

# TOWNSHIP OF DERRY

## INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY

Thursday, June 19, 2008

600 Clearwater Road, Hershey, Pennsylvania 17033

### **CALL TO ORDER**

The June 19, 2008 Township of Derry Industrial and Commercial Development Authority (ICDA) Meeting was called to order at 5:30 p.m. by Chairman, J. Scot Chadwick.

### **PLEDGE OF ALLEGIANCE**

All present stood for the Pledge of Allegiance.

### **ROLL CALL**

#### ***Board Members Present:***

J. Scot Chadwick, Chairman  
James Ingalzo  
August (Skip) T. Memmi, Jr., Secretary  
Todd Pagliarulo, Vice-Chairman  
Michael H. W. Pries

#### ***Also Present:***

Joseph Caraciolo (Foreman, Foreman & Caraciolo) ICDA 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 Chadwick 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 Chadwick made a motion to approve the Minutes of the May 15, 2008 Industrial and Commercial Development Authority Meeting as written. Mr. Pagliarulo moved and Mr. Memmi seconded the motion to approve the Minutes. ***The motion carried 5-0.***

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

Mr. Caraciolo, Solicitor, explained when Dauphin County enacted a hotel tax, the new 2% was going to come to ICDA for debt service and payment on the Giant Center.

After reviewing the language of the statute, it is possible the ICDA may not be entitled to the money. In order to rectify a possible problem, the ICDA will need to lease the Giant Center to the General Authority. The General Authority will then sublease the Giant Center back to the ICDA. The hotel tax funds will then flow to the General Authority who will name the ICDA as the agent on all debt service payments regarding the Giant Center and other items. In summary, the ICDA will be passing through the General Authority to put the funds back to the ICDA where we believe the intentional legislature has always been. Mr. Caraciolo said he has a resolution that was drafted by Mr. Twaddell. He asked Mr. Twaddell to address the Board.

David O. Twaddell, Attorney for Rhoads & Sinon LLP – Mr. Twaddell serves as Bond Counsel on the financing of the Giant Center financing. He distributed copies of a 1) Resolution; 2) an Acknowledgement, Support Lease, Sublease, and Assignment Agreement; and 3) a Hotel Tax Receipts Escrow Agreement. He explained Dauphin County had imposed a hotel tax of which 70% of that tax was dedicated by the Commonwealth and the County to fund service on a regional sports facility, which is now the Giant Center. In order to implement that, the Authority entered into a multi-party agreement with Dauphin County and the Dauphin County Controller and Treasurer's office. Mr. Twaddell said pursuant to the agreement, the County Treasurer's Office agreed it would collect and calculate the hotel tax monthly and make the allocations of the tax to the various purposes to which it was levied including the payment of debt service on the Giant Center bonds. The Controller agreed to remit the payment by the 25<sup>th</sup> of each month. The trustee for the bond issue is M&T Bank who actually receives that money in its capacity as trustee under the 2000 Bond Indenture that was secured by the hotel taxes.

Mr. Twaddell said currently the County has levied an additional 2% hotel tax making the total a 5% hotel occupancy tax. Of that additional 2%, they have scheduled additional funding to the ICDA to fund projects the ICDA is undertaking which fulfill the requirements of the law. This includes the Giant Center and projects such as the Intermodal and the Museum. He said there needs to be a new agreement with the County to implement the sharing of the tax revenue to ensure the payments are coming in support of the Giant Center. This new agreement is the same as the original agreement with the addition of several provisions to include the new tax and the designation of an authority not only incorporated under the Municipality Authority Act of 1945, but also one which either owns or leases a regional sport facility.

