

# **FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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

**PLANNING DEPARTMENT CONFERENCE ROOM**

## **MEETING NOTES**

PRESENT:

TODD RULISON, CHAIRMAN  
JOSEPH SEMIONE, VICE CHAIRMAN  
WILLIAM SULLIVAN, TREASURER  
JOE GILLIS, SECRETARY  
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  
EDUARD ZAYDMAN, JOHNSTOWN RENEWABLES

### **I. MINUTES FROM JANUARY 6, 2016 MEETING:**

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

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

MOTION : Accept as presented.  
MADE BY : Joseph Semione  
SECONDED : Timothy Munn  
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 Project:**

1. Vireo Health Lot Sale:

- Closing documents have been executed.
- Formal closing has not been scheduled.

2. Vireo Health License Agreement:

- The IDA has a License Agreement with Vireo Health that authorizes Vireo Health to occupy and utilize the building on the lot that the IDA owns.
- This License Agreement expired on January 31, 2016.

IDA DISCUSSION: Jim Mraz recommended that the IDA authorize the Chairman to execute a 2-month extension to this License Agreement. He said this was desired since a formal closing on the lot sale still hasn't been scheduled.

MOTION: To authorize the Chairman to execute a 2-month extension to the License Agreement between the IDA and Vireo Health.

MADE BY: Timothy Munn  
SECONDED: Joseph Semione  
VOTE: Unanimous

3. 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.
4. 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 consists 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.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda regarding the proposed Johnstown Renewables (JR) Project. He said JR will be taking whey from FAGE and using it to manufacture ethyl alcohol and an animal feedstock. He stated that the project structure will be a lease leaseback arrangement. This structure is different from what the IDA has utilized in the past. He stated Kara Lais has advised that this proposed structure is acceptable.

Jim Mraz introduced Eduard Zaydman from Johnstown Renewables. Mr. Zaydman stated that he has been involved with fuel ethanol for a number of years now. He stated that there is an R & D facility in Wisconsin that has been working on converting dairy products into ethyl alcohol and animal feedstock. Mr. Zaydman provided a comprehensive review of what the Johnstown Renewables Project consists of. He described the process that would be used to convert the acid whey it will be receiving from FAGE's plant and converting it into ethyl alcohol and animal feedstock. He also described the pipeline that will be constructed between FAGE's plant and the Johnstown Renewables' plant to transmit FAGE's whey to the processing facility. The line will run across FAGE's property to Enterprise where it will cross under Enterprise Drive. The City of Johnstown will have to grant an easement to Johnstown Renewables to allow a private sewer line to cross Enterprise Drive. Jim Mraz stated that the City of Johnstown Common Council is aware of the need for this easement and is proceeding with obtaining it.

Eduard Zaydman stated that the whey coming from FAGE is at approximately 6% solids. He stated they will be watering the whey and increasing the solid's content to approximately 18%. He stated that process will generate wash water that will be utilized in the building. That wash water will be further cleaned. He said the wastewater that will be leaving the plant will be almost good enough to drink. He stated that he has met with the Gloversville-Johnstown Joint Wastewater Treatment Plant who advised that there should be no problems from the Plant's perspective in accepting the quality and quantity of wastewater that will be coming from the Johnstown Renewables' plant.

Eduard Zaydman stated that their acid whey processing facility will be producing 190 proof ethyl alcohol. He stated this alcohol will be able to be used either for industrial or beverage grade uses.

Eduard Zaydman stated that he is required, per his contract with FAGE, to start accepting whey by October 31, 2016. He stated, given the 90-day notice the IDA has with the ABO, it would mean that he would not be able to start construction until at least May 8, 2016. Bill Sullivan asked if there was a way that the IDA could get the Johnstown Renewable Project started sooner. Jim Mraz stated an option may be to have the IDA execute a License Agreement similar to what it did with Vireo Health. That License Agreement allowed Vireo Health to start work on the IDA's property while the IDA still owned the property. He stated he would discuss this concept with Kara Lais to see if this could also be pursued for the Johnstown Renewables Project. Eduard Zaydman stated that this would be of significant help to him in trying to achieve his deadline of accepting whey by October 31, 2016.

