

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030104

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt resolution approving the issuance of Lee County Industrial Development Authority Bonds on behalf of Legacy at Lehigh, LLC, in an amount not to exceed \$11,000,000.00 for the primary purpose of financing the costs of acquisition, construction, equipping, and furnishing a Congregate Care Residential Community to be owned and operated by Legacy at Lehigh, LLC.

WHY ACTION IS NECESSARY: Authorizes Industrial Development Authority to issue industrial development bonds pursuant to Chapter 159, Florida Statutes.

WHAT ACTION ACCOMPLISHES: Provides Board consideration of proposed Industrial Development Authority Bonds as required by Internal Revenue Code and Florida Statutes. Board approval will authorize and adopt approving bond issuance resolution.

**2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT #**

C12A

3. MEETING DATE:

02-11-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

**5. REQUIREMENT/PURPOSE:
(Specify)**

- STATUTE F.S. Ch. 159
- ORDINANCE _____
- ADMIN. CODE _____
- OTHER Sec. 147 IRC

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER _____
- B. DEPARTMENT County Attorney
- C. DIVISION _____
- BY: James G. Yaeger
County Attorney

7. BACKGROUND: The Lee County Industrial Development Authority has entered into an agreement for issuance of private activity revenue bonds with Legacy at Lehigh, LLC. On January 17, 2003, the Industrial Development Authority held a noticed public hearing and adopted an inducement resolution for the proposed issuance of Industrial Development Authority private activity revenue bonds in an initial amount not to exceed \$11,000,000.00 for the primary purpose of financing the acquisition, construction, equipping and furnishing of a Congregate Care Residential Community to be owned and operated by Legacy at Lehigh, LLC.

The Internal Revenue Code and Florida Statutes require an applicable elected body to approve the prospective bond financing for the project. The county resolution approves the issuance of the bonds and the project. Section 3 provides that Board action is a limited approval.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	<i>[Signature]</i>	OA	OM	RISK	GC	<i>[Signature]</i>
					<i>RK 1/23</i>	<i>[Signature] 1/23/03</i>	<i>[Signature] 1/23/03</i>	<i>[Signature] 1/23/03</i>	

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

CO. ATTY.
FORWARDED
TO CO. ADMIN.
1-23-03

RECEIVED BY
COUNTY ADMIN. *RK*
1-23-03
3:45
COUNTY ADMIN.
FORWARDED TO: *DS*
1/23/03

NABORS, GIBLIN & NICKERSON, P. A.

ATTORNEYS AT LAW
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2502 ROCKY POINT DRIVE
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TALLAHASSEE, FLORIDA 32308
(850) 224-4070
TELECOPY (850) 224-4073

January 22, 2003

James G. Yaeger, Esq.
Lee County Attorney
2115 Second Street
Fort Myers, Florida 33901

03 JAN 23 PM 10:02
RECORDED BY
LEE CO. ATTORNEY

Dear Mr. Yaeger

Enclosed please find ten copies of a proposed resolution for consideration by the Board of County Commissioners at the earliest available meeting. Adoption of the resolution would provide the Board's limited approval to the issuance of not exceeding \$11,000,000 of Lee County Industrial Development Authority Industrial Development Revenue Bonds, Series 2003 for the benefit of Legacy at Lehigh, LLC. The approval of the County is extremely limited and is required by Section 147(f) of the Internal Revenue Code and Section 159.47(1)(i), Florida Statutes. In essence, these provisions provide that an elected public body must give its approval to the issuance of industrial development bonds prior to their issuance. The Board's approval is given in accordance with Section 125.01(1)(z), Florida Statutes.

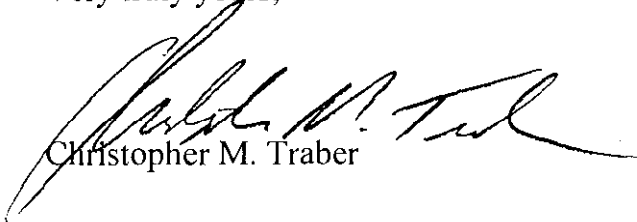
Section 3 of the Board's resolution makes it clear that the approval being given by the Board is limited and, importantly, that the Board is not incurring any liability as a result thereof. Please note that Section 8 of the Authority's resolution adopted by the Authority on January 17, 2003 (after a public hearing on the issue) which is attached as an Exhibit to the Board's resolution, also contains the same provision.

