

DERRY TOWNSHIP
INDUSTRIAL & COMMERCIAL DEVELOPMENT AUTHORITY
235 HOCKERSVILLE ROAD, HERSHEY, PENNSYLVANIA 17033
December 14, 2006
MEETING MINUTES

CALL TO ORDER

J. Scot Chadwick, Chairman, called the December meeting of the Derry Township Industrial & Commercial Development Authority to order at 5:33 p.m.

PLEDGE OF ALLEGIANCE

All present stood for the Pledge of Allegiance.

ROLL CALL

Members Present:

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

Also Present:

Joseph Caraciolo (for Jeff Foreman-Foreman & Foreman, P.C.) ICDA Solicitor
James N. Negley, Manager/Secretary/Treasurer
Marie C. Sirkot, Administrative Assistant

Public Present:

Dave Boyer, Buchart Horn, Inc./Basco Associates
Bill Davies, HE&R
Andrew Giorgione, Buchanan, Ingersoll & Rooney
Bruce Yerger, Buchart Horn, Inc. /Basco Associates

PUBLIC COMMENT

No discussion.

APPROVAL OF MINUTES

Mr. Pries made a motion to approve the November 16, 2006, I.C.D.A. Minutes; Mr. Memmi seconded the motion. Mr. Lenker abstained since he was not at the November meeting. **Motion carried, 4-0-1.**

FINANCING ISSUE – ITF

Donna Kreiser handed out both a resolution and a proposed form of loan agreement for a second financing by the I.C.D.A. in the amount of \$5,000,000 for the construction of the intermodal transportation center. She stated that this is identical to the borrowing that the authority undertook in 2004; originally in the amount of \$10,000,000. Borrowing again is with PNC Bank, issuing a note to the bank that will be purchased by us and proceeds of that note will be used for the construction. Ms. Kreiser added that the Township of Derry approved the guarantee for this project at its meeting last Tuesday and asked if there were any questions.

Mr. Memmi asked Bill Davies if this is what is needed to be accomplished, and Mr. Davies replied that it was and that this would give the flexibility to continue with the construction.

Donna Kreiser advised that the closing would be set for December 29, 2006, so that financing will be in place before the end of the year. Apparently this is consistent with all agreements and understandings that are already in place on the project.

A motion to adopt this resolution was made by Mr. Memmi and seconded by Mr. Pries, with Mr. Lenker abstaining. Mr. Negley added a note to call this Resolution #2006-3. **Motion carried, 4-0-1**, with one abstention.

HERSHEY MUSEUM PROJECT

Mr. Andy Giorgione stated his intention to update the board since the last meeting on the standing of the project documents. These documents have been shared with the solicitor and additional amendments were sent today. Basically the ICDA is being used as a conduit to help further the Hershey Museum project; the museum is taking all the risks while the ICDA is bringing in the borrowing, grant funds and things of that nature. There are 3 documents before you:

1. **Ground Lease** – ICDA will be the tenant and the land (that you have donated to the museum) will be leased to you for purposes of the project. The term is 29 years. Once a year you will be asked to make a payment of \$10,000 to the museum. When the grant and loan requirements have been met, and ownership of the property goes to the museum, the museum has a right to terminate the ground lease.
2. **Building Lease** – in this document, ICDA will be the landlord and the museum will be the tenant. The term will be 29 years; same right of termination, but the payment is now being made from the museum to ICDA in the amount of \$20,000 plus all costs, so there will be a net profit of \$10,000 minimum on a yearly basis and all your costs will be covered.

3. Construction Agency Agreement - the museum is your agent to design, finance and construct the project and then they would operate it out of the building.

Mr. Giorgione stated that he wants all of the transactions to be documented appropriately; they are arm's length transactions so there are default provisions, rights of termination, etc., but given the partnership here we don't expect any of these rights to be exercised. He added that our solicitor has reviewed these documents and he would like to move forward with signature and execution as soon as the board is ready to proceed.

Chairman Chadwick stated that this is a fairly complex arrangement, but he believes he followed it and asked if there were any questions from anyone on the board. Mr. Giorgione commented that the arrangement is very similar to the Giant Center in many respects. He asked for approval of the documents so they can be finalized and go to signature.

