

**MEETING OF THE INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE COUNTY OF CAMPBELL, VIRGINIA**

July 24, 2008

The regular meeting of the Board of Directors of the Industrial Development Authority of Campbell County, Virginia, was held in the Community & Economic Development Conference Room, County Office Building, Rustburg, Virginia, on July 24, 2008.

The Directors present were:

George Rosser, Chairman
Vance Driskill, Secretary-Treasurer
Robert Kennedy
Geraldine Pettigrew
Lewis Robertson

The Directors absent were:

Darryl Whitesell, Vice-Chairman
Malcolm Morris

Also Present:

J. Michael Davidson, Economic Development Director
Rebecca Schwarz, Assistant Secretary-Treasurer
Frank Wright, Jr., Esq., Overbey, Hawkins, & Wright

// Mr. Rosser called the meeting to order at 7:32pm. The minutes from May 22, 2008 were presented for review. Upon a motion by Mr. Driskill, seconded by Mr. Kennedy, and duly adopted by unanimous vote, the Campbell County Industrial Development Authority approved the May 22, 2008 minutes.

Mr. Rosser turned the discussion over to Mr. Davidson.

// Mr. Davidson asked Mr. Wright to begin his presentation on the Freedom of Information Act (FOIA). Mr. Wright passed out copies of portions of the Freedom of Information Act. He commented that he would not be covering the entire FOIA at the meeting, but rather certain portions that he wants to highlight on. The IDA operates somewhat under the radar and does not receive a great deal of FOIA requests. However, in a situation where a FOIA request might come up and an issue became controversial, there are some areas where FOIA could negatively impact the IDA if things are not done properly. Staff takes care of most of the requirements of FOIA for the IDA, but Mr. Wright wants the IDA members to be aware of the FOIA stipulations. The purpose of FOIA, which is a Virginia state statute, is to keep government from operating behind closed doors.

Mr. Wright went through the FOIA hand-outs he passed around and reviewed the meaning of various stipulations and how they apply to the IDA. He said the main things FOIA covers are meetings and public records. Among key points he discussed were the following:

- The Freedom of Information Act is to be narrowly interpreted. When an issue goes to court and it is difficult to make a black and white determination of whether or not FOIA was violated, the majority of the time rulings end in favor of the public.
- Public records are all writings and recordings. Any electronic document can be included under FOIA. Emails, voice mails, even notes someone takes at meetings, are all subject to the

stipulations of FOIA. As a basic rule, all IDA-related material/recordings is open to public inspection. There is a Public Archives Act, and the County has a policy on this. The act requires public bodies to have procedures in effect for keeping records. This is something Mr. Wright doubts the IDA has, but this might be something the IDA should considering setting up.

- There are a few exceptions to FOIA, though not many. Attorney-client privileges fall under the exceptions. Certain information that pertains to the location of a business or industry can also fall under the exceptions. For discussion of issues that fall under these exceptions, the IDA may enter into closed session. In order to enter closed session, the board must cite the code that permits a closed session and reasonably identify the subject matter to be discussed.
- Meetings are any interaction between 3 or more board members pertaining to IDA-related business. This includes email discussions and impromptu encounters in public which turn to discussion of IDA matters. Notice of a meeting must be given at least 3 working days prior to being held, which means impromptu meetings violate FOIA, and there is a prohibition on electronic meetings.
- If a citizen feels that an entity has violated FOIA either by conducting an illegal meeting or refusing to turn over documents that are subject to a FOIA request, the citizen may file a “writ of mandamus,” which is essentially a lawsuit seeking that a court order the entity to comply with the provisions of FOIA. This can be done in General District Court or Circuit, and there is a very simple form for a citizen to fill out for General District Court. It is not necessary for someone to have a lawyer for this type of suit. The key provision relating to this aspect of FOIA says that “the petitioner shall be entitled to recover reasonable cost and attorney’s fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust.”
- If there is a willful or knowing violation of FOIA, not only might the organization be sued, but also the individual board members, who would have to independently pay fees, which can range up to \$100,000.

Mr. Wright said that the biggest issue for local government tends to be in regard to email. He advises that the members not delete any emails relating to IDA business, as emails are covered by FOIA. Mr. Davidson made the comment that for all county employees, business emails must be saved for three years. After three years, depending upon the nature of the email, there is a process to go through for destruction of the records.

Mr. Driskill clarified with Mr. Wright that only when an individual knowingly commits fraud or violation of FOIA does the prosecution of individuals take place. Mr. Wright said this is correct.

The IDA discussed with Mr. Wright how to handle closed meetings and confidential information regarding business expansions/moves, the sale of real estate, and other matters which are not open to the public. Mr. Davidson confirmed with Mr. Wright that from this point forward the Confidential Working Papers need to be discussed in closed session and must follow all rules pertaining to closed sessions. Regarding Government Opportunity Funds, Mr. Davidson said that GOF funds are nullified if confidential information is released prior to the governor’s announcement of a project and GOF awards. For this reason, these types of projects must be discussed in closed session. Chairman Rosser asked if a form needed to be created as a guide for going into closed session. Ms. Schwarz produced her copy of what the current form looks like. Mr. Wright recommended some revisions to the current IDA script and process for entering into closed session. Also discussed was the necessity that only the items laid out by the motion may be discussed in closed session. If another item comes up that needs to be discussed, the board must reconvene in open session, vote to re-enter closed session on the new item to be discussed, and then follow the proceedings for closed sessions. Mr. Davidson commented that the Virginia Economic Development Partnership always attaches project names to each project. Mr. Wright said this would probably be a good idea and a good safeguard.

