

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

June 10, 2019

The Regular Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 12:14 p.m. on the above date at the Institute for Advanced Learning and Research, 150 Slayton Drive, Room 206, Danville, Virginia. Present were City of Danville Members Chairman Fred O. Shanks, III, Sherman M. Saunders, and Alternate J. Lee Vogler. Pittsylvania County Members present were Vice Chairman Robert W. Warren, Ronald S. Searce and alternate Elton Blackstock.

City/County staff members attending were: City Manager Ken Larking, City of Danville Director of Economic Development Telly Tucker, Assistant Director of Economic Development Corrie Bobe, City of Danville Project Manager Kelvin Perry, County Director of Economic Development Matt Rowe, Assistant County Administrator for Planning & Development Gregory Sides, City of Danville Director of Finance Michael Adkins, City Accountant Henrietta Weaver, Clement Wheatley Attorneys Michael Guanzon and Jennifer Burnette, and Secretary to the Authority Susan DeMasi. Also present were Brian Bradner and Shawn Harden from Dewberry & Davis.

PUBLIC COMMENT PERIOD

No one desired to be heard.

APPROVAL OF MINUTES OF THE MAY 13, 2019 MEETING

Upon **Motion** by Mr. Saunders and **second** by Mr. Searce, Minutes of the May 13, 2019 Meeting were approved as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

NEW BUSINESS

5A. CONSIDERATION OF RESOLUTION NO. 2019-06-10-5A AUTHORIZING THE ISSUANCE OF REVENUE REFUNDING BOND – CANE CREEK PROJECT

Authority Treasurer Michael Adkins explained at the last meeting, the RIFA Board passed the Financing Agreement with Wells Fargo to proceed with the refunding and refinancing of the Cane Creek Bonds. This Resolution allows RIFA to go to closing and permits the Chairman of the Authority to sign the closing documents along with others. City Council and the Board of Supervisors next Tuesday at their respective meetings, will vote to renew the Support Agreements to pay the debt service. Mr. Adkins noted this will be the final refinancing of this debt. The interest rate fluctuates a little day to day; on May 31st, the rate was just over three and half percent, at 3.45%, it should not move substantially from that point. Staff needs permission of the Board to continue with this refinancing.

Mr. Saunders **moved** for adoption of *Resolution No. 2019-06-10-5A, authorizing the issuance of its Revenue Refunding Bond (Cane Creek Project), Series 2019, in a principal amount not to exceed \$2,545,000; authorizing the execution and delivery of all bond documents in connection therewith including without limitation the Financing Agreement, the Bond and the Support Agreements; and authorizing other matters in connection therewith, in order to refinance the prior \$3,700,000 Revenue Refunding Bond (Cane Creek Project), Series 2016*

The Motion was **seconded** by Mr. Searce and carried by the following vote:

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

June 10, 2019

VOTE: 4-0
AYE: Warren, Scearce, Shanks, Saunders (4)
NAY: None (0)

5B. CONSIDERATION OF RESOLUTION 2019-06-10-5B APPROVING DEED OF COMMUNICATIONS SITE EASEMENT AGREEMENT TO MID-ATLANTIC BROADBAND

Pittsylvania County Director of Economic Development Matt Rowe explained staff was contacted by Mid-Atlantic Broadband about setting up a new cabinet mode on RIFA property, just off of Cain Street. Dewberry has looked at the site and confirmed that the proposed location does not interfere with anything RIFA was doing in the Park. What they are doing will be beneficial to Cane Creek Centre and to the Megasite enabling terabyte plus speeds to be served there. The next step was to email Mid-Atlantic Broadband to inform them that RIFA was ready for them to submit their plan showing the final location, and they will submit a final easement plat with a deed of easement; that will be reviewed by the Authority Attorney.

