

# **FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**THURSDAY  
JUNE 25, 2015  
8:00 A.M.**

**PLANNING DEPARTMENT CONFERENCE ROOM**

## **MEETING NOTES**

### **PRESENT:**

TODD RULISON, CHAIRMAN  
JOSEPH SEMIONE, VICE CHAIRMAN  
WILLIAM SULLIVAN, TREASURER  
DIANA PUTNAM, MEMBER  
DAVE D'AMORE, MEMBER  
JAMES MRAZ, IDA EXECUTIVE DIRECTOR  
RON PETERS, PRESIDENT, FULTON COUNTY CRG

### **I. MINUTES FROM JUNE 9, 2015 MEETING:**

MOTION : Accept as presented.  
MADE BY : Todd Rulison  
SECONDED : Joseph Semione  
VOTE : Unanimous

### **II. BUDGET REPORT:**

MOTION : Accept as presented.  
MADE BY : Joseph Semione  
SECONDED : Dave D'Amore  
VOTE : Unanimous

### **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 and Incubator Center Project:**

##### **1. Roof Leaks in Building 3:**

- IDA previously authorized Correll to perform emergency roof repairs at an estimated cost of \$6,700.
- Correll found an additional cracked roof drain pipe in Gym.
- Cracked pipe was replaced.
- There are two (2) small areas of gym floor where boards have severely warped due to water leaks.
- There remains two (2) leaks in building that have not yet been fixed.
- Correll has submitted invoice. Total invoice amount: \$6,775.00

**IDA DISCUSSION:** Jim Mraz reviewed the information on the Agenda. He stated that he is still trying to find a mason contractor to provide a quote to open up the masonry walls where the two (2) leaks remain and have a plumbing contractor provide an estimate to replace the broken pipes. The mason would be to take out the existing walls and to replace them. Once he's obtained that quote, he will come back to the IDA Board to present it.

**IDA ACTION:**

**MOTION:** To authorize a payment in the amount of \$6,775.00 to Correll Contracting Corp.

**MADE BY:** Diana Putnam

**SECONDED:** Bill Sullivan

**VOTE:** Unanimous

2. Invoice from Department of Solid Waste:

- Department of Solid Waste provided a dumpster for CIC's workers to use to clean out debris left over auctioning off all equipment from Kitchen in Building 3.
- Department of Solid Waste has submitted invoice.
- Total Invoice: \$76.00

IDA ACTION:

MOTION: To authorize a payment in the amount of \$76.00 to the Department of Solid Waste.

MADE BY: Dave D'Amore

SECONDED: Todd Rulison

VOTE: Unanimous

3. Empire State Health Solutions' (ESHS) Proposed Project:

- a. The following questions/comments have been sent to ESHS to respond to:
  1. What will the exterior of the existing building look like once completed? Will windows and exterior doors be replaced? Will the building be sided or just painted? Will the existing roof be refinished? What landscaping will be provided around the building and fencing? Please provide Elevation Drawings for the existing and proposed new buildings and an overall Landscaping Plan for the entire Site.
  2. A Stormwater Management Plan prepared by a New York State Licensed Professional Engineer and prepared in accordance with NYS's Department of Environmental Conservation's Stormwater Regulations must be prepared and submitted to the IDA before it can conclude SEQR.
  3. The metes and bounds description of the property to be acquired from the IDA must be transferred from Ferguson & Foss' survey drawing onto the Site Plan.
- b. With respect to the SEQR review the IDA is conducting, several questions were asked:
  1. The EAF indicates that there will be two (2) shifts working at the manufacturing facility. Is this correct? How many people will be working at the facility during each shift?
  2. What type of vehicles will be used to transport medicines from the manufacturing facility at Tryon to the dispensaries? How many vehicle trips a day are projected? Will any 48' or 53' tractor trailers be utilized by ESHS?
  3. What specific pesticides and herbicides will be utilized in the growing areas? Specify how they will be contained?
  4. Where does ESHS anticipate installing solar panels on the site? Would they be ground-mounted or mounted on top of a building?
  5. How will the new buildings be connected to onsite utilities including water, wastewater, gas, electric and communications?
  6. What is the projected average daily water usage from the municipal water system and projected average daily wastewater discharge into the municipal wastewater system?

