

Alaska Industrial Development and Export Authority  
**Board Meeting Minutes**  
**October 20, 2010**  
Anchorage, Alaska and Beijing, China

**1. CALL TO ORDER**

Chairman Pat Galvin called the meeting of the Alaska Industrial Development and Export Authority to order on October 20, 2010 at 10:37 a.m.

**2. ROLL CALL: BOARD MEMBERS**

A quorum was established.

Board members present in Anchorage: Chair Pat Galvin (Commissioner, Department of Revenue); Susan Bell (Commissioner of Commerce, Community & Economic Development); Vice-Chair John Winther (Public Member); and Mike Felix (Public Member).

Participating via teleconference: Robert Sheldon (Public Member), Beijing, China.

**3. AGENDA APPROVAL**

The agenda was approved as amended.

**4. ROLL CALL: STAFF, PUBLIC**

Staff present in Anchorage: Ted Leonard (Executive Director); Steve Haagenson (AEA Executive Director); Chris Anderson (Deputy Director-Commercial Finance); Sara Fisher-Goad (Deputy Director-Operations); Mike Harper (Deputy Director-Rural Energy); James Hemsath (Deputy Director-Development Finance); Valorie Walker (Deputy Director-Finance); Mike Catsi (Business Development Officer); William Phelan (Loan Officer); Karsten Rodvik (Project Manager-External Affairs); Shauna Howell (Executive Assistant); Sherrie Siverson (Executive Assistant); and Teri Webster (Administrative Assistant).

Others present in Anchorage: Brian Bjorkquist and Mike Nave, (Department of Law); Ken Vassar (Birch, Horton, Bittner & Cherot); Dennis Fenerty (Attorney); Tim Bradner (Alaska Journal of Commerce); Michael Martin, Jim McMillan and Jay Page (First National Bank Alaska); Sherry Smith and Sharon Wright (Northrim Bank).

Participating via teleconference: Gary Conatser and Chris Vaughn (Northrim Bank, Fairbanks, Alaska).

**5. PUBLIC COMMENTS**

There were no public comments.

**6. PRIOR MINUTES – September 22, 2010**

The minutes for September 22, 2010 were approved as presented.

## **7. NEW BUSINESS**

### **7A. Resolution No. G10-17 Mt. McKinley Animal Hospital Project**

Mr. Vassar reviewed a request to the Alaska Industrial Development and Export Authority to issue Recovery Zone Facility Bonds, not to exceed \$3,000,000. Issuing a conduit revenue bond means AIDEA has no credit involvement in this financing.

The borrower is Krislyn J. DeLeon whose professional corporation identity is Krislyn J. DeLeon, DVM, PC, as well as another corporate entity, St. Francis LLC, also owned by Ms. DeLeon.

The proceeds of the Bonds will be used by the Authority for the purpose of providing funds necessary to: (a) pay all or a portion of the cost of constructing the following: an 8,078 square foot veterinary hospital located at 425 Harold Bentley Avenue, Fairbanks, Alaska; and (b) pay costs of an issuance and certain other costs associated with the issuance of the Bonds.

A discussion ensued regarding the obligations of Board members in the review process and the Board requested AIDEA staff provide fee schedules related to bonds periodically.

There were no other questions or comments.

**MOTION: Mr. Felix moved to adopt Resolution No. G10-17 as presented. Seconded by Mr. Winther. There being no discussion, the question was called. A roll call vote was taken and the motion passed with Mr. Sheldon, Mr. Winther, Mr. Felix, Commissioner Bell and Commissioner Galvin voting yea.**

### **7B. Resolution No. G10-18 Coming Attractions Theatres – Wasilla Project**

The Coming Attractions Theatres project has generated a great amount of enthusiasm in the Matanuska Valley. The resolution states a not-to-exceed number of \$11.5 million. It is anticipated that the size of this bond will be \$8,572,500. As the projects get close to closing and financing, there is a little movement which is why there is a “not-to-exceed amount” in the resolution. This is a conduit revenue bond and AIDEA’s credit is not involved. The borrower is one individual, John C. Schweiger, signing individually and also as a trustee of the John C. Schweiger Loving Trust. Mr. Schweiger is CEO of Coming Attractions Theatres, Inc. based in Ashland, Oregon.

