

# **I-195 REDEVELOPMENT DISTRICT COMMISSION**

## **MEETING OF COMMISSION**

### **PUBLIC SESSION**

**November 5, 2012**

**The I-195 Redevelopment District (the “District”) Commission met on Monday, November 5, 2012, in Public Session, beginning at 5:00 p.m., at the offices of the Rhode Island Economic Development Corporation, located at 315 Iron Horse Way, Suite 101, Providence, Rhode Island, pursuant to notice of the meeting to all Commissioners, and public notice of the meeting, a copy of which is attached hereto, as required by applicable Rhode Island law.**

**The following Commissioners were present and participated throughout the meeting as indicated: Chairperson Colin Kane, Ms. Barbara Hunger, Ms. Diana Johnson, Mr. John Kelly, Dr. Barrett Bready, Mr. Michael Van Leesten, Mr. William Parsons (ex officio) and Mr. Bob Azar, designee of Mr. James Bennett (ex officio).**

**Members Absent: Mr. Mark Ryan.**

**Also present was: Mr. Robert I. Stolzman, who acted as Assistant Secretary and Mr. Michael Walker, as staff assigned by the Rhode Island Economic Development Corporation.**

**Chairperson Kane called the meeting to order at 5:00 p.m.**

**1. APPROVAL OF THE PUBLIC SESSION MINUTES OF THE MEETING HELD ON OCTOBER 15, 2012**

**Upon motion duly made by Mr. Van Leesten and seconded by Ms. Hunger, the following vote was adopted:**

**VOTED: To approve the Public Session Minutes of the meeting held on October 15, 2012, as submitted to the Commission, subject to a modification made by Ms. Johnson.**

**Voting in favor of the foregoing were: Chairperson Kane, Ms. Hunger, Ms. Johnson, Mr. John Kelly, Dr. Barrett Bready and Mr. Van Leesten.**

**Voting against the foregoing were: None.**

**2. FOR AN UPDATE AND CONSIDERATION OF RESOLUTIONS**

## **AUTHORIZING PARTICIPATION IN RIEDC BONDS AND TRANSFER OF REAL ESTATE**

**At the request of Chairman Kane, Mr. Stolzman presented a detailed summary of the resolutions authorizing the District's participation in the Rhode Island Economic Development Corporation ("RIEDC") bonds (the "Bonds") (see Exhibit A). Mr. Stolzman explained that the resolutions authorize the Chairman, Vice Chairman and Treasurer to execute documents with respect to the Bonds in accordance with the approved resolutions. Mr. Stolzman explained that the RIEDC is the issuer of the Bonds, Sovereign Bank is anticipated to be the purchaser of the Bonds and the Commission is the borrower. Sovereign Bank will purchase the Bonds, the proceeds of which will be loaned by the RIEDC to the Commission, and the Commission will use the Bond proceeds to purchase the I-195 land from the Department of Transportation ("DOT").**

**Mr. Stolzman explained that the title paragraph indicates the borrowing of proceeds in an amount not to exceed \$42 Million. Mr. Stolzman explained that the Bonds have not been sized precisely because it is unclear whether or not the transaction whereby two parcels will be sold to Johnson & Wales directly by RIDOT will have closed by the time of the closing of the Bonds. Mr. Stolzman explained that the Bonds are not secured by the full faith and credit of the State but rather are subject to annual budget appropriations by the General Assembly.**

**Mr. Stolzman explained each and every recital (“Whereas” paragraph) of the resolutions and noted that most are dedicated to defining certain terms. Mr. Stolzman explained that the “I-195 District” was created and exists as a public instrumentality of the State of Rhode Island under Rhode Island laws. The I-195 District is a subsidiary of the RIEDC and was created for the purposes, among other things, of acquiring the “I-195 Surplus Land”. The I-195 Surplus Land is defined as the land remaining after the relocation of 195 highway. Mr. Stolzman explained that the resolutions provide that, in order to finance the I-195 District’s acquisition of the I-195 Surplus Land, the Rhode Island General Assembly has authorized the RIEDC to issue the Bonds in an amount not to exceed \$42 million to be secured by annual budget appropriations of the General Assembly.**

