

**DERRY TOWNSHIP
INDUSTRIAL & COMMERCIAL DEVELOPMENT AUTHORITY
600 CLEARWATER ROAD, HERSHEY, PENNSYLVANIA 17033
March 20, 2008
MEETING MINUTES**

CALL TO ORDER

The March meeting of the Derry Township Industrial & Commercial Development Authority was called to order at 5:30 by J. Scot Chadwick, Chairman.

PLEDGE OF ALLEGIANCE

All present stood for the Pledge of Allegiance.

ROLL CALL

Members Present:

J. Scot Chadwick, Chairman
James Ingalzo
August T. Memmi, Secretary
Todd Pagliarulo, Vice Chairman
Michael H. W. Pries

Also Present:

James N. Negley, Manager/Treasurer/Assistant Secretary
Joseph Caraciolo (Foreman, Foreman & Caraciolo) ICDA Solicitor
Marie Sirkot, Administrative Assistant
Ardith Yahner, Stenographer

Public Present:

Bill Davies, HE&R
Tom Fowlston, PNC Bank
Donna Kreiser, Buchanan, Ingersoll & Rooney
Vince & Janice Lewis, 576 Beech Avenue, Hershey, PA 17033
H. James Rippon, 1325 Wyndham Rd., Hummelstown, PA 17036
Daniel Victor, Patriot News

PUBLIC COMMENT

Mr. H. James Rippon asked if he could speak to the board, and Chairman Chadwick invited him to come forward and have a seat at the table in front of the microphone. Mr. Rippon stated his address as 1325 Wyndham Rd., Hummelstown, PA, 17036 in Derry Township. As background, Mr. Rippon stated that he attended public school in Derry Township for kindergarten and first grade, then St. Joan of Arc for second through eighth

grade, and Hershey High School ninth through twelfth grade; plus one year of Catholic prep school. Mr. Rippon continued, "I played sports, got banged up the first year; my cousin got a broken leg the second game. There are several people sitting up there that I've known for over 30 years. Todd came to my house once and helped when a car was on fire in the garage. I've known Skip for umpteen years and Mike Pries a little bit. The other two gentlemen I don't know. That doesn't mean anything; I don't expect any kind of preferential treatment other than don't kick me out until I'm finished."

Mr. Rippon continued, "Is there a limit on what, I just have some questions, some time line type questions, do I have a limit? I'm not gonna be here for an hour." Chairman Chadwick answered that we've never limited anyone in the past, so as long as we're engaged in people's business, sure.

Mr. Rippon went on; "This concerns the Derry Lodging Limited Partnership which has an agreement with the ICDA to develop the old municipal building, police station, and where you pay taxes. The solicitor doesn't have a name there, but you're Mr. Foreman, right?"

"I'm actually Joseph Caraciolo from Foreman's office", answered Mr. Caraciolo.

"I didn't want to call you Solicitor, but that's what it says there", Mr. Rippon replied and Mr. Caraciolo answered, "That's fine."

Mr. Rippon went on, "The best I can recollect from what I have, and I did get all these documents from one place or another; should I say what I own in town?" Mr. Chadwick answered, "You're welcome to; I don't know that it's necessary."

"Well, I own the Day's Inn in Hershey", Mr. Rippon replied. "I'm not here because I own the Day's Inn in Hershey, I'm here as an appellant from the Derry Township Zoning Hearing Board and I'm one of the four appellants and taking the position that the Derry Township Zoning Hearing Board abused it's discretion which has nothing to do with you guys. Now, here we go – December 30, 2005 there was an agreement between the Township of Derry and the Derry Township ICDA. That's, I guess, when all this land got started, is that correct? Maybe you don't know, but I have it here; it is December 30 of 2005."

"Jim Negley, do you remember about ... you don't have these documents in front of you, but" to which Mr. Negley answered "we weren't prepared for this type of request". Mr. Rippon continued, "Well, they're here and it reads in here no less than a million five. Now January 1, 2006, which is this document, there is a request for proposals all done legally. I just don't understand and maybe someone can explain it to me, that if the agreement between here and the township occurred on December the 30th, how two days later, over New Year's Eve and New Year's Day could the document request for proposals be printed and out there to the public? It was probably done, what, the middle of December, end of November, I don't know, but it certainly wasn't done a day or so prior to."

“Everything was done according to the legal standards that the Patriot News advertised on January 2 and January 9 request for proposals. A handful of people, I guess, knew that the land in question was out for request for proposals or knew it was for sale. I didn’t. I talked to Ken Gall of Hershey Trust who said, “Jim, if you have nothing better to do, go the Township Supervisors meetings and you’ll know everything.” “Maybe there was a better way (it’s water over the dam now), but maybe there was a better way to do it. In Lower Allen Township they’re selling their municipal building and they put a For Sale sign out in front of it. Maybe that would have been a better approach.”