In response to question by the Board, Mr. Vassar said that if there is a balance left over as of November 8, 2010, those funds become available for reallocation by AIDEA for other projects.

**MOTION: Mr. Felix moved to adopt Resolution No. G10-18 as presented. Seconded by Commissioner Bell. There being no discussion, the question was called. A roll call vote was taken and the motion passed with Mr. Sheldon, Mr. Winther, Mr. Felix, Commissioner Bell and Commissioner Galvin voting yea.**

### **7C. Resolution No. G10-19 Tanaga Outpatient Surgery Center Project**

Mr. Vassar reviewed a request to the Alaska Industrial Development and Export Authority to issue Recovery Zone Facility Bonds, not to exceed \$17,000,000. Issuing a conduit revenue bond means AIDEA has no credit involvement in this financing.

The owner of the project is Tanaga, LLC.

The proceeds of the Bonds will be used by the Authority for the purpose of providing funds necessary to: (a) pay all or a portion of the cost of construction of a structure providing approximately 38,000 square feet of gross building area for an outpatient surgery center located at 2310 Peger Road, Fairbanks, Alaska; and (b) pay costs of an issuance and certain other costs associated with the issuance of the Bonds.

There were no other questions or comments.

**MOTION: Commissioner Bell moved to adopt Resolution No. G10-19 as presented. Seconded by Mr. Winther. There being no discussion, the question was called. A roll call vote was taken and the motion passed with Mr. Sheldon, Mr. Winther, Mr. Felix, Commissioner Bell and Commissioner Galvin voting yea.**

#### **7D. Loan Resolution No. L10-07 Dimond & Victor, LLC**

Ms. Anderson reviewed the loan request from Dimond & Victor, LLC to refinance a retail strip center on the north side of Dimond Boulevard. AIDEA's participation would be ninety (90) percent, \$3.6 million, of a \$4 million dollar gross loan amount. Terms are 25 years for AIDEA's portion and 15 years for First National Bank Alaska. There are multiple guarantors including XC Corporation, Parker Investments, LLC, Debra Shinn Living Trust, Curtis and Dena Nading, David and Janet Parker, and Lowell and Debra Shinn.

The purpose of the refinance is to take advantage of both a longer term and lower interest rates than they are currently getting with FNBA. Employment is unaffected. The borrower entity is managed by Curt Nading, David Parker and Lowell Shinn, but the property management of the structure is contracted out. The mall was constructed in 2007 and the primary residents are Brown Jug and a Blockbuster Video franchise. It was appraised at \$5.4 million in March 2010. This is a seventy-five (75) percent loan to value; effective economic life is 48 years which is within AIDEA guidelines.

Curtis and Dena Nading have loans with AIDEA and related debt is approximately \$1.2 million. This project has several strengths. It is 100% leased to well-established tenants. The owners are very experienced real estate investors. AIDEA considers this a good location since the Dimond area is the retail center area for Anchorage. The lease rate is fairly high for this center. The parent company of Blockbuster has declared Chapter 11, but this is a franchisee. There is no direct operational relationship between the two. The franchise has been doing quite well in this location with strong retail rentals in the area. There are no environmental problems associated with the property.

Approval of this loan will increase AIDEA's statewide portfolio in the retail industry from 19.6% to 20.4% and in the Anchorage area from 21.4% to 22.7%. Loan covenants require the borrower to provide standard annual financial information. Staff recommends approval of this loan. All leases will be assigned to the lender for security purposes. This will be subordinate to the deed of trust. There will be a non-disturbance attornment agreement in place acceptable to AIDEA. We also included a graph for simplicity sake to show the break out with the LLC and with the lender and the matrix of the guarantee.

