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

I. CALL TO ORDER

The November 20, 2008 Derry Township Industrial and Commercial Development Authority meeting was called to order at 5:35 p.m. by Chairman, J. Scot Chadwick.

II. PLEDGE OF ALLEGIANCE

All present stood for the Pledge of Allegiance.

III. ROLL CALL

Members Present:

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

Also Present:

James N. Negley, ICDA Manager/Treasurer/Assistant Secretary
Barbara Zemlock, Post & Schell, ICDA Solicitor
Marie Sirkot, Administrative Assistant
Brenda Van Deursen, Recorder

Public Present:

Rebecca Delia, PNC Bank
Bill Davies, H E & R
Diana Reed, Diana M. Reed & Associates
Lou Starzl, H E & R
Lou Verdelli, RBC Dain Rauscher Inc.

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.

IV. VISITOR/PUBLIC COMMENT:

No one came forward.

V. APPROVAL OF MINUTES:

Vice-Chairman Pagliarulo made a motion to approve the October 16, 2008 Derry Township Industrial & Commercial Development Authority Meeting Minutes as written. Mr. Ingalzo seconded the motion. ***The motion carried, 5-0.***

VI. UPDATE ON THE GIANT CENTER BONDS

Mr. Lou Verdelli presented a brief update on the bonds and the interest rate swaps on the financings of the ICDA. The ICDA has close to $47 million in bonds outstanding for the Giant Center project. They are watching where the bonds are trading and where they should be trading versus some of the indexes that the swaps are tracking off of.

Ms. Becky Delia of PNC Bank, said when the Giant Center was financed it was done in two separate bond issues. The first Series A of 2000 was tax exempt and the second Series B of 2001 was taxable.

Ms. Delia explained the first bond (Series A), which was originally over $22 million, is currently in the amount of $20,695,000. It is a variable rate demand bond that is enhanced by a Letter of Credit (LOC). This type of security has had problems in the last few months due to the banks and insurance companies. The bonds are enhanced by PNC Bank LOC, which is participated out to a number of other banks in the community. It is now rated AA-AA3. PNC Bank is a strong LOC provider on these bonds. The LOC is priced at 60 basis points and is in place through 2010, which is very good because of the current credit crunch.

Mr. Verdelli said that Swap #1 is currently in place with Wachovia Bank. Their credit rating is Aa2/AA-, which is on watch for an upgrade because Wachovia was purchased through Wells Fargo. The swap of $20,695,000 matches the outstanding amount of the bonds. The interest rate, which was variable, is now fixed at 4.875%. The swap terminates in 2015; however Wachovia has the one time right to cancel it in 2010. He said if Wachovia does terminate five years early, Swap #2 would kick in. Swap #2 is with the Royal Bank of Canada who has maintained a triple A rating. The amount of this swap would be $17,645,000 with a fixed interest rate of 5.15% once this swap kicks in. The Authority will also receive five annual payments of $107,500, every February 22nd which began in 2007 and will continue through 2011.

Ms. Delia stated the second bond, (Series B of 2001) was originally a little over $28 million and the outstanding balance now is a little over $26 million. PNC Bank LOC also supports the bond. This portion of the bond has a little more risky collateral because it has excess hotel revenues plus the operating cash flows from the actual operations of the Center. The LOC pricing is a little higher. The two letters of credit expire at the same time so everything is reviewed on the same schedule.

Mr. Verdelli said the swap that was in place through 2011 was done with PNC Bank. The amount outstanding is $26 million. The Authority is paying a fixed rate of 5.510% and received 100% of the 1-month LIBOR rate. This swap is scheduled to expire in 2011. Protection was put in place until 2030 when the bonds mature. The second swap is with the Royal Bank of Canada. The fixed rate is 5.47% and there are no annual payments under this contract.

Ms. Delia explained the history of how the swaps had been trading relative to the index. Mr. Verdelli pointed out the week where the interest rate on the Authority's bonds went up to 8% and LIBOR rate was just above 4%. It was only for one week where what the Authority had to pay on the bonds did not match up to what they were receiving as an offset from the swap. If this would happen for an extended period of time you would be paying the fixed rate of 5.51% plus whatever the difference is between the bond and the LIBOR rate. Mr. Davies added that the important thing is to realize where your risks are and constantly monitor them.

Mr. Memmi asked Mr. Verdelli about doing a constant maturity swap with the bonds like the Township did a few weeks ago. Mr. Verdelli said it could be applied. It was discussed before, but we weren't comfortable moving forward; however, things have changed now.

Mr. Ingalzo asked Mr. Verdelli if there was a reason why the taxable and non-taxable bonds acted as they did in the market place. Mr. Verdelli said there was so much turmoil in the market during those couple of weeks. Some of the marketing agents were able to find enough buyers. In other cases there were more bonds than there were buyers and for a week or two things did not match up. It did not track taxable versus non-taxable.

Mr. Ingalzo asked from a risk management perspective what would be the courses of action if this were to continue. Mr. Verdelli said you look at finding a new LOC provider that will hopefully allow the bonds to trade stronger and closer to the index. You would also look at refinancing and enhancing the existing LOC. These would be some of the steps to fix the problems.

Mr. Ingalzo asked Mr. Verdelli if he was comfortable with PNC's financial situation based on what happened and how they have reacted in the

marketplace as opposed to others. Mr. Verdelli said he was comfortable. PNC bonds have traded very close to the index of the market.
Mr. Davies added that in the documents, there is a provision regarding if PNC Bank could not remarket.