**Mr. Stolzman explained that the I-195 District will borrow the bond proceeds from the RIEDC to finance the acquisition of the I-195 Surplus Land and, in consideration for such loan, the I-195 District will make payments to the RIEDC from the net proceeds of the sale or lease of the I-195 Surplus Land. Mr. Stolzman explained that there will be a Payment Agreement by and among the State of Rhode Island, the RIEDC, the I-195 District and a trustee which provides that the Governor shall request annual budget appropriations by the General Assembly. Mr. Stolzman explained that none of the Bonds to be issued by the RIEDC, loan repayment obligations of the I-195 District or the Payment Agreement will constitute indebtedness of the State**

**secured by the full faith and credit of the State.**

**Mr. Stolzman provided a detailed explanation of each and every paragraph contained in the authorizing resolutions. Mr. Stolzman explained that the first resolution authorizes the borrowing of the loan from the RIEDC. The term of the loan will not exceed twenty (20) years and will bear interest at a rate not to exceed eight (8%) percent. Mr. Stolzman noted that the loan will bear interest at a Libor-based interest rate which currently is much lower than eight percent (8%).**

**The second resolution authorizes the Loan proceeds to be disbursed to the DOT. The third resolution provides for the net proceeds of the District's sale of parcels to be pledged toward repayment of the Bonds. Since the Commission is concerned with its ability to utilize net proceeds to repurchase parcels that have not met the statutory development deadlines, Chairman Kane and Mr. Stolzman have been working with the RIEDC and the Department of Administration, and their counsel, on an escrow authorization procedure. Accordingly, Mr. Stolzman recommends the third resolution be amended to add the following: “; provided, that with the consent of the Department of Administration, the net proceeds (minus interest costs) of any sale or lease transaction by the I-195 District to a third party may be escrowed for the benefit of the I-195 District's utilization of a reverter at approximate par value to enable it to enforce the development deadlines set forth in the I-195 Act.” Ms. Hunger asked if this was the provision relating to the so-called clawback previously discussed to**

enforce the legislative requirement that purchasers of the property from the Commission begin construction within one year and complete construction within three years. Chairman Kane confirmed that this is indeed to help address that issue. The Commission discussed the interest mechanism as it relates to the clawback provision. Mr. Kelly noted that this provision denies the Commission's unilateral ability to use the clawback since it requires the Department of Administration's authorization. The Commission discussed several other options available to the Commission to enforce the legislative requirements such as reverters without payment, completion and performance bonds and other secured guarantees. Mr. Parsons asked if the reverter option was the same reverter model historically used in Quonset. Mr. Stolzman explained that it was the same model. Mr. Van Leesten inquired as to the State's motivation in requiring the State's authorization in connection with the clawback provision. The Commission discussed the State's desire to control the annual budget process.

The fourth resolution confirms that the Bonds are sold by the RIEDC. The fifth resolution authorizes specific agreements to implement the intent of the resolutions. Mr. Stolzman recommended the escrow language also be added to Section (v) of Resolution 5.

The sixth resolution authorizes the I-195 District to accept title to the I-195 Surplus Land and authorizes the Authorized Officers to execute any documents in connection with such transfer. Ms. Johnson asked

**if all three (3) Authorized Officers are required to sign each document. Mr. Stolzman explained that the resolution authorizes each Authorized Officer to sign singly and, therefore, only one Authorized Officer is required to sign each document. Ms. Johnson noted that, while she prefers more than one (1) or two (2) out of three (3).Authorized Officers to sign each document, she understands that the contemplated structure duplicates common practice.**

**Mr. Stolzman explained that the seventh resolution provides that the Chairman, Vice Chairman and Treasurer are the Authorized Officers and their signatures are binding upon the Commission. The eighth resolution authorizes the Authorized Officers to take further action and approve certain documents as necessary to carry out the transactions contemplated by the resolutions. The ninth resolution ratifies the Authorized Officers' execution of the documents. The tenth resolution authorizes the Authorized Officers to amend or modify any documents in connection with the loan as necessary to carry out the resolutions. Finally, the eleventh resolution provides that the closing on the Bonds must take place on or before December 31, 2012.**