“One, two, three people born and raised in Hershey; well I don’t know about born and raised, but raised in Hershey I’ve known you for over 30 years – I don’t expect anyone to call me, but if it would have been known to the general public, Daniel Victor and Drew Weidman and others from the local newspapers probably would have written an article about it that it was for sale. I do know for a fact from a number of folks that this deal was put together long before 2005 of December, which was done in the best interest of the township. I’m a township person. I want to see my taxes go down – I know they won’t. I like to...hmmmm, he’s trying.”

“So, this board gave Ross Santangelo a letter to him, but it was really for the general public 30 days to come up with a proposal to do something in addition to what Jules Patt came up with. I knew nothing about it, not that I wanted to do anything, but it would have been nice to know about it. But again, you got advice from your Solicitor, you did a request for proposals, how in the world someone who lives in Hollidaysburg two or three hours away knew about it when so many local people didn’t know about it; just comments, questions.”

“Then it was the minutes of your meeting here of April 20, 2006; Mike Pries moved – I don’t know if I should be saying Mike and Skip or Mr. – I know you guys, so what do you prefer, Mr. or Skip and Todd and Mike? The other two are Mr.’s because I don’t know them.” Chairman Chadwick answered, “Whatever works for you.”

“Whatever works for me, OK,” Mr. Rippon replied. “April 20, 2006 Mike moved, seconded by Skip to accept Patt’s deal – he was the only one that submitted anything. That in itself is probably awfully strange that someone else didn’t do something. The way that Hershey Trust is buying up land all over the place I’m surprised they didn’t buy it and put it in their land bank.”

“Ground lease dated 7th day of August 2006. This is one for maybe the Solicitor. This is page 7 and is G, Section 6. I’m going to read this. I think I understand what it means, but I just want to verify what it means.” ““The land shall be zoned to permit as a matter of right and without the need for any variance or special exception the use of the demised premises for the intended use”.” “I don’t know how this board could do that because you don’t have the authority to do that. Now you can help, but the way this thing reads as a matter of right and without the need for any variance; they needed six – five, six, seven

whatever it was, I don't understand how that could have been in this agreement for the ground lease, but it was."

"Then the only other things that I really have and I'm missing one I'm sure; extension of outside delivery dates. There's one that goes to December 10, 2007, one that goes to April 10, 2008 - that's why you're here now, to approve another 90 day extension which I know is going to be approved, which is fine - but there must have been one prior to that I am missing, is that correct? Because I think there have been maybe three extensions so far?"

Mr. Caraciolo stated that there have been three amendments to the contract.

"I'm just missing the first one, I guess", replied Mr. Rippon. "It's probably in here somewhere; I have a huge file and only brought a few of the things with me. That's all I have. Everybody up there is pretty quiet. Someone ask me a question, I'd love to answer a question. Skip, do you have a question?"

Mr. Ingalzo replied that he had a question, and asked Mr. Rippon what was the point of all the information that he just gave to the board.

"That's a good point", Mr. Rippon answered. "The timeline that things just happened over a very short period of time rapidly, but prior to December of 2005, there had to have been - and I know there was - long discussions and negotiations between a particular person and Jules Patt about doing a deal. Why weren't other people - this was before the RFP - why weren't other residents involved in that? Somebody went to Jules Patt and worked out a deal and then this body wanted to make sure that deal went through, if what I read is accurate as far as the variances and special exceptions. I just think that others, not me necessarily, Ross Santangelo and his group, other people in town, there's local realtors in town, I'm not sure what happened with Lower Allen Township that put a sign out in front of their place; maybe an auction would have been the best deal - get your money right then and there. I do have the two appraisals that were done not that far apart. One is October 26, 2005 by RSR and they are certified folks to do appraisals - went to James Negley a million one, and then September 18 there was one done by Robert Jones and that's three five - what a difference between the two and they're both certified folks."

"Why am I here to bring this up? Just to refresh everyone's memory about the time line, how things went so fast and why in the world wasn't this more public so that residents of Derry Township or Jim Nardo, I understand he would have maybe tried to do something; other developers that are more local and not bring someone in - this has nothing to do with insider and outsider - I'll say I'm an insider because I live here - I just think that the way this board did this was unfair to all the other residents of Derry Township. You did your legal obligation there's no doubt about it, but I think it could have been done a little differently and it would have been a little more fair for everybody to do something with that land which now is sitting and will probably sit for a long time before anything ever is developed there. I hate to be the one who will make that happen, but I will. In public

I've told a lot of people I think the best thing is for the group here to negotiate a lower price with Jules Patt and build a limited service hotel. He built the Comfort Inn in Hershey and other hotels so he knows how to do limited service stuff as well as big projects. I have no other comments to make."

