

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

**TUESDAY
FEBRUARY 11, 2020
8:00 A.M.
PLANNING DEPARTMENT CONFERENCE ROOM**

AGENDA

PRESENT:

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

I. MINUTES FROM JANUARY 14, 2020 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:

- Monthly Bank Reconciliation Reports: Todd Rulison

C. Governance Committee:

- No report.

D. Finance Committee:

- No report.

IV. FULTON COUNTY/FULTON COUNTY CENTER FOR REGIONAL GROWTH (FCCRG) REPORTS:

1. Fulton County Report: John Blackmon, Liaison
2. FCCRG Report: Ron Peters, CEO

V. OLD BUSINESS:

A. Status of Johnstown Renewables (JR) Project:

1. Background:

- In January 2016, 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 an 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 31, 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) inquiries from companies interested in acquiring the land and partially completed building owned by JR. IDA put these companies in contact with JR.
- In May 2019, IDA received a letter from JR's law firm providing the following update on their efforts to complete the project:
 - 1) JR was seeking to enter into a new joint venture or find another user for the facility.
 - 2) A couple of entities have toured the facility and had expressed an interest in it.
 - 3) The letter requested an extension until December 31, 2019 to complete the project.

- 4) At the May 2019 IDA meeting, the Board passed a motion to extend the project completion date for the JR project to December 31, 2019 and to authorize the Chairman to sign an amendment to the Lease Agreement with JR.
 - 5) Kara Lais sent JR an Amendment to the Lease Agreement extending the project completion deadline until December 31, 2019.
 - 6) To date, JR has not returned the executed Amendment.
- At its May 2019 meeting, the IDA Board authorized:
- 1) The Chairman to execute an amendment to JR's Lease Agreement extending the project completion date to December 31, 2019.
3. Sales Tax Exemptions:
- In early October 2019, the IDA learned that JR was planning on auctioning off materials and equipment currently being stored at the site.
- At its October 2019 meeting, IDA Board authorized:
- 1) Recapturing the estimated \$960,000 in sales tax benefits JR received on this project because JR had not completed the project and created the 27+/- new jobs they committed to create in their Project Application.
 - 2) Executing an Escrow Agreement with JR whereby all proceeds from the Auction would go to an Escrow Agent and eventually paid to NYS's Department of Taxation and Finance to repay the sales tax benefits JR received.
- Escrow Agreement has been executed.
- Johnstown Renewables filed an amended ST-340 form with NYS Department of Taxation and Finance (T & F). The amended amount was based on the estimated sales from the Auction.
- The original ST-340 JR filed with T & F showed \$960,000 in sales tax exemptions were taken when the building was being constructed. The exemptions were on JR's purchasing materials and the building and on machinery and equipment to install in the building.
4. Lease Agreement:
- JR's Lease Agreement with the IDA stated that JR would complete their project by December 31, 2017.
- IDA Board agreed to extend completion date through December 31, 2019 to give JR more time to complete project.
- JR has not executed an Amendment to the original Lease Agreement to extend the project completion date through December 31, 2019.
- At its December 10, 2019 meeting, the IDA Board authorized:
- 1) Extending the completion date of the Auction through January 31, 2020.
 - 2) Extending the Project Completion Date identified in the Lease Agreement until February 28, 2020.
5. Update:
- Kara Lais spoke with JR's Counsel last week.
- The Auction is complete and final sales totals are being tabulated. Once tabulation is complete, figures will be provided to IDA.
- Funds have been placed into Escrow Account per Escrow Agreement. JR's Counsel did not specify how much has been put into the account.

- Based on final Auction results, JR may be filing another ST-340 Form with T & F to revise what JR claims to be the sales tax exemptions they've taken.
- JR wants to proceed with an Early Lease Termination.

IDA DISCUSSION:

IDA ACTION:

MOTION: To approve an early termination of the IDA's lease with JR, subject to JR paying the required fees and to authorize the Chairman to execute all early lease termination documents.

MADE BY:

SECONDED:

VOTE:

B. IDA Website:

1. Background:

- At its November 12, 2019 meeting, IDA Board hired Emery Designs to update IDA's website.
- Executive Director has been participating in weekly Conference Calls with Emery Designs to discuss various issues.
- At its January 14, 2020 meeting, the IDA Board agreed to consolidate the information on the Tryon Technology Park website (tryontechnologypark.com) into the IDA's website (fcida.org) but to retain the domain name Tryon Technology Park.

2. Status Report:

- List of top employers to post on IDA website has been drafted: see attached.
- White pages for sites have been drafted: See attached.
- Draft Layout of Home Page: See attached.

3. Activity Report of IDA Website:

- See attached.

IDA DISCUSSION:

C. Tryon Technology Park Revised Site Plan:

1. Background:

- At the January meeting, IDA Board authorized hiring C.T. Male to revise update Site Plan for Tryon Technology Park.

2. Review Revised Site Plan:

A. Sites:

Site No.	Area (Acres)	Maximum Building Size
1	21.61	470,000 SF
2	23.24	506,000 SF
3	16.77	365,000 SF
4	69.09	1,500,000 SF
5	26.61	579,000 SF
6	24.87	541,000 SF
7	17.24	375,000 SF
Total	200.00	4,000,000 SF

B. Buildings:

Building No.	Sq. Ft.	Lot Size
1	75,000	12+/- Acres
2	15,000	3.4+/- Acres

C. Tryon Development Area:

- 45+/- acres

IDA DISCUSSION:

D. Statebook:

- Statebook is an online source of data used by Site Selectors.
- At the December 10, 2019 IDA Board meeting, there was a discussion about purchasing Statebook for the IDA's website.
- Betsy Emery, who is currently working on updating the IDA's website, has received a proposal from Statebook to have Statebook data available on three (3) local websites:
 - 1) Fulton County
 - 2) Fulton County Industrial Development Agency
 - 3) Fulton County Center for Regional Growth
- Site Selectors have commented that economic development organizations' websites must be data rich.
- Annual Cost : \$5,000
- Cost per Entity : \$1,667

IDA DISCUSSION:

IDA ACTION:

MOTION:

MADE BY:

SECONDED:

VOTE:

VI. NEW BUSINESS:

A. Revised Layout for Tryon Development Area (TDA):

1. Background:

- Original layout for TDA showed 100+/- acres.
- Length of Road: 7,690'
- Feedback received was that density of development was too low.

