

**DERRY TOWNSHIP
INDUSTRIAL & COMMERCIAL DEVELOPMENT AUTHORITY
600 CLEARWATER ROAD, HERSHEY, PENNSYLVANIA 17033
May 17, 2007
MEETING MINUTES**

CALL TO ORDER

Vice Chairman Todd Pagliarulo called the May meeting of the Derry Township Industrial & Commercial Development Authority to order at 5:35 p.m.

PLEDGE OF ALLEGIANCE

All present stood for the Pledge of Allegiance.

ROLL CALL

Members Present:

August T. Memmi, Secretary
Todd Pagliarulo, Vice Chairman
Michael H. W. Pries
Richard E. Lenker, Jr.

Also Present:

Jeff Foreman (Foreman & Foreman, P.C.)
James N. Negley, Manager/Treasurer/Asst. Secretary
Marie C. Sirkot, Administrative Assistant

Public Present:

Dave Boyer, Buchart Horn/BASCO Inc.
Bill Davies, H.E. & R.
Tom Fowlston, PNC Bank
Donna Kreiser, Buchanan Ingersoll
Dave Lavery, H.E. & R.
Linda Pagliarulo
Bruce Yerger, Buchart Horn/BASCO Inc.

PUBLIC COMMENT

No discussion.

APPROVAL OF MINUTES

Mr. Lenker moved and Mr. Pries seconded the approval of the minutes of the April 19, 2007 meeting.

Motion carried, 3-0, with Mr. Lenker abstaining.

MUSEUM PROJECT (BOND COUNSEL & SOLICITOR)

Donna Kreiser from Buchanan Ingersoll explained that Resolution 2007-05 authorized a loan to the ICDA from PNC Bank for the new museum. The principal amount is not to exceed \$9,000,000 and the M.S. Hershey Foundation will secure the note. The Industrial & Commercial Development Authority has acting power for Derry Township.

Mr. Memmi asked about the interest rate and was told by Mr. Bill Davies that it is a floating rate, and it is a tax-free note.

Mr. Lenker stated that he would recuse himself from voting. Mr. Pries moved and Mr. Memmi seconded the motion to approve **Resolution No. 2007-05**.

Motion carried, 3-0, with Mr. Lenker abstaining.

INTERMODAL TRANSPORTATION FACILITY UPDATE

Mr. Boyer reported that the ITF project is 61% complete by time and 56% by cost. Plumbing and electric has begun and bus station walls are being poured. Lobar and their subs are resolving precast issues. Owner purchased materials are saving 6% on tax.

Mr. Pries commented that the facility looks fantastic. Mr. Memmi asked whether September/October is a good possibility for the garage and whether the parking decks could be used before the bridge and bus station were done. Mr. Boyer said he would follow up with the codes office. Mr. Memmi asked about a request to put in a bicycle/locker storage section and whether there

was space to do something like that. Mr. Boyer said that he would provide information to the board before the project was completed.

NEW MUNICIPAL BLDG. PROJECT CONSTRUCTION UPDATE

Mr. Yerger distributed the last executive summary for this project, since the building is now occupied. Construction by cost is at 99%; they are still holding money on all of the contractors. Completion by start time is at 111%, since the start date was January 2005. Punch list work is being verified and there is a follow up meeting next Tuesday to verify what still needs to be done and put action plans in place with the contractors to correct items that are still on the list. There continues to be test and balancing work on the HVAC system and there is an upcoming staff training regarding temperature adjusting by computer.

Mr. Yerger reported that the sprinkler system leaked from the upstairs area today into the lower area and there is a follow up being done by the contractor to get restoration people in who are experienced in cleaning and repairing water damage. Mr. Negley has also put the insurance company on notice so that, if need be, action is needed later on. Mr. Yerger asked if there were any questions or comments at this point.