Mr. Memmi wondered if signing documents or anything approved at this meeting would affect the appraisal of the site in a negative way. Mr. Davies stated the documents are to solidify the relationship; there is nothing financial in the documents themselves. One component criteria indicates that the museum will have minimum funds or provide a contribution of a million dollars. Mr. Davies added that he intends to talk with Rick Drayer from the Office of the Budget and include these documents in the RACP application in early January. Andy Giorgione noted that there are lease values in the documents, so maybe before signing he should check with the appraiser to make sure that it wouldn't affect his analysis. Mr. Memmi asked if there is a time element that negates that language and Mr. Giorgione replied that maybe he should check with the appraiser before signing; just to make sure it wouldn't affect his analysis.

Mr. Memmi also thought that he had read that after the debt is paid the money would have to be paid back to the Dept. of Community & Economic Development (under RACP). He asked if this was true because that wouldn't be in the board's best interests, and also is there a time element that negates that language.

Mr. Giorgione replied that the right of termination is there so that once the grant's parameters have been complied with and any loan requirements satisfied, the museum has the right to terminate all agreements and then take possession and control. He stated that he has not seen the grant agreement yet; he doesn't think he has even a draft yet, so he doesn't know what the language will be.

Mr. Memmi remembered that on one of the RACP's that he administered for the county, the language seemed to say that if the property ever transferred, the funds would have to be paid back to DCED. He wants to make sure that this is not the case for the museum, since the board is trying to do this for their benefit.

Mr. Chadwick suggested that “subject to approval after final review by our attorneys” be included before a motion is made to approve and the rest of the board members agreed.

Mr. Memmi asked if the board could include any language changes recommended by Rick Drayer in mid January without another vote, and Mr. Caraciolo replied that another vote would be needed. Mr. Chadwick asked if all three leases could be passed together and Mr. Caraciolo replied yes. Mr. Memmi asked if Mr. Giorgione could have these draft forms ready for Mr. Drayer to look at by mid January.

Motion by Mr. Memmi to approve, seconded by Mr. Lenker.

Motion carried, 5-0.

INTERMODAL TRANSPORTATION FACILITY UPDATE

Mr. David Boyer addressed the PP&L duct bank conflict that requires the redesign of the bus station. He indicated that Buchart Horn completed redesign last week, and Monday Buchart and Quandel met with Lobar to review plans and schedules. HiConcrete will review and prepare shop drawings and final fabrication. The pedestrian bridge steel is under fabrication and Gannet Flemming has pile location plans for the pier on the north side and the bus station foundation. The infill section of the bridge (2B) has to be added and that information gets turned over to the contractor next week. Lobar’s driller is confirmed to be back on site on January 1st. and Lobar will finalize details by the second week of January. Concrete for piers and foundations will be poured the latter part of January. Lobar expects to set the bridge in early February – not mid January as in their earlier schedule. Quandel has been working with Lobar to sequence the work to minimize delay. Mr. Boyer added that pricing reviews and approvals for foundation changes, bus station precast changes, and the bridge steel infill station need to be expedited. At this point, delays will be no more than the 55 days predicted earlier and we will work to expedite that if possible. Confirmation by HiConcrete for the time frame for the precast fabrication manufacturing will be critical to this. Mr. Boyer (with apologies to HE&R) needs a decision by ICDA & HE&R to look at waiving the contract requirements for liquidated damages. This will go a long way in allaying the fears of Lobar that we will be willing to be flexible.

Mr. Bruce Yerger distributed the Executive Summary Report to the Board members. Mr. Boyer explained that construction activity is continuing on the footer placement; rebar placement, concrete wall placement, and installation of the storm sewer connection at the Hershey Museum. Percentage of progress by time is 26% and billing is at 14% and the concrete work at the garage is behind by about 3 days.

Hershey Company’s waste water forced main was completed; which moved the main out of the way for the bus station location. We are still working with HE&R for review and approval of billings for professional fees and contractor applications for payment. The RACP grant for the Intermodal project was held up by Senate Bill 1166 (Capital Budget Bill) which was passed on November 22nd and signed by the governor. The grant

agreement has been received and hopefully the board can take action tonight, subject to the solicitor's review and advice, so that this can be taken care of in a timely manner. (After some discussion it was discovered that the agreement had already been signed by both parties and was a fully executed contract).

Mr. Boyer continued by reporting that caulking repairs by Lobar are continuing on Phase I and they need to keep fixing it until they get it right. He asked if there were any questions.

Mr. Memmi reported that Mr. Clark of Clark Resources has volunteered to intercede for us with DCED and beg for some additional funding relevant to the duct bank and asked if anything had been done regarding this.