**The Commission also discussed a draft closing agenda for the real estate transfer (see Exhibit B). Mr. Stolzman described and the Commission discussed each item on the agenda and the significance thereof. In particular, Mr. Stolzman explained and the Commission discussed the status of the proposed Memorandum of Understanding**

between RIDOT and the District. The Memorandum of Understanding will confirm the scope of work to be undertaken by RIDOT with respect to roads, sidewalks and the parks. The Commission also discussed the deed, proposed deed restrictions and parcels descriptions which will be individualized for each parcel (recognizing that the Commission may further subdivide some parcels). The Commission also discussed utility easements. Mr. Stolzman explained that it appears as if water, sewer and communication utilities will all be located within street and sidewalk rights-of-way. However, National Grid gas and electric easements require some access to parcels. The Commission has not yet seen the proposed easements or access locations specifically for those easements to National Grid. RIDOT has promised to provide ALTA class 1 surveys for each of the transfer parcels. The Commission still awaits presentation and review of those surveys and legal descriptions. Additionally, the Commission discussed that RIDOT will require certain construction easements in order to build roads, sidewalks and parks after the conveyance of the Surplus Land. Mr. Stolzman also recommended that prior to the conveyance of the Surplus Land from RIDOT to the Commission, property management arrangements, including liability insurance, be obtained by the Commission. Finally, the Commission also discussed the status of its environmental report from Fuss & O'Neill.

Upon motion duly made by Mr. Van Leesten and seconded by Ms. Johnson, the following vote was adopted:

**VOTED: To approve the resolutions presented as amended and attached hereto as Exhibit C.**

**Voting in favor of the foregoing were: Chairperson Kane, Ms. Hunger, Ms. Johnson, Mr. Kelly, Dr. Bready, and Mr. VanLeesten.**

**Voting against the foregoing were: None.**

### **3. CHAIRPERSON'S REPORT AND COMMISSION UPDATE**

**Chairperson Kane distributed an outline of action items to be completed by the Commission (see Exhibit D). Chairperson Kane discussed some of the agenda items for the upcoming meetings scheduled for November 19th and December 10th.**

**Upon a motion made by Ms. Hunger and seconded by Dr. Bready, the following vote was adopted:**

**VOTED: To go into closed session, pursuant to the Open Meetings Act, Rhode Island General Laws Section 42-46-4, in order to enter into discussions concerning budget for the district under Sections 42-46-5(a)(5) and 5(a)(7).**

**Voting in favor of the foregoing were: Chairperson Kane, Ms. Hunger, Ms. Johnson, Mr. Kelly, Dr. Bready and Mr. Van Leesten.**

**Voting against the foregoing were: None.**

**Members of the public were then asked to leave the boardroom for the closed session.**

**The public session was reconvened at 7:05. p.m.**

**Chairperson Kane reported that the discussion during the closed session was confined to (i) discussion over legal counsel to the Commission and (ii) potential transactions of the Commission of which the premature disclosure would be detrimental to the public. Chairperson Kane announced that the Commission voted in closed session to sever its relationship with Adler Pollock and Sheehan P.C. Additionally, the Commission voted to end the closed session, maintain the closed session records, and reconvene the public session.**

**Upon motion duly made by Ms. Johnson and seconded by Ms. Hunger, the following vote was adopted:**

**VOTED: That, pursuant to Rhode Island General Laws 42-46-4, 42-46-5 and 42-46-7, the Open Meetings Act, the minutes of the closed session shall not be made available to the public, except as to the**

**portions of such minutes as the Commission ratifies and reports in public session of this meeting.**

**Voting in favor of the foregoing were: Chairperson Kane, Ms. Hunger, Ms. Johnson, Mr. Kelly, Dr. Bready and Mr. Van Leesten.**

**Voting against the foregoing were: None.**

**There being no further business in Public Session, upon a motion by Dr. Bready and seconded by Ms. Johnson the meeting was adjourned at 7:10 p.m.**

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**Colin Kane, Chairperson**