

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

April 12, 2021

A Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 12:09 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 Chairman Sherman M. Saunders, J. Lee Vogler, Jr., and Alternate Dr. Gary P. Miller. (*Dr. Miller entered the meeting at 12:18 p.m.*) Pittsylvania County Members present were Vice Chairman Ronald S. Searce, Robert W. Warren, and Alternate Vic Ingram.

City/County staff members attending were: City Manager Ken Larking, Pittsylvania County Administrator David Smitherman, City of Danville Director of Economic Development Corrie Bobe, Pittsylvania County Director of Economic Development Matt Rowe, Christian & Barton Attorney Michael C. Guanzon, and Secretary to the Authority Susan DeMasi. Also present were Shawn Harden and Brian Bradner from Dewberry. *City of Danville Director of Finance/Authority Treasurer Michael Adkins, and City of Danville Accountant Henrietta Weaver, attended the meeting electronically.*

Chairman Sherman M. Saunders presided.

PUBLIC COMMENT PERIOD

No one present desired to be heard.

APPROVAL OF MINUTES OF THE MARCH 8, 2021 MEETING

Upon **Motion** by Mr. Searce and **second** by Mr. Warren, Minutes of the March 8, 2021 Meeting were approved as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

NEW BUSINESS

5A. CONSIDERATION OF RESOLUTION NO. 2021-04-12-5A, APPROVING GRADING SERVICES BY HAYMES BROTHERS, INC., FOR THE PROPOSED SIGN PLACEMENTS LOCATED ON BERRY HILL ROAD

Pittsylvania County Director of Economic Development Matt Rowe noted this item was a change order, for a lump sum of \$20,000, from Haymes Brothers for grading approximately two acres associated with the two entrance signs; the scope of work was included in the agenda. Brian Bradner from Dewberry noted they had reached out to Haymes as they were currently working adjacent to these two sites. Dewberry had prepared plans, so Haymes priced it based off those and Dewberry also reviewed their scope of work.

Mr. Warren asked Mr. Bradner if RIFA received any other bids or inquire about the pricing of this. Mr. Bradner explained based on the timeliness, Dewberry reached out to them initially because they were working adjacent to the site, and were already mobilized. They have not reached out directly to anyone else, but they can if the Board would like them to do that. Dewberry had prepared their own cost estimate, they reviewed their pricing and theirs theirs was actually less. Mr. Warren stated he did not want to delay the process, the signs were important, but does hope going forward, it was probably in all their best interests, certainly the elected officials, to have other bids for transparency.

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Mr. Warren **moved** for adoption of Resolution No. 2021-04-12-5A, *approving grading services by Haymes Brothers, Inc., a Virginia corporation, for the proposed sign placements located on Berry Hill Road within the Authority's Southern Virginia Megasite at Berry Hill Project, located in Pittsylvania County, Virginia, for a lump sum fee of \$20,000.00.*

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

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

5B. CONSIDERATION OF RESOLUTION NO. 2021-04-12-5B, AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AN AGREEMENT FOR PURCHASE AND SALE WITH BERRY HILL SOLAR, LLC,

Mr. Rowe explained Items 5B and 5C were related Resolutions. The first was to purchase the right of way currently under an option with Berry Hill Solar LLC. This was being paid for by Tobacco Commission Megasite Funds for the connector road acquisition; it would represent RIFA's final purchase for the connector road through that property. The Authority had received those funds, and the local match was already appropriated as well. The agreement was somewhat open ended on the acreage because that will be dependent open the final alignment of the VDOT roadway. Mr. Guanzon noted the items for 5B and 5C, if approved, would be contingent on each other, the closing would be contemporaneous with and conditioned for each other. RIFA would buy the portion for the connector road and they would buy from RIFA an easement through Berry Hill to do the interconnection. The price would be equal, it was just a matter of trying to get the details out for the engineering maps to be finalized. Dewberry had already looked at the preliminary items and requested some adjustments. For purposes of grant funds, staff was doing these as two separate transactions.

Mr. Vogler **moved** for adoption of Resolution No. 2021-04-12-5B, *authorizing the negotiation, execution and delivery of an Agreement for Purchase and Sale with Berry Hill Solar, LLC, a North Carolina limited liability company, under which the Authority will purchase a portion of certain real property near the Authority's Southern Virginia Megasite at Berry Hill Project located in Pittsylvania County, Virginia in support of building a connector road to service the Authority's Southern Virginia Megasite at Berry Hill Project.*

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

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

5C. CONSIDERATION OF RESOLUTION NO. 2021-04-12-5C, AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AN AGREEMENT FOR PURCHASE AND SALE OF UTILITY EASEMENT WITH BERRY HILL SOLAR, LLC,

Mr. Scarce **moved** for adoption of Resolution No. 2021-04-12-5C, *authorizing the negotiation, execution and delivery of an Agreement for Purchase and Sale of Utility Easement with Berry Hill Solar, LLC, a North Carolina limited liability company, as purchaser, under which purchaser will purchase a portion of certain real property in the Authority's*

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Southern Virginia Megasite at Berry Hill project located in Pittsylvania County, Virginia, in support of building a connector road to service the Authority's Southern Virginia Megasite at Berry Hill Project and of further development of the Project.

