

MINUTES OF THE 480th “SPECIAL” MEETING OF THE OHIO TURNPIKE COMMISSION

June 17, 2002

Pursuant to the bylaws, the Ohio Turnpike Commission met for a “Special” meeting at the Commission’s Administration Building at 1:00 p.m. on June 17, 2002, with members of the staff: Gino Zomparelli, Executive Director and Assistant-Secretary Treasurer, Daniel Castrigano, Deputy Executive Director-Chief Engineer; Thomas Amato, General Counsel.

The Chairman then called the meeting to order and requested the Asst. Secretary-Treasurer to call the roll.

A vote of ayes and nays was taken and all Members present responded to roll call as follows:

Ayes: Mo Darwish (for Gordon Proctor); Mr. Dixon,
 Mr. Strnisha and Mr. Greenwood
Absent: Mr. Wilkins, Senator Armbruster, Rep. Buehrer.

The Chairman advised that Mr. Darwish is here today representing Gordon Proctor, Director of Ohio Dept. of Transportation and is authorized to vote for him. I’d like everyone here to introduce themselves just so we have it on the record.

Ohio Turnpike representatives: Alan Hirth (Climaco Lefkowitz firm); Jim Steiner, Tim Ujvari, Rob Fleischman, Larry Woolum, Ohio Trucking Assoc.; Fred McFall; Bob Martell, Hardees’ Food Service; Kevin Redden, Gladieux Corp.; Tim Escola, Lauren Hakos Dehrmann; Sharon Isaac; Kathy Dolbin, Tracy Cowley and Diane Pring.

This is the Commission’s 480th meeting of the Ohio Turnpike Commission. We are meeting here in the Commission’s headquarters as provided for in the Commission’s Code of Bylaws for a “Special” meeting.

We will vote on two resolutions today and then go back to our regular format. I don’t believe we will be meeting in July so we’ll probably meet next in August.

Mr. Zomparelli, will you give your recommendations of the resolutions?

Zomparelli: Thank you, Mr. Chairman. You have two draft resolutions in your folders. The first draft resolution is a resolution rescinding award of Contract TR-8B (Unit #3) concerning the operation of the food concession at the Commission's Great Lakes and Towpath Service Plazas.

This was the Unit we had brought up at the last Commission Meeting. We are asking that this contract be rescinded so that we can award to a new vendor. I'll read the Resolved:

“NOW, THEREFORE, BE IT

“RESOLVED that the Commission hereby rescinds the award of Contract No. TR-8B (Unit #3) to Advanced Restaurant Concepts, Inc. (“ARCI”) of Toledo, Ohio for the operation of the food concession concept at Unit #3 at the Commission's Great Lakes and Towpath Service Plazas in Cuyahoga County, Ohio.”

Just as a reminder, ARCI has vacated the premises as requested by the Commission. The Commission has issued an RFP for subsequent bidders. I'd recommend that the Commission move to adopt this resolution.

Greenwood: I'd like to entertain a motion to adopt the resolution before we have a discussion.

Dixon: So moved.

Strnisha: Second.

Greenwood: Mr. Dixon moves, Mr. Strnisha seconds. The resolution has been read. We discussed it at the last Commission Meeting. This is the rescission resolution. Any questions on this resolution?

Dixon: Just a question – do we seek any damages or is this a mutual agreement or loss of income, damage?

Zomparelli: Mr. Chairman, Commission Member Dixon, they are in arrearage of payments – that was one of the reasons for asking them to cease operations. General Counsel will be seeking moneys that are due to the Commission.

Dixon: So basically we just want the rent and we are washing our hands of them?

Zomparelli: Correct. They have already vacated.

Dixon: Is this the unit that you and I went out to visit?

Zomparelli: Right.

Greenwood: Any other questions? Let's call the roll:

Roll: Mr. Dixon-yes; Mr. Strnisha-yes; Mr. Darwish-yes; Mr. Greenwood-yes.

The resolution passes.