**MOTION: Mr. Felix moved to adopt Loan Resolution No. L10-07 as presented. Seconded by Mr. Winther. There being no discussion, the question was called. A roll call vote was taken and the motion passed with Mr. Sheldon, Mr. Winther, Mr. Felix, Commissioner Bell and Commissioner Galvin voting yea.**

## **7E. Eligibility Resolution No. ER10-15 Valley Utilities, LLC – Goose Creek Water and Wastewater Project**

A prison is currently under construction in the Mat-Su area and part of that project is a water and sewer plant. AIDEA was asked if there is possible alternative funding. Valley Utilities is currently looking at a private placement non-rated bond to fund this project. A request has come from the State and from Valley Utilities to see if AIDEA could participate to lower the funding of the plant. The eligibility resolution states that AIDEA may issue a bond for this plant down the line. This allows us to stop the clock on what expenditures may be allowed if AIDEA was to participate. It does not guarantee that AIDEA would participate in this bond.

In response to questions from the Board, Mr. Vassar explained that under the tax code, if tax exempt bonds are issued to finance the project, the costs of that project will be eligible for reimbursement with proceeds of a tax exempt bond only if they are incurred not more than 60 days before the date of the reimbursement resolution. Through time and history and tradition these are called eligibility resolutions. The tax code calls them a statement of official intent. If the Board adopts this resolution today, costs incurred for the Goose Creek Water and Waste Water facility up to 60 days ago will be eligible for reimbursement with the proceeds of any bonds AIDEA may issue. There are certain exceptions that allow expenditures going beyond the 60 days to be reimbursed, but by and large it is a 60 day limit. This resolution keeps costs that are being incurred and have been incurred up to 60 days ago eligible for reimbursement with proceeds of those bonds.

The facility is a State project used to house prisoners instead of sending them to Arizona. This is the final stage in getting the project ready to run and the total cost is approximately \$17 million dollars. The State has approached getting the project done through an agreement with the Matanuska-Susitna Borough and Valley Utilities. Valley Utilities is a company consisting of three or four engineers who undertook building this facility for the Goose Creek Prison Project. One option was to have the Mat-Su Borough issue bonds on a private placement basis. This option was not optimal and unfavorable compared to what AIDEA could provide.

These are revenue bonds and the revenue will be the payments the State makes under a service agreement with Valley Utilities for the water and wastewater facilities. The Matanuska-Susitna Borough has adopted a reimbursement resolution that covers all of the costs of the project. The timing is right for AIDEA to adopt this resolution because it keeps an option open that may be, in the long run, a very favorable option for the state.

**MOTION: Mr. Winther moved to adopt Eligibility Resolution No. ER10-15 as presented. Seconded by Commissioner Bell. There being no discussion, the question was called. A roll call vote was taken and the motion passed with Mr. Sheldon, Mr. Winther, Mr. Felix, Commissioner Bell and Commissioner Galvin voting yea.**

## **7F. Update on Skagway Ore Terminal (SOT)**

Mr. Leonard said AIDEA staff has been working with the Municipality of Skagway and the SOT customer as to how and when AIDEA can expand the terminal. While working with the customer and with PARN, an issue has arisen requiring that agency staff update the Board members. Mr. Hemsath and Mr. Fenerty, one of our attorneys, are present to provide additional information.

Mr. Hemsath – The Skagway Ore Terminal, as well as the development finance project assets, consists of a 40,000 square foot covered ore concentrate shed, 60,000 square feet of uncovered storage pad and a ship loader. Currently AIDEA has one customer using the SOT, Capstone Minto Mining. Capstone moves copper concentrate product using two ships and moves approximately 10-12 shipments each year. We recently became aware of potential legal

action between Pacific & Arctic Railway Navigation Company (PARN) and Capstone regarding a dispute over wharfage fees. There is a significant potential impact here to the Skagway business plan, especially as it relates to further expansion of the ore concentrate shed. AIDEA is monitoring the situation and wants to apprise the Board of the situation. Dennis Fenerty is an outside counsel to AIDEA. He has been very actively monitoring the situation with Capstone specifically, and he will provide an overview of the situation.

Mr. Fenerty said the following: He would describe a handful of events that have occurred which are public information and Mr. Bjorkquist would monitor the discussion so as not to jeopardize attorney-client privilege. AIDEA acquired the Skagway Ore Terminal in 1990 under a purchase agreement from PARN. White Pass is a subsidiary of PARN. They own the dock facility. They sold AIDEA the ship loader and the storage pad that Mr. Hemsath described and the storage pad that AIDEA built a building on it to house storage for ore products.