Mr. Twaddell said while there is no lease rental due under the lease, there is lease rental due under the sublease, which is where the General Authority will sublease the facility back to the ICDA. The ICDA will agree to provide for payment of any costs, fees, or expenses that the General Authority incurs pursuant to this agreement. Mr. Twaddell has spoken to Mr. Davies from RAMCO who assured him of ICDA's management agreement with RAMCO, which provides a mechanism to use facility revenues to cover those costs. He mentioned the County has asked that just one check be cut. This will be part of the second agreement, Hotel Tax Receipts Escrow Agreement. Under this document it appoints M&T Bank as escrow agent. Mr. Twaddell said if the Board approves these two agreements in present form, they can be completed so the next payment can be applied the 25<sup>th</sup> of the month when it is due.

Mr. Pries noted on page 8 of the Hotel Tax Receipts Escrow Agreement – County

Treasurer should be Janis Creason. He asked Mr. Twaddle about the different dates mentioned in the agreement. Mr. Twaddle explained in order not to have a merger of title, the sublease needs to be different by one day's length. Sublease begins the 24<sup>th</sup>, the escrow agreement begins the 25<sup>th</sup>, 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 mentioned in the original agreement with RAMCO and ICDA that all costs are to be out of either the funds of the Hotel tax or through RAMCO directly. He asked if that will also cover the costs of the solicitor to both the ICDA and General Authority and any staff costs that might have been incurred. Mr. Davies said RAMCO would cover the costs.

Chairman Chadwick is confident with conversations he has had with legislative staff and with documents associated with the legislation. They are consistent with the Legislative intent. Mr. Twaddell said they looked at the history of the legislative notes, but went through this more extensive search to feel thoroughly grounded. In fact, Counsel to the banks has indicated they do expect to see validity opinions issued. Mr. Davies said he was in agreement with Mr. Twaddell's remarks. He is very confident with all the expertise they have used. Solicitor Caraciolo said this really was the only way to resolve this situation.

Mr. Memmi wanted to make sure the County Solicitors were kept abreast with this. Solicitor Caraciolo said they have been kept informed of what has been happening and are well aware of the agreement and potential resolution. The County plans to put this on their next agenda.

Mr. Pries asked if there are going to be additional costs to this project from M&T. Mr. Davies said there would be approximate costs of \$1,000 per account per year. That annual cost incurred by the General Authority will be reimbursed from the ICDA. The ICDA passes those costs off through RAMCO.

Mgr. Negley said the Resolution Number will be 2008-02.

Vice-Chairman Pagliarulo made a motion to approve ***Resolution No. 2008-02*** Acknowledgement, Support, Lease, Sublease, and Assignment and Hotel Tax Receipts for Escrow Agreement. Mr. Ingalzo seconded the motion. ***The motion carried, 5-0.***

Mr. Memmi expressed his frustration that we never should have been put in this situation. He said that monies that could go to deserving projects have to be paid to banks to establish separate accounts. He said it is frustrating given the number of people that reviewed the legislation before it was adopted, and missed this.

### **INTERMODAL PROJECT OUTSTANDING INVOICES**

Chairman Chadwick referred to the e-mail from Bruce Yerger regarding two outstanding invoices from Buchart Horn. He said he and Mr. Memmi met with Mr. Yerger and as a result of that meeting, they received this e-mail.

Bill Davies, HE&R – Mr. Davies said Buchart Horn did not pick up the PPL ductbank. They met with Buchart Horn to identify the premium cost of approximately

\$63,000 incurred because the ductbank was not identified in time. HE&R has been working with Buchart Horn and are recommending to the ICDA that the premium cost associated with solely the ductbank issue is charged back to the design contractor. He mentioned there are several outstanding items that are still taking place and recommends withholding those funds until Buchart Horn fulfills their obligations. The estimated costs are approximately \$40,000. He said they will have further discussions with Buchart Horn to confirm the fact that the original contracts incorporated those steps.

