

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

June 13, 2022

A Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 12:13 p.m. on the above date at the Institute for Advanced Learning and Research, 150 Slayton Avenue, Room 207, Danville, Virginia. Present were City of Danville Members Vice Chairman Sherman M. Saunders, J. Lee Vogler, Jr., and Alternate Dr. Gary P. Miller. Pittsylvania County Members present were Chairman William V. Ingram, Jessie Barksdale, and Alternate Darrell Dalton.

City/County staff members attending were: City Manager Ken Larking (via Zoom), Deputy City Manager Earl Reynolds, Interim County Administrator Clarence Monday, City of Danville Director of Economic Development Corrie Bobe (via Zoom), Assistant Director of Economic Development Barbara Fiedor, Pittsylvania County Director of Economic Development Matt Rowe (via Zoom), City of Danville Chief Financial Officer and Authority Treasurer Michael Adkins, City of Danville Budget Director Henrietta Weaver, Pittsylvania County Director of Finance Kim Van Der Hyde, Legal Counsel to the Authority Attorney Michael C. Guanzon, and Secretary to the Authority Susan DeMasi. Also present were Brian Bradner from Dewberry (via Zoom) and Telly Tucker, President of the Institute for Advanced Learning and Research.

Chairman Vic Ingram presided.

PUBLIC COMMENT PERIOD

No one present desired to be heard.

APPROVAL OF MINUTES OF THE MAY 9, 2022, MEETING

Upon **Motion** by Mr. Saunders and **second** by Mr. Barksdale, Minutes of the May 9, 2022, Meeting were approved as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

NEW BUSINESS

5A. CONSIDERATION OF RESOLUTION NO. 2022-06-13-5A, REVISING THE AMENDED AND RESTATED BYLAWS OF THE AUTHORITY.

Legal Counsel for the Authority Michael Guanzon explained staff recommended adding officers, in addition to the Chairman, Vice Chairman, Secretary and Treasurer, to include new positions called City Manager Officer and County Administrator Officer. Right now, there was a standing resolution that empowered Ms. Bobe and Mr. Rowe to enter into non-disclosure and confidentiality agreements with recruits, and into non-legally binding letters of intent, to negotiate a definitive agreement which would ultimately be discussed and voted on by the Board when it becomes final, and RIFA had a public announcement. This way, Mr. Larking and Mr. Monday, since they were the highest executives in the City and County, would also have the ability to enter into those agreements for RIFA. Mr. Guanzon noted it does not take away any power of the Board, it was just to make it easier and puts RIFA in a better position.

Mr. Vogler noted this change, would that give the City Manager or the County Administrator authority to make decisions without the Board's consent or knowledge, and Mr. Guanzon explained only with the non-disclosure agreements; those non-disclosure agreements just say when RIFA gets the information from the potential recruit, they were keeping quiet and those

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were subject to Mr. Guanzon's review to make sure there wasn't anything else that was binding. The letter of intent had nothing legally binding in it except for confidentiality and exclusive dealings.

Mr. Ingram noted he thought some of the concern with this was not only not including the Board, that the Board would not know of certain actions being taken, and finding out about it at the end of the process, which he did not think was a good thing. Mr. Guanzon stated in this situation, that other than those things he just discussed, these were the outer bounds in which they would negotiate a definitive agreement. When a definitive agreement had been negotiated, it was brought to the Board in closed session. There was no danger of staff making any promises that they wouldn't be authorized to do; the Board has the ultimate say. Mr. Guanzon stated he would recommend when they were getting close, in the future to one of those situations, that was the time when the Board would take a look at the definitive agreement draft, vet it out and if they don't understand something, ask him or one of the staff in closed session. If there was any doubt in their minds or they didn't like something, he would suggest they make that known in closed session so when they go out in open session to vote, they vote their conscience.

Mr. Saunders noted, if the City Manager or County Administrator negotiate certain things with prospects and it comes to the Board for a vote, what would happen if the Board did not agree; but commitment had been made to the prospect. How can they avoid that kind of confusion and Mr. Guanzon stated in all letters of intent it states specifically that whatever was promised had to be in that definitive agreement which was still subject to approval by the RIFA board. Mr. Saunders stated he had two concerns, one was that there was no potential for the Board and staff to disagree; they don't want to send a message to the prospect that they thought the staff did one thing, but it got to the Board as something else. Second, he would like to hear what the other board members had to say about this.

