

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

TUESDAY
FEBRUARY 9, 2016
8:00 A.M.

PLANNING DEPARTMENT CONFERENCE ROOM

AGENDA

PRESENT:

___ TODD RULISON, CHAIRMAN
___ JOSEPH SEMIONE, VICE CHAIRMAN
___ WILLIAM SULLIVAN, TREASURER
___ JOE GILLIS, SECRETARY
___ DIANA PUTNAM, MEMBER
___ DAVE D'AMORE, MEMBER
___ TIM MUNN, MEMBER
___ JAMES MRAZ, IDA EXECUTIVE DIRECTOR
___ KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH PC
___ RON PETERS, FULTON COUNTY CENTER FOR REGIONAL GROWTH
___ MIKE ANICH, LEADER-HERALD

I. MINUTES FROM JANUARY 6, 2016 MEETING:

MOTION :
MADE BY :
SECONDED :
VOTE :

II. BUDGET REPORT:

MOTION :
MADE BY :
SECONDED :
VOTE :

III. COMMITTEE REPORTS:

A. Nominating Committee:

- No report.

B. Audit Committee:

- No report.

C. Governance Committee:

- No report.

D. Finance Committee:

- No report.

IV. OLD BUSINESS:

A. Tryon Technology Park Project:

1. Vireo Health Lot Sale:

- Closing documents have been executed.

2. Tryon Marketing Brochure:

- Marketing brochure being finalized.
- Will be doing two (2) separate printings:
 - First batch will be small and be without pictures. Will be waiting until spring to take pictures of Tryon/Vireo Health. This brochure is being done to give to Ron Peters to take to two (2) conferences he will be attending in February and March, 2016.
 - Second will be with pictures. This will be the larger printing and done in the spring/summer.

3. Tryon Sign:

- Sign will be located on left side of entrance road.

V. **NEW BUSINESS:**

A. **Proposed Johnstown Renewables Project:**

1. **Background:**

- IDA has received a Project Application from Johnstown Renewables, LLC.
- Application Fee has been submitted.

2. **Project Ownership:**

- Johnstown Renewables' (JR) Application is organized as a Delaware limited liability company and is authorized to do business in New York State.
- Members include:
 - CRE Capital, LLC
 - New Age Renewable Energy

3. **Project Structure:**

- JR is proposing a lease/leaseback arrangement with the IDA.
- In this structure, following the sale from the IDA to JR, JR would lease the property to the IDA and then the IDA would lease the land and improvements back to the Company to operate.

4. **Project Description:**

a. **General:**

- JR is proposing to construct and operate an acid whey processing plant in the Johnstown Industrial Park.
- The JR Project consists of two (2) key components:
 - 1) Acid Whey Processing Facility.
 - 2) Acid whey pipeline.

b. **Acid Whey Processing Facility:**

- The acid whey processing facility will consist of two (2) major components:
 - 1) Acid whey de watering using filtration technology.
 - 2) Processing of acid whey concentrate into renewable commodities using fermentation and distillation technology.
- The facility shall include the following key components:
 - 1) Acid whey receiving Area Receiving buffer tank, offloading bay.
 - 2) 35' tall, pre-engineered metal processing building Area: Whey de watering, fermentation, by products processing, storage and office space.
 - 3) Distillation Area: 69' distillation columns, finished product tank, water tank, product offloading. All tanks will be installed on own concrete slabs.

c. **Acid Whey Pipeline:**

- Two (2) 4" pipelines will transport acid whey from FAGE's plant to JR's Acid Whey Processing Facility.
- Both lines will have the capacity to transmit 200 gallons per minute (gpm) of whey.
- There will be approximately 780' of piping installed.

- The piping would:
 - Be made of stainless steel.
 - Be underground.
 - Cross under Enterprise Drive.

d. Products to be made from Acid Whey:

- Ethyl Alcohol
- Dry yeast feed for livestock

e. Water and Wastewater:

- Process will require city water only for the human consumption.
- All process water will be produced via filtration of acid whey.
- Wastewater discharge to the wastewater treatment plant will be similar to a regular household strength.
- The plant, at its peak, will discharge up to 160 gpm or 230,400 gallons/day of wastewater into the existing City’s sanitary sewer infrastructure.

5. Permits/Approvals Required:

- City Planning Board : Site Plan
- City Zoning Board of Appeals : Area Variance
- City Common Council : Easement to cross Enterprise Drive
- IDA : Sell Lot/Site Plan
- NYSDEC : Air Permit

6. SEQR:

- Proposed action is a Type I Action under SEQR.
- Potential Involved Agencies include:
 - City of Johnstown Planning Board
 - City of Johnstown Zoning Board of Appeals
 - City of Johnstown Common Council
 - IDA
 - NYSDEC
- A Coordinated SEQR Review needs to be completed.
- The City of Johnstown Planning Board met on February 2, 2016 and proposed that they serve as SEQR Lead Agency and conduct a Coordinated SEQR Review.
- The IDA Board should support having the City of Johnstown serve as SEQR Lead Agency.