7. What exterior building and freestanding signage is proposed to be installed?  
Provide illustrations of all proposed signage.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He stated subsequent to the IDA meeting, he reviewed the Site Plan and the EAF submitted by ESHS. The questions shown on the Agenda were the ones he has submitted back to Empire State. He stated that he just wanted to bring these to the attention to the IDA Board now. He stated the responses that ESHS will be providing will be reviewed at the next meeting. He stated the IDA Board will hope to try and complete the SEQR review process at its July 14<sup>th</sup> meeting.

Jim Mraz stated that ESHS presented its Site Plan at the June 15<sup>th</sup> Town of Perth Planning Board meeting. He stated that Perth Planning Board members were very supportive of the project.

## V. NEW BUSINESS:

### A. IDA Property at 160 Enterprise Drive, Johnstown Industrial Park:

#### 1. Lease Agreement:

- IDA executed a Lease with the Crossroads Incubator Corporation (CIC) on July 1, 1995.
- Lease expires on June 30, 2016.
- The property was initially occupied by Ozark Electronics. It was occupied by Finkle Distributors until 2010. Yusen currently leases most of the building.

#### 2. PILOT Agreement:

- IDA executed PILOT Agreement with CIC on September 1, 1995.
- PILOT afforded property tax exemptions from 1996-2005. Exemptions ended in 2005.
- Since 2006, CIC was making PILOT payments equaling 100% of what they would have been paying in property taxes if there was no PILOT.
- Finkle moved out of building in 2010. CIC was not able to find a new tenant.
- As a result, CIC became delinquent in making PILOT payments to local taxing jurisdictions after Finkle moved out in 2010.
- These delinquencies in PILOT payments represent a default under the PILOT and Lease.
- In 2012, IDA sent letters to local taxing jurisdictions advising them that since the CIC was delinquent in making PILOT payments, they should pursue whatever actions they could to protect their interests.
- The IDA sent another letter to local taxing jurisdictions in June, 2015.

#### 3. NBT Mortgage:

- This property is included in a Mortgage the CIC has with NBT Bank.
- CIC has been delinquent on its payments to NBT Bank.
- CIC is in default on this Mortgage.

#### 4. Foreclosure:

- As a result of being in default on its Mortgage payments, NBT has filed a Foreclosure Action in State Supreme Court.

- The IDA has been served a Summons as part of this Foreclosure Action.

**5. Forbearance Agreement:**

- NBT asked both the CIC and IDA to execute a Forbearance Agreement. The intent of the Forbearance Agreement is to delay a foreclosure to give the CIC time to sell the property.
- If the property is sold, proceeds from the sale would go to NBT Bank.
- To date, neither the CIC nor IDA have not executed this Agreement.

**6. Potential Sale:**

- CIC has an offer to purchase the property.
- NBT Bank needs to sign off on this sale.
- As the current owner of the property, the IDA would also have to sign off on the sale by terminating its lease with the CIC.

**7. CIC Request for Early Lease Termination:**

- CIC has the right to request an early termination of the Lease. To do so, it must make a payment to the IDA of \$1,000 per year of occupancy under the Lease.
- IDA received a letter dated May 26, 2015 from the CIC's attorney advising that they were exercising their right under Section 11.1 of Lease to an early lease termination.
- The CIC has asked the IDA to waive the 90-day notice requirement in the Lease.
- CIC has agreed to the following conditions:
  - a. Make a payment to the IDA per Section 11.1 of the Lease Agreement.
  - b. Make a payment to the IDA for expenses incurred related to the CIC's default of its Lease and PILOT and the early termination, including Attorney fees, incurred by the IDA per Section 5.03 of the PILOT Agreement.
  - c. Execute a Judgment by Confession with the IDA that can be placed on record in the amount of outstanding PILOT payments plus accrued interest.

8. Review proposed Resolution approving a Deed of Conveyance from the IDA to the Crossroads Incubator Corporation and Lease Termination for the property at 160 Enterprise Drive in the Johnstown Industrial Park and authorizing execution and delivery of same.

- See handout.