Staff was requesting the Board to pass a Resolution approving the deed and site agreement. Mr. Shanks questioned the location of Cain Street and Shawn Harden from Dewberry explained it was the strip of land in the front of the park on the inside as it was entered. Because of the divided entrance, they had to gain access from Cain Street and not Cane Creek Parkway.

Mr. Scearce **moved** for adoption of *Resolution No. 2019-06-10-5B, approving the execution and delivery of a Deed of Communications Site Easement Agreement to Mid-Atlantic Broadband Communities Corporation, a Virginia non-stock corporation, over that certain real property fronting on Cain Street, commonly known as Tax PIN 78380, located in Danville, Virginia.*

The Motion was **seconded** by Mr. Saunders and carried by the following vote:

VOTE: 4-0
AYE: Warren, Scearce, Shanks, Saunders (4)
NAY: None (0)

5C. CONSIDERATION OF RESOLUTION 2019-06-10-5C AUTHORIZING EXECUTION AND DELIVERY OF AN OPTION FOR REAL ESTATE TO APPALACHIAN POWER

Mr. Rowe explained staff was working with AEP to get the right of way for the new 138kv Redundant Transmission Line; part of that process was to establish a substation in the park itself. AEP has identified 17.5 acres off of Oak Hill Road, which was Lot 6 in the Park. Staff was able to work with AEP where they would purchase the property for \$30,000 per acre, \$1 per acre for a transmission easement and \$1 per acre for a distribution easement. RIFA would enter into a performance agreement with AEP and refund that money back to them once a substation was established in the park, prior to 2023. All the work for the right of ways was being paid for by the Tobacco Commission grants. Mr. Guanzon has provided the final draft comments to AEP's counsel and everybody seems to be in agreement with the documents.

Mr. Warren **moved** for adoption of *Resolution No. 2019-06-10-5C, authorizing the execution and delivery of an Option for the Sale and Purchase of Real Estate to Appalachian Power Company, a Virginia corporation, for that certain real property containing approximately 17.5*

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

June 10, 2019

acres situated off Oak Hill Road, located in the Authority's Southern Virginia Megasite at Berry Hill, at a purchase price of \$30,000 per acre, \$1 per acre for a transmission easement, and \$1 per acre for a distribution easement; the option term would be for an initial 6-month term with an option fee of \$5,000 to be applied against the purchase price at closing, with an additional 6-month extension for a \$5,000 fee; and authorizing a Local Performance Agreement to include a land grant of up to the purchase price under such option, in exchange for the purchaser to construct a power substation.

The Motion was **seconded** by Mr. Saunders and carried by the following vote:

VOTE: 4-0
AYE: Warren, Scearce, Shanks, Saunders (4)
NAY: None (0)

5D. CONSIDERATION OF RESOLUTION 2019-06-10-5D AUTHORIZING THE SALE TO IKEA OF LOT 7A

Mr. Guanzon explained there was a Ground Lease with RIFA and IKEA in 2006 that has since expired. IKEA had the ability under the Ground Lease to purchase all of 7A, 7B, and 7C; they did not do so, which was an inadvertent failure. They have requested to purchase 7A, which was their current footprint, for the same price. Staff has reviewed it, IKEA has substantially complied with their Performance Agreement and have been paying taxes since the time they were supposed to, had they exercised that option. Staff met with Dewberry, there are some issues with the public road that had been abandoned by the County and taken off the VDOT registers. If the Board approves this, it would be to transfer the property, limited to where IKEA was located now, provide them with a temporary easement because there was a driveway that goes through part of 7B, and then negotiate a road maintenance agreement. The recommendation will come back at another time, to recut Lot 7A so that instead of having an easement, just add that property to them. The amendment to the Ground Lease would have allowed them to purchase it for \$1, not only 7A, but 7B and 7C. RIFA was not going to give them all that, and will be keeping another 125 acres that it wouldn't have otherwise had.

