

TOWNSHIP OF DERRY

GENERAL AUTHORITY

Thursday, June 19, 2008
600 Clearwater Road, Hershey, Pennsylvania 17033

CALL TO ORDER

The June 19, 2008 Township of Derry General Authority Meeting was called to order at 6:40 p.m. by Chairman, Bruce A. Smith.

PLEDGE OF ALLEGIANCE

All present stood for the Pledge of Allegiance.

ROLL CALL

Board members Present:

Chris Barrett
Kelly Fedeli, Secretary
August (Skip) T. Memmi, Jr., Vice-Chairman
Michael H. W. Pries
Bruce A. Smith, Chairman

Also Present:

Joseph Caraciolo (Foreman, Foreman & Caraciolo) General Authority Solicitor
James N. Negley - Manager/Treasurer/Assistant Secretary
Marie Sirkot, Administrative Assistant
Brenda Van Deursen, Recorder

Public Present: Diana Reed, Diana M. Reed & Associates; Bill Davis, HE&R, David Twaddell, Rhoads & Sinon, LLP

Chairman Smith advised that all public meetings are recorded for the purpose of providing accurate minutes.

VISITOR/PUBLIC COMMENT:

No one came forward.

APPROVAL OF MINUTES:

Chairman Smith called for a motion to approve the Minutes of the January 17, 2008 General Authority minutes. Mr. Pries moved to approve the Minutes as written. Mr. Barrett seconded. Ms. Fedeli abstained from voting due to her absence from the meeting. ***The motion carried 4-0-1.***

LEASE, SUBLEASE OF GIANT CENTER, AND ASSIGNMENT AND ESCROW OF HOTEL TAX

Mr. Caraciolo, Solicitor said this is an issue involving a hotel tax that was passed by the Dauphin County Board of Commissioners. The hotel tax allows for certain money to flow to the ICDA regarding debt payment. Because of the way the Act was drafted, the ICDA is not able to receive the funds. The ICDA leased the Giant Center to the General

Authority and now the General Authority is able to receive the funds. The General Authority was incorporated under the Municipality Authorities Act. With the Giant Center and the way ICDA was incorporated; we will start receiving the hotel tax from Dauphin County.

Mr. David Twaddell, from Rhoads & Sinon, LLP will explain further. He has served as Bond Counsel for the issuance of the debt that was incurred to build the Giant Center. The Giant Center was supported in part by a newly enacted hotel tax of 2%. 70% of the tax was dedicated to fund debt service on bonds to be issued to build a regional sports facility that is part of the financing source for the Giant Center. The Giant Center is owned and operated by the Derry Township Industrial and Commercial Development Authority. It has contractual arrangements with RAMCO and HE&R. The Commonwealth and Dauphin County authorized and imposed an additional hotel tax back in 2002. That tax is being used in the County for other purposes. At the end of last year, an additional hotel tax of 2% was authorized to be available for a variety of purposes including additional funding of a regional sports facility in Derry Township as well as other tourism and tourism infrastructure projects.

Mr. Twaddell reported in the drafting of that statute, the additional 2% is to be made available to a qualified authority defined to be an authority, which was incorporated under the former Municipality Authorities Act of 1945. Unfortunately, that does not include the ICDA even though the intention of the legislature was to move this money to the ICDA for the further financing of the Giant Center, as well as the Intermodal Transportation Center and the Museum. Knowing the Township had incorporated a General Authority under the old 1945 Act at the same time the ICDA was created, the General Authority is poised to meet the requirements of the statute. The resolution before approves two agreements. The first is a new Acknowledgement and Support Agreement. The ICDA has had an agreement with Dauphin County since 2000 when it started the Giant Center. The agreement has been updated to recognize a 5% tax. The community receives two portions: continue to receive 70% of the first 2% tax and now will be receiving 37 ½% of the most recent 2% tax. It is available for the Giant Center and other tourism.

The second part of the updated agreement goes through the process of leasing the Giant Center to this Authority. This Authority now becomes a 1945 Act Authority that leases a regional sports facility, which allows you to be a recipient of this new tax. The lease is made by the ICDA in consideration for this Authority's agreement to cooperate and participate in the overall plan to move the tax money to these projects ultimately. The General Authority assigns to the ICDA your rights to those taxes so that they can be used for those projects and subleases the facility back to the ICDA for operation.

Under the sublease, it generally is a non-cash lease, however, there is a provision that the ICDA does agree it would pay as a rental any costs incurred by the General Authority pursuant to the agreement. There are some transaction costs for putting this into place and some modest cost ongoing while the arrangement remains in place. The ICDA has the availability to pass the cost through the management company, RAMCO for the Giant Center.

The other document approved by the Resolution is the Hotel Tax Receipts Escrow Agreement. The County has cut a single check for the bond trustee (M&T) for the Giant Center Bonds. Dauphin County has asked that we continue to cut just one check. In order to do that, an escrow agreement was created that appointed M&T Bank as escrow agent.

They will then receive the payments from the County on a monthly basis and a portion of will automatically transfer it to their Corporate Trust department, which will continue the process that has been in place. The additional piece of the tax will be held initially by M&T as escrow agent. Under the first agreement, the General Authority has appointed the ICDA as sub lessee. It will be their function to requisition those dollars out.

Mr. Pries noted on page 8 of the Hotel Tax Receipts Escrow Agreement – County Treasurer should be Janis Creason. He asked Mr. Twaddell about the different dates mentioned in the agreement. Mr. Twaddell explained in order not to have a merger of title, the sublease needs to be different by one day's length. Sublease begins the 24th, the escrow agreement begins the 25th, and the other agreement begins today, June 19, 2008. Mr. Pries asked what the administrative costs would be associated with this switchover. Bill Davies said they are still working on the details for the total cost of the transaction. He did say the ICDA and General Authority's funds would not be utilized to finish the transaction.

Mr. Memmi said this was a mistake that should never have happened. It has now cost additional funds and extra time. He said he was confident the General Authority and the ICDA Board understand what is being done, but is not sure the public is going to understand.

Ms. Fedeli asked if the intent is to amend the current law to correct it. Mr. Twaddell said there has been conversation with legislation. It can be fixed, but it's not going to happen quickly. Ms. Fedeli asked if it gets done, would this revert back to the old way. Mr. Barrett added, would it unwind this action? Mr. Twaddell said probably so. It would restore the qualification of the ICDA. Solicitor said it would not happen automatically, it is something we would have to change with paperwork.

Mgr. Negley said this Resolution will be GA2008-01.

Mr. Pries made a motion to approve ***Resolution GA2008-01*** – Lease, Sublease of Giant Center, and Assignment and Escrow of Hotel Tax and was seconded by Mr. Barrett. ***The motion carried, 5-0.***

VISTOR/PUBLIC COMMENT

No one came forward.

ADJOURNMENT

Ms. Fedeli moved to adjourn the meeting at 7:15 p.m. Mr. Barrett seconded. ***The motion carried, 5-0.***

Respectfully submitted by:

James N. Negley
Manager/Treasurer/Assistant Secretary