

**DERRY TOWNSHIP INDUSTRIAL & COMMERCIAL DEVELOPMENT
AUTHORITY**

235 HOCKERSVILLE ROAD, HERSHEY PENNSYLVANIA 17033

March 16, 2006

MINUTES

CALL TO ORDER

The March 16, 2006 meeting of the Derry Township Industrial & Commercial Development Authority was called to order at 5:40 p.m. by Michael H. W. Pries.

ROLL CALL

Board Members Present:

J. Scot Chadwick – Chairman
Richard E. Lenker, Jr.
August (Skip) T. Memmi, Jr. – Secretary (arrived 5:48 p.m.)
Michael H. W. Pries

Board Members Present:

Todd K. Pagliarulo – Vice Chairman

Also Present:

Jeff Foreman (*Foreman & Foreman, P.C.*) – Solicitor

Public Present:

Scott Loercher – Buchart Horn, Inc. / Basco Associates
Bruce Yerger – Buchart Horn, Inc. / Basco Associates

PUBLIC COMMENT

No discussion.

APPROVAL OF MINUTES

Motion: Mr. Lenker moved and was seconded by Mr. Pries to approve the following Minutes:

February 16, 2006

Public Meeting

Motion carried, 3-0.

REPORT ON DOWNTOWN DEVELOPMENT PROJECT

Mr. Yerger reported the following:

- Phase I
 - Several weather related punch items remain outstanding related to caulking. Lobar will flood the decking to isolate leaking and then caulk the area. Quandel will notify HE&R and DTICDA when this will occur.
 - All budget figures presented by Mr. McNamee in the past still hold on Phase I.
 - A final occupancy change order is being prepared in the amount of \$82,800.
 - The project is \$22,000 over the original project amount.
 - The Solicitor and Manager need to execute documents for the remaining items.
 - Warranty/guarantee documents for the OEM were delivered to Tom Clark.
 - A meeting was held today with Bill Davies of HE&R, and Diana Reed to review the budget amounts. An update should be available within the next two weeks.
- Phase 3
 - Continue to look at Value engineering items for the Phase 3 regarding the parking deck.
 - Meetings are held weekly with Buchart-Horn, HE&R, DTICDA, and Quandel representatives.

Bid Consideration – Laundry Building Demolition Project

Motion: Mr. Pries moved and was seconded by Mr. Lenker authorizing the Notice of Intent to award the bid to Pflumm in the amount of \$252,460, subject to receipt of insurance documents, and review and approval from the Solicitor and Manager.

Motion carried, 4-0.

Motion: Mr. Memmi moved and was seconded by Mr. Lenker to accept the additional Change Order from Pflumm in the amount of \$89,700 for the demolition of a portion of the north foundation wall, subject to the contract award being worked out, and subject to review and approval from the Solicitor and Manager.

Discussion: Mr. Memmi asked if the \$89,700 is the issue they were dealing with relevant to not having factored all of the items. Solicitor Foreman responded that it is a different issue, a recalculation after the bidding was done. The reason this is a legitimate change order is that this is an additional incidental amount to the original bid which results from giving up more of the scope award.

Mr. Memmi asked if the bid just approved was adjusted for their errors. Solicitor Foreman responded no; legally it could not be adjusted for that purpose. The change order is requested by the engineer for the foundation wall.

Motion carried, 4-0.

DCED application

Mr. Yerger noted Buchart-Horn continues to work with the DCED application and may require assistance getting it processed.

Redevelopment Assistance Capital Program application

The RACP document should be finalized within the next two weeks.

Letter of Understanding regarding the planned purchase of Phase I of the ITF from the Township of Derry Industrial Commercial Development Authority and funding for the completion of Phase II of the project

Solicitor Foreman presented a draft Letter of Understanding from HE&R regarding the planned purchase of Phase 1.

He noted concerns with Item 12: the use of the word *mechanism* was changed by HE&R. Clarification was made that they are not simply suggesting mechanism and that HE&R is responsible for the mechanism.

Item 1: Solicitor Foreman noted this Letter of Understanding is not binding until the details are worked out. The most important detail is the actual price. Item/paragraph 1 indicates DTICDA and HE&R will come to a conclusion regarding the real price for Phase 1 that includes the actual cost of construction, design, administrative, and related costs DTICDA encountered as the project was put together.