Mr. Memmi questioned that before the \$63,000 would go to litigation, would it be in our best interest to have some sort of discussion on how we may be able to negotiate that number. Mr. Davies recommends working directly with Buchart Horn and let them know the final conclusion is holding back the \$63,000 and it will not be negotiable. Mr. Pagliarulo believes Buchart Horn is getting off very easy with that amount. He will be upset if they contest that because the ductbank has caused a lot of pain and suffering. Solicitor Caraciolo said if it proceeds to litigation, there are multiple parties involved who would want to see a resolution to this rather than it going to litigation. He would like to draft a response to Mr. Yerger's e-mail, circulate it to the Board, and ultimately send it to Mr. Yerger. Chairman Chadwick told the Solicitor to proceed.

Mr. Memmi stated as part of the FTA grant, monitoring of MBE has to continue until the grant is totally paid to us, which is another 2-3 years. Mr. Memmi expressed his concern with filing the appropriate paperwork before the July deadline so as not to jeopardize our dollars.

Mr. Davies said what was identified in Mr. Yerger's e-mail was the fact that Clark Associates were paid a fee for that service. Mr. Yerger's recommendation in the e-mail was actually to transfer that responsibility back to the Authority. Mr. Davies said he would like to have further discussions regarding this because he doesn't know why the Authority would want to take on that responsibility when they have already paid for the service. He said he did not know enough of the details, but his suggestion would be to incorporate that into the future responsibilities of Buchart Horn to fulfill those obligations since Clark Associates is a subcontractor of Buchart Horn.

Mr. Memmi said he didn't disagree, but his concern is that we file the appropriate paperwork relevant to that. Mr. Memmi thought the deadline to file the documents was in July. Mr. Davies said he has stayed out of this. Mr. Memmi said as our agent, it probably behooves us to make sure that the deadline is met. You need to have that discussion with Boyer or whomever you have to have it with, but we don't want to jeopardize our dollars because we didn't file a two-page document. Mr. Memmi said, based on Mr. Yerger's e-mail, we need to make sure that they are going to file this year, and we will deal with the following years.

#### **VISTOR/PUBLIC COMMENT**

No one came forward.

Vice-Chairman Pagliarulo asked Marie how the website was coming along. She said she will meet with Mike Macchioni on July 3<sup>rd</sup> for training on the website. Hopefully by the end of July, it should be up and running.

Mr. Pries stated they have been in the new Township Building approximately 14 months. In discussion with Buchart Horn, everything was to be fully operational by April 30<sup>th</sup>. We are now mid-June, and we should know the status of the outstanding items. He said they owe the ICDA \$172,000 in errors and omissions for this building.

Mgr. Negley said the amount of design omissions amount to \$172,000 owed to the Township through the ICDA. There are a number of outstanding issues... some roof leaks, maintenance, but the most important concern is the generators. The generators have been misplaced. He explained when they are activated, the diesel fumes flow into the airtake. The building is uninhabitable when the generators are on. Buchart Horn is supposed to be working on some type of filtering system. He has conversed with the Solicitor and is ready to contact Buchart Horn with that number, but wanted to make sure the generators are satisfactory first. Mgr. Negley said he was to have a response back from Mr. Boyer last week on the generators, but has not received it yet.

Mr. Memmi suggested Mgr. Negley set up a meeting with the contractors to discuss the problems with the building. Chairman Chadwick requested Mr. Memmi and Mgr. Negley start the process.

Mr. Pries asked if there are any projects being planned for the future. He said it has been some time since the ICDA has had any new projects. After discussion, Chairman Chadwick said it would be placed on next month's agenda to discuss new items and work on a process in an organized manner.

Mr. Memmi suggested setting up a meeting with Buchart Horn and the contractors that are still out there, since we are losing Dave Boyer. We need to get the job done now. It has been a year-and-a-half. The time is past due we get this finalized and closed out. We need to be proactive now. It was decided that Mr. Memmi and Mr. Negley get started on that.

#### **ADJOURNMENT**

Mr. Memmi moved to adjourn the meeting at 6:30 p.m. Vice-Chairman Pagliarulo seconded. ***The motion carried, 5-0.***

Respectfully submitted by:

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James N. Negley  
Manager/Treasurer/Assistant Secretary