

**DERRY TOWNSHIP
INDUSTRIAL & COMMERCIAL DEVELOPMENT AUTHORITY
600 CLEARWATER ROAD, HERSHEY, PENNSYLVANIA 17033
July 19, 2007
MEETING MINUTES**

CALL TO ORDER

Chairman Scot Chadwick called the July meeting of the Derry Township Industrial & Commercial Development Authority to order at 5:30 p.m.

PLEDGE OF ALLEGIANCE

All present stood for the Pledge of Allegiance.

ROLL CALL

Members Present:

J. Scot Chadwick, Chairman
August T. Memmi, Secretary
Todd Pagliarulo, Vice Chairman
Michael H. W. Pries
Richard E. Lenker, Jr.

Also Present:

Jeff Foreman (Foreman & Foreman, P.C.)
James N. Negley, Manager/Treasurer/Asst. Secretary
Marie Sirkot, Administrative Assistant
Ardith Yahner, Stenographer

Public Present:

Dave Boyer, Buchart Horn, Inc.
Bill Davies, H.E. & R.
Dave Lavery, H.E. & R.
Linda Pagliarulo
Diana Reed, DRA
Lou Verdelli, R.B.C.
Bruce Yerger, Buchart Horn, Inc. /Basco Associates

APPROVAL OF MINUTES

Mr. Memmi moved and Mr. Lenker seconded the approval of the minutes of the June 21, 2007 meeting.

Motion carried, 4-0, with Mr. Pagliarulo abstaining.

GIANT CENTER UPDATE

Bill Davies reported on the consideration of terminating the fixed rate SWAPS financing on the Giant Center. The fixed rate that is in place now is for a term of 2011 to 2030 and is an on market SWAP with a value of zero. With the increase in interest rates, there is an opportunity to terminate that SWAP and go to a variable rate with a possibility to collect \$250,000. There is, however, some risk involved such as variable rate debt if the SWAP is terminated after 2011. Under the deal with Regional Arena Management the Series B is actually supported by the operations, so it really faces more risk on the operation of the GIANT Center. Any excess funds go to the Regional Arena Management, so it's really a decision in future cash flows of Regional Arena Management.

We think that it's an appropriate risk to take because that money can be put aside for future capital gains fulfillment so that if anything like a chiller goes down we'll know where the funds are coming from. It's a good step in dealing with capital gains at least over the next few years, before the hotel tax exceeds the amount of the pilot payment or the real estate taxes.

Mr. Davies added that they are recommending moving forward and talking through the process of approval for that transaction and need the board's direction for a strike price so that as long as it's above that they could execute that transaction which would terminate the SWAP and turn the debt back to a variable rate starting in 2011. His suggestion is to have a strike price somewhere around 575,000, which gives them some flexibility.

Mr. Memmi asked if it was their intent to "ride the curve" and set a floor of perhaps 575,000 but keep reviewing it; could we wait to get to \$800,000 or above. Also, how should the board, if they decide to do this, structure the resolution to give them that latitude? Mr. Davies replied that the team will watch the market and get to a high point before reacting and that 575,000 is a reasonable floor (right now it's at 650). Mr. Memmi asked if the team that

would be working with H.E.&R. would be the same as before (PNC, etc.) so that they are familiar with our transactions. Also, if we get the money, will it be put into a fund that will return an interest investment to be used annually for capital improvement or in a line item so that it can be drawn down at any time? Mr. Davies replied that his suggestion would be to lock it in, but only for 6 months at a time; it wouldn't be appropriate to use for little things. Mr. Memmi agreed that it should be put into a vehicle that provides interest to save for a "big ticket item" in the future.

Mr. Pries arrived at 5:45 p.m.

Mr. Pagliarulo suggested looking at this fall between RAM and ICDA for an update meeting with H.E.&R. since they are under new leadership. Mr. Davies agreed. Mr. Davies continued that they are currently looking at the Series A side, which is more complex.

Mr. Memmi proposed a motion allowing H.E.&R. the ability to enact a SWAP on the Series B bonds with a floor of \$575,000 and the cap to be at the maximum that they feel is appropriate at the time to enact the SWAP transaction. Mr. Pagliarulo seconded the motion. Mr. Lenker will recuse himself on the advice of the solicitor.

Mr. Chadwick asked for an explanation of what risk is involved in moving from fixed to variable rate and what would be a "worst case scenario". Mr. Davies explained that it is based on 30-day libor, which is currently at 5.4 or 5.5, and 30-day libor over history has been at its maximum somewhere around 6.5. Until 2011 it's still fixed and we anticipate that sometime between now and 2011 we will enter into some type of transaction that will fix the rate.