Solicitor Foreman would have liked to have language that was ironclad in this paragraph indicating DTICDA and HE&R agreed to make the Authority whole in this project. The caution raised is regarding the cost. If the cost by DTICDA is attributed in some manner; whether by the three phases, or dollar costs by phase, or some other mechanism, these related fees incurred by DTICDA will not be recouped because there was no mechanism to do so. HE&R will pay for the actual cost of construction of Phase 1, for the ongoing costs of additional work needing to be completed, as well as operations and maintenance, including CAM charges. At this point in time, DTICDA and HE&R cannot agree on the other 2/3 of the administrative costs.

Mr. Pries asked for the definition of Exhibit A. Solicitor Foreman responded Exhibit A is everything that goes with the project and is not yet attached.

Mr. Memmi asked if Solicitor Foreman is comfortable with the language. Solicitor Foreman responded he is comfortable with the discussions and related email. He noted the LOU is non-binding, and the details in the agreement itself will be the tipping point on this decision. It does memorialize the understanding that HE&R will pay for all additional construction and operation up to the amount considered for the current plan.

It's clear in the document DTICDA continues to make, at its discretion, any substantial changes to the plan. At this point HE&R does not intend to make any changes, but if they were to do so, they would have to come back to get a sign-off from DTICDA.

The only piece still missing is the actual language regarding the purchase price. If HE&R don't arrive at a conclusion that makes DTICDA whole, then the Authority will have to make a decision as to how they want to approach it.

Solicitor Foreman stated it would be a legitimate discussion to indicate a meeting was held and there's a legal advertising cost each time there's a meeting. HE&R may say the discussion was unrelated to the downtown project so they would only pay for half the advertising costs. Questions may also arise regarding federal and state grants DTICDA.

Solicitor Foreman said, that with the discussions and email between both parties, everyone is agreed the intention that anything DTICDA did on this project would be compensated and would be whole.

Mr. Memmi asked if the costs associated with working to obtain additional grant funding will be picked up in Phase 2.

Solicitor Foreman responded if the costs were not DTICDA's actual cost for Phase 1 they cannot enforce payment.

Mr. Memmi asked what the proposed timeline is for the final, bindable agreement. Solicitor Foreman responded less than one month. At some point, representatives of HE&R will have to meet with those of DTICDA because no else can make these decisions. It is clear the costs are all legitimate costs.

Mr. Memmi said there are many issues driving the timeline for DTICDA, and other decisions have to be reached in the near future which need to be addressed after DTICDA receives the official document.

Solicitor Foreman answered that other than this outstanding item, if there was no disagreement regarding these costs, the document could be finalized within the week.

Mr. Memmi asked what the costs are. The total figure according to Buchart-Horn is \$6,398,000. Diana Reed's estimate is \$6.8 million.

Solicitor Foreman stated Diana Reed, Buchart-Horn met with them, and he has had numerous conversations regarding these figures. The Solicitor was surprised HE&R would question the little things. The only big thing questioned was the government numbers.

Mr. Memmi stated DTICDA signs this and moves on to the next step. It gives DTICDA a basis to start. There continue to be issues as to what the number will be for Phase 1. The other piece to be worked through is how DTICDA can capture costs associated with working through the other grants, trips to Philadelphia, and staff time that hasn't been figured into Phase 1 because it hasn't been determined what it is going to be.

Solicitor Foreman suggested a separate agreement could be implemented to pay all or a portion of these fees for some period of time because the grants would be to their benefit.

Mr. Memmi further stated there is nothing in the language of the agreement as yet to determine the contractual and reporting arrangements between the parties. Solicitor Foreman agreed.

Mr. Memmi said issues are beginning to occur about the structure of the administration of the project. Solicitor Foreman responded said the placement that is addressed in the LOU is the word *agent*, stating HE&R as DTICDA's agent. Therefore, HE&R must respond to DTICDA. The actual agreement will flush out a much greater understanding as to how this will work. As long as HE&R is DTICDA's agent they do not have free reign to do anything.

Mr. Lenker questioned item/paragraph 13 of the LOU regarding HE&R proposed to be the sole and exclusive source of funding for Phase 1. Does that not drive the ongoing process of the agreement for the items mentioned by Mr. Memmi?

