

DANVILLE-PITTSYLVANIA REGIONAL INDUSTRIAL FACILITY AUTHORITY

Minutes

May 11, 2020

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 Vice Chairman Fred O. Shanks, III, Sherman M. Saunders and Alternate J. Lee Vogler. Pittsylvania County Members present were Chairman Robert W. Warren, Ronald S. Searce, and Alternate Vic Ingram. Mr. Saunders left the meeting at 12:55 p.m. and Mr. Vogler entered at 12:54 p.m.

City/County staff members attending were: City Manager Ken Larking, County Administrator David Smitherman, City of Danville Interim 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 was Brian Bradner from Dewberry. *City of Danville Deputy City Manager Earl Reynolds, Director of Finance Michael Adkins, Accountant Henrietta Weaver and Pittsylvania County Project Manager Susan McCullough attended the meeting electronically.*

Chairman Robert W. Warren presided.

CONFIRMATION OF MEETING LOGISTICS

Legal Counsel to the Authority Michael Guanzon stated, because of the COVID plan the Board instituted last month, as a reminder, there were assigned seats; to keep distancing please stay at your seats unless leaving the room. When RIFA does have Closed Session, the press could wait in the lobby because the other parts of the Institute are closed to the public, and staff will call them back.

PUBLIC COMMENT PERIOD

No one present desired to be heard.

APPROVAL OF MINUTES OF THE APRIL 14, 2020 MEETING

Upon **Motion** by Mr. Shanks and **second** by Mr. Searce, Minutes of the April 14, 2020 Meeting were approved as presented. Draft copies had been distributed to Authority Members prior to the Meeting.

NEW BUSINESS

5A. CONSIDERATION OF RESOLUTION NO. 2020-05-11-5A APPROVING CHANGE ORDER 9 BY HAYMES BROTHERS FOR LOT 4 AT BERRY HILL

Brian Bradner from Dewberry explained this was the final change order for the pad expansion work at the Southern Virginia Megasite at Berry Hill. The construction was completed under budget and ahead of schedule by Haymes. Part of the plan was they went to the back part of the lot where they provided borrowed dirt to do the fill on the pad expansion in Lot 4, creating additional pad area. As part of that, they constructed a gravel road that extends back into the area that has been expanded. There was a gap from where that road ends with pad expansion up to where it currently ends at the entrance. The first item was to extend that road to complete that gap; that will provide everyone with good access throughout all the graded areas of the pad as they exist today. Secondly, when entering that back portion, some security

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was needed; there was additional work related to a fence and gate to provide a level of security.

Mr. Scearce **moved** for adoption of *Resolution No. 2020-05-11-5A, approving Change Order 9 to the site development work by Haymes Brothers, Inc., a Virginia corporation, originally approved under Resolution No. 2017-02-24-4A, including construction of a roadway and the installation of a fence and gate for 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 \$47,433.00.*

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)

5B. CONSIDERATION OF RESOLUTION NO. 2020-05-11-5B APPROVING CHANGE ORDER 5 TO PHASE I SANITARY SEWER BY HAYMES BROTHERS AT BERRY HILL

Mr. Bradner explained this Change Order relates to the Phase I Sanitary Sewer work that Haymes was also completing at the site. This was to complete the segment of force main along US Highway 311, Berry Hill Road, in the amount of a little over \$1.3M. This was now part of the Danville Utilities system that was recently transferred over, and the funding will be provided through the agreement with Danville Utilities. Mr. Shanks questioned if this was part of the line not included in the other bidding process and Mr. Bradner noted it was part of the project that was originally bid earlier on. At the time, funds did not exist in order to complete the work. They had hoped to bring this Change Order to the Board at the beginning of the year, but based on a number of factors, it was decided to carry it forward a couple of months to make sure budgets were in place and agreements with Danville Utilities. Mr. Bradner noted once this segment was complete, the entire sewer system would be intact and ready to go.

Mr. Shanks **moved** for adoption of *Resolution No. 2020-05-11-5B, approving Change Order 5 to the Phase I Sanitary Sewer Project work by Haymes Brothers, Inc., a Virginia corporation, originally approved under Resolution No. 2018-03-12-5A, including completion of the sewer force main along Berry Hill Road, in the Authority's Southern Virginia Megasite at Berry Hill, located in Pittsylvania County, Virginia, increasing the contract price by \$1,335,128.76.*

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

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

5C. CONSIDERATION OF RESOLUTION NO. 2020-05-11-5C AUTHORIZING A TEMPORARY PARKING LICENSE AGREEMENT WITH MAJOR CONSTRUCTION

Interim Director of Economic Development Corrie Bobe noted there was roadway construction and improvements being done on Highway 58. Staff has had a request from Major Construction to use the former Securitas lot to store equipment as well as park their vehicles while construction takes place.

