

# **THE INDUSTRIAL DEVELOPMENT BOARD FOR THE CITY OF HENDERSONVILLE, TENNESSEE**

## **Minutes of Regular Meeting**

**June 13, 2013**

The Industrial Development Board of the City of Hendersonville, Tennessee met on June 13, 2013. Members of the Board present included Bruce Carter, Ed Spurlock, Tom Atchley, Mike Fussell, Larry Irwin and Fred Qualls, ex-officio. Others in attendance included: Keith Dennen, attorney, Eddie Roberson, Fell Merwin and Dave Popen of FOALS, Charles Alexander of TSDC, Don Long of City of Hendersonville and Jimmy Johnson of Forward Sumner.

Mr. Carter, as Secretary-Treasurer, called the meeting to order at 6:40 p.m. Mr. Carter noted that two members would be sworn in this evening, and he requested that Mr. Dennen provide the oath of office. Mr. Irwin and Mr. Atchley were then sworn in as members of the Board.

Next, Mr. Carter presented the Minutes of the Board meeting held on March 13, 2013, for approval. Upon motion by Mr. Fussell, seconded by Mr. Spurlock, the minutes of the Meeting of the Board held on March 13, 2013, were unanimously approved.

Mr. Carter then presented the Financial Report to the Board. Mr. Carter noted that the report was for the period of February 1, 2013 to May 31, 2013. He further noted that during that period, the Board had received \$12,411.37 representing payments of rent with respect to the cell phone tower site. Mr. Carter noted that this represented a slight increase in the tower rent. Mr. Carter also noted that the expenses for the period include a final payment to PayChex of \$7.95 and a payment to Forward Sumner of \$5,000.00. Finally, Mr. Carter noted the payment of attorney's fees to Dickinson Wright PLLC as an extraordinary item due to the TIF litigation initiated by the County against Fifth Third Bank. Mr. Carter noted that Mr. Dennen provided an estimate of the amount of attorney's fees that the Board would incur by virtue of that litigation to the Finance Committee of approximately \$1,000.00 each month over the course of the next 24 months. Upon motion by Mr. Spurlock, seconded by Mr. Fussell, the Financial Report was unanimously approved.

Next, Mr. Carter requested that Eddie Roberson provide his report to the Board with respect to the Cell phone tower. Mr. Roberson noted that he had made a detailed presentation to the Board of its options at the March 14, 2013, meeting. He summarized those as being to sell the tower site to AT&T or to enter into negotiations with respect to the extension of the lease. He advised that Crown Castle had contacted him this week regarding the Board's decision. He further advised the Board that he felt that an extension would include an upfront payment.

Upon motion by Mr. Fussell, seconded by Mr. Atchley, the Board unanimously voted to extend Mr. Roberson's engagement as a consultant to the Board to include negotiations with Crown Castle with respect to a long-term extension of the Tower Lease. The Board further directed that Mr. Dennen, as the Board's legal counsel would participate in those negotiations with a goal of bringing a final document to the Board for consideration at its next meeting.

Mr. Carter noted that several requests had been received for funding by the Board and had been forwarded by the Finance Committee to the Board for consideration. Mr. Carter noted that the Board members had been present for the presentations to the Finance Committee.

Mr. Carter asked Mr. Charles Alexander, Director of the Tennessee Small Business Development Center at Volunteer State Community College to answer any questions the Board members might have. Upon motion by Mr. Fussell, seconded by Mr. Irwin, the Board unanimously approved a contribution to the Tennessee Small Business Development Center at Volunteer State Community College in the amount of \$5,000.

Next, Mr. Carter called upon Mr. Johnston to make a presentation on behalf of Forward Sumner. Mr. Johnston reported that Forward Sumner has initiated a four (4) year capital campaign as the initial five (5) year campaign has been completed. Mr. Johnston then requested that the Board approve a contribution of \$18,000, which he noted, represented an increase of \$3,000 over the prior year.

Mr. Fussell noted that he serves on the Board of Directors of Forward Sumner and therefore is unable to vote on the matter. He noted that Mr. Johnston and his team perform an invaluable service to Sumner County. Upon motion by Mr. Atchley, seconded by Mr. Irwin, with Mr. Fussell abstaining, the Board unanimously voted to approve the contribution of \$18,000 to Forward Sumner.

