

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

TUESDAY
APRIL 9, 2019
8:00 A.M.

PLANNING DEPARTMENT CONFERENCE ROOM

AGENDA

PRESENT:

___ DAVE D'AMORE, CHAIRMAN
___ TIM MUNN, VICE CHAIRMAN
___ JOSEPH SEMIONE, TREASURER
___ JOE GILLIS, SECRETARY
___ TODD RULISON, MEMBER
___ GEORGE DOHERTY, MEMBER
___ JANE KELLEY, MEMBER
___ JAMES MRAZ, EXECUTIVE DIRECTOR
___ KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH PC
___ SCOTT HENZE, PLANNING DIRECTOR
___ RON PETERS, FULTON COUNTY CENTER FOR REGIONAL GROWTH
___ MARIE BORN, LIAISON, ECONOMIC DEVELOPMENT AND ENVIRONMENT COMMITTEE
___ MIKE ANICH, LEADER-HERALD

I. MINUTES FROM MARCH 19, 2019 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:

- Began process of monthly reconciliation of the four (4) accounts the IDA has with NBT Bank.

C. Governance Committee:

- No report.

D. Finance Committee:

- No report.

IV. OLD BUSINESS:

A. 2019 Goals:

1. Background:

- At the last meeting, the Board discussed establishing some goals for 2019.

2. 2019 Goal:

a. Market Tryon Development Area:

- 1) Conduct desktop environmental assessment and prepare basemap.
- 2) Prepare Sell Sheet.

3. Other Potential Goals:

a. Identify Sites for Potential Development:

- Obtain site control
- Conduct desktop environmental assessment and prepare basemap
- Develop and implement marketing strategy.

b. Review illustration example of identifying potential sites:

- 1) Parcel on West State Street, City of Johnstown

IDA DISCUSSION:

B. Investment of IDA Funds:

1. Status Report:

- At the March meeting, the IDA Board authorized transferring funds from its money market account into a 6-month CD.
- Funds were transferred on March 21, 2019.
- CD: 6 months: 2%
- CD will be due on September 21, 2019.

C. Intersection of CR107 and CR158:

1. Background:

- The intersection of CR107 and CR158 by the Tryon Technology Park is not a “T” intersection.
- The Site Plan for Tryon identified reconstructing that intersection to be a “T” intersection to better accommodate vehicles using this intersection.
- At its August 14, 2018 meeting, the IDA Board expressed its willingness to donate to Fulton County the land needed to allow for this reconstruction project to be completed.

2. Land Acquisition:

- Fulton County’s Highway and Facilities Department is preparing to start work on reconfiguring this intersection into a “T” intersection.
- This will improve traffic safety at this intersection.
- Fulton County needs to acquire a 2+/- acre piece of land from the IDA in order to reconstruct this intersection.
- A survey has been completed and will be provided to the County Attorney to prepare a deed to transfer ownership of the parcel over to Fulton County.

IDA DISCUSSION:

IDA ACTION:

MOTION: To authorize the IDA Chairman to execute a deed transferring ownership of a ___ acre parcel of land over to Fulton County.

MADE BY:

SECONDED:

VOTE:

V. NEW BUSINESS:

A. Board Training:

1. Background:

- The annual evaluations IDA Board members completed last fall indicated a desire to conduct more training and updates for members.

- As a result, it is proposed that time be allocated at each IDA meeting to provide training.
2. Review NYS Department of Taxation and Finance’s Requirements for IDA’s Granting Sales Tax Exemptions:
- a. Webinar:
- On March 27, 2019, Jim Mraz participated in a Webinar conducted by the NYS Department of Taxation and Finance regarding IDA’s providing sales tax exemptions and when/how an IDA must recapture unauthorized sales tax exemption benefits.
- b. “Agents”:
- As a government entity, an IDA is exempt from paying sales and use taxes (sales tax) on its purchases. However, it is not normal practice for an IDA itself to make purchases related to a project. An IDA typically appoints as its **“agent”** for this purpose. An **“agent”** is typically a:
 - Business or developer,
 - Contractor, or
 - Subcontractor
 - Purchases made by a properly appointed **“agent”** within the authority granted to it by an IDA are deemed to be purchases made by the IDA and are exempt from sales tax.
- c. Form ST-60:
- An IDA **must** file with the Tax Department Form ST-60, “IDA Appointment of Project Operator or Agent For Sales Tax Purposes”, **each time** it appoints an **“agent”** to receive sales tax exemption benefits. The IDA must file Form ST-60 within 30 days of appointing an **“agent.”**
- d. IDA’s Record Keeping and Reporting Requirements:
- An IDA must keep records of the sales tax exemption benefits it provides.
 - If the IDA fails to report the sales tax exemption benefits or make records available to the Department upon request, the IDA shall be prohibited from providing sales tax benefits until the IDA comes into compliance with all such requirements.
- e. Form ST-62: Annual Compliance Report:
- An IDA must file Form ST-62, IDA Annual Compliance Report – State Sales Tax Recapture, within 90 days of the end of the IDA’s fiscal year. The report must include details of:
 - The terms and conditions of each of its projects;
 - The IDA’s activities and efforts to recapture any state sales tax exemption benefits due;
 - The IDA must file the report with the:
 - Commissioner of Taxation and Finance
 - Director of the Budget
 - Commissioner of Economic Development
 - State Comptroller