IDA DISCUSSION:

IDA ACTION:

MOTION: To support having the City of Johnstown Planning Board serve as SEQR Lead Agency for the required Coordinated SEQR Review.

MADE BY:

SECONDED:

VOTE:

7. Proposed Lot Purchase:

- Johnstown Renewables desires to purchase 5.374 acres of land on the north side of Enterprise Drive.
- Total Lot Sale: 5.374 x \$20,000/acre = \$107,500
- A Purchase and Sale Agreement has been prepared and reviewed by IDA Counsel.

IDA DISCUSSION:

IDA ACTION:

MOTION: Subject to the completion of a Coordinated SEQR Review, Site Plan approval by the IDA and City of Johnstown Planning Board and final project approval by the IDA, to authorize the Chairman to execute the Purchase and Sale Agreement subject to its final review and approval by IDA Counsel and the Executive Director.

MADE BY:

SECONDED:

VOTE:

8. Administrative Fee:

- As a straight lease project, the IDA's Fee Schedule calls for the Applicant to pay an Administrative Fee to the IDA.
- Administrative Fee would be .25% of the total expenditures that will be subject to Sales Tax Exemption.

9. Application for Tax Exemption:

- a. Financial Assistance Requested:
 - 1) 485-b Real Estate Tax Exemption.
 - 2) Sales Tax Exemption.
 - 3) Mortgage Recording Tax Exemption.
- b. No IDA bond financing is being requested.
- c. Requirements of Section 859-a of General Municipal Law:
 - The IDA must adopt a resolution describing the project and the financial assistance that the IDA is contemplating with respect to the project. The assistance shall be consistent with the IDA's Uniform Tax Exemption Policy unless the IDA has followed the procedures for deviation from such policy.
 - If a project requests financial assistance greater than \$100,000, the IDA must hold a public hearing. The public hearing must be held in City of Johnstown. At said public hearing, interested parties shall be provided reasonable opportunity, both orally and in writing to present their views with respect to the project.
 - The IDA must give at least ten (10) days published notice of said public hearing and shall, at the same time, provide notice of such hearing to the chief executive officer of each affected tax jurisdiction within which the project is located. The notice of

hearing must state the time and place of the hearing, contain a general, functional description of the project, describe the prospective location of the project, identify the initial owner, operator or manager of the project and generally describe the financial assistance contemplated by the IDA with respect to the project.

d. Public Hearing:

- The value of the tax exemptions requested by Johnstown Renewables exceed \$100,000.
- As a result, the IDA must schedule and conduct a public hearing.
- The public hearing will be on:

**Tuesday
March 1, 2016
2:00 p.m
Common Council Chambers
City Hall
33-41 East Main Street
Johnstown, NY**

- See Resolution: Handout

IDA DISCUSSION:

IDA ACTION

MOTION: To adopt a Resolution to schedule a public hearing relating to the Johnstown Renewables, LLC Project.

MADE BY:

SECONDED:

VOTE:

10. New Jobs:

- The Johnstown Renewables Project would create 27 permanent, new jobs with an average rate of \$26/hour.

11. Project Number:

- IDA is required to establish a 9-character Project Code for each project in accordance with the guidelines established by the State Comptroller.
- **Project Code: 1701-16-01-A**

12. 90-Day Notice to Authorize Budget Office:

a. Background:

- Section 2897(6)(d) of the Public Authorities Law requires public authorities to submit a written explanation of the circumstances involving the disposal of property through a negotiated transaction to the Authorities Budget Office (ABO) not less than 90 days prior to the scheduled date of the transaction.

- A written explanation of the circumstances involving the disposal of property through a negotiated transaction applies to the following property:
 - 1) Personal property with an estimated fair market value more than \$15,000.
 - 2) Real property having an estimated fair market value greater than \$100,000, except that any real property disposed of by lease or exchange.
 - 3) Real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of \$15,000.
 - 4) Real property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property;
 - 5) Related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

- The ABO will only accept an explanatory statement of the circumstances of a property disposal by negotiation that includes the following information:
 - 1) Description of the parties involved in the property transaction.
 - 2) Justification for disposing of property by negotiation.
 - 3) Identification of property, including its location.
 - 4) Estimated fair market value of the property.
 - 5) Proposed sale price of the property.
 - 6) Size of property.
 - 7) Expected date of sale of property.

