

AT A REGULAR MEETING OF THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE COUNTY OF JAMES CITY, VIRGINIA IN THE BOARDROOM OF THE COUNTY GOVERNMENT CENTER, 101C MOUNTS BAY ROAD, AT 3:30 P.M. ON THE SEVENTH DAY OF MARCH, NINETEEN HUNDRED AND EIGHTY-FOUR.

1. ROLL CALL

Ms. Diane L. Abdelnour, Chairman
Mr. Kenneth H. Axtell
Mr. John Barnett, Jr.
Mr. C. Hammond Branch
Mr. Harold N. Poulsen
Mr. John G. Zimmerman

OTHERS PRESENT

Mr. Orlando A. Riutort
Mr. Frank M. Morton, III
Mr. John McDonald

2. APPOINTMENT OF PERMANENT SECRETARY/TREASURER

Mr. Riutort introduced Mr. John McDonald as a candidate for the position of Secretary/Treasurer to the Authority. He reviewed Mr. McDonald's qualifications for the position including his various responsibilities since joining the County.

Upon a motion by Mr. Zimmerman, seconded by Mr. Branch, the Authority voted unanimously to approve Mr. McDonald's appointment as Secretary/Treasurer effective March 8, 1984.

3. MINUTES

Mr. Axtell noted the omission of the word counsel after the last word on the bottom of page four.

Ms. Abdelnour requested that on page seven of the minutes it be stated that she had voted against the resolution because the feasibility study had been presented to the Authority at the meeting and that she did not feel the Authority had had ample opportunity to review the study and that the motion to approve the resolution was premature. She stated further that in the past she had voted against the project and would continue to vote against the project because it is the violation of the Authority's policy to use bond proceeds for working capital and that an excess of these proceeds were being used for this purpose. It was her opinion that the project was not providing a service to the community at a reasonable cost and that it would not be a benefit to the County, i.e. not the project itself would not be a benefit but the way it was financially structured.

Upon a motion by Mr. Poulsen, seconded by Mr. Branch, the minutes of the February 8, 1984 meeting were unanimously approved with the noted corrections and additions.

4. CASE NO. IRB-2-82. APPROVAL OF BOND PURCHASE AGREEMENT FOR WILLIAMSBURG LANDING

It was decided to postpone this case until after Case No. IRB-4-83 had been heard to allow all interested parties time to arrive at the meeting.

5. CASE NO. IRB-4-83. REFINANCING LIGHTFOOT MOTELS, INC.

Ms. Abdelnour stated her concerns about the refinancing application which she had already brought to the attention of Mr. Friddell. Her concerns were: (1) whether the Authority legally could refinance since the original bonds had already been issued and the project could be built under the original financing, and (2) whether the Authority should get into the refinancing business, and (3) the procedure to follow in the refinancing, i.e. if it needed to go before the Board of Supervisors and if a new public hearing was required. She noted the procedures of the Peninsula Ports Authority for such cases.

Mr. Morton stated he had discussed these issues with Mr. Frazier and that it might be better for him to address these issues.

Mr. Frazier stated there was no need for another public hearing on the case and that the Authority's actions were appropriate because the refinancing had been part of the original expectations when the case was heard in 1983. He stated the Board of Supervisors' approval and another public hearing were not necessary because such actions were related to the nature of the project and the project had not changed.

Mr. Friddell stated that this was a common practice, i.e. refinancing, and was done frequently in other parts of the State although there was not a large volume of such cases primarily because of the cost of refunding. There is also a prohibition against paying off bonds that have been publicly financed for a period of five years and after that a premium is charged. He explained that when they closed in December, there had not been sufficient time to complete a public deal. He then explained the arrangement that had been made with United Virginia Bank for the interim period until they could return to the Authority for this refinancing. He explained the documents that had been provided to Mr. Frazier and their current status.

Mr. Frazier stated his roll in reviewing the documents on behalf of the Authority. He noted that having the resolution at this meeting eliminated the need for another presentation before the Authority.

In response to a request from Mr. Poulsen, Mr. Friddell restated the reason the refinancing had been requested.

Mr. Poulsen asked what would happen if the refunding of the bonds was not approved.

Mr. Friddell stated their situation would be very difficult because the bank would not hold the bonds for ten years and that either on April 1 or three months later the bank could put the bonds back to them. They would also lose their tax free financing.

Mr. Frazier reviewed the situation that had existed at the end of 1983 because of the legislation pending before Congress relating to industrial revenue bonds and how this affected the refinancing of cases such as this. He noted that State statutes provide for such refinancings.

Mr. Morton advised the Authority that there were no other cases acted upon in 1983 which would also require action such as this.

Upon a motion by Ms. Abdelnour, seconded by Mr. Axtell, the Authority voted unanimously to approve the refinancing of the industrial revenue bonds for Lightfoot Motels, Inc. Mr. Zimmerman abstained.

CASE NO. IRB-2-82

The Authority addressed the request for approval of a bond purchase agreement for Williamsburg Landing.

Mr. Alvin Anderson noted there were two items for the Authority's approval. They were the final official statement and the bond purchase agreement. He explained that the only changes that had occurred were the lower interest rates and the reduction in the amount of the underwriter's discount. He explained how the funds freed up by this savings would be used. He stated that the final official statement would include a disclosure on the announcement by U. S. Retirement Company that it has plans to construct a \$25 million facility off Monticello Avenue. He reviewed the bond purchase agreement.

Mr. Poulsen questioned the total amount indicated as \$36,250,000 because Mr. Smelcer had stated in his letter that on March 3, 1984 he did not know how much the bonds were and the Wall Street Journal on March 5, 1984 had indicated the amount of the bonds as \$36.2 million.