Mr. Shanks noted that strip of 7B that lies between the plant site and the road right of way was not useful, and Mr. Guanzon noted his agreement, it was actually a "U" shaped lot. When he spoke with the legal counsel for IKEA, they will have to work out where to draw the line to add that other property. It was pretty serious for them to get this because if they don't have an insurable interest, legally, then if they do have a catastrophic loss right now, it was arguable whether their insurance policy would actually cover them. That was the reason for the stop gap measure, because RIFA does not have the new line drawn yet, it would be to just do a deed, a temporary easement, until they can work out the details of the rest of it. Mr. Guanzon stated IKEA drive, which ends in a cul-de-sac was abandoned by the County, but the map that would have added 7C to the right of that road was never recorded. By operation of law, when the County had abandoned that road, half of it got added to 7B, the other half got added to 7C; there was some cleaning up to do.

Mr. Shanks noted they talked about the expense RIFA incurred on the rail spur, trying to recover that, did staff decide that was not worth the effort. Mr. Guanzon explained when staff looked at that price, it was about \$350,000 to \$400,000. Given that RIFA was getting other property back, and they got the sense IKEA was not interested in expanding, staff didn't want to tip things over by making such a demand. The issue staff was also looking at was based

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

June 10, 2019

on where that line comes in, and that RIFA would get that other property, and could actually extend that line, it was not without value.

Mr. Scarce asked for clarification and Mr. Rowe noted it was 125 acres and what staff discussed was the real value was being able to get additional rail access in that park. As a swap to adding on the additional 7B so they can have their drive going into the plant, RIFA would turn the property outline a little bit closer to the plant and cross the rails so RIFA would be able to get another rail spur in there if they needed. It would be staff's recommendation that the County petition VDOT to take that road back into the system because it would be serving three parcels again, which is the minimum VDOT would like to see; right now there was no road maintenance agreement.

Mr. Saunders **moved** to approve *Resolution No. 2019-06-10-5D, authorizing the sale to IKEA Industry Danville, LLC, a Delaware limited liability company, of Lot 7A, commonly known as Tax GPIN 2347-06-3528, in the Authority's Cane Creek Centre project in Pittsylvania County, Virginia, for a purchase price of \$1, consistent with that certain Ground Lease dated October 25, 2006, as amended, along with an easement of ingress and egress across Lot 7B owned by the Authority, from IKEA Drive to the existing parking area on Lot 7A subject to a road maintenance agreement to be negotiated, and in exchange for a quitclaim, release and waiver by IKEA Industry Danville, LLC, of any and all options or rights of first refusal to all real property owned by the Authority in its Cane Creek Centre project*

The Motion was **seconded** by Mr. Warren and carried by the following vote:

VOTE: 4-0
AYE: Warren, Scarce, Shanks, Saunders (4)
NAY: None (0)

5E. FINANCIAL STATUS REPORTS AS OF MAY 31, 2019

Authority Treasurer Michael Adkins gave the Financial Status report as of May 31, 2019 beginning with the \$7.3M Cane Creek Bonds which show an expenditure of \$598 to Clement Wheatley for legal fees. General Expenditures show RIFA paid \$15,584 to Clement Wheatley for legal services, \$429 for meals and \$61 for two months of Utilities. The Mega Site Funding Other than Bonds shows \$4,500 expended to Dewberry for Amendment #22 and \$3,000 to Clement Wheatley for legal fees; Lot 4 Site Development shows \$39,450 to Dewberry for Amendments #19 and #23; Lot 8 Site Development shows no activity, and Water and Sewer shows \$2,700 was paid to the Treasurer of Virginia for a DEQ Land Disturbance permit. Rent, Interest and Other Income shows RIFA received \$10 in rent from IKEA, which represents rent for 2006 through 2016, \$500 was received from Axxor, their annual fee for the entrance sign and \$25,412 was paid to the Institute for the maintenance of the Hawkins' Building.