James G. Yaeger, Esq.
January 22, 2003
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Please let us know whether or not it will be necessary to have any representatives from the Authority, Legacy at Lehigh, LLC or their counsel present at the meeting. Also, please provide me with a certified copy of the adopted resolution at your convenience.

Thank you for your assistance in this matter.

Very truly yours,



Christopher M. Traber

CMT:mbw
Enclosures

cc: James T. Humphrey, Esq.
John R. Stokes, Esq.
David H. Williams, Jr., Esq.

RESOLUTION NO. ____

A RESOLUTION APPROVING THE ISSUANCE BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY OF ITS INDUSTRIAL DEVELOPMENT REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$11,000,000, THE PROCEEDS FROM THE SALE OF WHICH WILL BE USED FOR THE PRIMARY PURPOSE OF FINANCING (OR PROVIDING FOR REIMBURSEMENT OF) CERTAIN CAPITAL IMPROVEMENT COSTS INCURRED OR TO BE INCURRED BY LEGACY AT LEHIGH, LLC (THE "COMPANY") IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, EQUIPPING AND FURNISHING OF A CONGREGATE CARE RESIDENTIAL COMMUNITY.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION 1. FINDINGS. It is hereby ascertained, determined and declared as follows:

A. The Lee County Industrial Development Authority (the "Authority") has submitted to the Board of County Commissioners of Lee County, Florida (the "County"), a copy of a resolution of the Authority which was adopted by the Authority on January 17, 2003 (the "Authority Resolution"), granting its preliminary approval for the issuance by the Authority of its industrial development revenue bonds (the "Bonds"), in an aggregate principal amount not to exceed \$11,000,000 for the primary purpose of financing (or providing for reimbursement of) certain costs of acquisition, construction, equipping and furnishing of a congregate care residential community to be owned and operated by Legacy at Lehigh, LLC (the "Company"), as more particularly described in the Authority Resolution (the "Project"). A copy of the Authority Resolution is attached hereto as Exhibit A.

B. On January 17, 2003, the Authority held a public hearing, which public hearing was duly conducted by the Authority on such date upon reasonable public notice, and at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project and the issuance of the Bonds for such purposes.

C. The Authority has requested the County to approve the issuance of the Bonds in order to satisfy the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended and Section 159.47(1)(i), Florida Statutes.

D. The purposes of Part II and III of Chapter 159, Florida Statutes, will be effectively served and it is desirable and in the best interests of the County that the issuance of the Bonds and the use of the proceeds thereof to finance the costs of the Project be approved by the Board of County Commissioners of the County (the "Board").

SECTION 2. APPROVAL OF ISSUANCE OF BONDS, THE PROJECT.
The issuance of the Bonds and the use of the proceeds thereof to finance the costs of the Project as contemplated by the Authority Resolution be and hereby are approved.

SECTION 3. LIMITED APPROVAL. The approval given herein shall not be construed as (i) an endorsement of the creditworthiness of the Company or the financial viability of the Project, (ii) a recommendation to any prospective purchaser to purchase the Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (iv) an approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Project, and the Board shall not be construed by reason of its adoption of this Resolution to make any such endorsement, finding or recommendation or to have waived any right of the Board or stopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the approval by the Board of the issuance of the Bonds by the Authority shall not be construed to obligate the County to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Bonds, the acquisition and construction of the Project, and the Authority shall so provide in the financing documents setting forth the details of the Bonds.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

ADOPTED, this _____ day of _____, 2003.

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

(SEAL)

By: _____
Chairman

ATTEST:

Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

County Attorney

A RESOLUTION OF THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY RELATIVE TO THE PROPOSED ISSUANCE BY THE AUTHORITY OF INDUSTRIAL DEVELOPMENT REVENUE BONDS IN ONE OR MORE SERIES IN AN INITIAL AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$11,000,000 FOR THE PRINCIPAL PURPOSES OF (1) FINANCING CERTAIN CAPITAL IMPROVEMENT COSTS INCURRED OR TO BE INCURRED BY LEGACY AT LEHIGH, LLC IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, EQUIPPING AND FURNISHING OF A PROPOSED CONGREGATE CARE RESIDENTIAL COMMUNITY AS DESCRIBED HEREIN; PROVIDING FOR CERTAIN RELATED MATTERS IN CONNECTION THEREWITH AND FOR AN EFFECTIVE DATE.