Mr. Memmi asked Mr. Boyer when does Lobar (in Phase I) realize that it's time to go back and recaulk the whole department deck? What happens when the warranty ends? It's been ongoing for a year and I believe it's time they fixed it. Mr. Boyer assured Mr. Memmi that he would put some pressure on them to get it fixed correctly.

In reference to liquidated damages, Mr. Memmi would consider giving an extension to the time line equal to the time delay that the new bridge and relocating the piles have caused in this project and we're at the 55-60 day limit. He doesn't believe that it is in the best interest of the Board to totally give up the opportunity to have some leverage relevant to time delay with some sort of remuneration there. Mr. Boyer agreed with Mr. Memmi and there will be more discussion on this subject at the next board meeting.

Mr. Pries thanked members of HE&R, Buchanan Ingersoll, and Buchart Horn for their support of the New Year's event in Hershey.

MUNICIPAL BUILDING PROJECT CONSTRUCTION UPDATE

Mr. Boyer advised that the PP&L pole relocation along Clearwater Drive that was scheduled for the 13th was delayed because of weather. He is waiting to hear when the rescheduled date will be. Bruce Yerger distributed a copy of the executive summary report, which indicates that construction is now 74% complete, and tracking for an on-time completion. Mr. Boyer then offered up the series of change orders that he has reviewed with Jim. The listing is in your handout. There are totals to CH&E for \$88,341.00, which includes \$80,764.00 of purchases by the general contractor for items which are budgeted originally as "furniture, fixtures and equipment". Rather than furniture people acquiring that, it made more sense to parcel these out: window blinds, wall mounted benches in the Police Dept., bike rack, refrigerator, and specialized forensic equipment in the Police Department which is the most significant portion of that cost. Mr. Boyer continued that if the general contractor puts this in place there will be a warranty, it will be covered under his change order, and it just makes sense to separate this out; although overall budget impact will have to be tracked by Jim.

Mr. Boyer stated that the other change orders are mechanical, plumbing and electrical, and then an item currently under review a 66A&B on the list that are under negotiations with the contractor. Late pricing from the contractor totals \$34,600, but is expected to be reduced, so that particular series of change orders is not in the package yet, since it is not an established value. Presented for your consideration this evening is \$132,528.69 (with the late pricing expected to be around \$34,000). Mr. Boyer added that even after approving these, contingency funds will still have over \$330,000 remaining if these are approved. Are there any questions?

Mr. Pries asked if the board could have the actual contingency number listed in the report. Bruce Yerger answered that the number is around \$336,000, but it will go up. Yerger stated that a summary has been presented to Jim, but it will need to be revised once we know what 66A & B will be. Then a supplement will be done so the board can have a running tally.

Mr. Memmi: We're 70+% through the project. Based on your experience, would you anticipate many additional change orders?

Mr. Boyer suggested that the board members refer to the log in the executive summary report. He stated that there is one rather large addition of mechanical units for cooling in the server rooms which was an omission of \$28,000. There is a total of \$53,000 (some of which will be renegotiated) that is probably still outstanding.

Mr. Memmi asked Mr. Negley if, based on the change orders that we will hopefully approve this evening, when the next construction meeting comes will the board still be waiting for the owner's decision.

Mr. Negley replied that Buchart Horn is aware that the RFI's have to be approved faster.

Mr. Memmi then inquired whether we are staying on top of the PP&L issue. He stated that this may be one of the biggest projects that CH&E has ever done and they have stepped up and done a good job, even going ahead with change orders before they were approved, and assuming that risk because they had faith in the township. Mr. Memmi would like to see the traffic signals up that should have been up about 2 weeks ago and were still not in as of December 13th.

Mr. Boyer told Mr. Memmi that he would follow up on the traffic signals and that it was probably a sub contractor of CH&E. Mr. Memmi added that there have been people working at the site on Saturday and Sunday to complete this job.

Mr. Lenker stated that he and the Township Manager were at the job site recently and were very pleased with what they saw. Good work on everyone's part! Mr. Chadwick agreed, and Jim Negley suggested a joint tour with the ICDA Board members toward the end of January.

Mr. Pries made a motion to approve the change orders and Mr. Lenker seconded the motion.

Motion carried, 5-0.

Item 10 was moved to discussion at Executive Session.

Since there was no public comment, Mr. Chadwick made a motion to adjourn and Mr. Pries seconded the motion.

Motion carried, 5-0.

Meeting was adjourned at 6:25 p.m.

Approved:

James N. Negley
Assistant Secretary