

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY
Minutes
April 8, 2013

The Regular Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority convened at 12:13 p.m. on the above date in the Danville Regional Airport Conference Room, 424 Airport Drive, Danville, Virginia. Present were City of Danville Members Chairman Sherman M. Saunders, Fred O. Shanks, III and Alternate J. Lee Vogler. Pittsylvania County Members present were Vice Chairman Coy E. Harville, James Snead and Alternate Jessie L. Barksdale.

City/County staff members attending were: City Manager Joe King, County Administrator Dan Sleeper, Danville Finance Director/Authority Treasurer Barbara Dameron, Assistant County Administrator for Planning & Development Gregory Sides, City of Danville Project Manager Corrie Teague, Governmental Affairs Consultant Lynwood Wright, City of Danville Senior Accountant Patricia Conner, Clement & Wheatley Attorney Jennifer Burnett and Secretary to the Authority Susan DeMasi.

Chairman Saunders called the Meeting to order.

PUBLIC COMMENT PERIOD

No one desired to be heard.

APPROVAL OF MINUTES OF THE MARCH 11, 2013 MEETING

Upon **Motion** by Mr. Harville and **second** by Mr. Shanks, Minutes of the March 11, 2013 meeting were approved as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

OLD BUSINESS

5A. UPDATE ON RESOLUTION 2013-02-11-6C – DEWBERRY & DAVIS

Authority Attorney Jennifer Burnett noted at a prior meeting the Board discussed the Executive Summary regarding Dewberry & Davis' request that the current contracts for the wetlands and the Mega Park be transferred to a sister company, a New York corporation. There was discussion at that meeting regarding additional protections to write into an amendment to those contracts as consideration for giving the consent. Those assignments will be discussed and voted on in the next two agenda items.

No Action is Required by the Board.

5B. CONSIDERATION – RESOLUTION NO. 2013-04-08-5B – ASSIGNMENT BY DEWBERRY & DAVIS, INC. TO DEWBERRY ENGINEERS – AMENDMENT TO PROPOSAL DATED APRIL 1, 2003

Authority Attorney Jennifer Burnett noted this amendment pertains to the Wetlands Monitoring, and takes into account the items discussed in order to give consent, to make sure the controlling law would always be Virginia and venue would be Pittsylvania County.

Mr. Shanks **moved** adoption of *Resolution 2013-04-08-5B, approving the assignment by Dewberry & Davis, Inc., a North Carolina corporation, to Dewberry Engineers, Inc., a New*

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York corporation, of that certain Amendment to Proposal for Technical Services dated April 1, 2003, which amendment is dated December 20, 2006 (Project No. 50003249).

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

VOTE: 4-0
AYE: Harville, Snead, Saunders, Shanks (4)
NAY: None (0)

5C. CONSIDERATION – RESOLUTION NO. 2013-04-08-5C – ASSIGNMENT BY DEWBERRY & DAVIS TO DEWBERRY ENGINEERS – AGREEMENT BETWEEN OWNER AND ENGINEER DATED FEBRUARY 9, 2009

Authority Attorney Jennifer Burnett explained this amendment is for the contract for the Berry Hill Mega Park. It addresses the controlling law, which is already Virginia in the contract, but to also make sure venue for any proceeding that would arise under the contract would always be in Pittsylvania County. It also addresses an indemnification provision in the contract that states that RIFA, as a political subdivision, would not be able to indemnify.

Mr. Shanks **moved** adoption of *Resolution No. 2013-04-08-5C, approving the assignment by Dewberry & Davis, Inc., a North Carolina Corporation, to Dewberry Engineers, Inc., a New York corporation, of that certain Standard Form of Agreement between Owner and Engineer for Professional Services dated as of February 9, 2009, which was Amended by Amendment No. 1 thereto dated October 6, 2009, and by Amendment No. 2 thereto dated December 3, 2010 (Project No. 50018376).*

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

VOTE: 4-0
AYE: Harville, Snead, Saunders, Shanks (4)
NAY: None (0)

NEW BUSINESS

6A. CONSIDERATION – RESOLUTION NO. 2013-04-08-6A – APPROVING GRANT TO LUMOS NETWORKS, INC.

Ms. Teague noted Mr. Richard Patterson from Lumos was here today, and that Lumos is requesting an easement to run fiber down Riverpoint Drive. Lumos will be in contact with Danville Utilities about an easement, but are coming to RIFA to request an easement on this particular lot to run the lines from Riverpoint up to the cell tower in the Cyber Park. In response to Mr. Harville, Ms. Teague noted staff is working with Mr. Guanzon to make sure the wording does not conflict, it is not going to be an exclusive easement for Lumos. Ms. Teague stated she believes Verizon is on that tower as well. Mr. Harville questioned Ms. Burnett regarding the Easement and she noted that Mr. Guanzon is working on the easement, adding provisions that are protective of RIFA, making sure it is non-exclusive. Ms. Burnett stated that today is approving the concept of it, the Easement is not ready to be signed right now in the form that it is. Ms. Burnett stated the Board can approve the concept of it and then ratify the changes later.