Zomparelli: Now the second draft resolution in the members' folders is captioned, "Resolution Awarding a Contract for the Operation of the Food Concession at the Commission's Great Lakes and Towpath Service Plazas under Contract No. TR-8B (Unit #3)"

The Commission issued an RFP for the operation of the food concession in Unit #3 at Milepost 170.1 in Cuyahoga County at the Great Lakes/Towpath Service Plazas. We had five companies present various proposals for operation of Unit #3. I believe you have the back-up information attached to the resolution showing the bidders and the concept that they bid – Hardees' bid "Star Hardees" concept; Compass USA bid a Wendy's concept and as a second choice, Pepe's concept. HMS proposed a Burger King concept, Sub Concepts, Inc., Gregg Chemical Corp. proposed a Subway concept and ARCI bid an Angus Grille concept. (Advanced Restaurant Concepts,

ARCI) is the vendor we asked to vacate and terminated their contract.)

Fred McFall, Dan Castrigano and myself reviewed the proposals. We obtained bid percentages from all the bidders, All three of us are recommending an award to Wendy's at 9%. I do want to point out to the Commission that Burger King submitted a bid proposal of 12% and Hardee's submitted a bid proposal of 10%.

The Wendy's proposal was submitted by Compass Group USA, Inc. out of Charlotte, North Carolina. It is our recommendation that they be considered the "best bid" and the "best bid" that serves the Commission's interest for food concessions at its Great Lakes/Towpath Service Plazas in Unit #3. I'll read the Resolved:

"RESOLVED that the above-mentioned proposal submitted by **Compass Group USA, Inc.** for the performance of **Contract TR-8B (Unit #3)** is hereby accepted; and

FURTHER RESOLVED that the executive director and general counsel hereby are authorized to execute **Contract TR-8B (Unit #3) (Great Lakes and Towpath)** Service Plazas, which provides for an initial term of seven (7) years and at the parties' mutual agreement and written notice to extend for additional five (5) year periods, with Compass Group USA, Inc. in the form heretofore prescribed by the Commission pursuant to the aforesaid bid, and to take any and all action necessary or proper to carry out the terms of said bid and said contract."

I recommend that the Commission move to adopt this resolution.

Greenwood: I'd like to entertain a motion to consider this resolution before we have discussion.

Dixon: So moved.

Strnisha: Second.

Greenwood: Mr. Dixon moves and Mr. Strnisha seconds. Discussion on the resolution to award the contract – any questions from Commission Members?

Strnisha: So we have all the information, did you mention the percentage for ARCI and Sub Concepts?

Zomparelli: Sub Concepts proposed initially 10% on sales over \$1-M and then increased their percentage to 12.125% on all sales. They didn't change it again, right Fred?

McFall: Correct. It's 10% over \$1-M.

Zomparelli: So theirs is also higher.

Strnisha; So the question on the table is – and given the recommendation that their percentage is lower is based on what?

Zomparelli: There is a Panera Bread Co. concept which has basically sandwiches in Unit #4. We thought the competition between the Subway and Panera's wouldn't make sense having both those concepts in the same plaza next door to each other. That was one issue and the issue dealing with Burger King – which makes it tough because they offered 12% - the issue with Burger King is this is at approximately Milepost 170. At Milepost 100 (Erie Islands/Commodore Perry) is a Burger King concept and the pair that we are going to open up sometime in July in Lorain County which is quite close to Cuyahoga County at Milepost 139.5 also has a Burger King concept.

The question the three of us considered was does it make sense to have three Burger Kings in a row?

Dixon: Excuse me, what mileposts?

Zomparelli: Milepost 170 (Great Lakes/Towpath); Milepost 139 (Middle Ridge/Vermilion Valley) and Milepost 100 (Erie Islands/Commodore Perry.) So between 70 miles, there would be three Burger Kings in a row.

I don't think people are going to stop in the same – they might stop to eat three times on their journey – that's the issue.

Strnisha: So you think you'll pick up more sales because you have a Wendy's and a Burger King within that 70-mile stretch as opposed to just Burger King?