Dr. Miller noted he was fine with it, and Mr. Vogler stated his concern was what he asked earlier and also what Mr. Saunders said. He does not worry about who was in those spots right now, but they never know who was going to end up there. It could be an issue where nothing has been officially done, but it doesn't look good with one person telling the company one thing, when they come back to actually sign the board looks at it differently, and they have to go back. If it were only the people now, he wouldn't be concerned about it all, but he tries to think about where things will be in the future.

Mr. Guanzon stated from practice, staff gives reports in closed session on potential recruits, where they were, what they were thinking of and those were the times where the board has spoken up and said where the line needs to be drawn. They have consistently given reports on certain things, and he did not think the Board has ever been caught by surprise before the entire agreement was done. He believed the Board needed to take a look from an administrative standpoint that this was intended to assist them in getting things done more so then feeling like they were having some power taken away from them.

City Manager Ken Larking noted the way it was written, the Economic Development Director can sign an LOI on behalf of RIFA right now; all they were doing was changing that from the Economic Development Directors to the City Manager and County Administrator. In his opinion, it was wiser to have those two positions be the ones to sign off on the LOIs because they were used to being held accountable to the elected officials, and therefore, the RIFA Board Members, should anything go wrong. Part of their responsibility as County Administrator and City Manager was to keep their elected officials informed about what they

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were doing. This takes risk away from the Economic Development Directors who can feel confident that what they were working on, the prospects, their bosses were aware and made their elected officials informed of what they were doing. If they don't do anything, in the meantime, the Economic Development Directors can still sign off on LOIs. He believed the risk should be on the appointees to the elected boards, they were used to taking that risk. They won't do anything without talking with their elected officials to make sure they were in agreement with what they signed off on. Mr. Larking noted he recommended they make the change to the bylaws. Mr. Guanzon noted how it was written was that they have to act jointly. Mr. Ingram noted they were okay with voting and moving forward.

Mr. Saunders **moved** for adoption of *Resolution 2022-06-13-5A further revising the Amended and Restated Bylaws of the Authority adopted August 13, 2007, and last revised June 14, 2021, by amending Article VI ("Officers") by adding new Paragraph 6 to authorize the Board to appoint a City Manager Officer and County Administrator Officer to supervise the Authority's projects, and where an individual holding such officer position shall be required to meet certain eligibility criteria; and authorizing such officer positions to execute jointly and to deliver confidentiality and non-disclosure agreements and letters of intent, on behalf the Authority, with potential business and industry recruits in connection with the Authority's recruitment efforts so long as the Authority is not legally bound to make appropriations and the form of such documents are approved by legal counsel to the Authority.*

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

VOTE: 4-0
AYE: Barksdale, Ingram, Saunders, Vogler (4)
NAY: None (0)

5B. CONSIDERATION OF RESOLUTION NO. 2022-06-13-5B, AUTHORIZING THE EXECUTION OF A BMP AGREEMENT WITH THE CITY

Pittsylvania County Director of Economic Development Matt Rowe noted this item was for the Best Management Practice agreement with the City for the expansion of the Hawkins' Building in the Cyber Park on the Institute campus. The City of Danville administers the Stormwater Management Program and per state law, any stormwater feature has to have a BMP agreement in place. Mr. Rowe stated he believed there has been some modification language of the standardized agreement and if a motion was to be made, it would be a motion to approve the Best Management Practice agreement pending legal review and potential modification.

Mr. Guanzon explained there was a modification that needed to be done; he had already had a conversation with the City Attorney to modify the language and that has been agreed upon as far as indemnification provisions which means that RIFA would be indemnifying the City. RIFA as a political subdivision cannot indemnify under most situations; the City Attorney and he have agreed to the appropriate language, and there will be an insert that says, to the fullest extent allowable by law. That part has been corrected; there was a reference to the Hawkins' Building and that was in error and needs to be removed. If the Board see fit, those were the ones that needed to be changed to amend the resolution.

Mr. Barksdale **moved** for adoption of *Resolution No. 2022-06-13-5B, as amended, authorizing the negotiation, execution and delivery of a Best Management Practices Agreement with the City of Danville, Virginia, related to the construction and maintenance of on-site storm water*

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management facilities at 300 Stinson Drive, Danville, Virginia (PIN 76368) of the Authority's Cyber Park Project.