IDA DISCUSSION:

IDA ACTION:

MOTION: To authorize the IDA Counsel to file the required 90-day letter to the ABO.

MADE BY:

SECONDED:

VOTE:

13. Next Steps:

- Advertise Public Hearing.
- Hold Public Hearing.
- Approve Preliminary Agreement.
- Adopt Closing Resolution.
- Execute documents:
 - Lease
 - PILOT
 - Bill of Sale
 - Deed
 - Other

IDA DISCUSSION:

B. Capital Resources Corporation:

1. Background:

- On January 31, 2008, the provisions of the New York State General Municipal Law that authorized the Fulton County Industrial Development Agency and other IDA's to issue tax-exempt revenue bonds for charitable entities expired.
- The New York State Legislature has not adopted subsequent legislation to allow IDA's to provide this type of financing to not-for-profit entities.
- Historically, the ability of IDA's to provide tax exempt revenue bond financing to charitable entities has been an important economic development tool.
- Not-for-profit entities in Fulton County that have benefitted from the Agency's tax-exempt financing include Nathan Littauer Hospital and Fulton County YMCA.

2. Capital Resources Corporation:

- a. An alternative now exists to allow not-for-profit entities to access to tax-exempt revenue bond financing.
- b. This involves the formation of a Capital Resource Corporation (CRC) under the New York State Not-For-Profit Corporation Law.
- c. A CRC would generally exist for the same public purposes as the IDA and have the power to issue tax-exempt bonds for the benefit of not-for-profit borrowers.
- d. Hodgson Russ, the IDA's Bond Counsel, submitted a written request to the Internal Revenue Service (IRS) for a private letter ruling regarding the authority of a capital resource corporation to issue tax-exempt bonds for the benefit of not-for-profit corporations.
- e. The IRS issued a positive ruling thereby validating that CRC's can issue tax exempt financing for not-for-profit entities.

3. Formation of a Capital Resource Corporation:

- a. The following steps would need to be taken to forming and structuring a Fulton County Capital Resource Corporation:
 - 1) Agency Resolution. The IDA Board would adopt a resolution approving a proposed Certificate of Incorporation and authorize the Chairman or Executive Director to approach the Board of Supervisors regarding the formation of a CRC.
 - 2) Board of Supervisors' Resolution. The IDA would present the proposed Certificate of Incorporation, along with the resolution approving such proposed Certificate of Incorporation, to the Board of Supervisors and request that the Board of Supervisors approve the proposed Certificate of Incorporation and the formation of a CRC.
 - 3) Filing of the Certificate of Incorporation. Once approved by the Board of Supervisors, the IDA would file the certificate of incorporation and the CRC begins its existence. Once formed, the IDA Board would comprise the Board of Directors of the newly formed CRC.

4. Key Terms of the Certificate of Incorporation:

- a. The purpose of the CRC would be to promote community and economic development and creation of jobs in the non-profit and for-profit sectors.
- b. The CRC would be subject to the provisions of the Public Authorities Accountability Act of 2005.
- c. The CRC would be authorized to issue bonds.
- d. The CRC's operations would be limited to Fulton County.

- e. The County would be the sole member of the CRC. The CRC would be managed by a Board of Directors. The Board of Directors would be appointed by and serve at the pleasure of the Board of Supervisors. The CRC's Board of Directors shall consist of the members of the IDA. The members of the Board of Directors shall not be entitled to compensation.
- f. The County shall receive an annual financial report. The CRC shall be subject to audit by the County, the Authority Budget Office and the Office of the State Comptroller.
- g. The CRC would be a "public body" for purposes of the Open Meetings Law.
- h. The CRC must hold a public hearing with respect to proposed projects with the same notice as required under Section 859-a of the General Municipal Law.
- i. Any amendment of the Certificate of Incorporation or by-laws of the CRC would be subject to approval by the Chairman of the Board of Supervisors.

IDA DISCUSSION:

VI. OTHER BUSINESS:

A. 2015 PILOT Report:

1. Background:

- Each year, the IDA monitors all PILOT Agreements it has on projects to verify that PILOT payments are being made per the PILOT Agreements.
- Each year, the IDA sends a letter to every company it has a PILOT with asking that they fill out a PILOT Report.
- The IDA also sends a similar letter to all local taxing jurisdictions impacted by an IDA PILOT. The information from local taxing jurisdictions is used to compare against the information received from companies.
- The 2015 letters and reports were sent out on November 19, 2015.

2. Status Report:

- The IDA received responses from all entities it sent Status Report to:

Companies:

YMCA
Euphrates
CIC
CG Roxane
NLH
Swany

Municipalities/School Districts:

Fulton County
City of Gloversville

Town of Johnstown
 Greater Johnstown School District
 Fonda-Fultonville School District
 City of Johnstown

3. Summary of 2015 PILOT Payments:

- See attached.

