

**TOWNSHIP OF DERRY**  
**INDUSTRIAL AND COMMERCIAL DEVELOPMENT AUTHORITY**

**Thursday, July 17, 2008**  
600 Clearwater Road, Hershey, Pennsylvania 17033

**CALL TO ORDER**

The July 17, 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:***

James N. Negley, Manager/Treasurer/Assistant Secretary  
Marie Sirkot, Administrative Assistant

***Public Present:***

Diana Reed, Diana M. Reed & Associates  
Bill Davies, HE&R  
Michael Killion, Buchanan, Ingersoll & Rooney  
Drew Weidman, The Sun  
Jim Rippon  
Charleston Zimmerman  
Ray Manari

Chairman Chadwick advised all those present that it is the policy of the Authority to tape all meetings for the purpose of providing accurate minutes.

**RESIGNATION OF FOREMAN, FOREMAN AND CARACIOLO, P.C.**

Chairman Chadwick announced that the ICDA has received the resignation of the solicitor's law firm, Foreman, Foreman & Caraciolo, effective immediately. Unfortunately, this evening, the ICDA is without the benefit of a solicitor. Chairman Chadwick directed, ICDA Manager James Negley, to make an immediate search to solicit interest from other highly qualified firms who might be interested, at the earliest possible date because there are a number of time sensitive matters before us. Please report back when you have worthy candidates and a meeting will be scheduled as necessary, to act on that.

Mr. Ingalzo made a motion to accept the resignation of Foreman, Foreman & Caraciolo, effective immediately. Vice Chairman Pagliarulo seconded the motion. *The Motion carried, 5-0.*

### **VISITOR/PUBLIC COMMENT**

Mr. Jim Rippon of 1325 Wyndham Road, Hummelstown came forward. Mr. Rippon stated that he had a question or two. Why is the ICDA considering an extension, almost two years after the lease was executed, when what is proposed grossly exceeds what is required by the zoning ordinance? It is so completely out of scale with what surrounds it in the neighborhood. Think about an answer when you consider the request to grant another extension. If you do not grant the relief of extending it, it would be your job to redevelop the property as quickly as possible. Mr. Rippon made it clear that he does not want to develop anything. He is out of that business. The Patt Organization should comply and build what is allowed there. Mr. Rippon owns the Days Inn in Hershey, and is not against this hotel, but is against the process. He stated that he complied with all the requests of the Zoning Hearing board when he built his hotel. For the Patt Organization to get this kind of preferential treatment over everyone else in this Township, he thinks is really not fair. Excluding Herco, Hershey Company and Hersha, Mr. Rippon thinks he may be one of the top few largest taxpayers in Derry Township. He wants them to comply with the zoning laws and not circumvent them by other ways. This project is just too big, has too many variances, and too many special exceptions were approved.

Mr. Ray Manari of Governor Road, Hershey came forward. Mr. Manari was born, raised and has lived in Hershey all his life. He inquired about the ground lease of August 2006, the 60-year lease of the ground. Are there going to be any property taxes paid by the hotel? The rent for the hotel for the first 15 years is \$100,000 a year. For the remaining 45 years, \$175,000. Is this indexed? 50 years from now, \$100,000 is not going to be a lot of money. Mr. Negley informed Mr. Manari that the hotel will pay taxes and it was structured with money up-front and \$100,000 for 5 years, then a gap for 15 years, and 2% of gross receipts of the hotel. It will be taxable.

Mr. Manari has no objection to another hotel in Hershey. The Township could use the money. He explained that he was on the Zoning Hearing board for four years, and the board denied people who wanted to expand their patios just 3 feet. He feels that Pandora's box has been opened, and would like to know how the board is going to say that - now everyone has to meet these ordinances. He explained that he has never seen anything like this.

### **APPROVAL OF MEETING MINUTES**

Chairman Chadwick called for a motion to approve the Minutes of the June 19, 2008 Industrial and Commercial Development Authority Meeting as written. Mr. Pries made a motion and Mr. Memmi seconded the motion to approve the Minutes. *The Motion carried, 5-0.*

### **UPDATE ON "OLD" MUNICIPAL BUILDING DEVELOPMENT PROJECT**

Mr. Michael Killion of Buchanan Ingersoll & Rooney came forward on behalf of the Patt Organization and to explain that they are looking to get approval to extend the ground lease and answer any questions the board members may have. Chairman Chadwick advised Mr. Killion that the board is without a solicitor this evening and asked how long they are requesting the extension to be. Mr. Killion advised they are requesting 120 days, and they are expecting to resolve litigation in this time. They are in a holding pattern pending the result of the litigation. After some discussion, everyone agreed that the current extension expires July 31, 2008.

Mr. Pries inquired if Derry Limited Lodging is withdrawing from the appeal and would be re-submitting to the Zoning Hearing Board. He explained he heard more than a rumor that the Patt Organization and the restaurant/bar Shakey's were making a deal. Do you know if that is true or not? Mr. Killion said he did not know. Mr. Killion did not know if they were coming back before the Zoning Hearing Board. Mr. Pries asked if the Patt Organization is going to proceed with the plan as they had before. Mr. Killion said that was his understanding. Purchasing the property, Shakey's, next door will have no impact on the plan as it stands now.

Mr. Memmi suggested they extend the ground lease 30 days at this time, since a solicitor is not available. They are also up against a time limit with the existing ground lease expiring the end of this month. Mr. Memmi advised he was not comfortable with the 120 days. This will give us time to get a solicitor to give us advice and look at the balance of the 90 days at that time.

