Secretary	Board of Commissioners of Public Lands
Jim DiUlio, Deputy Secretary	Board of Commissioners of Public Lands
Richard Sneider, Chief Investment Officer	Board of Commissioners of Public Lands
Mike Krueger, IT Manager	Board of Commissioners of Public Lands
Denise Nechvatal, Senior Accountant	Board of Commissioners of Public Lands
Thuy Nguyen, Office Manager	Board of Commissioners of Public Lands
Julie Benkoske, Chief of Staff	State Treasurer

ITEM 1. CALL TO ORDER

Board Chair Godlewski called the meeting to order at 2:01 p.m.

ITEM 2. APPROVE MINUTES – November 6, 2020.

MOTION: Commissioner LaFollette moved to approve the minutes; Board Chair Godlewski seconded the motion.

DISCUSSION: None

VOTE: The motion passed 3-0.

ITEM 3. APPROVE LOANS

MOTION: Commissioner LaFollette moved to approve the loans; Board Chair Godlewski seconded the motion.

DISCUSSION: Mr. Sneider commented that one loan is for roadwork and the other is for the Village of Bloomfield financing the cost to create their Tax Incremental District (TID). These funds are for professional fees to get the district off the ground.

Commissioner LaFollette asked if the dearth of loans is due to the coronavirus?

Mr. Sneider replied that he did not believe so, although it may have some impact. He further explained that at this time of year the agency sees a decline in the number of loans being requested.

VOTE: The motion passed 3-0.

The Board of Commissioners of Public Lands (BCPL) unanimously approved **\$371,50000.00** in State Trust Fund Loans to support **2** community projects in Wisconsin.

1. Town of Sylvester / Green County / Finance roadwork / \$212,000.00
2. Village of Bloomfield / Walworth County / Finance costs to create TID / \$159,500.00

ITEM 4. OLD BUSINESS - NONE

ITEM 5. NEW BUSINESS – NONE

ITEM 6. CHIEF INVESTMENT OFFICER’S REPORT

Mr. Sneider asked the Board to act on an issue that will significantly benefit the School Trust Funds.

He shared that the asset diversification established in the investment policy is having a positive impact on both the total amount and resilience of the annual distributions made to public school libraries.

Currently BCPL has two asset classes outside the target range approved by the Board: real estate and cash. Private real estate was selected for its superior risk/return characteristics when compared to publicly-traded Real Estate Investment Trusts.

A third party vendor was hired to perform additional due diligence and provide the Investment Committee with reports. Based upon its due diligence review, the Investment Committee approved three separate investment commitments totaling \$90 million. These proposed investments will bring the Common School Fund asset allocation within approved target ranges for all asset classes. Once completed, the \$90 million in investments is expected to increase distributions by approximately \$4.5 million each year, which increases the total annual distribution more than 10% from current levels. Delays in completing these investments cost the beneficiaries potentially more than \$75,000 per week.

The only impediment to completing these investments is a need to hire outside legal counsel with expertise in securities law to review and advise BCPL staff regarding the Subscription Agreements and side letters, which is the final step in the process. The estimated cost of outside counsel’s work would be less than \$10,000 per agreement. How soon BCPL can obtain authority to hire outside counsel has an impact beyond the weekly opportunity cost to beneficiaries.

One of the approved funds has offered a fee reduction of \$30,000 per year if BCPL locks up the investment for a period of two years. However, because of the rule change at the index of which this fund is a member, that fee agreement will no longer be available starting in 2021.

Mr. Sneider asked for assistance in obtaining the authority needed to hire outside counsel as quickly as possible to assist in reviewing the documents necessary to implement the investment policy.

Executive Secretary German commented that it would be great to have that assistance. A request had been made and the answer from the Governor’s office was ‘no’.

Deputy DiUlio commented that he agreed with Mr. Sneider and his concerns. He shared that at times BCPL is not very different than a pension fund, where the beneficiaries, the public school libraries, are looking for some consistency. The agency has been able to provide that consistency in recent years through the use of the smoothing fund and the mix of investments. Private investments generally have a higher rate of return than publicly traded investments because they are intended for long term investors. He shared that he used to be an issuer of mutual funds but now he is on the other side as a purchaser. He stated that additional legal help would be a benefit to everyone.

Board Chair Godlewski asked Mr. Sneider and Executive Secretary German to walk through the process the agency had gone through. She shared that the first step was talking to the Department of Justice (DOJ). DOJ realized they did not have the capability to do the legal review BCPL needs. Next, was reaching out to the Governor's Office. She asked for clarification of the steps the agency has gone through.

Executive Secretary German responded that Board Chair Godlewski recounted accurately what had been done previously. BCPL spoke with DOJ. It was his understanding that DOJ then relayed the request to the Governor's Office who said 'no'. In an effort to keep moving forward on these private investments and without being able to directly hire special counsel, BCPL contracted with a financial advisor who in turn hired a law firm to do the initial review of the investment agreements and the documentation.