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

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

5D. CONSIDERATION OF RESOLUTION NO. 2021-04-12-5D, CLARIFYING RESOLUTION NO. 2021-03-08-6FA

Mr. Guanzon explained last month, the RIFA board approved the conversion of the Contract of Sale to a Ground Lease to enable RealtyLink to do some site development work on the property for a subtenant in advance of buying the property. There were some minimum terms but the form of the document had not been finalized. This was a situation two years in the making starting with agreements, then a contract of sale where RIFA would sell them the property in Cane Creek, and then RIFA entered into a local performance agreement with Aerofarms. Realty Link had completed its due diligence and there were several extensions for them to take a longer time to review the property. Late last year, they needed more time, so RIFA extended the period of time to close and gave them 60 days. It was RealtyLink's idea to change this to a short term ground lease for a period of time so that they could do the work, have the control, RIFA would own it, and they would pretty much wait until their ultimate subtenant would be ready to do this transaction. The team, RealtyLink's legal counsel and Aerofarms legal counsel started negotiating the terms of that ground lease and he thought they were done. Then late last week, RealtyLink wanted to change terms of the ground lease, but RIFA hadn't signed it and was still finalizing what was going in. It was his opinion, legally, that the first Resolution he had prepared last month would have been good enough to take care of whatever minor things that needed to be changed. This resolution says clarifying; it was whatever this board decided to authorize the officers, within the range of what has been approved, to make certain adjustments. For example, if the lease would end on July 1, and they needed to August 1st, those were minor types of things that the Board does not want to have to convene everyone for. If it were a material change, the chairman or vice chairman, would probably consult legal counsel to determine if a meeting was needed, because it was either way off the scope of what was intended or it was a material change that required the whole board to convene to discuss. This was to give the board some flexibility to consider what RealtyLink wants; RealtyLink was requesting a longer period of time for the ground lease, even though the time frame given to them was what they suggested. There was some legal advice he wanted to give to the board on this item; the Board can table this until after closed session, discuss it in closed session, or go to closed session now and then come back.

Mr. Saunders noted if there was no objection, he would be in favor of tabling Resolution 2021-04-12-5D. Mr. Warren moved that Resolution 2021-04-12-5D be **TABLED** until following the closed session to allow legal counsel to consult with the Board on the extension. The Motion was **seconded** by Mr. Searce and carried by the following vote:

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

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5E. FINANCIAL STATUS REPORTS AS OF MARCH 31, 2021

Authority Treasurer Michael Adkins gave the Financial Status report as of March 31, 2021 beginning with the Cane Creek Bonds which showed no expenditures for March. General Expenditures for Fiscal Year 2021 show RIFA paid \$2,840 to WTP Services for registering the Berry Hill main logo, \$233 for meals and \$41 for monthly utilities. Funding Other than Bonds for Berry Hill showed no expenditures for the month of March, and Lots 1 and 2 Site Development at Berry Hill showed RIFA expended \$49,500 to Dewberry for work done under Amendment #30. Under Water and Sewer at Berry Hill, RIFA expended \$6,750 to Dewberry for work under Amendment #38, and \$376,713 to Haymes Brothers for continued work on Phase 1 Sanitary Sewer. Rent, Interest and Other Income show RIFA received \$22,817 in rent from the Institute for the Hawkins Building, \$35 earned in interest, and \$6,328 each from Pittsylvania County and the City of Danville for their share of the Harlow Fastech incentive. Under Expenditures, \$22,817 was paid to the Institute for the Hawkins' Building Maintenance.

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

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

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 12:28 p.m. Mr. Scarce **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

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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.

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

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

RETURN TO OPEN SESSION

On **Motion** by Mr. Scarce and **second** by Mr. Warren and by unanimous vote at 2:00 p.m., the Authority returned to open meeting. (Reinstatement/Unmuting of Conference Line [see Agenda Item 5E above].)

Mr. Scarce **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. Vogler and carried by the following vote:

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

CONTINUATION OF NEW BUSINESS

5D. CONSIDERATION OF RESOLUTION NO. 2021-04-12-5D, CLARIFYING RESOLUTION NO. 2021-03-08-6FA (AMENDED)

Mr. Vogler **moved** to approve Resolution 2021-04-12-5D, *clarifying that Resolution No. 2021-03-08-6FA includes authorization to make adjustments to the term of the Ground Lease and the right of the Subtenant to exercise the Option to purchase in the event of an uncured*

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Monetary Default by the Tenant. Amended to include the term of the Ground Lease be extended to August 31st.

The Motion was **seconded** by Mr. Scarce.

Mr. Scarce noted he had full confidence in the Authority's legal counsel, Mr. Guanzon, and what he has been doing for this contract, but stated he wanted to put RealtyLink on notice that he was not happy with their negotiating tactics, and any further delays with this process with them will make him less likely to affirm any other future negotiations with them. Mr. Warren noted his agreement with Mr. Scarce's comments.

The **Motion** was carried by the following vote:

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

7. COMMUNICATIONS

There were no communications from Board Members or staff.

Meeting adjourned at 2:05 p.m.

APPROVED:

s/ Sherman M. Saunders
Chairman

s/ Susan M. DeMasi
Secretary to the Authority