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Mr. Searce **moved** for adoption of *Resolution No. 2020-05-11-5C, authorizing a Temporary Parking License Agreement with Major Construction, Inc., a Virginia corporation, to use the parking lot for vehicle and equipment parking, located on property owned by the Authority, more commonly known as 1260 South Boston Road (Tax PIN 76441), located in Danville, Virginia.*

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

Mr. Warren questioned damage to the parking lot and Mr. Guanzon explained there was an indemnification and the requirement that all their vehicles be licensed and tagged. RIFA can terminate within sixty days notice.

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

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

5D. CONSIDERATION OF RESOLUTION NO. 2020-05-11-5D RATIFYING THE LOCAL PERFORMANCE AGREEMENT WITH JUST GREENS LLC., DBA AEROFARMS

Pittsylvania County Director of Economic Development Matt Rowe explained this was a ratification of the Local Performance Agreement. In December when AeroFarms was announced, the Board directed staff to have flexibility in the agreement for the final investment figures. The original announcement was \$42M, and they have signed and agreed to the final project investment number of \$53M, keeping the same amount of jobs. Staff was looking for ratification of the Performance Agreement by the Board. Mr. Guanzon noted the reason they didn't have all that information before was it had to be kept confidential until the governor made the announcement. This was ratifying what was agreed to with AeroFarms and also to have an increased investment by the Company.

Mr. Shanks questioned if they were moving in on schedule and Mr. Rowe explained they have been delayed due to the COVID situation; their headquarters were in Newark and they have not been able to meet as a company. They were working closely with Ms. Bobe on the New Market Tax Credits, have finalized the design and locked into the investment figure. They were probably two to three months behind where they would like to be. Mr. Shanks asked if the Board could get an update on their schedule and Ms. Bobe stated the New Market Tax Credit Board did approve an extension until September 30th; staff will know in the next few weeks what their final timeline will be. Mr. Rowe noted they have to have a particular type of equipment for the HVAC with the recirculation system, it was made by a manufacturing firm in China; that was the holdup.

Mr. Shanks **moved** for adoption of *Resolution No. 2020-05-11-5D, ratifying that certain Local Performance Agreement, pursuant to Resolution No. 2019-12-09-7A, with Just Greens, LLC, doing business as AeroFarms, a Delaware limited liability company, a previously undisclosed industry recruit, for the establishment and operation of a new vegetable growing and processing facility in the Authority's Cane Creek Centre Industrial Park, located in Pittsylvania County, Virginia, and the City of Danville, Virginia.*

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

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

5E. CONSIDERATION OF RESOLUTION 2020-05-11-5E APPROVING ONE TIME TRASH REMOVAL AND DEMOLITION SERVICES FOR 2471 TOM FORK ROAD

Pittsylvania County Administrator David Smitherman noted there was a derelict property on the edge of Cane Creek Parkway, with a considerable problem with people dumping tires. Mr. Guanzon noted the amount started out at \$5,500 and then there were more tires to clean up; it was \$10,000 total. Mr. Rowe stated it was his understanding that the work was already completed; the Board had previously ratified this up to a certain amount. Mr. Larking stated it was one of those projects that he and the County Administrator could approve and get ratified later by the Board.

Mr. Saunders **moved** for adoption of *Resolution No. 2020-05-11-5E, approving one-time trash removal and demolition services with Marshall Construction Co., Inc., a Virginia corporation, related to the building more commonly known as 2471 Tom Fork Road (Tax GPIN 2347-04-1865) on Lot 7B of the Authority's Cane Creek Centre Industrial Park project located in Pittsylvania County, Virginia and the City of Danville, Virginia, for a fee of \$10,157.46, subject to adjustments.*

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)

5F. CONSIDERATION OF RESOLUTION 2020-05-11-5F APPROVING THE PROPOSED PROPERTY MODIFICATIONS WITH REALITY LINK FOR LOTS 3A AND 3B AT CANE CREEK

Mr. Rowe noted as part of the developer's due diligence for AeroFarms' lot, they found some title issues that need to be rectified. There was an old prescriptive easement roadway on the back portion of the lot, and based upon previous deeds that were recorded, there may be some liability to RIFA for maintenance of that specific roadway. To rectify that, RIFA would need to be able to remove the roadway from the property, that way the roadway and the associated maintenance concerns do not continue to convey with the property to the next owner, RealtyLink, and their tenant AeroFarms.