Motion carried, 4-0, with one abstention.

Mr. Verdelli added that a memo would be provided with all the final details.

HERSHEY MUSEUM PROJECT UPDATE

Mr. Davies reported that the Hershey Museum project is progressing quite well. The foundation installation is being coordinated with Whiting Turner and several meetings have been held to deal with issues such as depth of rock. The design called for utilizing a foundation, which required 6,000 lbs.

per square inch, and due to the depth of the rock some of the foundation has been redone and spread footings have been created.

A new debt agreement has been entered into with PNC so that we'll be able to use that funding in coordination with the authority and enacting the installment sales agreement that was put in place so that the foundation itself is constructing the new museum and the installment sales agreement is allowing the funding to go from the authority down to the foundation to pay the construction bills.

Mr. Memmi added that based on the fact that the RACP ceiling was not increased, we have a letter from DCED that says this project was approved for funding under the RACP program. Without the money being there, are we anticipating any problems with that five million Bill? Mr. Davies answered that he has no details except that we received the contract with the special conditions in April and all levels of government have signed off on it. He explained that he doesn't understand all the inner workings, he has had a conversation with Todd about this issue, but we do have a signed contract and the special conditions are the final thing to be put in place; he will meet with Mr. Foreman to coordinate a few things to finish before we get the funding going.

Todd explained that he has been dealing with Representative Payne who said that as long as we have the commitment letter we're in good shape – and we are past the commitment letter – we have a contract.

DEVELOPMENT OF OLD MUNICIPAL CAMPUS PROJECT

Mr. Foreman reported that in respect to the amendment of the second ground lease with Derry Lodging, it was decided at the last board meeting that we would extend the contract and enter into certain other agreements if Derry Lodging would take over the liability for all of the environmental conditions. Up to this point they had identified a series of environmental conditions that were concerns. Mr. Foreman advised the board that he has a copy of the contract before him, which has been agreed to by Derry Lodging and addresses this issue, but does not go as far as the point endorsed by the board at the last meeting. Therefore, there will need to be a policy decision by the board tonight.

Derry Lodging has agreed to acknowledge all of the environmental conditions that we/they are aware of, to take responsibility for all required remediation and any work to be done with regard to environmental conditions, and ongoing liability for these known conditions and any that are created from here on out. The liability that would be left for the ICDA would be for unknown conditions that may be discovered in the future. This is not an unusual position, but it is different from the position endorsed by the board at the last meeting, so this is the decision for the board to make tonight.

Mr. Chadwick asked whether “unknown” refers to things completely unknown and unrelated to anything that we suspect now, or items stemming from things that we know now but just haven’t found. Mr. Foreman replied that in these situations it has been his experience that as you get further away from the transfer of the property it gets harder and harder to determine in which category things fall. For example, if there is an underground tank and in the remediation process some remaining chemicals in the tank were to spill and create an environmental hazard that would clearly be the responsibility of Derry Lodging. However, if 10 years from now there was ground contamination found, the previous owner would say that it occurred after the transfer and the new owner might say it occurred before the transfer, therefore resulting in litigation, etc. and we might be held responsible. Obviously, the best result is if Derry Lodging takes all environmental liability, but if it adds any comfort, they have just completed an environmental assessment which the board has, and every condition that was discovered is listed and cataloged in that assessment and all would be considered “known” conditions.

Mr. Pagliarulo stated that according to DEP, we cannot abdicate our responsibility as the original land owners, even if we arrive at an agreement we are still responsible for anything within reason to mitigate if a problem comes up is that correct? Mr. Foreman answered that for these known conditions, Derry Lodging is taking responsibility and they are indemnifying us, so once the land is transferred, they would be responsible. If they were to go bankrupt, the DEP does have the authority to go after a previous owner. Mr. Pagliarulo asked Mr. Foreman (since he has handled other land dealings) what would be a reasonable and prudent way to handle this. Mr. Foreman answered that although we wanted Derry Lodging to accept all responsibility, this agreement is not unusual or unreasonable.

Mr. Memmi asked Mr. Foreman whether the audit was a Phase I or a Phase II and Mr. Foreman believes it was Phase I. Mr. Memmi suggested asking that a Phase II audit be completed and that Derry Lodging assumes responsibility for anything found on the Phase II audit and the township would assume responsibility for anything that is unknown after that. Since a Phase II audit is more detailed, most financial institutions will require a Phase II anyway before they will do any financing.