In 2007 AIDEA entered into a user agreement with Capstone Minto and they have been using the facility since then. Its first shipment occurred in October of 2007 and it received an invoice from PARN for a dockage fee and also for a wharfage fee. For some period of time Capstone paid both the dockage fee and the wharfage fee. The wharfage fee amounted to approximately \$115,000. Under the user agreement between AIDEA and Capstone, Capstone is responsible for performing all of AIDEA's obligations under the purchase agreement with PARN. AIDEA is largely an outside observer of what is going on. However, when Capstone was hit with an invoice of both dockage and wharfage, it went back and read the contract between AIDEA and PARN and realized the contract language says that PARN has a right to "all inclusive dockage charge." The contract is silent on wharfage. The question is, does PARN, as owner of the dock, have the right to charge both a dockage and a wharfage fee? Capstone Minto asked PARN to mediate the dispute. *changed to read: Capstone Minto requested that PARN join in mediation regarding the dispute.\**

In response to a question from the Board, Mr. Fenerty explained the difference between dockage and wharfage. The industry seems to accept a basic definition that a dockage fee is for the privilege of pulling up to the dock. If you pull up to the dock and tie up to the dock, you owe a dockage fee to whoever owns the dock. The wharfage fee is the charge for moving product or people across the dock, a wharf. When AIDEA purchased the facility, it purchased the ship loader and the footprint of the ship loader. AIDEA owns the ship loader affixed to the ground, the arm that reaches across and the piling and the support mechanisms underneath the ship loader. This is believed to be the "wharf." That is our argument, and the privilege of moving product across the wharf to the ship is a wharfage fee. PARN doesn't own the facility; it owns the remainder of the dock.

Mr. Fenerty's remarks continued as follows: Capstone Minto asked PARN to mediate the dispute. *changed to read: Capstone Minto requested that PARN join in mediation regarding the dispute.\** They agreed to pay future wharfage charges into an escrow account. Approximately \$150,000 in additional wharfage charges have been paid into escrow, so PARN is not receiving them at present. PARN has conceded in negotiating sessions with Capstone that it knows it has no right to collect wharfage, so what it is going to do instead is increase its "dockage" charges against ore ships, not cruise ships (and this is where their bread and butter is), by tenfold. Your Executive Director strongly disagrees with PARN's negotiating posture and has let PARN know that. Your Executive Director believes that PARN's negotiating posture is interfering with your Skagway Ore Terminal facility, with your customer Capstone Minto, and with future customers. Sixty-percent of the facility is yet to be used, and AIDEA wants it to be used. AIDEA has received reports from potential users who are concerned about this "wharfage" issue. Mr. Leonard also believes it is interfering with AIDEA's mission of development. At this time, the Executive Director is not asking the Board for anything. This reports is just to inform the Board,



but it is believed that litigation is likely imminent. Everything I have described to you to this point does not fall under attorney-client privilege. It is a series of factual events that have occurred up to this point. [*\*Change made at the request of Mr. Sheldon at Dec 3, 2010 board meeting.*]

Commissioner Galvin recommended the Board enter into Executive Session for further discussion.

**MOTION: Mr. Felix moved to go into executive session to discuss potential litigation, negotiations and mediation related to the Skagway Ore Terminal. Seconded by Mr. Winther.**

**EXECUTIVE SESSION 11:35 am.**

The Board reconvened at 12:38 p.m. and a quorum was established.

Mr. Bjorkquist said the Board stayed on topic appropriately in the executive session dealing with the Skagway Ore Terminal.

**8. DIRECTOR COMMENTS**

Mr. Leonard welcomed Mr. Sheldon to the Board.

AIDEA will be bringing additional eligibility resolutions from recovery zone bond applications to the Board at the November 22, 2010 meeting. He referred Board members to their packets for reports on loan activities, delinquencies, project fact sheets and a semi-annual financial report from the POLARIS fund.


Next regularly scheduled meeting Monday, November 22, 2010

**9. BOARD COMMENTS**

There were no comments.

**10. ADJOURNMENT**

There being no further business of the Board, the meeting was adjourned at 12:43 p.m.

  
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Ted Leonard, Executive Director/Secretary  
Alaska Industrial Development and Export Authority