**IDA DISCUSSION:** Jim Mraz reviewed the information on the Agenda. He stated that the CIC has agreed to the conditions identified in Section 7 above. He stated that it is his understanding that the proceeds from the lot sale will be used by the CIC to make the required payments to the IDA. Ron Peters confirmed that was the case. He stated that, as such, if, for whatever reasons, NBT Bank does not consent to the proposed sale, the closing would not move forward.

Jim Mraz stated that letters were sent out recently to both local taxing jurisdictions advising them to take whatever actions they could to recoup those delinquent payments. Jim Mraz stated that the Judgment by Concession identifies the amount of delinquent PILOT payments the CIC still owes the City of Johnstown and the Fonda-Fultonville School District. He stated having the Judgment by Concession executed and filed represents the one (1) action the IDA can take to try and have these delinquent PILOT payments paid as part of the closing. He stated that he filing of the Judgment by Concession could be raised as an issue by the potential buyer at the closing. If so, the buyer could ask that these delinquent payments be paid for out of the proceeds from the closing so

that this Judgment can be satisfied. He stated the potential buyer may not have an issue at all with this Judgment by Concession. He stated if an issue is raised by the buyer and the bank decides to not satisfy the Judgment from proceeds from the lot sale, the lot sale will not go through.

Jim Mraz asked if there were any questions. Bill Sullivan asked if all these payments are going to be issued at closing. Jim Mraz stated, "Yes." Dave D'Amore asked if the same company is interested in purchasing this property. Jim Mraz stated, "Yes." Dave D'Amore asked if this Judgment by Concession represents a legal commitment that the buyer will be obligated to satisfy. Jim Mraz stated, "No." He stated this Judgment by Concession is not the same as a tax lien. Todd Rulison asked if the buyer will be made aware of the Judgment by Concession prior to closing. Jim Mraz stated that he would ask Kara Lais to ensure that that is the case.

Jim Mraz then reviewed the proposed Resolution titled "Resolution to Approve a Deed of Conveyance from the IDA to the Crossroads Incubator Corporation and Lease Termination for the Property at 160 Enterprise Drive in the Johnstown Industrial Park and the Authorize the Execution and Delivery of Same." He reviewed each of the Resolves in the Resolution. He asked IDA members if they had any questions or comments regarding the form and content of the Resolution. There were none.

Jim Mraz explained the motion to authorize the IDA Attorney to sign both the Judgment by Confession and Stipulation and Order Partially Vacating Notice of Pendency from NBT Bank. He asked if there were any questions. There were none.

**IDA ACTION:**

**MOTION:** To approve a Resolution approving a Deed of Conveyance from the IDA to Crossroads Incubator Corporation and Lease Termination for the property at 160 Enterprise Drive in the Johnstown Industrial Park and authorizing execution and delivery of same.

**MADE BY:** Joseph Semione  
**SECONDED:** William Sullivan  
**VOTE:** Unanimous

**MOTION:** To authorize the IDA Attorney to execute a Judgment by Confession acknowledging the outstanding PILOT payments plus accrued interest due local taxing jurisdictions from the CIC for the property at 160 Enterprise Drive in the Johnstown Industrial Park and to have said Judgment filed in the County Clerk's Office and to execute a Stipulation and Order Partially Vacating Notice of Pendency with NBT Bank.

**MADE BY:** Diana Putnam  
**SECONDED:** Dave D'Amore  
**VOTE:** Unanimous

**B. CFO:**

- IDA has received an invoice from Carol Ellis, CFO, for a payment due her per her Agreement with the IDA.
- Total Invoice: \$309.00

MOTION: To authorize the issuance of a payment in the amount of \$309.00 to Carol Ellis per her Agreement with the IDA to serve as the CFO.

MADE BY: William Sullivan  
SECONDED: Dave D'Amore  
VOTE: Unanimous

**VI. OTHER BUSINESS:**

**1. Next Meeting:**

Tuesday  
July 14, 2015  
8:00 a.m.

**VII. CLOSE MEETING:**

MOTION : To close the meeting.  
MADE BY : Joseph Semione  
SECONDED : Todd Rulison  
VOTE : Unanimous  
TIME : 8:40 a.m.