Executive Secretary German added that he has had to step away from his duties as Executive Secretary to act as counsel for the agency by reviewing those documents. Most of the documents are more than 100 pages long. It is very time consuming. BCPL's trust funds and organizational structure are different from the type of funds and investors that these private investments companies usually encounter. Most of the questions on the subscription agreements are not geared toward a permanent, sovereign fund like BCPL's. These documents are geared more toward pension funds and private institutions and investors. BCPL is unique and therefore the questions contained in the subscription agreements do not clearly address BCPL's situation.

Commissioner Kaul asked how the request to the Governor's Office was made?

Executive Secretary German recalled that the initial request was made to DOJ and then DOJ relayed it to the Governor's Office.

Commissioner Kaul asked if there was a written explanation as to why the request was needed.

Commissioner LaFollette asked which governor the request was made to.

Executive Secretary German clarified that it was the current governor. He stated that he does not recall how the initial request was framed. He then added that if it is the desire of the Board, a more elaborate request can be drafted explaining the particulars of the situation.

Commissioner Kaul expressed that the request could be a one-page summary stating what the request is and why. It should be sent to the appropriate person in the Governor's Office, perhaps his counsel.

Executive Secretary German asked if the request should be directed to DOJ first or directly to the Governor's Office with a copy to DOJ.

Commissioner Kaul clarified that formally speaking it is a request for special counsel.

Executive Secretary German agreed.

Commissioner Kaul commented that it can go directly to the Governor's Office. This is not an area where DOJ has specialized expertise so sending directly to the Governor's Office seems to make sense.

Commissioner LaFollette commented that he agreed with Commissioner Kaul.

Board Chair Godlewski asked about the process of requesting outside/special counsel. Is there a way outside counsel can be funded by the BCPL instead of the special counsel fund? How is it financed?

Commissioner Kaul replied that he is unsure about the financing of special counsel.

Executive Secretary German explained that there is a special appropriation for special counsel, but it is his understanding that the Governor's Office can make special arrangements with the agency requesting it. In essence, there could be a memorandum of understanding. BCPL could use part of its goods and services appropriation line to reimburse the Governor's Office. However, that special counsel appropriation line is not replenished by BCPL repaying the Governor's Office.

Board Chair Godlewski commented that would be a good point to get clarification on. She shared that there is an advantage in articulating that the BCPL is willing to pay for those legal fees by repaying the Governor's Office so it's not taking away from the current fund.

Commissioner LaFollette asked why the agency can't hire the attorney itself.

Executive Secretary German explained that his understanding is that for BCPL to hire special counsel it needs permission of the Governor and there is a special appropriation for such special counsel.

Commissioner LaFollette asked for clarification on hiring an attorney to advise it. Would it have to be special counsel? Could it be an LTE hire?

Executive Secretary German replied that if there was a securities attorney who would be willing to be hired as an LTE, that could work. However, these attorneys tend to be a little bit rare and he does not know of an attorney who would be currently available to consider an LTE position with the State. The hourly rate that the State could pay this attorney would be considerably less than what firms are paying.

Commissioner LaFollette asked how the Governor's Office would find an attorney for the agency.

Executive Secretary German replied that the agency needs the permission of the Governor's Office, rather than the use of the Governor's counsel. There is a special appropriation in the State budget for special counsel.

Commissioner Kaul asked if the appropriation is "sum sufficient" or "sum certain."

Executive Secretary German responded that he thought it to be sum certain, but he will need to verify that.

Commissioner Kaul commented that if the appropriation is sum certain, there may be concern that if BCPL's request gets authorized by the Governor, the remaining amount of the limited appropriation may not be enough to meet the costs of remaining special counsel needs of the state in the future. This means BCPL may want to request legislation. Right?

Executive Secretary German replied, correct.

Board Chair Godlewski shared that that was her understanding. She reiterated that this could be workable if there was a way to reimburse the appropriation, in the short term.

Commissioner Kaul asked if there really is a way to reimburse the appropriation.

Board Chair Godlewski commented that she had the same question.

Executive Secretary German explained that it is his understanding that generally appropriations are not reimbursable. Whatever the amount the appropriation is, that is the amount you can spend on it. Whether those expenses are recouped or reimbursed does not change the appropriation amount. However, BCPL agreeing to reimburse DOA or the Governor's Office may provide DOA or the Governor's Office with funds for other goods and services it can use for other projects.

Commissioner Kaul commented that if the appropriation is sum certain, it is worth asking but he believes it would still be worth looking into a legislative path. Is there someone at DOA who BCPL could ask to support the request? Executive Secretary German replied that he had talked with DOA counsel during the initial request and counsel indicated that the answer was 'no'.

Board Chair Godlewski shared that she checks in bi-weekly with the DOA leadership team and they told her they had to seek advice from the Governor's Office. DOA was unable to help with the request.

Commissioner Kaul commented that DOA's limitations should be added to the letter sent to the Governor's Office to clarify that there are no other options within State government.

Commissioner Kaul asked if there have been any efforts to pursue legislation on this.