WHEREAS, Legacy at Lehigh, LLC, a Florida limited liability company (the "Company"), has heretofore applied to the Lee County Industrial Development Authority (the "Authority"), to issue its industrial development revenue bonds in the initial aggregate principal amount of not to exceed \$11,000,000 in one or more series (the "Bonds") for the purpose of (1) financing certain costs of acquisition, construction, equipping and furnishing of a 94-unit congregate care residential community (the "Project") to be owned and operated by the Company, (2) capitalizing interest on the Bonds during construction of the Project and for a reasonable period thereafter, (3) funding a debt service reserve fund, if required, and (4) paying costs associated with the issuance of the Bonds. The Project shall be located in Lee County, Florida, as more particularly described in the notice of public hearing attached hereto as Exhibit A; and

WHEREAS, the Company has requested that the Authority loan the proceeds of the Bonds to said Company pursuant to Chapter 159, Parts II and III, Florida Statutes, or such other provision or provisions of Florida law as the Authority may deem advisable (the "Act") in order to accomplish the foregoing; and

WHEREAS, pursuant to a Resolution adopted by the Authority on December 13, 2002 (the "Inducement Resolution"), the Authority gave its preliminary approval to the issuance of the Bonds for the purposes set forth above; and

WHEREAS, in order to satisfy certain requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Authority held a public hearing on the proposed issuance of the Bonds for the purposes herein stated on the date hereof, which date is more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in Lee County, Florida (a true and accurate copy of the affidavit of publication of such notice is attached hereto as Exhibit A), which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Bonds and the location and nature of the Project and was held in a location which, under the facts and circumstances, was convenient for the residents of Lee County, such notice was reasonably designed to inform residents of Lee County of the proposed issue, stated that the Authority would be the issuer of the Bonds, stated the time and place of the hearing and generally contained the information required by Section 147(f) of the Code and applicable regulations thereunder; and such 14 days were adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notice of public hearings conducted by the Authority and provided sufficient time for interested persons to prepare for and to express their views at such hearing; and

WHEREAS, pursuant to the Inducement Resolution, the Authority and the Company executed a Memorandum of Agreement in the form attached to the Inducement Resolution as Exhibit A setting forth certain matters and responsibilities in connection with the proposed issuance of Bonds (the "Memorandum of Agreement"); and

IT IS, THEREFORE, DETERMINED AND RESOLVED BY THE LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, THAT:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution, hereinafter called the "Resolution" is adopted pursuant to the provisions of the Act and other applicable provisions of law.

SECTION 2. PRELIMINARY STATEMENT. This Resolution is entered into in furtherance of and in addition to the Inducement Resolution in order to permit the Company to continue to proceed with commitments for the Project and to incur costs in connection with the Project and to provide an expression of intention by the Authority, prior to the issuance of the Bonds, to issue and sell the Bonds and make the proceeds thereof available to finance all or part of the costs of the Project, to the extent of such proceeds, all in accordance with and subject to the provisions of the Constitution and other laws of the State of Florida, including the Code, in the Inducement Resolution and this Resolution, but subject in all respects to the terms of the Memorandum of Agreement.

SECTION 8. LIMITED APPROVAL. The approval given herein shall not be construed as an approval of any necessary rezoning applications nor for any other regulatory permits relating to the Project and the Authority shall not be construed by reason of its adoption of this resolution to (i) attest to the Company's ability to repay the indebtedness represented by the Bonds, (ii) a recommendation to prospective purchasers of the Bonds to purchase the same, or (iii) have waived any right of the County or estopping the County from asserting any rights or responsibilities it may have in that regard.

SECTION 9. EFFECTIVE DATE. This Resolution shall take effect immediately.

ADOPTED this 17th day of January 2003.

**LEE COUNTY INDUSTRIAL
DEVELOPMENT AUTHORITY**

(SEAL)

Chair

ATTEST:


Assistant Secretary

EXHIBIT A

**AFFIDAVIT OF PUBLICATION OF
NOTICE OF PUBLIC HEARING**

NEWS-PRESS

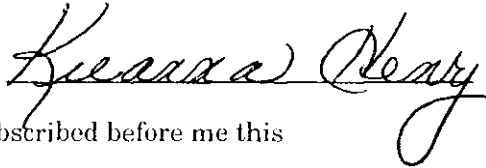
Published every morning - Daily and Sunday
Fort Myers, Florida