Mr. Guanzon noted that road, Cedar Lane, was on the back end of the property; it was a private road, not publicly maintained. When RIFA purchased the property, the predecessor in title were the people that owned the property prior to RIFA; they had agreed to maintain the entire road even though part of that easement was on RIFA's property. Staff was going to try a boundary line adjustment to move the line outside of what RIFA would own; the adjacent owners would essentially get that half of the road. This would take it out of RIFA's title. They have not discussed this yet with the other owners, and staff was hoping they would be cooperative. The second issue was, staff was having disputes with RealtyLink with respect to the cemetery property; it was a small area and the question was what was RIFA going to do about it. The suggestion and possible work around they were going to try and do was,

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County zoning has said RIFA can create a legal lot around that small piece of property without creating an illegal lot. RIFA would convey the property without the cemetery, which was in the back corner close to Cedar Lane Road. The hope would be that RIFA would be able to give that property to the family members, whose family members are buried there. They have not approached them, so it will take some time.

Mr. Guanzon noted these issues were still being worked on by staff so that RIFA can proceed to closing. RIFA will probably have to do another extension of their due diligence period because of trying to work these things out. This Resolution would be twofold, one would be to adjust the boundary line to cut out half the road, and secondly, to convey the property, less the cemetery lot. In the event RIFA needs to convey it to the family, staff will come back to get formal Board approval.

Mr. Shanks asked if Cedar Lane had various owners or was it one owner and Mr. Guanzon noted it had several, there were at least two parties, a family trust that was on the back end, and a couple. Staff takes the position that the property belongs to RIFA, that half of the private road belongs to RIFA. Staff had suggested that RIFA abandon their rights to the other half of the road and under Virginia law, it says that whoever was the one using the property was responsible for the maintenance and repairs. That was what they had proffered, to say RIFA hasn't been using it, they just not use it, and are going to abandon that easement. If they are unable to fix those types of things, RIFA will have to talk to RealtyLink and ask them what they want to do.

Mr. Warren questioned if RIFA could move the boundary line so they wouldn't be affected by it, and Mr. Guanzon noted they could if the other people against the property are agreeable to this; staff has not spoken to the other side. Mr. Warren asked, looking at the square that RealtyLink was purchasing from RIFA, RIFA can adjust the lines of what RealtyLink was purchasing to not include the road and RIFA would still own it. Why would RIFA need the other entities to be involved; if they only sell RealtyLink up to thirty feet of the line, why could they not do that. Mr. Guanzon explained, because the lot would be of a dimension that creates an illegal lot. Mr. Smitherman asked if RIFA could go to the county planning commission for a variance and Mr. Guanzon noted they could, but even fast tracking it would probably take another three months; that's the back up plan. The other plan would be to say RIFA was going to abandon their easement and RealtyLink take it or leave it.

Mr. Shanks noted one possible solution depending on how things were shaped, RIFA was already given permission to make the legal lot of the cemetery that apparently doesn't have roadway. It could be combined possibly with that strip that follows that road and all that be one lot. Mr. Guanzon stated that was another thing that the Board will have to discuss in closed session; there are some other options that staff has discussed. However, it would be at considerable expense with redrawing certain things and ensuring the building plans would have enough road frontage. There was also an environmental easement protective area that has been added there; staff would have to check all those things out.

Mr. Rowe noted, staff was coming to the Board based upon the information that RealtyLink provided. When their counsel told staff this was a request, if the Board deems this as not something they want to explore than he and Mr. Guanzon would inform their counsel that after talking to RIFA they think the way it was right now was acceptable, so they would be able to put their titles on it. Mr. Warren stated his opinion was RIFA should try to alleviate the problem,

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not put the burden on the company, and supported Mr. Guanzon and Mr. Rowe trying to work on this.

Mr. Shanks noted he didn't know how close the road was to the cemetery, but if it was minor, making the lot could be done in short notice. RIFA already owns part of the road, it already owns the cemetery, the only party involved was Pittsylvania County and RIFA. If the planning commission reviews company wise and RIFA he believes that could be handled in two or three weeks. Mr. Guanzon stated they have been having discussions with Dewberry because there were some conservation environmental protected areas; they would have to go through and make sure they were not going to be impacted. Whatever they cut out or cut through for the new line was not going to adversely affect the set back requirements for the building that AeroFarms was planning on having built on there. This resolution authorizes RIFA to make the cemetery lot a separate lot. Because it was a cemetery, the county did not need to get a variance, they can make that a separate legal lot because it was tax exempt anyway. To adjust the border to make it smaller and give half of the road to the adjacent owners was essentially what would happen.

Mr. Warren stated he didn't want to vote to approve a cemetery lot unless it includes a solution to the road; it doesn't make sense to do one without the other. Mr. Rowe noted the key was, the cemetery lot was based upon the zoning administrator's determination and was already a nonconforming lot of record. He understood what Mr. Shanks was saying and that was something that the Board probably would want to discuss further in closed session as far as a boundary line adjustment of that nonconforming lot, to make it more conforming.

