

# FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

TUESDAY  
MAY 14, 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 APRIL 9, 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:

- No report.

#### C. Governance Committee:

- No report.

#### D. Finance Committee:

- No report.

### IV. **OLD BUSINESS:**

#### A. **Status of Johnstown Renewables Project:**

##### 1. Background:

- In January 2016, Johnstown Renewables (JR) filed a Project Application with the IDA for a project in the Johnstown Industrial Park.
- JR had two (2) primary stockholders:

1) CRE Capital LLC	:	70%
2) New Age Renewable Energy	:	30%
- The project involved building a 11,900+/- sf building on a 5.2 acre parcel of land in which ethyl alcohol would be produced from liquid whey from the adjacent FAGE yogurt manufacturing plant.
- The project was projected to involve the investment of \$16+/- million and the creation of 27 jobs.
- The IDA Board executed a 10-year Lease Agreement with JR in March 2017.
- The IDA Board executed a 10-year PILOT Agreement with JR in March 2017. Year 1 of the PILOT was 2017.
- The IDA Board approved a sales tax exemption for the JR project. This sales tax exemption was provided for the period of July 15, 2016 – December 31, 2017.

##### 2. Status Report:

- Construction work on the project commenced in 2017.
- On January 25, 2018, the IDA received a letter from CRE Capital, LLC advising of the passing of Christian Eisenbeiss. Mr. Eisenbeiss was the sole member of CRE Capital, LLC and the managing member of JR.

- At the February, 2018 IDA meeting, the IDA Board, in Executive Session, reviewed the January 2018 letter from CRE Capital. The IDA Board authorized and directed IDA Counsel to send a letter to CRE Capital.
- In February 2018, IDA Counsel sent a letter to CRE Capital advising that JR was in default for failure to complete the project by December 17, 2017. The letter asked for a status report.
- In March 2018, IDA contacted County Treasurer to check on status of PILOT payments due the County. Payment had been received.
- In March 2018, IDA Counsel was contacted by a representative of JR advising that, due to FAGE filing a lawsuit against JR, any advancement of the JR project was on hold contingent upon a resolution of the lawsuit.
- In March 2018, the IDA Board was provided an update by IDA Counsel. IDA authorized and directed IDA Counsel to send JR another letter.
- In March 2018, IDA Counsel sent JR another letter advising that JR could request an extension to the project completion date given the circumstances surrounding the sudden passing of its managing member and primary investor.
- In April 2018, IDA sent another letter to JR.
- In May 2018, the IDA received a letter from a law firm representing JR providing a status report on the lawsuit and project.
- In May 2018, the IDA met with representatives of New Age Renewable Energy, the minority member in JR. IDA asked JR to make sure their PILOT payments were being made per the PILOT.
- In April, IDA contacted the Fonda-Fultonville School District to check on status of PILOT payment. Fonda-Fultonville had not issued PILOT invoice. IDA worked with School District to get invoice issued. Invoice was issued and JR paid invoice.
- In June 2018, IDA contacted City of Johnstown to check on status of PILOT payment due the City. City had not received payment. Upon discussion with City, it was determined that the City sent PILOT invoice to wrong address. IDA provided correct address to City. Invoice was sent to correct address and payment was received.
- During the fall of 2018, IDA received two (2) inquires from companies interested in acquiring the land and partially completed building owned by JR. IDA put these companies in contact with JR.

3. Project Extension:

- JR desires to extend the project completion date to December 31, 2019.

IDA DISCUSSION:

IDA ACTION:

MOTION: To extend the project completion date for the Johnstown Renewables Project to December 31, 2019.

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. **Structure of Fulton County Industrial Development Agency:**

a. **Board of Directors:**

- 7 members appointed by Board of Supervisors
- Annual appointment

b. **Management:**

- Chief Executive Office
- Chief Financial Officer

c. **Counsel:**

- Fitzgerald Morris Baker Firth

d. **Auditor:**

- West & Company

3. **Budget:**

- PAAA and PARA require that an IDA Board prepare and adopt an annual budget.
- The budget must be adopted and filed on PARIS within 60 days of the start of an IDA's fiscal year.
- The FCIDA's fiscal year is January 1 – December 31.
- As a result, the FCIDA must adopt and file its annual budget by November 1<sup>st</sup> of each year.