Affidavit of Publication

STATE OF FLORIDA
COUNTY OF LEE

Before the undersigned authority, personally appeared
Kieanna Henry
who on oath says that he/she is the
Asst. Legal Clerk of the News-Press, a daily newspaper,
published at Fort Myers, in Lee County, Florida; that the
attached copy of advertisement, being a
Notice of Public Hearing
In the matter of **Public Hearing on 1/17/03**
in the _____ Court
was published in said newspaper in the issues of
January 2, 2003

Affiant further says that the said News-Press is a paper of general circulation daily in Lee, Charlotte, Collier, Glades and Hendry Counties and published at Fort Myers, in said Lee County, Florida and that said newspaper has heretofore been continuously published in said Lee County, Florida, each day, and has been entered as a second class mail matter at the post office in Fort Myers in said Lee County, Florida, for a period of one year next preceding the first publication of the attached copy of the advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.



Sworn to and subscribed before me this

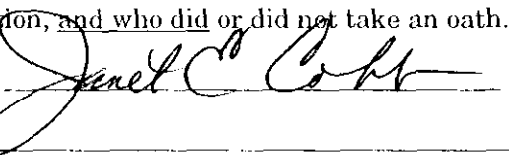
2nd day of January 2002 by

Kieanna Henry

personally known to me or who has produced

_____ as identification, and who did or did not take an oath.

Notary Public



Print Name

My commission Expires:



Janet E. Cobb
MY COMMISSION # CC980442 EXPIRES
November 19, 2004
BONDED THRU TROY FAIN INSURANCE, INC.

NOTICE OF PUBLIC HEARING

The Lee County Industrial Development Authority (the 'Authority') will hold a public hearing on January 17, 2003, at 1:00 P.M., or as soon thereafter as the matter can be heard, at the Authority's offices located at 2180 West First Street, 3rd Floor Conference Room, Saxton House, Fort Myers, Florida to consider approval of the issuance by the Authority of not exceeding \$11,000,000 of its Industrial Development Revenue Bonds (Legacy at Lehigh, LLC Project), Series 2003 (in one or more series (the 'Series 2003 Bonds')). The Series 2003 Bonds will be issued for the principal purposes of financing certain costs of acquisition, construction, equipping and furnishing of a congregate care residential community (the 'Project') to be owned and operated by Legacy at Lehigh, LLC (the 'Company') and to be located in Lee County, Florida, in the area more particularly described below.

The Project consists of the acquisition of 9.41 acres of land in the unincorporated area of Lee County, Florida known as Lehigh Acres located near the intersection of Homestead Road North and Taylor Lane Extension, the construction of a congregate living facility consisting of a three-story building that will contain 94 apartment rental units, an exercise area, TV area, multipurpose activity room, beauty salon/barber shop, library, offices and building operations areas. The Project will also contain a 75-space parking area. The Series 2003 Bonds shall be payable solely from the revenues derived by the Authority from a loan agreement, mortgage and security agreement and other financing documents to be entered into by and between the Authority and the Company, prior to or contemporaneously with the issuance of the Series 2003 Bonds. Such Series 2003 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of Lee County, the State of Florida or any political subdivision or agency thereof. Issuance of the Series 2003 Bonds shall be subject to several conditions including satisfactory documentation, the approval by bond counsel as to the tax-exempt status of the interest on all or a portion of the Series 2003 Bonds and receipt of necessary approvals for the financing. The aforementioned meeting shall be a public meeting and all persons who may be interested will be given an opportunity to be heard concerning the same. Written comments may also be submitted to the Lee County Industrial Development Authority prior to the hearing at Fowler, White, Gillen, Boggs, P.A., 2201 Second Street, 5th Floor, Fort Myers, Florida 33901, Attention: James T. Humphrey, Jr., Esq.

ALL PERSONS FOR OR AGAINST SAID APPROVAL SHALL BE HEARD AT SAID TIME AND PLACE. IF A PERSON DECIDES TO APPEAL AN ACTION MADE BY THE AUTHORITY WITH RESPECT TO SAID HEARING OR MEETING, (S) HE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF SAID HEARING OR MEETING IS MADE WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS BASED. IN COMPLIANCE WITH THE Americans with Disabilities Act, persons needing special accommodations to participate in the proceeding should contact the individual or agency publishing this notice no later than seven days prior to the proceeding at the address given in this notice. Telephone: (239) 338-3161. By order of the Lee County Industrial Development Authority, LEE COUNTY INDUSTRIAL DEVELOPMENT AUTHORITY, Gail Markham, Chair, No. 9824