Mr. Warren **moved** to accept the Financial Report as presented. The Motion was **seconded** by Mr. Saunders and carried by the following vote:

VOTE: 4-0
AYE: Warren, Scarce, Shanks, Saunders (4)
NAY: None (0)

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

June 10, 2019

5F. CONSIDERATION OF RESOLUTION 2019-06-10-5F APPROVING A BUDGET TRANSFER OF \$68,500

Authority Treasurer Michael Adkins explained it was difficult to forecast what legal fees will be. Staff was asking that \$68,500 be transferred from the contingency line item to the Legal Fees for this current fiscal year, and was also asking permission to pull from the Unrestricted Fund balance, if needed, to cover additional fees through the remaining few weeks of this fiscal year.

Mr. Searce **moved** for adoption of *Resolution No. 2019-06-10-5F, approving the FY 2019 General Expenditures Budget Transfer of \$68,500 from Contingency Budget to Legal Budget and of excess from Unrestricted Funds.*

The Motion was **seconded** by Mr. Saunders and carried by the following vote:

VOTE: 4-0
AYE: Warren, Searce, Shanks, Saunders (4)
NAY: None (0)

5G. CONSIDERATION OF RESOLUTION 2019-06-10-5G APPROVING THE FY2020 GENERAL EXPENDITURES BUDGET

Authority Treasurer Michael Adkins explained the proposed budget for the administrative expenses for RIFA for FY 2020 was fairly flat; staff did try to increase the legal budget as has been appropriate for the past few years. In the past, the City and the County have both contributed \$75,000 each toward admin expenses; because RIFA does have a sizeable Unrestricted Fund Balance, each locality this year proposed contributing \$25,000. Staff will pull the difference to balance the budget from the Unrestricted Fund Balance; they have budgeted \$200,000 there. If that was not needed, it will stay in the Unrestricted Fund Balance.

Mr. Saunders **moved** for adoption of *Resolution No. 2019-06-10-5G, approving the FY 2020 General Expenditures Budget.*

The Motion was **seconded** by Mr. Searce and carried by the following vote:

VOTE: 4-0
AYE: Warren, Searce, Shanks, Saunders (4)
NAY: None (0)

5H. REPORT ON MOVE OF MICHAEL C. GUANZON, ESQ. FROM CLEMENT WHEATLEY LAW FIRM TO CHRISTIAN & BARTON

Mr. Guanzon explained he has accepted an offer to be a partner at the law firm of Christian & Barton in Richmond. He has been at Clement Wheatley for twenty years and it was an opportunity he felt he needed to make. The question for the Board was moving forward, what their options might be. They could continue with him in his new law firm, they have authorized him to keep the exact same rate structure and there would be no travel expenses to make the meetings, as before. Another option would be to remain with Clement Wheatley in which case Jennifer Burnette and Ted Hodges would be the contact people. Another option would be some type of hybrid situation, RIFA has had a situation in the past where they had Troutman

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

June 10, 2019

Sanders hired as special counsel for one of RIFA's projects. The other option would be to choose another law firm. The Board can deliberate in closed session as permitted by FOIA; he and Ms. Burnette will step out of the room during the discussion and there was a provision when the Board comes out of closed session to make a Resolution.

Mr. Shanks noted they have enjoyed working with Mr. Guanzon, does not know what the outcome of this will be, but Mr. Guanzon has given RIFA 100% and the Board really appreciates everything he has done. Mr. Guanzon stated it has been a pleasure and a honor.

6. CLOSED SESSION

[During the closed session, all matters discussed shall involve receiving advice from legal counsel, and as such all communications during the closed session shall be considered attorney-client privileged.]