Mr. Ingalzo asked if there were any trigger mechanisms for informing the Board if any concerns would arise with the bonds. Mr. Davies and Mr. Verdelli assured the Board there was.

VII. OTHER BUSINESS TO COME BEFORE THE BOARD

Solicitor Zemlock mentioned a brief issue involving the settlement with Buchart Horn on the Intermodal Transportation issues. She referred to a draft settlement agreement, which is in the final stages, and should not have any substantial changes needed. Mr. Davies and Mgr. Negley have been involved in the negotiations and referred to the amount to be paid. She asked the Board if the agreement is satisfactory to offer a motion to approve it in the substantial form provided, and to authorize the Solicitor to make any minor modifications as well as authorizing the Chairman or Vice Chairman to execute it upon final document.

Mr. Pries wanted to verify that this agreement was solely for the Intermodal Transportation Facility. Solicitor Zemlock said it was. Any other claims against Buchart Horn are not included in this agreement and we are not releasing them from those claims. Mr. Pries expressed concern regarding the $173,000 owed from Buchart Horn for errors and omission. Solicitor Zemlock said it should be discussed in executive session.

Chairman Chadwick referred to paragraph 5 of the Agreement. He said the last sentence reads, "Additionally, the parties further agree this release shall not be construed to be a release of any other claims which the ICDA may have against BH on other projects." Solicitor Zemlock said this was specifically put in to make sure the release only pertains to this Intermodal project.

Chairman Chadwick asked Mgr. Negley if he was satisfied with the Agreement, and Mr. Negley said he was.

Mr. Memmi asked if this agreement guarantees Buchart Horn would be part of the process of closing out the RACP. Mr. Davies said it would. He told Buchart Horn they would get their money when we get our services completed.

Mr. Memmi mentioned there are still other draws for FTA funding of this project in 2009, 2010 and there may be one in 2011. He asked if they were intending to manage the FTA draws relevant to the ones coming up.

Diana Reed of Diana M. Reed & Associates, said she believes Buchart Horn will do everything necessary for the draws.

Mr. Memmi said there are more elements to include relevant to the audit and close out of the RACP and also all FTA grant funding that is going to be provided in the out years. He would like language stating that Buchart Horn will be involved all the way to the end of the process.

Mr. Memmi made a motion to approve the settlement agreement between the Industrial & Commercial Development Authority and Buchart Horn; with changes to the agreement to specify the FTA years and the activities relevant to the RACP grant and any other changes the solicitor finds appropriate being incorporated into the agreement before either the Chairman or the Vice-Chairman signs the final agreement. Mr. Pries seconded the motion. ***The motion carried, 5-0***.

Manager Negley reported that he met with Buchart Horn on Tuesday regarding an invoice sent on July 22nd to Buchart Horn in the amount of $172,633.09 for design omissions subject to this building project. Mgr. Negley met with Mr. Glen DeWillie who is second in command at Buchart Horn. Mr. DeWillie was authorized to offer a settlement in the amount of $35,000 or 20% of the amount invoiced. Mgr. Negley told him he could not speak for the Board, but didn't think the offer was reasonable and the Board would probably decline the offer. Mgr. Negley thinks we should pursue other avenues to collect this money.

Mr. Pries made a motion to reject the proposed settlement offer from Buchart Horn's offer of 20% of $172,622.09 or $35,000. Mr. Memmi seconded the motion. ***The motion carried, 5-0.***

The Board agreed to go into executive session to discuss the issues with Buchart Horn following the other agenda items.

Mr. Ingalzo referred to the idea of establishing a strategic plan for the future direction of the ICDA that was discussed at the last meeting. Those members who volunteered to be part of a steering committee met and decided we need to identify stakeholders that would be involved in this process. We all agreed during our January meeting to come up with a list of people and have an initial meeting with those stakeholders to brainstorm as to how we would structure the entire plan. We decided everyone including the Board would come up with a list of names and submit at the January meeting.

Mr. Pries shared that the PATT Group was scheduled in October to provide a public town hall meeting update regarding the old municipal building. They rescheduled it to November, but it still has not happened. Supervisor Memmi asked when the extension would expire. Solicitor Zemlock said she would verify the month it would expire…January or February. Chairman Chadwick asked if it would be appropriate for someone to contact George Young to find out what is going on. Mr. Pries had called Mr. Young who mentioned he did not have any specific details to give other than they would like to talk to the Township supervisors.

Mr. Memmi added if we don't see activity by the conclusion of the current extension, he is voting against another extension. He suggested the solicitor deliver that message. Mr. Pries said he also would not approve another extension.

VIII. VISITOR/PUBLIC COMMENT:

No one came forward.

At 6:25 p.m., the ICDA Board recessed to go into executive session.

At 6:40 p.m., the Board resumed the ICDA Board meeting. Chairman Chadwick said they met in executive session to discuss possible litigation.

IX. ADJOURNMENT

Chairman Chadwick called for a motion to adjourn. Vice-Chairman Pagliarulo moved to adjourn the meeting at 6:40 p.m. Mr. Memmi seconded. ***The motion carried, 5-0.***

RESPECTFULLY SUBMITTED BY:

James N. Negley Manager/Treasurer/Assistant Secretary	Brenda Van Deursen Recording Secretary