Chairman Chadwick advised the Solicitor that he would hold back on any comments that he might make, since it is in the courts at this time before county court Judge Kleinfelter. Solicitor Caraciolo agreed that this is correct and he will make no comments either. He advised Mr. Rippon that there is very little he can say because Mr. Rippon is currently in litigation and there is potential litigation that could stem from that. He pointed out that this meeting, like every other meeting, is open to any public member like Mr. Rippon who wants to come in and make a comment and there was nothing preventing him from attending any former meetings.

Mr. Rippon replied, "I just wanted to come and blow off some steam I guess, maybe, I don't know."

Mr. Chadwick advised Mr. Rippon that even though the board cannot say much, he is delighted that Mr. Rippon came, and he introduced himself. Mr. Rippon asked Mr. Chadwick, "where are you from originally" and Mr. Chadwick replied that he is from the northern tier; Bradford County and moved here in 2001. "You're new here to the area," said Mr. Rippon, and Mr. Chadwick replied that by Mr. Rippon's standards he's very, very new to the area. "I'm 67 years old and I've lived here all my life except for college and the U.S. Air Force," Mr. Rippon said. Chairman Chadwick replied that it is nice to meet Mr. Rippon and he appreciates his input and wishes they could talk more. Mr. Rippon added, "I know you can't comment a whole lot about this because you are the body who's about ready to extend this for another 90 days, but at some point in time it can't go on forever and if one day you do not extend it – I was talking to one of the gallery people back there – I guess if the deal comes to an end and then it's pretty much open to anyone who wants to negotiate with this body as far as 'Let's make a deal', and maybe at that time I might want to make a deal. But I can't say what I want to say now because you can't say maybe what you want to say for the same reason and you know what I'm talking about probably, but the others probably do not. Like I cannot sit here and make an offer right now because there's a contract out there right now."

Mr. Caraciolo advised Mr. Rippon that although there is a contract out there right now, during the public comment period of our general meeting would be an inappropriate time to make an offer to buy or lease a piece of property. If Mr. Rippon has something that he wants to present to the board, they're perfectly willing to schedule him to come in and meet and they'll put him on the agenda just like they put all these other people on the agenda, and they can have a more open conversation.

Mr. Rippon answered, "Not until the deal is over that you have now would I want to sit down and talk to you about that. I appreciate your time; I'm not a basketball fan so I'm not going home to watch the NCAA."

Chairman Chadwick thanked Mr. Rippon for coming. Mr. Rippon answered “Thank you very much and maybe we’ll see you again soon.”

Chairman Chadwick noted that there is another opportunity for public comment, but asked if anyone else had anything to add at this time.

Janice Lewis stepped up to the microphone and gave her address as 576 Beech Avenue, Hershey and stated that she is one of the appellants. She explained that as she is not a lawyer, she doesn’t have a full understanding of everything, but she is a concerned citizen. She realizes that all hands are tied regarding details of the current dealings with Patt, but does this board have the ability to make a decision to leave Patt out and start again? Mr. Caraciolo stated that it is possible, but there are ramifications. Mrs. Lewis then asked if the board can deny the extension that Patt is asking for and Mr. Caraciolo replied that the board could modify any contract that is entered into, but there are ramifications. Mrs. Lewis asked if the gentlemen of the board would stop and think of what is best for this community, not what would be best in everyone’s pocket, but what is best for the community. She thanked the board and sat down.

Chairman Chadwick thanked Mrs. Lewis for her comments and asked if anyone else cared to speak. Seeing no one, he moved on to item five of the agenda.

APPROVAL OF MINUTES

Mr. Pagliarulo moved and Mr. Pries seconded the motion for approval of the minutes of the February 21, 2008 meeting.

Motion carried, 5-0.

2008 MUSEUM FINANCING

Donna Kreiser reported that in May of 2007 the authority approved the issuance of a guaranteed project note in the amount of \$9,000,000 toward the construction of the Hershey Museum. We closed on that financing, the authority issued its note and it was purchased by PNC Bank and the proceeds loaned to the authority to undertake the project. This evening’s resolution would approve the authority’s issuance of its guaranteed project note in the amount of \$6,000,000, again toward the Hershey Museum project. This financing was anticipated in 2007 and was reflected in the bank’s commitment letter to the authority at that time. As in the first transaction, the note would be purchased by the bank, the proceeds loaned to the authority to undertake the project and as in the previous transaction, and the Hershey Foundation guarantees the payment of the note. Tom Fowlston from PNC bank is present if there are any questions. Also, four signature pages have been prepared for execution and Solicitor Caraciolo has reviewed them.