Mr. Anderson explained that in some issues if there is an interest rate savings, the parties agree to reduce the amount of the issue by that amount which is generated by selling the bonds for less. In this case the savings generated were being put in a contingency line item which would not change the amount. He thought this explained Mr.

Smelcer's comments and that perhaps the Wall Street Journal article had simply omitted the five.

Mr. Anderson requested the Authority's endorsement of the good faith check made payable to the Authority in the amount of \$362,500.

Mr. Poulsen asked of the majority of the bonds had already been sold. He was told they had.

Upon a motion by Mr. Poulsen, seconded by Mr. Barnett, the Authority voted unanimously to approve the final resolution of inducement.

The Authority adjourned while the necessary documents were being signed.

6. WORKSESSION

Ms. Abdelnour reviewed the problems the Authority had experienced which were to be addressed during the worksession.

The members discussed the effects of the pending legislation on the activities of the Authority, particularly how the bonds would be allocated. If the bonds are to be applied retroactively and the limit has already been reached or exceeded, there will have to be a procedure established. Possible alternatives are those being followed by the Peninsula Ports Authority and Virginia Beach which included the signing of a hold harmless agreement by the applicant.

The Authority discussed the outstanding cases which could be affected by the legislation pending before Congress.

Ms. Abdelnour reviewed the three possibilities outlined for the Authority by Mr. Friddell on how the problem could be handled by the State, the Authority and the Board of Supervisors.

Mr. Riutort stated that the applicants should all have been advised of the problem by their bond counsels.

Ms. Abdelnour noted that if the inducement resolution was passed prior to December 31, 1983, there would not be a problem; however, Mr. Zimmerman pointed out there could be a problem if the legislation was based on the date of closing and not the date the resolution of inducement was approved.

It was agreed to secure Frank Morton's opinion on this issue.

The members discussed the Authority's fees and the related information prepared by Mr. Riutort. Particular attention was given to the Peninsula Ports Authority's fees which were very comprehensive.

Ms. Abdelnour noted that fees will have to be determined for the Lightfoot Motels, Inc. refinancing case.

The members discussed which boards and commissions in the County are compensated for their services. It was suggested that the members of the Authority could be compensated for their time from the fees charged applicants. The fees should also include staff costs which presently are passed on to the taxpayers. Particular attention was given to the number of hours Mr. Morton worked for the Authority. Mr. Frazier's fees were also discussed. It was noted that the costs to the County for processing Williamsburg Landing's application would far exceed the fees charged; however, it was also not a typical case.

Fees based on a sliding scale, a percentage of the dollar amount of the application, and set fees were discussed.

Mr. Zimmerman asked if the Authority wanted to have a source of income. Other areas are interested in having an income because they use it to promote their locality.

Mr. Morton said that because of Mr. McDonald's strong financial background he be asked to study the Authority's fees.

The members then discussed with Mr. Morton whether he would be willing to work for the Authority. It was recommended that his fees be included in Mr. McDonald's study and that the Authority would ask the Board of Supervisors to approve Mr. Morton's serving as counsel to the Authority before or after normal working hours.

The members discussed whether its policies and procedures should be adopted as its bylaws. It was noted that demands from applicants were exerting pressures on both the Authority and County staff.

It was agreed that a committee be formed to come up with formal procedures. Mr. Morton and Ms. Abdelnour were best qualified to decide the legalities of the procedures. Ms. Abdelnour encouraged the members to contact the committee about specific needs.

After a brief discussion of the possible impacts of the legislation pending before Congress, it was agreed that because the legislation could significantly affect the Authority's policies and procedures, any action to change them would be postponed until the legislation had been enacted.

The Authority then discussed whether the County staff should evaluate projects for financial feasibility and make recommendations to the Authority.

Mr. Riutort noted that in the past the staff had only presented the package to the Authority and had not made any recommendations.

Mr. Barnett questioned whether the Authority should coordinate its activities with the Planning Commission regarding the feasibility and suitability of projects for the County.

Mr. Riutort noted that in the past Mr. Stevens had advised the Authority if the zoning for a project was correct, if utilities were available, etc.

The members discussed the types of information the staff should provide. It was generally agreed that the Authority should be kept informed of activities related to projects they had approved and the status of those projects. This could be done by means of an executive summary and a status report (to include the current activity) on the approved cases that could be updated for each meeting.

The per capita allocation of funds for industrial revenue bonds in the future was discussed. Mr. Zimmerman noted the borrower would be in a strange position if the application was approved with the stipulation the approval was subject to the pending legislation.

The Authority discussed the implications of their having approved more bonds than the legislation would allow. The risks of a hold harmless letter were also discussed.

Mr. Riutort advised the Authority that Mr. Friddell had stated that the Lightfoot refinancing would not be affected by the new legislation.

Mr. Zimmerman recommended not closing on any of the pending cases until after the legislation had been passed.

Mr. Barnett informed the members that the Waxford case could be affected by parts of the legislation governing restoration and acquisition of existing property.

Mr. Morton confirmed that Williamsburg Landing would not be affected by the pending legislation. He stated he had asked Hunton and Williams for information on how to address the issue of pending cases and what could happen in the future. He was uncomfortable with the Authority's not having immunity.

Ms. Abdelnour stated that some jurisdictions were requiring a hold harmless agreement or including an understanding at closing that tax exempt projects could become taxable.


Mr. Morton said that when he received the requested information from Hunton and Williams, the members could be poled by telephone for their suggestions on what action should be taken.

Ms. Abdelnour noted it could be a year before both the federal and state governments have acted upon this issue.

Mr. Axtell said applicants could be discouraged from applying because of the uncertainty.

7. ADJOURNMENT

There being no further business before the Authority, the meeting adjourned at approximately 5:45 p.m.


Orlando A. Riutort
Acting Secretary-Treasurer

Diane L. Abdelnour
Chairman