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

VOTE: 4-0
AYE: Barksdale, Ingram, Saunders, Vogler (4)
NAY: None (0)

5C. CONSIDERATION OF RESOLUTION NO. 2022-06-13-5C, APPROVING AMENDMENT #1 WITH DEWBERRY FOR LOT 7D

Mr. Rowe noted this item was for the Lot 7D grading in the Cyber Park; the \$51,500 was a fee for third party inspections, for example, making sure that basins and ponds were being put in correctly and that the pad itself was getting compacted to the right ratio. This was a cost that was standardized for this type of activity, and was commercially reasonable.

Mr. Barksdale **moved** for adoption of *Resolution No. 2022-06-13-5C, approving Amendment No. 1, dated June 3, 2022, with Dewberry Engineers Inc., a New York corporation, for professional engineering and construction administration services for Lot 7D Graded Pad Project in the Authority's Cyber Park Project, located in Danville, Virginia, for a lump sum fee of \$51,500.00.*

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

VOTE: 4-0
AYE: Barksdale, Ingram, Saunders, Vogler (4)
NAY: None (0)

Mr. Guanzon noted for clarification, the bylaws do provide that staff specify before RIFA has an expenditure that they identify where the money was coming from, and RIFA does in fact have the funds. Authority Treasurer Michael Adkins explained that in some cases the money was available, it may be unused local funding, it may be on a different funding sheet or part of fund balance, but will be transferred to that funding sheet to cover that expense.

5D. CONSIDERATION OF RESOLUTION NO. 2022-06-13-5D, APPROVING THE REIMBURSEMENT OF \$95,792.44 IN MARKETING EXPENSES

Mr. Rowe thanked Ms. Bobe for bringing this up; both City and County staff have been expending a lot of their local budgets on marketing the Southern Virginia Mega Site for RIFA'S benefit. Ms. Bobe has put together a proposal to reimburse both the City and County departments a cumulative total of \$95,792,44. This equates to a little over \$47,000 both to the City and the County for their advanced marketing expenses from the Southern Virginia Mega Site on several very large projects.

Mr. Saunders **moved** for adoption of *Resolution No. 2022-06-13-5D, approving the total reimbursement of \$95,792.44 in marketing expenses advanced by the City of Danville, Virginia and Pittsylvania County, Virginia, to the Authority resulting from certain marketing expenses related to the Authority's Southern Virginia Megasite at Berry Hill project, located in Pittsylvania County, Virginia*

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

VOTE: 4-0
AYE: Barksdale, Ingram, Saunders, Vogler (4)
NAY: None (0)

5E. CONSIDERATION OF RESOLUTION 2022-06-13-5E, APPROVING CHANGE ORDER 10 TO HAYMES BROTHERS

Mr. Rowe explained this was to approve Change Order #10 at the Megasite, Lot 4, to close out the Phase I grading. This was an incidental cost, an increase in the contract price that was partly due to fuel price increases, for removing the power line which was now being completed at the site, and moving the dirt that was originally under that power line and putting it to grade. This work was not done at the time due to the existing powerline cutting through the site; it had to be done by Haymes to close out the stormwater permit requirements. Mr. Adkins noted the funding references Grant #2491; that grant was actually closed. They would resurrect that funding sheet, and transfer money into it for the cost of the Change Order.

Dr. Miller noted it was a large Change Order, what did they have to do differently, and Mr. Rowe explained RIFA got a loan through the Tobacco Commission, through the County to relocate the AEP Power Line. When the power line was in place, Haymes Brothers could not grade underneath the powerlines, so there was a mound of dirt underneath them. On the original permit through DEQ and the Army Corp of Engineers, the plan showed that dirt was going to be smoothed out into the broader pad site covering additional acreage. The permit cannot be closed out until all that work has been done.

Brian Bradner from Dewberry Engineers noted his agreement with Mr. Rowe's explanation and added the ultimate goal was to get the pad in the condition it was in with the powerline being relocated, and would say the matter for this change order was based on the timing of when the powerline could be relocated in addition to the time that Haymes Brothers had to do continual monitoring to stay in compliance with the stormwater permit.