Executive Secretary German responded, no, there have been no efforts to pursue legislation on this.

Board Chair Godlewski asked about legislative options to consider.

Executive Secretary German responded that the next step is to verify whether or not the appropriation for special counsel is sum certain or sum sufficient and the letter to the Governor's Office should include a statement that DOA is not currently able to provide those services and verify that with DOA.

Board Chair Godlewski shared that is correct and based on the response from the Governor's Office, BCPL should be prepared to come up with legislative options for getting the legal support the agency needs. Does BCPL wait for the Governor's Office's response before pursuing legislative options? If there is a legislative budget process available, it would be beneficial to start on that today.

Executive Secretary German stated that the first place to start is verifying whether the appropriation is sum certain or sum sufficient. This can be done by not only reviewing the current budget but also speaking with the agency's budget analyst. While speaking with the budget analyst it would be important to ask if it is possible to have a provision written into the budget bill. He shared that he is not aware of any other agency having a provision like that but that does not mean it can't be done.

Board Chair Godlewski quoted Executive Secretary German saying, "We are far from the average agency." She asked Commissioner Kaul, through his attorney lens, if there was anything else, he thinks the agency should think about.

Commissioner Kaul replied, no.

Board Chair Godlewski commented that a status update on this issue could be included in next meeting's agenda. To summarize, BCPL will verify the issues, draft a letter to the Governor's Office and discuss potential legislative options.

Executive Secretary German expressed that at the next meeting he will provide an update on the issue.

Commissioner LaFollette asked about why this request is coming up now and has not before.

Executive Secretary German explained that in the past the agency was not engaged in the type of investment activity that it has recently.

Commissioner LaFollette stated he understands now.

Executive Secretary German reiterated that for the first couple investments in these private real estate funds, he stepped away from his duties as Executive Secretary to review documents as special counsel to the agency.

Board Chair Godlewski commented that this issue has been brought up before and the agency's efforts with the letter to DOJ and communication with DOA stopped at the Governor's Office. She believes what Mr. Sneider is looking for is a continued effort to move forward with the request, as it is a critical piece for the agency's ability to achieve these investments. She asked Mr. Sneider if there was anything more he would like to add.

Mr. Sneider replied there was nothing else to add but thanked the Board for their consideration.

ITEM 7. EXECUTIVE SECRETARY'S REPORT

Executive Secretary German shared that BCPL had accepted a winning bid on the sale of one of its isolated and unproductive properties in Price County, approved at the October 6th meeting. Closing will be happening shortly, and he will need signatures from the Commissioners on the land patent.

The conference phone line that has been used for Board Meetings for years will no longer be available after January 1st. The new conference line will be used for the next Board Meeting. They will be setting up the meeting schedule which will contain the meeting ID passcode. The new conferencing phone number will be the same for future board meetings, but the passcode may change for rescheduled or special board meetings. The new phone number is 608-571-2209.

BCPL has contracted to work with Stephanie Marquis on the Wisconsin Impact Report that the board has requested. Executive Secretary German is excited to work with Stephanie as she brings a wealth of experience in state government and media to this project. He is meeting with her tomorrow and is shooting to have a template put together by the end of the calendar year.

Evaluations are being done for several parcels of land for acquisition in Northern Wisconsin. A large landowner is considering divesting itself of thousands of acres and there are a few larger parcels that would work well in BCPL's portfolio. There is currently \$2 million in funds available for land purchases in the land bank.

Finally, BCPL is looking to start the new year off with a recap of the calendar year 2020 at the January 5th Board meeting. As a result, he expects the first board meeting in January to run longer than usual and respectfully requests that enough time is reserved in your respective schedules to accommodate that.

ITEM 8. BOARD CHAIR'S REPORT

Board Chair Godlewski shared what she would like to have included in the year-end review for the January 5th Board meeting. One piece to be presented is a year-end review of the investment portfolio, highlighting major investments since approval of the IPS (Investment Policy), the impact on the fund and the State Trust Fund Loan Program. The second piece is review of the goals and priorities which were agreed on at the beginning of 2020. How have the goals and priorities changed? What was the progress and performance of those goals? Discussion of this fits in nicely with the Wisconsin Impact report that is being done. The third piece is getting thoughts and feedback from Executive Secretary German now that he has served as Executive Secretary for a year. She asked Commissioners LaFollette and Kaul if there is anything she is missing and if they have questions about the agenda?

Commissioners LaFollette and Kaul replied that they have nothing to add.

ITEM 9. FUTURE AGENDA ITEMS

NONE

ITEM 10. ADJOURN

Commissioner LaFollette moved to adjourn the meeting; Commissioner Kaul seconded the motion. The motion passed 3-0; the meeting adjourned at 2:33 p.m.

A handwritten signature in black ink, appearing to read "Thomas P. German", is written over a horizontal line.

Thomas P. German, Executive Secretary

Link to audio recording:

<https://bcpl.wisconsin.gov/Shared Documents/Board Meeting Docs/2020/2020-11-17-BoardMtgRecording.mp3>