Solicitor Foreman is concerned someone will eventually say that if not Phase 1, they are Phase 2, or Phase 3.

Mr. Lenker stated the comments regarding public financing of a portion of the facility are part of as to how DTICDA finances these ventures. He doesn't understand how, once the agreement is executed, that it is not something which can be negotiated.

Solicitor Foreman said the public funding will not be in Phase 1. By definition it will be anywhere but Phase 1 because that's the phase HE&R will own themselves, and DTICDA can't put public funding into a portion of what they own. However, the agreement has always been the benefits of the project that is important to their development. Therefore they should pay for those costs. Solicitor Foreman said it is a concern, and is the understanding they are to pay for all costs. But it is not memorialized with particularity.

Solicitor Foreman said the language is not satisfactory at this point. Chairman Chadwick concurred. The agreement about the price is at most tentative.

Chairman Chadwick believes it is not a legally binding agreement, DTICDA is moving forward constructively with HE&R, and it seems like an article of good faith. It is his opinion DTICDA should demonstrate it is willing to continue going forward.

Motion: Mr. Memmi moved and was seconded by Mr. Pries to authorize the Chairman

to sign the Letter of Understanding.

Roll call vote:

| <u>Name</u> | <u>Vote</u> |
|-----------------------------|-------------|
| J. Scot Chadwick | Yes |
| Richard E. Lenker, Jr. | Abstain |
| August (Skip) T. Memmi, Jr. | Yes |
| Michael H. W. Pries | Yes |

Motion carried, 3-0-1. Mr. Lenker abstained.

REPORT, MUNICIPAL COMPLEX PROJECT

Change Order for asbestos removal

Motion: Mr. Pries moved and was seconded by Mr. Lenker to approve the change order in the amount of \$4,436 for the removal of asbestos in the municipal complex.

Motion carried, 4-0.

Buchart-Horn update

Mr. Loercher provided the following update:

- The project is in the early stages. A schedule should be in place by 3/30/06.
- Contracts and Quandel are on schedule.
- The contractor will start at the police building, followed by administration, and fill in the tax building with personnel as it becomes available.
- Two site signs and security fencing will be installed by next week. The signs will be installed along Hersheypark Drive, back-to-back, perpendicular to Hersheypark Drive, down from the entrance to Public Works and DTMA along Clearwater Drive. The signs will be viewed both ways.
- The majority of the work is site excavation. The installation of footings will begin within the next two weeks at the police building.
- Shop and coordination drawings are beginning to arrive.

Mr. Memmi attended a construction meeting two weeks ago and was impressed with the control and understanding of the project. He believes all the subs know what their roles are and it looks like the project should move along in a coordinated fashion. Mr. Memmi will continue to attend the meetings and provide updates to DTICDA.

Mr. Yerger noted Ms. Horner was provided with the FF&E furniture equipment schedule, budgets, and detailed listings.

Buchart-Horn was requested to work with Dauphin County regarding an antenna tower at the police station to tie into the county's system. A meeting with EMS, the police, and SSI was held recently to determine placement of the county tower on the site. All parties have reviewed the plan. Buchart-Horn was asked to provide additional drawings, utility plans, coordinate some of the layout for conduit and cable to feed from the Dauphin County EMA communication room to the police building, look at the standby generator to determine if there is spare capacity to run the communication system, provide additional sketches for additional equipment in the communications room, and a site plan for the modified conduit. Mr. Yerger asked if Buchart-Horn should proceed with this and provide a detailed proposal to DTICDA.

Mr. Lenker noted Dauphin County is spending \$30 million for a radio communications upgrade. In addition to the fact they need a radio tower site from something that would not tax the current system. DTICDA opened up this site to the county to piggyback on their site.

Mr. Lenker is concerned DTICDA would go to the extent of engineering the project for them. That was never the intent. It is his opinion this can be accomplished without DTICDA carrying the burden of paying for the county portion of this tower. He is concerned with DTICDA footing the bill in whole. Mr. Lenker noted EMA, the police department, and EMS will be situated onsite. He is confused by this request.

Mr. Yerger believes Dauphin County was to install the tower on the site, and there would be temporary placement of the Township's existing antennas on the tower. Eventually there would be a cutover for the Township use on the site. The space in the existing design would be modified to accommodate this.