4. **Meetings:**

- Since an IDA is a public benefit corporation, it must comply with Article 7 of the NYS Public Officers Law (Open Meetings Law).
- The Open Meetings Law requires that IDA's:
  1. All meetings be open to the public.
  2. Notice of the time and place of all meetings be given prior to every meeting.
  3. If a meeting is scheduled at least a week in advance, notice must be given to the public and the news media not less than 72 hours prior to the meeting.
  4. Notice to the public must be accomplished by posting in one or more designated public locations.
  5. When a meeting is scheduled less than a week in advance, notice must be given to the public and the news media "to the extent practicable" at a reasonable time prior to the meeting.
  6. If videoconferencing is used to conduct a meeting, the public notice for the meeting must inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.

7. If a majority of the IDA Board “gets together” to discuss public business, the meeting is subject to the Open Meetings Law. This is the case whether the Board members are at the IDA office or a local coffee house.
8. When a subcommittee conducts public business on behalf of the IDA, the subcommittee is a public body and its meetings are subject to the Open Meetings Law.
9. 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:
  - a) Matters which will imperil public safety if disclosed.
  - b) Any matter which may disclose the identity of a law enforcement agent or informer.
  - c) Information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed.
  - d) Discussions regarding proposed, pending or current litigation.
  - e) Collective negotiations pursuant to article fourteen of the civil service law.
  - f) 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.
  - g) The preparation, grading or administration of examinations.
  - h) 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.

5. Policies:

- One of the responsibilities of the FCIDA Board is to adopt policies to guide the operation and management of the FCIDA.
- At present, the FCIDA Board has adopted the following Policies:
  01. Compensation and Reimbursement
  02. Attendance
  03. Travel
  04. Ethics
  05. Procurement
  06. Property Disposition
  07. Whistleblower Protection
  08. Extension of Credit to Board Members and Staff
  09. Check Writing
  10. Credit Card
  11. Annual Assessment of the Effectiveness of Internal Controls
  12. Approval of Subleases
  13. Discretionary Funds Policy
  14. Uniform Tax Exemption Policy
  15. Investment Policy
- In addition, the FCIDA Board has adopted, as policies, the following recommended practices published by the ABO:
  - 06-01 : Board Member Training
  - 06-02 : Understanding Corporate Governance
  - 07-01 : Independence of Board Members
  - 07-02 : Financial Disclosure by Local public Authority Board Members
  - 07-03 : Compliance Review Process
  - 07-04 : Posting and Maintaining Reports on Public Authority Websites
  - 10-01 : Acknowledgement of Fiduciary Duty
  - 10-02 : Public Authority Mission Statements and Measurement Reports
  - 10-03 : Posting and Maintaining Reports on Public Authority Web Sites
  - 10-05 : Annual Board of Directors Evaluation

- 11-01 : Compliance Review Requirements
- 11-02 : Enforcement Powers of the Authorities Budget Office
  
- 14-01 : Explanatory Statement of the Circumstances of Property Disposal by Negotiation
- 14-02 : Formation of a Subsidiary by a Public Authority
  
- 15-01 : Restrictions on Grants and Loans Made by Public Authorities
  
- 17-02 : Public Authority Procurement Guidelines
  
- 18-02 : Public Authority Investment Report

**B. Leasing Lands at Tryon Technology Park:**

1. Background:

- In 2018, the IDA entered into a Lease Agreement with R & R Farms, LLC to lease certain IDA-owned land located at the Tryon Technology Park to grow crops.
- In 2018, R & R Farms paid the IDA \$30/acre to lease approximately 40 acres.

2. 2019 Lease Agreement:

- R & R Farms desires to lease, at least, the same land in 2019 at the same price as 2018.
- They are evaluating whether they would like to lease up to an additional 16+/- acres.

IDA DISCUSSION:

IDA ACTION:

MOTION: To authorize the Chairman to execute an Agreement with R & R Farms to lease lands at the Tryon Technology Park.

MADE BY:

SECONDED:

VOTE:

**C. IDA Website:**

- Received invoice from Hosting4Less.
- Invoice is for:
 

1. Hosting IDA Website for 1 year	:	\$119.40
2. Domain Name Registration for 1 year	:	\$ 25.00
- Total Invoice : \$144.40

IDA DISCUSSION:

IDA ACTION:

MOTION: To authorize a payment of \$144.40 to Hosting4Less.