Vice Chairman Pagliarulo advised that he agreed with Mr. Memmi. He would like to have the Derry Township supervisors weigh in on this issue too, to give this board some additional direction on what should be done.

Chairman Chadwick stated the Authority is offering a counter-proposal, which would need to be accepted by the Patt Organization. He asked Mr. Killion if his client would be willing to accept these terms until we go out and get ourselves a solicitor and then re-visit the issue. Mr. Killion answered he would prefer to check with the client, but he thought they probably would.

Mr. Ingalzo stated that he was in agreement with Mr. Memmi and that 30 days is adequate at this time to get the answers to the questions this evening and allow us to get a solicitor in place.

Mr. Memmi made a motion to extend the ground lease for 30 days; subject to agreement from the Patt Organization with the understanding the ICDA will have a solicitor in place for the next meeting and discuss the next 90 days at that point in time. Mr. Ingalzo seconded the motion.

*The Motion carried, 5-0.*

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

It was decided without the benefit of a solicitor this evening; this agenda item will be postponed until the next meeting of August 21, 2008.

#### **REVIEW OF ICDA MONTHLY EXPENSES AND 2007 YEARLY EXPENSES**

Mrs. Diana Reed came forward and explained she went a little further then the monthly expenses to give the members an opportunity to look at all the projects that we are currently involved in and what's happening. This was also for the benefit of new member, Mr. Ingalzo. The audit is drafted at this point and will be out by the end of this week. You should receive a copy next week.

Mr. Ingalzo asked Mrs. Reed to cover the on-going monthly operational expenses. She explained that the general expenses are covered by two administrative fees, one by the Giant Center annually and two semi-annual payments paid by the Township's Municipal Complex, which totals \$42,500. The SWAP Agreement money was placed aside for on-going administrative expenses for the ICDA, for a period of 5 years. There are some restrictions. We have to requisition the money down from M & T and use it for project expenses. Everything done by the ICDA is considered to be for project expenses. The

administration portion of the ICDA has \$150,000 in revenue a year to keep operations on going. Monthly expenses include legal costs, rate of expenses from the Township, which include Jim and Marie. Work for each project is allocated out as much as possible. Insurance costs are approximately \$20,000 per year. Auditing and accounting expenses are done quarterly to be in compliance with various bond indentures, as well as the annual audit. The Authority makes various donations to projects. Consulting fees are \$5,000 a month. There are also miscellaneous fees.

Mr. Pries advised that each year the ICDA is a major benefactor of \$10,000 to the New Year's Eve Celebration. He questioned the administrative fees that have come out of the \$10,000 and made the donation more like \$4,000. He would like to ask the board to continue the \$10,000 for the year 2008 and that all \$10,000 be used for the event and not be limited by any administrative fees. Mrs. Reed said the administrative fees can be paid by the ICDA expenses and the full \$10,000 be used for the event if that is what the board wishes. Expenses were used for staff's time, accounting, auditing etc. Mrs. Reed explained all records are recorded. The charges were always on the financial statements.

Mr. Pries made a motion that the ICDA continue the sponsorship of \$10,000 for the New Year's Eve Celebration for the year 2008. Mr. Pagliarulo seconded the motion. Chairman Chadwick asked Mrs. Reed if the Authority could afford it. Mrs. Reed said money was tight, but the Committee could do some serious fundraising. *The Motion carried, 5-0.*

Mr. Memmi asked Mrs. Reed if the issues surrounding the FTA compliance regulations for minorities for the Intermodal project were resolved. Mrs. Reed advised that the report is due in August and that it was always taken care of by the engineer. Mr. Davies stated that he is attending a meeting tomorrow with Bruce Yerger of Buchart Horn and this item is on the agenda and will be discussed. Mr. Negley will be informed of the results of that meeting.

### **IDEAS FOR FUTURE ECONOMIC DEVELOPMENT**

It was decided without the benefit of a solicitor this evening; this agenda item will also be postponed until the next meeting of August 21, 2008.

### **VISITOR/PUBLIC COMMENT**

Mr. Rippon suggested the board make sure that the 30-day extension of the ground lease start from the expiration date of July 31, 2008 and not from today, so that it doesn't expire before the next board meeting in August. Mr. Memmi answered, that was his intent when he worded the motion.

Mr. Rippon asked if the ICDA is an independent body and functions on its own. Chairman Chadwick answered that the ICDA operates independently of the Board of Supervisors and the Zoning Hearing Board. Mr. Rippon said he then had a question for Mr. Pagliarulo. Why do you want to ask the supervisors to give you guidance when you operate on your own? Mr. Pagliarulo answered, to give the board of supervisors the courtesy, especially when it impacts the Township. Mr. Rippon offered one final comment; that if he was on the other side developing this, he would have been here at the meeting tonight. Jules Patt had no real representation here that knew what was going on. You have to be present when you have this much as stake.

Mr. Ray Manari came forward and suggested it should show in the minutes that 120 days was disapproved and there was a 30-day interim approval. Mr. Chadwick offered that it already shows on the record that it was a counter proposal for the 120 days. Mr. Manari asked why the Patt Organization has to accept this proposal. Mr. Chadwick answered that this board entered into a contract with his client.

What's been proposed is an extension to that contract and requires an agreement between both parties. They proposed an extension of 120 days that we did not accept. We proposed 30 days. It is up to them to accept our counter proposal. A contract extension will be signed if they accept it.

**ADJOURNMENT**

Vice Chairman Pagliarulo moved to adjourn the meeting at 6:25 p.m. Mr. Memmi seconded the motion.  
***The Motion carried, 5-0.***

Respectfully submitted by:

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James N. Negley  
Manager/Treasurer/Assistant Secretary

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