In response to Mr. Warren, Mr. Guanzon explained the cemetery lot was never a separate lot; what Dewberry had done being retained by RealtyLink, had just drawn a line around that area. What staff did was show that to the county zoning administrator, she said she would approve it and so there wouldn't be any problem. Mr. Rowe stated looking at the commissioner of revenue's tax parcel maps, around that cemetery it shows its own little tax map, it was pretty standard for an old rural cemetery. All Dewberry did was go back and find the old deed and plat showing that as being a lot in the broader plat for Lot 3A and 3B. Staff had the county zoning administrator make a determination on if it was an existing lot or an easement. She said the certified surveyor shows that as being a lot, she would go with that. Mr. Shanks suggested the Board go into closed session and come back to this item. Mr. Guanzon suggested the Board table this, finish Item G, go into closed session and come back and dispense with that.

Mr. Shanks **moved to TABLE Item 5F**: Resolution No. 2020-05-11-5F, approving the proposed property modifications relating to that certain Contract of Sale dated November 21, 2019, between the Authority and RealtyLink Investments, LLC, a South Carolina limited liability company, pursuant to Resolution Nos. 2019-09-09-5E and 2019-11-12-5A, for Lots 3A and 3B in the Authority's Cane Creek Centre project, located in Pittsylvania County, Virginia and the City of Danville, Virginia to facilitate purchaser to proceed to closing.

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

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

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5G. FINANCIAL STATUS REPORTS AS OF APRIL 30, 2020

Mr. Adkins gave the Financial Status report as of April 30, 2020, beginning with the Cane Creek Bonds which showed one expenditure for the month of April, \$4,522 to Christian and Barton for legal services. General Expenditures for the current fiscal year show RIFA expended \$51,973 to Christian & Barton for legal counsel, \$311 for meals and \$31 for monthly utilities. Funding Other than Bonds for the Mega Site showed no expenditures for April. Lot 4 Site Development shows RIFA expended \$655,520 which was a progress billing from Haymes Brothers for the Phase 1 Pad Expansion work. Lot 8 Site Development showed no expenditures for April. Water and Sewer showed RIFA expended \$34,710 to Dewberry under Grant 2641 which was administered by the County. Rent, Interest and Other Income showed the account earned \$451 in interest income, \$27,280 was received from the City for their share of the Harlow incentives and received \$25,376 from the City which was the City's share of the Harlow's rent. RIFA expended \$25,412 to the Institute for the Hawkins' Building maintenance and \$4,229 to the Institute as an incentive for the Gefertec's rent. Page 104 was a recap of the expenditures for April.

Mr. Shanks questioned on page 102, there was a payment made to Norfolk Southern Railway, \$22,300.00. Mr. Adkins noted that was a prior expenditure, will pull that detail and get it back to the Board.

Mr. Shanks **moved** to accept the Financial Report as presented. 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)

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 12:53 p.m. Mr. Shanks **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; 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

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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.

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)

D. On **Motion** by Mr. Searce and **second** by Mr. Shanks and by unanimous vote at 2:29 p.m., the Authority returned to open meeting.

(Reinstatement/Unmuting of Conference Line [see *Agenda Item 5G above*].)

E. Mr. Searce **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: Warren, Searce, Shanks, Vogler (4)
NAY: None (0)

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5F. CONSIDERATION OF RESOLUTION 2020-05-11-5F APPROVING THE PROPOSED PROPERTY MODIFICATIONS WITH REALITY LINK FOR LOTS 3A AND 3B AT CANE CREEK

Mr. Shanks **moved** that Item 5F, Resolution 2020-05-11-5F be **removed** from the TABLE.

Mr. Shanks **moved** for adoption of *Resolution No. 2020-05-11-5F, approving the proposed property modifications relating to that certain Contract of Sale dated November 21, 2019, between the Authority and RealtyLink Investments, LLC, a South Carolina limited liability company, pursuant to Resolution Nos. 2019-09-09-5E and 2019-11-12-5A, for Lots 3A and 3B in the Authority's Cane Creek Centre project, located in Pittsylvania County, Virginia and the City of Danville, Virginia to facilitate purchaser to proceed to closing.*

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

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

7. COMMUNICATIONS

Mr. Vogler thanked everyone for putting in the work. Friday was a different RIFA but the collective bodies did a great job and looks forward to their continued partnership.

Mr. Shanks thanked staff for all they do for these meetings.

Mr. Warren noted his agreement with Mr. Vogler, it was a wonderful event Friday for the entities in the northern end of the County and special thanks to the City for participating in the SR RIFA. Thanks also to the Economic Development team for a job well done.

Ms. Bobe noted Michael Adkins sent in an email clarifying the Norfolk Southern payment which was expended in January 2018 was to cover insurance and a one time license fee. It was approved at the December 2018 RIFA meeting.

Meeting adjourned at 2:34 p.m.

APPROVED:

Chairman

Secretary to the Authority