Mr. Memmi asked Bill Davies if this will be enough money to complete the project and Mr. Davies replied that they are right on target with anticipated spending and the project

is moving along quite nicely. Mr. Memmi made a motion to adopt Resolution 2008-01 and Mr. Ingalzo seconded the motion.

Motion to approve Resolution No. 2008-01 carried, 5-0.

UPDATE ON OLD MUNICIPAL BUILDING DEVELOPMENT PROJECT

Mr. Robert Schuster from Buchanan Ingersoll & Rooney representing Derry Lodging Limited Partnership requested an additional extension to the current agreement and stated that Mr. Caraciolo has a copy of the extension.

Mr. Caraciolo confirmed that he had been emailed a copy of the extension, which was entitled Fourth Amendment to the Ground Lease. Under the current contract there is a termination date of March 31 and an outside delivery date of April 10, 2008. They are requesting an extension with a contingency period termination date of July 31, 2008 and an outside delivery date of August 10, 2008, which is a four-month extension.

Mr. Pries asked Mr. Schuster why this extension is for 120 days when the previous three have been for 90 days. Mr. Schuster replied that it is because of the litigation that is taking place and in consideration of the board's time, they believe it will take at least 120 days to get the issue resolved and come back and start the process over. Mr. Pries asked what he meant by "starting the process over" and Mr. Schuster said it is his understanding that the zoning hearing board decision has been appealed and that his client has intervened as an interested party in that they have decided not to further engage in the litigation and have offered a stipulation to be removed from the case so that we can come back to the process and submit to the zoning hearing board again to try and resolve these issues without litigation.

Mr. Pries asked Solicitor Caraciolo when he received the email. Mr. Caraciolo replied that it was received March 19, 2008 and that the language is consistent with the language in previous extensions. In all aspects but the dates, the contract remains the same as drafted. Mr. Pries requested copies of emails to review before the meetings if possible.

Mr. Pries advised Mr. Schuster that he has had ample time to review the project and that it looks like a very viable project. He stated that he lives two blocks away and if there is storm water mitigation to be brought forth, tree line, sidewalks and tree-scapes to slow the traffic patterns, and potentially half a million dollars a year in school taxes brought forth as well as other taxes; if several hundred people will be employed (just a guesstimate) on that site then I'd like to suggest that Derry Limited Lodging proceed and become far more proactive in the community and get that message out there. I'm not hearing any of that being brought forth by the Partnership to date and this project has been out there for several years now. If so many good things can come from this project, please proceed and get that information out there. I'd like to see a public relations campaign put forth by the Derry Limited project. Mr. Memmi agreed with Mr. Pries' comments and moved to accept the request for extension as drafted. Mr. Pagliarulo seconded the motion.

Motion carried, 5-0.

PUBLIC COMMENT

No public comment at this time.

NEW BUSINESS

Mr. Davies advised that HE&R has gone through some refinancing and as a result they have a requirement to follow through on some documents for the Giant Center agreement. The Bank of New York, who is their previous lender, had a Subordination Non-disturbance and Attornment Agreement with the Authority, which essentially says that we recognize that the mortgage is in place. Last month HE&R closed on a new mortgage led by M&T Bank and they are asking for a similar document to be executed by the Authority, which recognizes the fact that this ground is subject to a mortgage. That document was sent in draft form to Jim Negley and the Solicitor. Mr. Davies apologized for the short turn around time, but the document needs to be executed by April 22nd. All this document does is take the existing arrangement and replaces the mortgage with another bank on the same terms.

Mr. Caraciolo advised that the board needs to make a motion to accept the Subordination Non-disturbance and Attornment Agreement; however this will have to be subject to his full review of the document. Initially, Mr. Caraciolo saw some minor mistakes in the document, one of them being the address, but he will have them taken care of. He suggested the board move to accept the Subordination Non-disturbance and Attornment Agreement subject to Solicitor review and modification. Mr. Pagliarulo so moved and Mr. Pries seconded the motion.

Motion carried, 5-0.

ADJOURNMENT

Chairman Chadwick asked for a motion to adjourn and Mr. Pagliarulo so moved. Chairman Chadwick adjourned the meeting at 6:17 p.m.

Motion carried, 5-0.

Approved:

James N. Negley
Manager/Treasurer/Assistant Secretary