Zomparelli: We know there was a Wendy's there before. That was the concept that was vacated. (The Director distributed the recently printed updated Turnpike Maps showing the various concepts available at all our service plazas.) It gives you a strip map of where our reststops are at the service plazas.

Strnisha: It looks like a placemat. Where's the sandwich?

Zomparelli: If you look at the map you can see the letters which indicate where on the roadway the service plazas are located and what concepts are included. If you look at the letters G & H. "G" is Commodore Perry on the south side and "H" is Erie Islands on the north side of the Turnpike. They both have the same concepts: Starbucks, Sbarro's, Jody Maroni's, Cinnabon, Burger King and Max & Erma's.

The next pair, I & J, in Lorain County (Vermilion Valley and Middle Ridge) that's Panera Bread, Starbucks, Burger King, Great Steak & Potato, Popeye's on one side. On the Middle Ridge side, instead of having Great Steak & Potato, they are proposing Manchu Wok substitute. It's all the same vendor.

The pair we are talking about are letters "K and L" (Towpath/Great Lakes) at MP 170. The question that we struggled with – Burger King, Hardee's and Wendy's are the three we narrowed it down to. The Hardee's is a concept that the Commission has had over 15 years on its western end of the Turnpike at letters "A and B" and "E and F." It has been a good concept for the Turnpike. Wendy's – we looked at Wendy's having its origination in Ohio, we were intrigued with having a Wendy's concept. Originally, when we put the Wendy's in at Great Lakes and Towpath, that was the first time Wendy's had been on the Turnpike. Our issues were more

operational than “concept.” I think we know Wendy’s works based on prior acceptance of our patrons with the combination of Wendy’s and Panera’s at Great Lakes and Towpath.

Strnisha: Just to make sure I understand your position, would you say, Hardee’s works, too based on experience?

Zomparelli: Hardee’s in the only concept in their plazas located on the western end (Service Plaza #A (Tiffin River) and B (Indian Meadow) and “E” (Wyandot) and “F” (Blue Heron). It works; there isn’t any competition with other food concessions. They are not multi-food concession units.

It is not an easy decision. We would be comfortable with all three if we didn’t take into consideration any of the other food concepts. HMS is an excellent operator on the Turnpike; Hardee’s has done a good job for us. Compass Group is a new player and at the last Commission meeting, we awarded them the Au Bon Pon and Noble Pizza concepts at Portage and Brady’s Leap (#N & M on the map.)

Greenwood: I’m always concerned, this is not persuade or dissuade – and I haven’t been at this game very long but I have listened to comments over the years. My own observation is, I’m always concerned about getting too high on the percentage from the standpoint that I don’t know and I don’t know how some of these folks make money paying us that high of a percentage anyway. That’s somewhat of a rhetorical question. I don’t mean to be sarcastic but what I’m coming from if you get around 10-12% range, stop and think, that’s a lot off the top that you have to pay. My feeling has been that rather than being penny-wise and pound foolish, I mean, I’d rather see continuity and keep a profitable successful food service system in for a long period of time rather than become greedy – maybe take a lot for the short term, but then wind up and they leave because they can’t cut it or whatever. Then we’ve got an empty facility and we have to go through all this again. I’m not saying that those comments are winners, but I’m saying it’s just something to consider.

I don't have a problem with the recommendation of the staff. I know from talking to the folks that looked at these proposals from the Turnpike Commission, I know they struggled as well as asked a lot of questions and know their decision was difficult. I am comfortable with their recommendation.

Zomparelli: Chairman Greenwood, if I may, the other thing I wanted to point out is – we always look at ways to increase competition and create market opportunities. Compass Group is a new player so we have given that consideration. It wasn't a controlling factor. Some of the bids in the past, we got "NO" bids or really get one or two from an Operator. We are introducing a third vendor. I think this is the first time on the Turnpike that we have had as much variety of vendors as well as food concepts then in the past.