MADE BY:

SECONDED:

VOTE:

**D. Don Brown Bus Sales:**

1. Background:

- Don Brown Bus Sales is located on CR107 adjacent to the Tryon Technology Park.
- The Company conducted an onsite auction on Saturday, April 27, 2019.
- The company requested to use four (4) parking lots at the Tryon Technology Park to park vehicles:
  - Building 3 : 3 lots
  - Building 60 : 1 lot
- Don Brown Bus Sales parked vehicles at the Tryon Technology Park from Saturday, April 20, 2019 until Friday, May 3, 2019.

2. Request to Extend Use of Parking Vehicles at Tryon Technology Park:

- Don Brown Bus Sales has requested to keep buses in one parking lot behind Building #3 until August 31, 2019.
- Don Brown Bus Sales will pay the IDA \$200 to keep these buses parked until August 31, 2019.

IDA DISCUSSION:

IDA ACTION:

MOTION: To authorize Don Brown Bus Sales to utilize the parking lot behind Building #3 at the Tryon Technology Park to park buses until August 31, 2019.

MADE BY:

SECONDED:

VOTE:

**E. Eminent Domain Action:**

1. Background:

- a. Fulton County's Development Strategy includes the creation of a Primary Development Area called the Hales Mills Development Area.
- b. The Concept Plan for this Development Area is consistent with the Comprehensive Plan of the Town of Johnstown.
- c. The Hales Mills Development Area consists of four (4) parcels of land that are owned by two (2) property owners.

d. Robert Bowe owns two (2) of the parcels:

163.-1-19.2	:	69+/- acres	:	west side of Hales Mills Road
163.-1-26.12	:	89.5+/- acres	:	east side of Hales Mills Road

- e. Fulton County desires parcel 163.-1-26.12 to be developed into housing, commercial and retail uses identified on the Hales Mills Development Area Concept Plan and the Town of Johnstown desires parcel 163.-1-19.2 to potentially develop into a recreational facility also as identified on the Hales Mills Development Area Concept Plan.
- f. The Hales Mills Development Area Project will address the public need of creating new housing, providing public recreational facilities and generating new property and sales tax revenues to stabilize property tax rates for Fulton County residents.

2. Negotiations:

- a. In June, 2018, Mr. Bowe put these two (2) parcels up for sale.
- b. Fulton County and the Fulton County Industrial Development Agency (IDA) have both attempted to negotiate the purchase of the parcels owned by Mr. Bowe. However, these negotiations have not resulted in the purchase of the parcels.
- c. Independent certified appraisals have determined that Mr. Bowe's asking price exceeds substantially the appraised value of the land.

3. Eminent Domain:

- a. The Fulton County Industrial Development Agency was created by the Board of Supervisors in 1969 to promote the economic welfare of the County by improving business development and recreational opportunities.
- b. Industrial Development Agencies are authorized by Sections 852 and 858 of the General Municipal Law to acquire property under the Eminent Domain Procedure Law (EDPL) which is necessary for its corporate purposes.
- c. On May 1, 2019, the Economic Development and Environment Committee recommended that the Board of Supervisors authorize and direct the IDA to undertake an EDPL Action to acquire parcels 163.-1-19.2 and 163.-1-26.12, contingent upon:
  - 1) The IDA Counsel will be utilized. IDA Counsel would keep County Attorney involved and informed.
  - 2) Fulton County will reimburse the IDA for all costs incurred in pursuing this action.
  - 3) Fulton County will provide the IDA with advance payment to purchase the eastern parcel once the final valuation is determined.
  - 4) The Town of Johnstown will provide the IDA with advance payment to purchase the western parcel once the final valuation is determined.

d. It is proposed that the EDPL Public Hearing be scheduled for:

**Tuesday  
June 4, 2019  
4:00 p.m.  
Town of Johnstown Town Hall**



4. Agreements:

- It is proposed that the IDA execute Agreements with Fulton County and the Town of Johnstown that identifies the duties and responsibilities of both parties with respect to having the IDA pursue an Eminent Domain Action on their behalfs.

5. Resolution:

- Review Resolution.
- See Handout.

IDA DISCUSSION:

IDA ACTION:

MOTION: To pursue this EDPL action, to adopt a Resolution scheduling a Public Hearing in accordance with EDPL and to authorize the Chairman to sign Agreements with Fulton County and the Town of Johnstown subject to the final approval of IDA Counsel and the Executive Director.

MADE BY:

SECONDED:

VOTE:

**VI. OTHER BUSINESS:**

**A. 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  
June 11, 2019  
8:00 a.m.

**VIII. CLOSE MEETING:**

MOTION :  
MADE BY :  
SECONDED :  
VOTE :  
TIME :