Mr. Memmi began by saying that the building looks good and the job went reasonably well, but having said that there are many issues still to be taken care of and the ICDA board has asked him to be their liaison. Mr. Memmi stated that he is not blaming Buchart/Horn, but this is an issue of the primes and their subcontractors, and possibly the construction manager for this project left the site prematurely. After being in the building for two weeks, the alarm bell is still sounding and hasn't been fixed, a control box is hanging from wires at the front door (this was on the punch list 4 weeks ago) there are wires hanging from the securing doors and locks that have not been installed. A new window that was installed was left without being cleaned and there are issues on furniture that have not been dealt with yet. Mr. Memmi went on to say to the Buchart representatives that it doesn't have to do with them, but with EI, Pagoda, Tomko, etc. and there isn't anyone here now pushing them and there was no one a month ago pushing them to complete it. There was rain spouting being hung from the tax office **today**. The township manager should not have to get contractors to do their work; that should have been the construction manager's job and the prime's job. Tomko missed the last two construction meetings and Pagoda wanted this

job, but has failed to perform. Looking at a list of change orders (most of them Pagoda) Mr. Memmi said he hopes that we have enough retainage so that they have some incentive to get the work done; but who will enforce this since the construction manager is not on site anymore? The board is looking for some help. Please help us get these contractors focused and solve these issues. If holding their money back is the only way to get the work done, then I hope that it is possible to do that.

Vice Chairman Pagliarulo excused himself at 5:55 p.m. and turned the meeting over to Secretary Memmi.

Mr. Pries advised the board that Rep. Payne had called him and asked what was being done with the chairs and file cabinets from the old building. Mr. Negley advised that there is a furniture buy-back program in place and anything that is not bought back will be sold at public auction. Mr. Pries asked Mr. Negley to please advise Rep. Payne of this information. Mr. Pries also asked if the balance available at the end will go into any certain fund and Mr. Negley explained that the money remains there, it doesn't go back. If the project cost is \$16,900,000 and it comes in at \$16,400,000, we just don't draw down the additional \$500,000; it remains in our capital projects.

Mr. Lenker commented that the staff has not been trained with the alarm system and there are caps and covers over the detection heads. Mr. Memmi asked if someone could come back and oversee this and Mr. Boyer answered that Cameron is continuing to monitor, but there isn't anyone on site full time; their contract is up. Mr. Memmi feels that their contract should not be finished until everything is completed to satisfaction, which is not the case.

Mr. Yerger explained that there is a meeting with Quandel next week at which time they will ask for dates that everything will be completed. Also, there is money that still has not been paid to Quandel, which could be held until completion of all items. This should be incentive to get things done quickly. Cameron will be asked to send someone to the job site or come himself to oversee the completion of these items.

Mr. Memmi asked for a report to the board about the PP&L pole issue, which cost us an extra \$20,000, so that the board can direct the solicitor to file in court the necessary documents for the board to get the money back. Mr. Memmi advised the board that there was a conference held last week by Mr. Negley to try to come to some resolution of this matter and it was

suggested that the principals equally share the cost. Then one of the principals decided that they did not have an equal responsibility, so Mr. Memmi is asking the board to direct the solicitor to resolve this legally if necessary, in order to recoup our \$20,000.

Mr. Lenker moved and Mr. Pries seconded the motion for legal action to recover the \$20,000.

Motion carried, 3-0.

Mr. Memmi then asked if a motion was needed on the change orders and Mr. Boyer replied that the amounts total \$16,488; they have already met with Jim and agreed to shoulder their responsibility for the design errors that are part of these change orders. Mr. Lenker asked Mr. Foreman - if we go to liquidate damages what happens, or should we just pay them and then worry about the liquidated damages? Mr. Foreman doesn't feel that this would qualify as liquidated damages. Mr. Boyer told the board that there are still funds being held, for example Pagoda there is still \$156,000 which has not been paid out, and Tomko \$47,300. Also 5% of CH&E's contract has not been paid, so there is money available to motivate progress.