The Board engaged in general discussion of FOIA, and Mr. Wright answered board questions regarding the stipulations and requirements of FOIA. Also discussed was how to familiarize new members coming in with the provisions of FOIA. Following discussion of these matters, Mr. Davidson moved to the next agenda item.

Matters from Economic Development Director

// Mr. Davidson asked Ms. Schwarz to present the financial report (attached). Ms. Schwarz reviewed the report and noted that under the Reconciliations section of the report she has begun including the reconciliations for both months between IDA meetings, rather than just the most recent month's reconciliation. The IDA has no questions regarding the financial report.

// Mr. Davidson next reviewed the Project Updates. Mr. Davidson said that an update since mailing the meeting packets is that Liberty has begun moving equipment and the construction of the Crossroads Colonnades road is underway.

Mr. Davidson asked if the IDA members had any questions on the Project Updates. Mr. Driskill asked for a progress report on the power situation with Dominion and AEP at Seneca Commerce Park. Mr. Davidson said that unfortunately AEP has said it will not give its territory over to Dominion. Therefore, the park will be served by two power providers. In order to pay for the power lines, Mr. Davidson said that the county is looking a re-doing the master plan and making the lots smaller. Mr. Davidson then discussed the details surrounding how Appalachian Power will bring power to the back of the park and the cost involved.

Mr. Rosser asked where sewer ends on Route 29. Mr. Davidson gave an overview and discussed what would be involved in bringing sewer into Seneca Commerce Park. General discussion of sewer for the park followed.

Along the lines of IDA projects, Mr. Davidson said there was another matter he wanted to bring before the IDA. A gentleman from a roofing company approached Mr. Davidson regarding Banker Steel's roof. The gentleman said that according to his observations of the building, he feels that the roof is in desperate need of repair. He spoke with Mr. Davidson and asked who was in charge of the building repairs. Mr. Davidson researched the contract with Banker Steel and confirmed that Banker Steel is responsible for any repairs to the building. The company has since spoken with Banker Steel as well. Mr. Davidson asked if the IDA felt Mr. Davidson needed to look into getting someone objective to look into the issue to see if the roofs on the buildings are in as bad shape as the gentleman said. Chairman Rosser asked if Banker Steel has been complaining of problems with the roof. Mr. Davidson said no. Chairman Rosser and Mr. Driskill both agreed that if Banker Steel is not complaining of any issues, the IDA does not need to involve itself in the issue, as Banker Steel is aware of its contractual responsibilities.

// Mr. Davidson discussed the next item on the agenda, the change of the next meeting date. Ms. Schwarz will be out of town on September 25th for her wedding, and Mr. Davidson will be out of town on business. Mr. Davidson proposed that the meeting date be switched to the following Thursday, October 2nd, 2008. Mr. Robertson said he would be unable to attend but he might be gone the following Thursday as well. For this reason he said not to base the decision on his schedule. Following discussion of the matter and other member schedules, it was decided that the September 25th meeting be re-scheduled for Thursday, October 2nd, 2008, at 7:30pm.

// Mr. Davidson said he would like to go over the Confidential Working Paper 7.7.08, so the board would need to go into closed session.

First, however, Mr. Davidson briefly discussed AREVA, as that project can now be discussed in open session. AREVA has gotten its building permit and is moving forward with its expansion.

On a motion of Mr. Driskill, seconded by Ms. Pettigrew, and duly adopted by unanimous vote, the Industrial Development Authority enters into a closed session at 8:13pm in accordance with §2.2-3711 (A)(5) of the Code of Virginia of 1950, as amended; discussion or consideration of the expansion of existing businesses and industries, for the purpose of discussing progress of such projects, the subject matter being Projects Intersection, Alpha, Bravo, Charlie, Delta, Echo, Foxtrot, Golf, Hotel, India, and Juliet.

The vote was: Aye: Driskill, Pettigrew, Rosser, Robertson, Kennedy
 Nay: None
 Absent: Whitesell, Morris

CERTIFICATE OF CLOSED MEETING

WHEREAS, the Campbell County Industrial Development Authority had convened a closed session on the 24 day of July, 2008 pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, §2.2-3711 of the Code of Virginia requires a certification by the Campbell County Industrial Development Authority that such closed session was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Campbell County Industrial Development Authority hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by 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 Campbell County Industrial Development Authority.

The roll call vote was: Aye: Driskill
 Aye: Rosser
 Aye: Robertson
 Aye: Pettigrew
 Aye: Kennedy
 Nay: None
 Absent During Meeting: Whitesell, Morris
 Absent During Vote: Whitesell, Morris

Mr. Davidson presented no other items for discussion.

Matters from the Chairman

// Mr. Rosser presented no further items for discussion.

Matters from IDA Members

// The IDA members presented no further items for discussion.

Following general discussion of the aforementioned matters, and with no other business presented for consideration, upon a motion by Mr. Robertson, seconded by Mr. Kennedy, and duly adopted by unanimous vote, the Campbell County Industrial Development Authority adjourned at 8:38 pm.

George Rosser, Chairman

Vance Driskill, Secretary-Treasurer