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Mr. Harville **moved** adoption of *Resolution 2013-04-08-6A, approving the grant to Lumos Networks, Inc., a Virginia corporation of a 15 foot wide nonexclusive easement to construct, operate, maintain, replace and remove a communication system consisting of such cables, buried wires, conduits and terminals over a certain vacant portion of the Authority's Cyber Park project, commonly known as Lot 10C (Tax Parcel No. 76471), fronting on Riverpoint Drive, in Danville, Virginia in order to attach to the AEP Transmission Tower Lease Area.*

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

VOTE: 4-0
AYE: Harville, Snead, Saunders, Shanks (4)
NAY: None (0)

6B. UPDATE ON REQUEST BY IALR REGARDING CHARLES HAWKINS BUILDING

City Manager Joe King noted RIFA had received a letter from Liam Leightley in January and a copy of that letter is included in the Agenda packet. Mr. King explained that staff has since been in several discussions with the EDA, and they were able to determine that the Institute would be eligible for a transfer of the EDA grant responsibilities to the Institute. The Hawkins' Building was constructed in part by EDA grants, Tobacco Commission allocations and contributions from the City and the County. The Institute is indicating they cannot produce tenants that can pay the combined rental rates to satisfy RIFA's lease payments plus cover their costs and are asking for a transfer of the property to them to allow them to charge a rate to satisfy the market. The EDA requirements prohibit the use of any revenue generated through lease agreements to anything other than the maintenance of the building. If RIFA were to approve transferring this property to the Institute it would not be losing revenue that could be put to other uses.

Mr. Saunders noted that he had heard some concerns from the Dan River Business Development Center. Mr. King explained that the Institute would accommodate a different client than the DRBDC and did not believe there is a conflict. Mr. King reviewed an analysis of the rent and costs of the Charles Hawkins' Building, that this arrangement was put together with the assumption that Virginia Tech would provide sufficient revenue to the Institute to cover this additional expense. Because of budget issues the State has encountered, this is no longer possible and Virginia Tech is not supporting this building to the extent that it was hoped they would at the outset and that is the heart of the problem.

Mr. Snead questioned if there is anything RIFA can do to bring the rent down to \$11 and Mr. King noted RIFA cannot reduce the \$10 it charges the Institute, and they are only paying that on the space they occupy. RIFA could put together an agreement with the Institute that essentially takes all the money it receives in rent and turns it over to them in a management fee to cover their expenses. That would leave the building in RIFA's hands. Mr. King noted the benefit of taking the building and transferring it to the Institute along with all the EDA responsibilities is RIFA is no longer liable for any of the expenses in the future and it is functioning as it was intended.

Mr. Harville noted he and Mr. Snead could not vote on this today. Mr. Harville stated he did favor Option B, because the main thing was the ownership of the building and let the Institute take the revenue and do all the upkeep. Mr. King explained that today's discussion is to get direction and then pursue it accordingly. Mr. King agreed RIFA needs both

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governing bodies approval and RIFA can take a formal action at the next meeting. Mr. King asked them to explain the numbers in the documentation, that \$174,300 is the annual cost for utilities, ground maintenance and building maintenance. The revenue that is being generated right now is \$46,850 and that is 15% of the building being occupied, you would have to double or triple that occupancy to get enough revenue to cover just out of pocket expenses that are being incurred. If the Institute backed out of this and RIFA is left with the building, those are the numbers everyone needs to understand.

6C. FINANCIAL REPORT AS OF MARCH 31, 2013

Authority Treasurer Barbara Dameron noted for the month of March, RIFA expended \$17,284 dollars, received \$4,205 in rental income and received a reimbursement for earlier expenditures on the Hawkins' Building of \$33,778. Cane Creek Center shows an expenditure of \$1,130 for contracts under Dewberry for the Wetland Monitoring and also to Power Signs to sandblast GOK International onto the sign.

General Expenses shows a transfer from the Charles Hawkins' Building of the \$33,778 as well as legal expenses, meals and utilities. No change from the previous month for the Mega Park Funding or Berry Hill Mega Park Lot 4 Site Development. Under Funds Available for Appropriation, no change from the previous month; Rent Interest and Other Income receipts for March shows the \$4,205 mentioned earlier. Under Transfers to General Expenditures Budget shows the Hawkins' Building \$33,778. Ms. Connor explained the change in reports showing the current fiscal year receipts and the carry forward figures. Mr. Harville noted that the Osborne Company in North Carolina has been notified that their rent will go up \$200 for this year and the contract will be up in May.

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

VOTE: 4-0
AYE: Harville, Snead, Saunders, Shanks (4)
NAY: None (0)

7A. - CLOSED SESSION

Chairman Saunders noted that 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 12:45 p.m., Mr. Snead **moved** that the Meeting of the Danville-Pittsylvania Regional Industrial Facility Authority be recessed in a Closed Meeting as permitted by Section 2.2-3711(A)(5) of the Code of Virginia, 1950, as amended, for discussion concerning a prospective business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the Authority's Cane Creek Project.

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

VOTE: 4-0
AYE: Snead, Barksdale, Saunders, Shanks (4)

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NAY: None (0)

On **Motion** by Mr. Harville and **second** by Mr. Shanks, and by unanimous vote at 1:00 p.m., the Authority returned to open meeting.

Mr. Shanks **moved** 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. Snead and carried by the following vote:

VOTE: 4-0
AYE: Snead, Barksdale, Saunders, Shanks (4)
NAY: None (0)

COMMUNICATIONS

Mr. Harville questioned if someone from RIFA would be at the sale of the AVRC to report back to the board and Mr. King noted that Mr. Guanzon has been in communication with the attorney and if they don't have a successful auction, then either the City, County or RIFA may want to make an offer.

Mr. Shanks noted the newspaper article indicated NextGen was the tenant and asked for an update on what they are doing. Mr. Wright noted they have been in the AVRC building for at least two years, maybe longer. Their research is going pretty well and they have been operating on a R&D grant from the Tobacco Commission. Mr. Wright noted he would be meeting with Sara Capps for an update. Mr. Snead asked Ms. Burnett to check with Mr. Guanzon on AVRC about a possible court date on Monday.

MEETING ADJOURNED AT 1:05 P.M.


Secretary to the Authority


Vice Chairman