

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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

PLANNING DEPARTMENT CONFERENCE ROOM

MEETING NOTES

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

I. MINUTES FROM MARCH 19, 2019 MEETING:

MOTION : Accept as presented.
MADE BY : Joseph Gillis
SECONDED : Jane Kelley
VOTE : 5 in favor, 0 opposed, 2 abstained (Todd Rulison/Joe Semione)

II. BUDGET REPORT:

MOTION : Accept as presented.
MADE BY : Jane Kelley
SECONDED : George Doherty
VOTE : Unanimous

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: Jim Mraz provided a presentation to the IDA Board regarding the process the Board would go through if it desired to pursue investigating potential infill sites for development. He stated the IDA Board discussed this concept at its last meeting and agreed to have Jim Mraz present an illustration of the process that the IDA Board would go through in reviewing potential sites. Jim Mraz reviewed the

zoning (allowable uses and setbacks), wetlands, flood hazards and other information regarding the site. He stated the information collected results in a determination being made of how much of a site can be developed. He stated that this information would be presented to the IDA Board along with the uses that are allowed by the Zoning Ordinance on a potential site. Based upon this review of this information, the IDA Board would make a determination on whether the site had potential development or not. This determination would be based upon how many impediments there may be to development on a particular site. He stated that if the IDA Board found a site had potential for development and a use that would be of interest, the next step would then be for the IDA to contact the property owner to share the information gathered to date. The property owner would then decide whether they would have an interest in executing an Access Agreement with the IDA to allow for more detailed investigative work to be done on the property and whether the property owner would be willing to enter into a purchase option with the IDA. If the property owner was interested, the IDA would then look to hire an engineer to go and conduct the more detailed type investigations that are being done at the Tryon Development Area. Once this detailed engineering evaluation was completed, the final step would be to market the site for potential development. Jim Mraz stated that the process would involve, initially, a no-cost evaluation being conducted of a site. The second step would then be to determine the property owner's interest. The third step would be where the IDA would have to invest certain dollars to have the detailed engineering work done. The final step would be in marketing the property.

Joe Semione asked if the IDA would look to purchase the property or seek an option? Jim Mraz stated that either approach could be utilized. He stated it would be up to the IDA to decide on a case-by-case basis. He stated that Joe Gillis, at the last meeting, advised for the IDA Board to be cautious in not getting involved with potential properties that could result in a financial drain on the IDA. Dave D'Amore supported having the IDA Board getting involved with this process. He stated the IDA has a responsibility to be proactive. He stated getting involved with this process would help promote and facilitate development on certain infill sites in Fulton County. Tim Munn stated he also thought this was a worthwhile process for the IDA to get involved with.

Jim Mraz stated that, based upon feedback obtained, a list of potential sites will be developed and presented at the next IDA Board meeting. He asked IDA Board members to also identify potential sites that they would like to have included onto this list. The IDA Board would then meet and review all of the potential sites and identify which one or ones it may want to initially pursue.

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: Jim Mraz reviewed the information on the Agenda. He stated the construction work on this project is scheduled to begin on April 15, 2019. He distributed a copy of a map showing the parcel that would be acquired for this intersection reconstruction project. He asked if there were any questions. There were none.

IDA ACTION:

MOTION: To authorize the IDA Chairman to execute a deed transferring ownership of a 2+/- acre parcel of land at the intersection of CR158 and CR107 over to Fulton County.

MADE BY: Joseph Semione

SECONDED: Tim Munn

VOTE: Unanimous

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:
 - The “**agent**” itself; and
 - 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: Jim Mraz reviewed the information on the Agenda. He stated that one of the things that the IDA Board needs to be doing on a consistent basis is making sure that companies obtaining sales tax exemption benefits from the IDA's file their Form ST-340 annually with the NYS Department of Taxation and Finance and the IDA. He asked if there were any questions. There were none.

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: Jim Mraz reviewed the information on the Agenda. He reviewed the proposed changes to the UTEP that were highlighted in the handout. He stated these changes were as a result of the feedback he obtained from the webinar he participated in last week. He stated that there was one (1) additional change proposed for dealing with PILOT's. He reviewed the proposed change with all IDA members present. After reviewing all of the proposed changes to the UTEP, he asked if there were any questions. There were none.

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: Joseph Gillis

SECONDED: Joseph Semione

VOTE: Unanimous

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: Jim Mraz reviewed the information on the Agenda. Joe Gillis asked if the recent increase in costs for mowing was as a result of asking for more areas to be mowed? Jim Mraz stated, “Yes.” He stated that the Site Selectors recommended additional areas be mowed and maintained. Jim Mraz asked if there were any further questions? There were none.

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: Joseph Gillis
 SECONDED: Jane Kelley
 VOTE: Unanimous

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.

VII. NEXT MEETING:

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

VIII. CLOSE MEETING:

MOTION : To close the meeting.
MADE BY : Joseph Semione
SECONDED : Timothy Munn
VOTE : Unanimous
TIME : 9:45 a.m.