Next, Mr. Carter asked Fell Merwin and Dave Popen to make a presentation in support of the request by the Friends of the Arts and Literature in Sumner (FOALS). Mr. Fussell noted that he also serves on the Board of Directors of FOALS and therefore would not vote on this matter.

Mr. Merwin reiterated his presentation to the Finance Committee and summarized the visioning process. Mr. Popen noted that in the event that at any step in the process the determination was made that the concept was infeasible, Tomlinson-Graham Group of Bowling Green, Kentucky would cease work and any unused funds would be returned.

Mr. Spurlock stated that his concern was whether the Board could afford to make a contribution of \$30,000 to FOALS at this time. Mr. Carter stated that presently the

Board's checking account includes about \$19,000, and the Board receives annual revenues of approximately \$48,000 from the rental of the tower. The present commitments of the Board include: \$5,000 to TSBDC, \$18,000 to Forward Sumner, \$15,000 to the Chamber of Commerce, \$12,000 for legal fees related to the TIF lawsuit, \$2,400.00 for Joanna Blauw's compensation and \$2,500.00 for the ISCS meeting.

Upon motion by Mr. Atchley, seconded by Mr. Spulock, with Mr. Fussell abstaining, the Board unanimously voted to defer consideration of the FOALS request until the next meeting.

Mr. Carter requested that Mr. Dennen provide a report of the status of the TIF Lawsuit. Mr. Dennen reported that the County filed a general denial to the counter-complaint filed by Fifth Third Bank. Presently, there is no activity in the lawsuit. Mr. Dennen reported that Fifth Third's attorney had advised him that Fifth Third would deduct its attorney's fees from the Bond Fund in accordance with the terms of the Bond documents. Mr. Dennen explained that in 2007, the Board issued bonds and the proceeds were loaned to Halo Properties for the construction of Saundersville Road between the railroad track and Whitten Elementary. In addition, he explained that the funds were used to build the bridge over Drakes Creek and to install water, sewer and other improvements to the road. Prior to issuing the bonds, both the City's Board of Mayor and Aldermen and the County Commission approved the project and authorized the use of property taxes to repay the bonds.

Specifically, Mr. Dennen stated that in 2005 the area generated approximately \$30,000 in property taxes for the County and approximately \$10,000 in property taxes for the City. For 2012, the same property generated \$1,640,000 in property taxes for the City and County. Pursuant to the agreement, \$1,597,000 of this amount was used to pay the principal and interest on the bonds, the letter of credit fees and other costs associated with the bonds. Mr. Dennen noted that the bonds are unsecured except by a letter of credit.

The TIF lawsuit is a lawsuit filed by the County against Fifth Third Bank in which the County asserts one legal issue – whether interest rate swap agreements are legal in Tennessee. Mr. Dennen noted that the Board voted to obtain an Attorney General's Opinion on this issue which would not have any cost. Even though the County knew of this request, the County filed the TIF lawsuit. As a result, the Attorney General declined to issue an opinion. Mr. Dennen then advised the Board that Garry Grooms, the attorney for Fifth Third in the TIF lawsuit informed him that Fifth Third would deduct its attorney's fees and costs from the Bond fund.

Mr. Fussell noted that the County Commission approved the bonds and the interest rate swap agreement and now was attempting to revisit the issue for no reason. Mr. Fussell further noted that the taxpayers of Sumner County are paying Fifth Third's attorney's fees, the County's attorney fees and the Board's attorney's fees. Mr. Fussell

noted that Mr. Dennen had prepared a letter addressed to the Chairman of the Sumner County Commission and to the County Executive requesting that the County Commission reimburse the Board for the fees and expenses the Board is incurring as a result of the TIF lawsuit.

Upon motion by Mr. Fussell, seconded by Mr. Spurlock, the Board unanimously approved Mr. Dennen's letter and directed Mr. Dennen to forward that letter as soon as possible.

Mr. Carter noted that the next item on the agenda was the election of officers. Mr. Atchley noted that because several members of the Board are absent, he recommended that election of officers be deferred until the next meeting. There being no objection, the election of officers was deferred.

There being no further business, the Board adjourned at 7:30 p.m.

---

Bruce A. Carter, Secretary-Treasurer