Mr. Pries asked what the difference is between a Phase I and Phase II audit. Mr. Memmi said that Phase II is more detailed and they actually will do soil testing and asbestos testing, etc. so it is a more intense evaluation of the property. Mr. Chadwick agreed that we would be less likely to have a dispute in the future and Mr. Lenker added that it would help identify parameters of the property. He agreed that a Phase II inspection should be done.

Mr. Foreman brought to the board's attention that they would have to extend the time allowed for Derry Lodging to have the additional testing completed and give them discretion at that point to decide whether to proceed or not. Mr. Pagliarulo agreed and added that it's best to handle all the concerns possible at this point in time to avoid any surprises at the end. Mr. Foreman advised that he would contact their lawyer tomorrow morning. He will need a motion from the ICDA to enter into an agreement with Derry Lodging to extend the time period from November 30 to December 31; provided that they agree to (at their expense) complete an additional Phase II examination and take responsibility for everything known at that point. Motion made by Mr. Pries and seconded by Mr. Lenker.

Motion carried, 5-0.

INTERMODAL TRANSPORTATION FACILITY PROJECT

Mr. Boyer asked the board to refer to Summary Report #11 and stated that construction progress is 75% complete by time and 80% by cost. Progress is continuing favorably. The traffic signal at Linden Road is in permanent operation now and the parking lot and bus station precast is in and complete. Contractors are working on the roofing for the bus station, the pedestrian bridge and the shelters over the stairwells in Phase I and Phase III. Mechanical, electrical and plumbing rough-ins are continuing at this point and the paving overlay on N. First Street and Linden Road was being done

today. Completion has been extended by a few days, but time may be made up as things go along.

Mr. Memmi advised that he was at the jobsite Saturday and in the stairwell next to the elevator in Phase I, there is a piece of steel hanging out over the stairs which may fall – could this be looked at? Also, are there any issues that you see at this time with construction of the bridge and Park Avenue improvements? Mr. Lavery answered that he has new drawings from Buchart Horn and the biggest change is that trolley traffic will now come from Chocolate World to the bus station.

Mr. Lenker commented that the traffic patterns during the paving for exiting from the existing structure and/or the access back to the post office and the laundry were very disorganized. He hopes that these issues have been dealt with so that when we are open for business in that area it provides direction and signage for drivers. Mr. Lavery answered that he is aware of it and can see it from his window. People are being reminded everyday of this and he will stay on top of it.

Mr. Boyer advised that RACP funding grant funds are being drawn down to pay for the construction costs and Diana M. Reed & Associates has received \$643,000 to date and there is another \$1.8 million allocated for the next draws. She has requisition 2 and 3 submitted and pending with the RACP office and requisition 4 is about to be submitted. We are drawing those funds down and beginning to use those. The people who monitor this are very satisfied with the records and documentation that is being kept. The original FTA grant of \$3.25 million is continuing to be requisitioned for funds to pay the contractors in both the intermodal and the parking related aspects. FTA advised us today that pending grant application, they are willing to move forward on covering supplemental funding of \$1.25 million of supplemental funds that were earmarked over time. The issue had been flexing of funds that were originally earmarked to go the Federal Highway Administration rather than Federal Transit, and working with the state Dept. of Transportation committee that Skip sits on, those funds have now been transferred (flexed, as they refer to it). Working with FTA we should soon successfully get that supplemental agreement authorized because the funds were in separate budget years and in separate accounts and they would not allow us to just amend the original grant application. We are still working very closely with HE&R in their continual review and oversight of billings and payments to contractors.

NEW MUNICIPAL BUILDING PROJECT CLOSEOUT

Mr. Boyer reported that contractors have made suitable progress completing punch list items and doing warranty work at this time. Things have really advanced since they were put on notice that they had seven days to show us progress or the work would be contracted out. Testing of the HVAC system is continuing and Skip has been our contact person to convey our “attitude” about our current status and work to make this a suitable home for staff.

Mr. Memmi agreed that we are slowly but surely getting there, except for the meeting with the provider of the roofing material and the guarantee. Mr. Boyer will follow up tomorrow morning to see when this meeting will happen.

Chairman Chadwick asked if we were under budget and Mr. Boyer said yes, although there are some change orders to present for the board’s consideration tonight. Mr. Boyer reported that Mr. Negley met with them and supports moving forward to have these approved. C.H. &E. change orders total \$36,430.70, Tomko: \$3,172.00, and Pagoda: \$5,978.76, totaling \$45,581.46. Quandel estimates are totaled in as well. If these change orders are approved, there will be \$68,000 remaining contingency and a \$376,000 balance remaining.