We have Panera Bread (Dalcan is the parent company); McDonalds now bidding individually, so we have created a nice competitive atmosphere. It's nice to keep that balance between vendors as well.

Strnisha: Mr. Chairman, for these kind of vendors – the fast food vendors, what would be the average or typical percentage that we are getting?

Zomparelli: It varies. At the old facilities (letters "P" and "O"), we're getting about 13% .

Strnisha: What about the newer ones we have awarded within the last year?

Zomparelli: At "G" and "H", Erie Islands/Commodore Perry, is 14.5% for Burger King. McDonalds is 8.5% or 9%. At Great Lakes/Towpath we get 9.25%.

Strnisha: Another question relating to the Chairman's comments, about trying to figure out from an outside perspective, these rental revenues. Now that's a big difference in percentage, but does McDonalds draw that much better? On one hand it's the percentage and the other hand it's what they do.

Zomparelli: Chairman Greenwood, Commission Member Strnisha, let me complicate it for you another step. Let's not use McDonalds. Call it ABC Fastfood. They are the best operator, the best food concept. They are located in the plaza with two other food concepts. If all the business goes to that one concept, regardless of what percentage we are talking about, there may not be enough business for the other two concepts to survive. That's the balance we try to look at. If everybody wants to go to ABC Fastfood and we have 123 and DEF on the other side, no matter what we put in there may not be enough business for them as well.

Customers want variety. Do they want it once a week, once a month or on every trip? It makes it difficult. McDonalds is a good concept. It's a good operator. Their breakfast percentages are over 18% at some locations. 18% of their business is their breakfast menu. If you want a sit-down or fastfood concept next door to them that we want them to concentrate on breakfast, it may not be economically feasible for them. We try to look at what concept compliments the other.

Strnisha: For example, does the amount of revenue as an example from McDonalds and Burger King, the amount of volume that goes through McDonalds is so much greater than Burger King from a revenue standpoint, it shrinks that difference between 8.5 and 14% -- if you follow my thought.

Zomparelli: Chairman Greenwood, Mr. Strnisha, I don't know if McDonalds does better than Burger King. We hear that many of the truckers prefer Burger King over McDonalds. I haven't checked it out but we have heard correct, Fred, that the trucking commercial operators prefer Burger King over McDonalds. If you talk to kids – they want McDonalds. That's why it's nice to have variety. This is not a science. It's a little bit of science and little bit of art. Hardee's is probably not as recognizable in the Cleveland area but if you go further west it is. People do like that concept. In Ohio they know Wendy's - the franchise

started in Columbus. Would that be the same answer in another state.

We went with Wendy's because the current Operator hadn't objected to Wendy's in the past. We really felt we didn't have enough time to evaluate the Wendy's concept because they didn't finish the initial term. It didn't seem that anyone complained to us about a Wendy's – like why don't you take Wendy's out and put in a Hardee's or Burger King or McDonalds.

The complaints at the Wendy's dealt with the operations and waiting in line – not about the concept itself. Between Wendy's, Hardee's and Burger King, I don't think the Commission can lose any one of the three. It's the staff's recommendation (Fred, Dan and myself – we met this morning because we finally got all the percentages in and had one last conversation about it.) We all three individually ranked Wendy's as the best choice. It's not a better concept than Hardee's or Burger King.

Fred has been in this business for a number of years. How many years, Fred?

McFall: Forty.

Greenwood: Fred, you heard what Gino said and how he responded to questions. Is there anything you want to add to what he has already said in terms of your decision-making process or has he already covered it.

McFall: Just a couple of things. When you look at the burger concepts, you look at McDonalds, Burger King & Wendy's and Hardee's. By adding Wendy's we have four of the top burger concepts on the road. Plus, when you bring in a new brand, that brand was there for about 1-1/2 years – you know it works. It works within that concept and as Gino said, it was basically an operational problem. It was well accepted, it's an Ohio brand, it's the #3 burger out there.

Greenwood: All things being equal, that was persuasive to you to get that additional brand on the Turnpike.