Mr. Memmi asked if someone could make a motion that the change orders be approved; with the stipulation to staff and Buchart that no monies will be distributed until these issues are corrected.

Mr. Lenker moved and Mr. Pries seconded the motion to approve change orders with stipulation.

Mr. Foreman agreed that the board is within legal limits to handle the situation this way. Mr. Boyer asked for confirmation that this means no approvals for payment will be made until all punch list items are resolved and Mr. Memmi answered yes. Mr. Foreman added that this stipulation should be included on the change order paperwork when the forms are executed. Mr. Boyer asked if this applies to just the items on the change order or all payments and Mr. Memmi replied that it is any money owed. Mr. Yerger added that his understanding is that all payments will be frozen until work is finished as promised, but he wants to make certain that there is no loophole in the language. Mr. Memmi assured him that both solicitors could do the language and if needed Diane Tekarski could be brought in as a

contract law consultant. Mr. Memmi asked for a vote to support the motion the way it has been presented.

Motion carried, 3-0.

A. Possible Right of Way for Hershey School Fiber Optic Installation

Mr. Foreman reported that the Municipal Authority has been asked to approve a right of way for the installation of fiber optics and he advised them that it should really be approved by the DTICDA as well. There is no document to be approved tonight (the paperwork was submitted to the Municipal Authority), but could the ICDA approve the right of way and allow for our signature when it comes to us?

Mr. Pries moved and Mr. Lenker seconded the motion to approve Mr. Foreman to sign the necessary forms for the ICDA. Mr. Memmi advised that he has seen Leon Whitmyer here with trucks and he wonders if this is being installed already. If so, they need to be informed in our letter that there was no approval for them to start ahead of time and that any damages that they do to the site are their responsibility to repair; to the satisfaction of the Public Works director.

Mr. Negley advised that he found out yesterday about this from Ralph Watters who advised Tom Clark. Tom went out to the site and spoke with Whitmyer and assured Mr. Negley that everything was proceeding the way it should.

Mr. Pries amended his motion to include the damage information in the letter and Mr. Lenker seconded the amended motion.

Motion carried, 3-0.

MUNICIPAL BLDG. AT HOCKERSVILLE RD. UPDATE

Mr. Foreman reported that last night was the zoning hearing with respect to the old municipal building and the project that is being proposed for the site. Mr. Foreman has copies of the plans that were submitted which contain substantial changes and improvements in the project. The zoning board will be voting on this at their next meeting.

There are two outstanding issues, Mr. Foreman explained; we have met with the developer and their counsel and clearly the approval process has taken considerably longer than was estimated; therefore they have been granted an extension if they want to continue with the project. In that discussion, the issue was raised with the PATT organization that the original agreement did not address the environmental study that was done, and as part of the time extension they need to undertake the work at their expense. Quite a while back we asked them to give us an estimate as to what that cost would be, and as of the end of last week they still did not have this estimate, but indicated that it should be ready this week. These two issues are in tandem at this point because the intent would be to negotiate an extension in return for them taking on the cost (or most of the cost) of the environmental work that is required. By the next board meeting they will have their answer from the Zoning Board. Mr. Foreman asked if there were any questions.

Mr. Memmi requested a short adjournment into an executive session for about five minutes after the meeting. Mr. Negley reminded him about a request for the “after-prom” party. Mr. Memmi advised the board of a letter received from the mothers in charge of “after-prom” activities asking for a donation from the ICDA of \$1,000 (as we have done in past years).

Mr. Lenker moved and Mr. Pries seconded the motion to give a donation of \$1,000.

Motion carried, 3-0.

PUBLIC COMMENT

No public comment.

ADJOURNMENT

Mr. Lenker moved to adjourn the meeting and Mr. Pries seconded the motion.

The meeting was adjourned by Secretary Memmi at 6:15 p.m.

Approved:

August T. Memmi
Secretary

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