At 12:37 p.m. Mr. Saunders **moved** that the Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority be recessed in a Closed Meeting for the following purposes:

- A. As permitted by Section 2.2-3711(A)(5) of the Code of Virginia, 1950, as amended ("Virginia Code"), for discussion concerning one or more prospective businesses where no previous announcement has been made of that business's interest in locating its facilities in one or more of the Authority's projects located in Pittsylvania County, Virginia, and/or Danville, Virginia;
- B. As permitted by Virginia Code § 2.2-3711(A)(39) for discussion or consideration of records excluded under Virginia Code § 2.2-3705.6(3) (including without limitation (i) those certain confidential proprietary records voluntarily provided by private business pursuant to a promise of confidentiality from the Authority, and used by the Authority for business and trade development and (ii) those certain memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by the Authority, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the Authority); such information being excluded from mandatory disclosure under Virginia Code § 2.2-3705.1(12) (information relating to the negotiation and award of a specific contract pertaining to the Authority's Southern Virginia Megasite at Berry Hill project, Cyber Park project and/or Cane Creek Centre project, where competition or bargaining is involved and where the release of such information would adversely affect the bargaining power or negotiating strategy of the Authority) and Virginia Code § 2.2-3705.1(8) (appraisals and cost estimates of real property in one or more of the Authority's projects subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease);
- C. As permitted by Virginia Code §§ 2.2-3711(A)(3) for discussion or consideration of the acquisition and/or the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the Authority; and

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

June 10, 2019

- D. As permitted by Virginia Code §§ 2.2-3711(A)(29) for discussion of the award of a public contract involving the expenditures of public funds where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the Authority.

The Motion was **seconded** by Mr. Searce and carried by the following vote:

VOTE: 4-0
AYE: Warren, Searce, Shanks, Saunders (4)
NAY: None (0)

E. On **Motion** by Mr. Saunders and **second** by Mr. Warren and by unanimous vote at 1:52 p.m., the Authority returned to open meeting.

E. Mr. Saunders **moved** for adoption of the following Resolution:

WHEREAS, the Authority convened in Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia, 1950, as amended, requires a Certification by the Authority that such Closed Meeting was conducted in conformity with Virginia Law;

NOW, THEREFORE, BE IT RESOLVED that the Authority hereby certifies that, to the best of each Member's knowledge, (i) only public business matters lawfully exempted by the open meeting requirements of Virginia Law were discussed in the Closed Meeting to which this Certification Resolution applies, and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed, or considered by the Authority.

The Motion was **seconded** by Mr. Warren and carried by the following vote:

VOTE: 4-0
AYE: Warren, Searce, Shanks, Saunders (4)
NAY: None (0)

7. NEW BUSINESS – CONTINUED

A. CONTINUATION OF AGENDA ITEM 5H; CONSIDERATION OF RESOLUTION 2019-06-10-7A [NO WRITTEN RESOLUTION]

Mr. Warren **moved** for adoption of a **Resolution** that *Danville Pittsylvania Regional Industrial Facility Authority enter into a service contract with Christian & Barton, more particularly the Attorney Michael Guanzon, effective July 1, 2019 running until June 30, 2020. Said contract will be negotiated and assigned and agreed to at the July board meeting and Mr. Guanzon will work in conjunction with Ken Larking, David Smitherman and their respective staffs to complete that transaction.*

The Motion was **seconded** by Mr. Saunders and carried by the following vote:

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

June 10, 2019

VOTE: 4-0
AYE: Warren, Searce, Shanks, Saunders (4)
NAY: None (0)

Mr. Shanks noted to Ms. Burnette, it was a very difficult decision and one that had more in response to Michael's past experience with RIFA than anything else. The Board appreciates the representation by Clement Wheatley, and her over the years, and certainly welcome her to come back in with a proposal for the following year. Mr. Saunders and Mr. Warren noted their agreement, it was no reflection other than the long tenure and history of having that prior knowledge was very beneficial. Mr. Guanzon has done an outstanding job, but Clement & Wheatley has always represented RIFA well.

Meeting adjourned at 1:57 p.m.

APPROVED:

s/Fred O. Shanks, III
Chairman

s/Susan M. DeMasi
Secretary to the Authority