McFall: When you introduce a new brand it really adds to the Turnpike. We brought Sbarro's out, brought Pizza. When you bring something new out there, even though you add another McDonalds, it's been there for 15 years. When you bring a brand new brand, the impact that you would have on the sales in most bases would offset the percentages that you would be receiving over a brand that has been out here for 15 years. In the long run, acceptance-wise and sales-wise, the percentage difference is going to be very minimal.

Strnisha: Another question, my comments from a "numbers" kind of guy what you are saying particularly when there is a percentage or two difference if because you have an additional brand, one or two out of 100 stop who might not have stopped, because they really like Wendy's you kind of make up any percentage difference because they stop instead of going into Indiana or PA. I certainly understand and I agree with the Chairman, I get too hung up on the percentages, although we do have to look at it and have reasonable explanations on if we take a proposal that's not the greatest on paper in terms of the economics of it. I certainly understand the logic relative to Subway. I also understand and accept real clearly relative to the other Burger King facilities. Then it kind of gets down to a very close difference it seems between Hardee's and Wendy's – both have worked reasonably well in different ways. Since it's so close and given these explanations, I would defer to the staff's recommendation. That's from sitting here for 20 minutes and getting all this rationale. That's how I kind of break it down. I think it's probably a close call but we aren't micro-managing this. I'm hearing some reasonable explanations. I would go along with this recommendation as well.

Greenwood: George, do you have any questions?

Dixon: No comments. I'm fine. I have all the data I need.

Darwish: I have one question, Mr. Chairman – more technical. What are the Commission’s liabilities towards the other bidders? Can they come back to us? On a construction contract if you don’t go with the lowest, you will be sure that the other one will object.

Amato: Mr. Chairman, Mr. Darwish, our statute specifically addresses the operation of the service facilities and it’s different from the construction contracts. The Commission is to award to the “best” bid so we are relieved from awarding to the lowest responsible bid situation.

Zomparelli: Mr. Chairman. I was thinking if Senator Armbruster was here, what he might say. He probably would say, what are we getting from Burger King in Lorain and we would answer about 9%. Burger King probably bid 12% because they recognize there is a problem having three Burger Kings in a row and why didn’t they offer us 12% at Middle Ridge/Vermilion Valley – which was our busiest service plazas right in the middle.

I think HMS had a very good strategy here coming in with a high bid for Burger King.

Greenwood: Any more questions, would you please call the roll. The question is on the passage of the resolution as previously read under Contract TR-8B (#3).

Roll: Mr. Dixon-yes; Mr. Strnisha-yes; Mr. Darwish-yes; Mr. Greenwood-yes.

The resolution is passed.

Zomparelli: We have the potential of full occupancy at all our new service plazas now for food concessions. We still have two retail spots to work with at Erie Islands/Commodore Perry. That concludes my report.

Greenwood: I believe we have a need to go into executive session.

Darwish: Mr. Chairman, I make a motion that we adjourn this meeting to hold an executive session in order to discuss the Inspector General's investigation. At the end of such executive session, the Commission shall re-convene.

The Chairman asked for a second. Mr. Strnisha seconded the motion. The Chairman asked that roll be called:

Roll: Mr. Darwish- yes; Mr. Strnisha- -yes; Mr. Dixon-yes and Mr. Greenwood-yes. (Time: 1:37 p.m.)

The Chairman then said that we are now going into executive session, and there will be no further business conducted afterwards. At 2:30 p.m. here in this room, the Oversight Committee meets. So we stand adjourned until after the executive session.

The Chairman stated that he'd like the record to reflect that at 2:29 p.m. we concluded our executive session. That concludes our business for today. As I said we will probably not meet in July and we get an announcement out for the August meeting. Any other business for the good of the order? If not, I'll entertain a motion to adjourn this Special Meeting.

Mr. Dixon moved and Mr. Darwish seconds. Please call the roll.

Mr. Dixon-yes; Mr. Darwish -yes; Mr. Strnisha-yes; and Mr. Greenwood-yes. (Time: 2:30 p.m.)

/dsp