Mr. Barksdale **moved** for adoption of *Resolution No. 2022-06-13-5E, approving Change Order 10 to the site development work by Haymes Brothers, Inc., a Virginia corporation, originally approved under Resolution No. 2017-02-24-4A, including modification and construction resulting from the relocation of a powerline for graded Pad A on Lot 4, in the Authority's Southern Virginia Megasite at Berry Hill, located in Pittsylvania County, Virginia, increasing the contract price by \$290,500.00.*

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

VOTE: 4-0
AYE: Barksdale, Ingram, Saunders, Vogler (4)
NAY: None (0)

5F. FINANCIAL STATUS REPORTS AS OF MAY 31, 2022

Authority Treasurer Michael Adkins gave the Financial Status report as of May 31, 2022, beginning with the \$7.3M Bonds for Cane Creek which had no activity during the month of May. General Expenditures for Fiscal Year 2022 show RIFA paid \$308.70 to the Institute for meals and \$178.85 for monthly utilities. Berry Hill Funding Other than Bonds had one

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expenditure to Dewberry for \$70,775 for work completed under Amendment #33. Lots 1 and 2 at the Megasite, staff added the VBRSP grant for about \$1.3M and added an encumbrance for Jimmy R. Lynch & Sons which was approved at the last meeting, for just over \$2.9M. As far as expenditures, RIFA paid \$7,500 to Dewberry for work under Amendment #30 and \$6,100 to the Treasurer of Virginia for Stormwater Permits issued for Lots 1 and 2. Water and Sewer at Berry Hill had no expenditures. Cyber Park Site Development was another one where they have added money from Fund Balance to cover the Nutrient Credits; that was the expenditure for this month to Virginia Nutrient Bank of \$37,840 for Nutrient Credits related to Lot 7B. Rent, Interest and Other Income show RIFA received rent from the Institute for the Hawkins Building, and because of timing they received two months, April and May; that was \$43,932; RIFA received the \$1,000 lease renewal from Osborne Company, \$1,500 from AEP for their monthly storage lease payment, and the checking account earned \$49.80 in interest. RIFA received Pittsylvania County's share of MEP rent of \$3,574.84, and also received an escrow refund related to Harlow and Gerfertec for \$3,573. For expenses, there was a check to the Institute for the Hawkins' Building property management of \$21,846.50 and also the rent for MEP was paid to the Institute for \$7,149.67.

Mr. Vogler **moved** to accept the Financial Report as presented; the Motion was **seconded** by Mr. Barksdale and carried by the following vote:

VOTE: 4-0
AYE: Barksdale, Ingram, Saunders, Vogler (4)
NAY: None (0)

5G. CONSIDERATION OF 2022-06-13-5G APPROVING THE FISCAL YEAR 2023 GENERAL EXPENDITURES BUDGET

Mr. Adkins explained in the monthly meeting for June, staff asks the Board to approve an operating budget for administrative costs. As usual, RIFA was receiving \$75,000 from each locality to cover administrative expenses and will pull forward any unused monies from Fiscal Year 2022 to add to this budget. This provides a loose structure of what they expect anticipated expenses to be and will adjust through the year.

Mr. Vogler moved to **adopt** Resolution 2022-05-09-5G, *approving the Fiscal Year 2023 General Expenditures Budget*.

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

VOTE: 4-0
AYE: Barksdale, Ingram, Saunders, Vogler (4)
NAY: None (0)

6. CLOSED SESSION

At 12:54 p.m. Mr. Barksdale **moved** that the Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority be recessed in a Closed Meeting for the following purposes:

[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.]

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- 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; and
- 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); and
- 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
- D. As permitted by Virginia Code § 2.2-3711(A)(8) for consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel; and
- E. 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. Saunders and carried by the following vote:

VOTE: 4-0
AYE: Barksdale, Ingram, Saunders, Vogler (4)
NAY: None (0)

Mr. Vogler left the meeting at 2:30 p.m.

RETURN TO OPEN SESSION

On **Motion** by Dr. Miller and **second** by Mr. Barksdale and by unanimous vote at 2:49 p.m., the Authority returned to open meeting.

Dr. Miller **moved** for adoption of the following Resolution:

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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. Saunders and carried by the following vote:

VOTE: 4-0
AYE: Barksdale, Ingram, Saunders, Miller (4)
NAY: None (0)

7. COMMUNICATIONS

There were no communications from Board Members or staff.

Meeting adjourned at 2:52 p.m.

APPROVED:

s/ William V. Ingram
Chairman

s/ Susan M. DeMasi
Secretary to the Authority