**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: Jim Mraz reviewed the information on the Agenda. He stated that the City of Johnstown Planning Board has proposed itself to be the Lead Agency. He recommended that the IDA Board endorse having the City of Johnstown Planning Board serve as the SEQR Lead Agency. He asked if there were any further questions. There were none.

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: Bill Sullivan

SECONDED: Joseph Gillis

VOTE: Unanimous

**7. Proposed Lot Purchase:**

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

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He stated that Kara Lais recommends getting authorization from the IDA Board to have the Chairman sign this Purchase and Sale Agreement once SEQR has been completed and the Site Plan has been approved. Jim Mraz asked if there were any questions. There were none.

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: Dave D'Amore

SECONDED: Timothy Munn

VOTE: Unanimous

**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 by JR:
  - 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 attached.

**IDA DISCUSSION:** Jim Mraz reviewed the information on the Agenda. He stated that Johnstown Renewables' Application for Tax Exemption requests financial assistance greater than \$100,000. As a result, the IDA must schedule a public hearing on the Application for Tax Exemption. Jim Mraz reviewed the Resolution that was handed out to schedule the public hearing regarding the Johnstown Renewables Project. He asked if there were any questions. There were none.

**IDA ACTION**

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

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

**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: Jim Mraz reviewed the information on the Agenda. He stated that this 90-day notice is scheduled to go out today if the IDA Board authorizes him to send it out. He asked if there were any questions. There were none.

IDA ACTION:

MOTION: To authorize the Executive Director to file the required 90-day letter to the ABO.

MADE BY: Joseph Gillis  
SECONDED: Todd Rulison  
VOTE: Unanimous



### **13. Next Steps:**

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

### **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:** Jim Mraz reviewed the information on the Agenda. He stated that the IDA has been asked if they would have an interest in creating this Capital Resources Corporation. It would be created to be able to issue tax exempt financing for not-for-profit projects in Fulton County. After a brief discussion, it was the unanimous consensus of all IDA members present to give further consideration to creating a Capital Resources Corporation. IDA Members asked Jim Mraz to obtain input on the following questions:

1. What risks would there be to the IDA if a Capital Resources Corporation was created and then deemed by New York State to no longer be eligible to issue tax exempt financing?
2. What purposes could a Capital Resources Corporation expend funds on? Would a Capital Resources Corporation be able to expend funds in a similar capacity that an IDA can?
3. Would there need to be an Executive Director type position for a Capital Resources Corporation?
4. Can some other entity other than a Capital Resources Corporation issue tax exempt financing?
5. If there any chance that the NYS Legislature will reestablish the authority of an IDA to issue tax exempt financing?

Jim Mraz stated that he would obtain answers to these questions and present those responses at the next IDA Board meeting.

**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

IDA DISCUSSION: Jim Mraz reviewed the 2015 Summary Report on PILOT payments made. He stated that the only project that did not pay all of its required PILOT payments was the project at 160 Enterprise Drive. This is the project that the IDA leases to the CIC. Jim Mraz advised that the CIC did not make any PILOT payments to the City of Johnstown or Fonda-Fultonville School District in 2015. Jim Mraz asked if there were any questions regarding the Summary Report. IDA members asked if local taxing jurisdictions could seek a court judgment compelling that unpaid PILOT payments be paid if the property was sold. Jim Mraz said he would ask Kara Lais for her opinion on this question.

**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.

**VII. NEXT MEETING:**

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

**VIII. CLOSE MEETING:**

MOTION : To close the meeting.  
 MADE BY : Joseph Gillis  
 SECONDED : Joseph Semione  
 VOTE : Unanimous  
 TIME : 9:20 a.m.