Mr. Pagliarulo moved to approve the change orders with Mr. Negley’s OK. Mr. Negley gave his approval. Mr. Lenker seconded the motion.

Motion carried, 5-0.

GOVERNMENT RELATIONS/TRANSPORTATION GRANTS

Mr. Schuster reported that there has been a reduction in the level of earmarks and that the House and Senate did not pass the bills for 1.2 million for Park Boulevard and the bill for the transit study. We did, however, have success in 1998 and 2004. The technology corrections bill may reallocate money to our project. (Wanted \$250,000 and got \$100,000 - \$150,000). Mr. Holden’s office is not fighting a battle at this time and if we push the senate may become engaged. It is unofficially pre-conferred and waiting for process; could be before August 3rd recess, but needs to be by the end of

September. He will engage the FTA; they have the ability to put the money elsewhere.

Mr. Chadwick asked if they could say they want it all and Mr. Shuster replied no. There is a possibility that the whole project could not proceed. Mr. Pagliarulo said since the state doesn't support Corridor 1, could we get any of that \$11,000,000? Mr. Memmi mentioned the Lancaster parking facility with the convention center and is it worthwhile to continue to pursue this? Mr. Shuster replied that the highway bill will expire October 1, 2009 and they will debate next year how those monies will be allocated; we are definitely on the list!

Also, a letter was sent to General Zimmerman at Hershey Trust so that we aren't chasing different priorities.

DIANA M. REED & ASSOCIATES

Ms. Reed reported that the New Year's Celebration account has \$17,000 in it, but that some money has been moved between accounts and \$10,000 is owed back to the general funds. Mr. Pries thanked Ms. Reed for making that clear. He also stated that Matt Davies, treasurer of the New Year's Eve Committee, wasn't sure where the money came from.

Mr. Pries recommended giving \$10,000 each year to the New Year's celebration fund from the ICDA so that we are the platinum sponsor. Mr. Lenker moved and Mr. Pagliarulo seconded the motion to forgive \$10,000 in repayment for this year's New Year's Eve Celebration.

Motion carried, 5-0.

Ms. Reed then reported that the General Fund SWAP money is being reduced for legal fees and consulting fees by about \$18,000 per month. There is now \$148,000.

Mr. Pries thanked Ms. Reed and said that he will advise Matt Davies to be in touch with her each month and see that she gets a copy of the bank statement.

HERSHEY AREA PLAYHOUSE

Mr. Chadwick advised that Susan Cort Black has requested money from the ICDA for Hershey Area Playhouse this year. Mr. Pagliarulo asked if we should donate and how much, and what did we give last year? He suggested \$5,000, but that this cannot be an every year occurrence. Chairman Chadwick agreed that a donation should be given. Mr. Pagliarulo moved to give \$5,000 to the Hershey Area Playhouse and Mr. Lenker seconded the motion, but believes the board needs a more formal policy about who to give money to, etc. It was agreed this could be discussed in executive session to establish a policy on the parameters, qualifications for solicitation of donors.

Motion carried, 5-0, to give \$5,000 to Hershey Area Playhouse.

PUBLIC COMMENT

No public comment.

MODERN TRANSIT PARTNERSHIP – CORRIDOR 2

Mr. Memmi reported that he attended a meeting regarding Corridor 2 and that they have hired Gannett Fleming to do a feasibility study. Gannett Fleming is scheduled to complete the Corridor 2 study by January of 2008. Since Corridor 1 may not come to fruition, should the board write a letter to Modern Transit Partnership asking them to put off moving forward with the study until we know what's going on, and the money for Corridor 1 is here. Mr. Lenker and Chairman Chadwick both agreed. Mr. Pagliarulo asked whether Corridor 1 is dead and buried and until the fate of Corridor 1 is determined Corridor 2 should be put on hold. Mr. Memmi replied that Gannett has already begun the study. Mr. Pagliarulo expressed his concern the letter may be misinterpreted and suggested reaching out to John Ward before any letter is sent. Chairman Chadwick asked Mr. Foreman if the Vice Chairman could sign the letter if Mr. Chadwick is not here and Mr. Foreman said yes.

Mr. Memmi moved to write the letter and Mr. Pagliarulo seconded the motion.

Motion carried, 5-0.

ADJOURNMENT

Motion to adjourn unanimously **carried 5-0.**

Meeting adjourned by Chairman Chadwick at 7:15 p.m.

Approved:

James N. Negley
Manager/Treasurer/Assistant Secretary

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