4. As of January 1, 2016, the IDA has the following active projects:

| Owner | Lessee | Address | Occupant |
|----------------------------|--------------|---------------------------------------|---------------------------------|
| IDA | CIC | 160 Enterprise | Yusen |
| IDA | Swany | 115 Corporate Drive | Swany |
| IDA | CG Roxane | 1 Old Sweet Road, Johnstown | CG Roxane |
| IDA | CIC | 4104 State Highway 30, Perth, NY | Nathan Littauer Hospital Clinic |
| (Landlord) NLH Association | (Tenant) IDA | 99 E. State St., Gloversville, NY | Nathan Littauer Hospital |
| Citi Mortgage | IDA | 99 E. State St., Gloversville, NY | Nathan Littauer Hospital |
| IDA | YMCA | 213 Harrison Street, Gloversville, NY | YMCA |

5. As of January 1, 2016, the IDA has active PILOT Agreements:

| Owner | Lessee | Address | Occupant |
|-------|-----------|-----------------------------|-----------|
| IDA | CIC | 160 Enterprise | Yusen |
| IDA | Swany | 115 Corporate Drive | Swany |
| IDA | CG Roxane | 1 Old Sweet Road, Johnstown | CG Roxane |

B. IDA Reform Legislation:

1. Background:

- IDA Reform Legislation passed the legislature on June 19, 2015.
- It was signed into law in December 2015.
- The legislation becomes effective 180 days after being signed by the Governor.

2. Key Provisions:

- a. The legislation establishes common minimum standards for IDA applications for financial assistance, including:
 1. An estimate of capital costs of the project.
 2. The projected number of full-time equivalent jobs that would be retained or created if the request for financial assistance is granted.
 3. A statement acknowledging that the submission of any knowingly false or misleading information may lead to immediate termination of any financial assistance and reimbursement of an amount equal to all or part of any tax exemption claimed as a result of the project.
 4. The IDA could require supplemental information as it determines to be appropriate.

- b. The legislation requires IDAs to adopt criteria for the evaluation and selection of each category of projects for which financial assistance would be provided. Such criteria would require:
 1. A written cost-benefit analysis that identifies the extent to which a project will create or retain permanent, private sector jobs.
 2. The estimated value of any tax exemptions to be provided.
 3. The amount of private sector investment generated or likely to be generated by the proposed project the likelihood of accomplishing the proposed project in a timely fashion.
 4. The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts.

- c. The legislation requires each IDA to develop a common minimum standards for IDA project agreements that would set forth the terms and conditions under which financial assistance would be provided, including:
 1. A requirement for an annual certification and documentation by the project owner, occupant or operator of full time equivalent jobs created and retained as a result of the financial assistance.
 2. A provision for the suspension or discontinuance of financial assistance, or for the modification of any payment in lieu of tax agreement to require increased payments, in accordance with policies developed by the IDA.
 3. A provision for the return of all or a part of the financial assistance provided for the project, as provided for in policies developed by the IDA.
 4. A provision that the business certify, under penalty of perjury, that it is in substantial compliance with all local, state and federal tax, worker protection and environmental laws, rules and regulations.

- d. The legislation requires IDAs to develop policies for the suspension or discontinuance of financial assistance, and annually assess the progress each project approved after January 1, 2016 is making toward achieving its goals.

- e. The Reform Legislation requires each IDA to develop policies:
 - For the suspension, discontinuance, or modification of financial assistance provided for a project.
 - For the recapture of all or part of the financial assistance provided for a project.
 - To annually monitor the progress of projects with respect to investment and job creation/retention goals.

C. Executive Session:

1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided, however, that no action by formal vote shall be taken to appropriate public moneys:
 - i. matters which will imperil the public safety if disclosed;
 - ii. any matter which may disclose the identity of a law enforcement agent or informer;
 - iii. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
 - iv. discussions regarding proposed, pending or current litigation;

- v. collective negotiations pursuant to article fourteen of the civil service law;
- vi. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- vii. the preparation, grading or administration of examinations;
- viii. the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.**

MOTION: To go into Executive Session to discuss, **“the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.”**

MADE BY :
 SECOND :
 VOTE :
 TIME :

MOTION : To go out of Executive Session.
 MADE BY :
 SECOND :
 VOTE :
 TIME :

VII. NEXT MEETING:

Tuesday
 March 8, 2016
 8:00 a.m.

VIII. CLOSE MEETING:

MOTION :
 MADE BY :
 SECONDED :
 VOTE :
 TIME :