Mr. Lenker said the Township will need a tower regardless. His concern is that he doesn't want the tower in the middle of the building. Mr. Lenker doesn't mind helping the county commissioners out; as far as he's concerned the space can be given to them free. Mr. Lenker does not mind paying a portion of this. He is also concerned this could go to a cost that's not budgeted in the original estimate.

Mr. Memmi asked if the original cost evaluation of the project has a communications tower and conduit for the Township's existing system. Mr. Yerger responded affirmatively, noting this is a modification to the current plan to accept the county communications tower, and to house the EMA communications room in the police building.

Mr. Lenker is concerned with the footprint of the tower, and wants to ensure the Township has accommodations for it. He doesn't want to pay for this connection later. Mr. Lenker believes this is merging SSI and DTICDA. He does not want Buchart-Horn to incur costs designing this for the county when he believes they have to do it anyway. Mr. Lenker does not want to foot the bill for the county system.

Mr. Memmi doesn't understand why DTICDA should pay for modifications that are necessitated by locating the county's tower on the municipal complex project. He noted additional conduit may be needed for the location. He said Dauphin County should do the engineering themselves.

Mr. Yerger withdrew this subject and will provide more detail at a later meeting.

Mr. Memmi asked if the idea was for the tower site to be placed without putting it in the middle of the building. Mr. Yerger responded yes. If Buchart-Horn has determined the site they want the tower located isn't jeopardizing anything DTICDA is working on. DTICDA marches on and then the agreement gets drawn up and they will go from there.

Mr. Yerger contacted Lou Verdelli to continue working with him regarding the proposed EMS site at the Public Works building. He should have some costs finalized and will present at the next meeting.

Web camera proposal

Buchart-Horn provided Ms. Horner with a proposal on the web cam. The web cam would provide two pole mounted cameras over 14 months, providing pictures at 10-15 second intervals, the installation of two poles 15 to 20 feet high with DSL wiring, a router and ethernet switch, and time for system and network setup at a total cost of \$12,000. In addition, there would be a need for a DSL line and modem for 14 months at \$50 a month, for a cost of \$700, plus web site host costs to accept the camera fees at \$1,500 for another \$2,200 for the Township. The camera portion of the \$12,000 is \$8,400 to rent cameras. The total is estimated at \$12,000 related to Buchart-Horn costs, and \$2,200 of costs DTICDA would incur over 14 months for the rental of the lines.

Mr. Memmi said this should be deferred to the Township Board of Supervisors for a decision.

This agenda item was tabled to next month.

REPORT, RFPs FOR REDEVELOPMENT OF CURRENT MUNICIPAL CAMPUS SITE

This agenda item will be discussed in an Executive Session following this meeting.

HERSHEY AREA PLAYHOUSE REQUEST

Mr. Pries noted a response is needed to Hershey Area Playhouse's request of \$25,000.

Mr. Memmi said the manager is not at today's meeting, and he's not sure what funding is available.

Mr. Lenker requested a financial review of DTICDA funds.

Mr. Memmi said the mission of DTICDA is to bring business to the Township, and this request would benefit local economic development. He suggested a one-time grant of \$5,000.

Motion: Mr. Pries moved and was seconded by Mr. Lenker to provide a \$5,000 contribution to Hershey Area Playhouse.

Motion carried, 4-0.

ANY OTHER BUSINESS TO COME BEFORE THE BOARD

No discussion.

EXECUTIVE SESSION

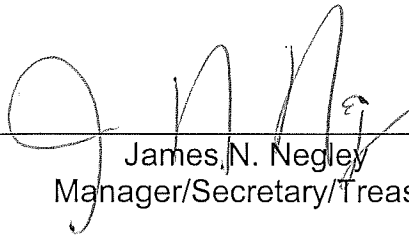
An Executive Session will be held immediately following this meeting to discuss land and legal issues.

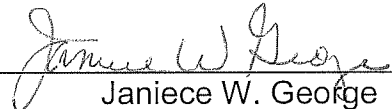
ADOURNMENT

Motion: Mr. Lenker moved and was seconded by Mr. Pries to adjourn the meeting at 6:45 p.m.

Motion carried, 4-0.

SUBMITTED BY:


James N. Negley
Manager/Secretary/Treasurer


Janiece W. George
Recording Secretary