- Municipalities Governing Body

f. Recapturing Sales Tax Benefits:

- An IDA must recapture any state sales tax exemption benefits that were claimed by an “**agent**” whenever the benefits were:
 - Not entitled or authorized to be taken;
 - In excess of the amounts authorized;
 - For unauthorized property or services; or
 - For property or services not used according to the terms of the project contract with the IDA.
- An IDA must remit recaptured sales tax exemption benefits to the Tax Department using Form ST-65, “IDA Report of Recaptured Sales and Use Tax Benefits.” The IDA must file Form ST-65 within 30 days from when the IDA comes into possession of the recaptured funds.
- An “**agent**” must cooperate with the IDA in its effort to recapture state sales tax exemption benefits. Where an “**agent**” fails to cooperate, IDAs have an obligation to commence an action or proceeding against an “**agent**” to recover unauthorized sales tax if necessary.
- Any failure by an “**agent**” to pay over improper sales tax exemption benefits to an IDA could also result in an assessment to the “**agent**” for the state sales tax due, plus applicable penalties and interest. The IDA must cooperate with the Department, for example, by sharing the relevant documents and information in the event that the Department elects to issue an assessment.

g. IDA Resolutions and Project Documents:

- All Resolutions approved by an IDA dealing with a project involving sales tax exemptions must include language dealing with recapturing unauthorized sales tax exemption benefits.
- All project documents shall also include this recapture language.
- Each “**agent**” appointed by an IDA shall agree to these recapturing provisions.

h. “Agent” Responsibilities:

1) Purchases:

- Once appointed, “**agents**” can make purchases to acquire, build, or equip a project exempt from sales tax. However, exempt purchases are only allowable to the extent provided by the terms of the “**agent’s**” IDA project contract.
- To make qualifying purchases exempt from sales tax, “**agents**” must use: Form ST-123, IDA Agent or Project Operator Exempt Purchase Certificate, or Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel.

- 2) Reporting Requirements: Form ST-340:
 - After the end of each calendar year, “**agents**” appointed directly by an IDA must file with the Tax Department Form ST-340, “Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA).”
 - Form ST-340 is used to report the total value of all state and local sales and use taxes exemptions claimed during a calendar year under the terms of the project contract, including the value of the exemptions claimed by:
 - o The “**agent**” itself; and
 - o The “**agent’s**” sub-agents, contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.
 - Form ST-340 is due on the last day of February in the following calendar year.

IDA DISCUSSION:

B. Policy 14: Uniform Tax Exemption Policy (UTEP):

1. Background:
 - Policy 14 is the IDA’s Uniform Tax Exemption Policy (UTEP).
 - It is recommended that the IDA’s Uniform Tax Exemption Policy be amended to revise language dealing with recapturing unauthorized sales tax exemptions and adding Project Operator/Agent reporting requirements for real property tax and sales tax exemption benefits received.
2. Proposed Revisions to UTEP:
 - See Handout.

IDA DISCUSSION:

IDA ACTION:

MOTION: To amend the Uniform Tax Exemption Policy (UTEP) to revise language dealing with recapturing unauthorized sale tax exemptions and add new Project Operator/Agent reporting requirements regarding real property and sales tax exemption benefits received.

MADE BY:

SECONDED:

VOTE:

C. Lawn Mowing Quotes:

- A Request for Quotes (RFQ) was distributed to four (4) companies/individuals to mow lawn at the Tryon Technology Park in 2019.
- Quotes were due by April 3, 2019.

- Following quote was received:

Company/Individual	Brush Hog/Flail Mower	Finish Mowing	Total
Ever Green Landscaping	\$ 4,440	\$ 4,494	\$ 8,934
James Esper Landscape	\$ 7,800	\$ 3,850	\$11,650

- Previous Year Costs:

2014	:	\$5,160	:	Greenscapes
2015	:	\$8,820	:	Evergreen
2016	:	\$7,520	:	Greenscapes
2017	:	\$8,500	:	James Esper
2018	:	\$10,700	:	James Esper

IDA DISCUSSION:

IDA ACTION:

MOTION: To authorize the Chairman to sign an Agreement with Evergreen Landscaping in the amount of \$8,934 to provide lawn mowing services at the Tryon Technology Park.

MADE BY:

SECONDED:

VOTE:

VI. OTHER BUSINESS:

A. Proposed State Legislation to Mandate NYS Prevailing Wages on IDA Projects:

1. Status Report:

- IDA sent letters to various State officials and NYS Senators expressing its opposition to a proposed bill to mandate that prevailing wages be paid on private sector projects receiving IDA benefits.
- The NYS Economic Development Council along with 50 other organizations also expressed this opposition to this proposed bill.
- This proposal was **not** included into the new State Budget.

IDA DISCUSSION:

B. 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
May 14, 2019
8:00 a.m.

VIII. CLOSE MEETING:

MOTION :
MADE BY :
SECONDED :
VOTE :
TIME :