2. Revised Layout:

- Revised layout for TDA utilizes 45+/- acres.
- Length of Road: 4,150'
- Tri-Plex townhouses:
 - 19 lots: 57 units
- Apartments:
 - 86 units

IDA DISCUSSION:

B. Tryon Technology Park Brochure:

1. Background:

- As part of Fulton County's effort to prepare a Targeted Industry Analysis for the Tryon Technology Park (TTP), a TTP brochure was prepared.
- This brochure is outdated because:
 - Regional Business Training and Incubator Center did not get created.
 - Site Plan revised.
 - Tryon website eliminated.
 - Tryon Development Area revised.
 - Other changes.

2. Proposals:

- a. Room One Planning and Design:
 - Room One prepared layout of original TTP brochure.

- IDA has received a proposal from Room One to revise the layout of the Brochure.
- Total Not-to-Exceed Fee: \$500

b. Curtis Printing:

- Curtis Printing printed the original TTP Brochure.
- Total cost to print 1,000 copies was \$2,615.
- Estimated fee to print 1,000 copies: \$2,800

IDA DISCUSSION:

IDA ACTION:

MOTION:

MADE BY:

SECONDED:

VOTE:

C. Site Selection Magazine's Annual Site Selectors Survey:

1. Background:

- Site Selection Magazine conducts an annual survey of nationally-prominent site selection consultants.
- The results of their most recent survey were published in its January 2020 edition.

2. Key Findings:

1) What is the one policy you would most recommend to a State or Community?

- | | |
|--|-----|
| - Improve Incentives | 44% |
| - Offer More Workforce Development/Training Help | 10% |
| - Implement Better Permitting Procedures | 10% |
| - Create More Certified Buildings/Sites | 8% |
| - Provide Better Housing Options | 3% |
| - Offer More Up-to-Date Data | 3% |
| - Other | 22% |

2) What Industry Sectors are showing the most expansion activity right now?

- Distribution & Logistics
- Advanced Manufacturing
- Food Processing
- Biomedical and Health Care
- Data Centers

3) What are the most common deal-killers?

- Lack of responsiveness
- Poor governmental leadership
- Lack of buildings and sites
- Lack of skilled workers

- Breach of confidentiality
- 4) Other comments on deal-killers:
 - Closed attitude of community members about foreign investment and outsiders.
 - Government over-regulation of small to medium projects. Large projects get the P.R. and cooperation, but the smaller projects get neither.
 - Breaking commitments made to the project.
 - Inability to deliver industrial buildings on time to meet corporate requirements.
 - 5) What would be the one policy recommendation you would advocate to state/local community?
 - Improve incentives
 - Better permit procedures
 - More workforce training
 - 6) Other policy recommendations:
 - A greater focus on housing and increasing immigration rates.
 - Incentivize capital expenditures. The world is moving to automation, and if you don't recognize that, you'll have an empty town.
 - Get serious about skilled labor training as a significant portion of the education budget.
 - Practice what you preach. If the economic developers are preaching "business-friendly", but the local permitting folks are strangling the project, there's a disconnect.
 - Don't try to over market your location with gimmicks and overly produced websites. Just give us the facts.
 - **All economic development organizations should have a development company on call with the necessary resources, experience and capital to immediately provide a proposal on the construction of an industrial building in a specific timeframe.**
 - 7) What do you want to see on economic development organization's websites?
 - **Name and contact information.**
 - **Accurate, up-to-date data.**
 - **News on recent projects.**
 - **Available buildings and sites.**

D. Public Work Enforcement Fund:

1. Background:

- On January 23, 2020, the IDA received a Notice from the NYS Department of Labor that the IDA has been asked to sign.
- The Notice is to acknowledge the IDA's responsibilities regarding the Public Work Enforcement Fund.
- New York State now mandates that all State agencies and public benefit corporations, which the IDA is, that enters into a public work contract to pay one-tenth (0.1) of one percent (0.01) of the total cost of the contract to the fund.
- The Notice requests that the IDA execute and return within 30 days of the date of the letter or be referred to the NYS Office of the State Comptroller for further action.

IDA DISCUSSION:

IDA ACTION:

MOTION: To authorize the Chairman to execute the Public Work Enforcement Fund Notice.

MADE BY:

SECONDED:

VOTE:

E. Quicken:

1. **Background:**

- The CFO uses Quicken to maintain all IDA accounts.
- Currently using Quicken Version 2007.
- The computer the CFO uses is scheduled to be replaced soon.
- It is recommended that this would be appropriate time to upgrade to Quicken Version 2020.
- Estimated Cost: \$70

IDA DISCUSSION:

IDA ACTION:

MOTION:

MADE BY:

SECONDED:

VOTE:

F. Capital Resources Corporation:

1. **Background:**

- On January 31, 2008, the provisions of the New York State General Municipal Law that authorized IDA's to issue tax-exempt revenue bonds for charitable entities expired.
- 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 New York State's Not-For-Profit Corporation Law.
- c. A CRC would generally exist for the same public purposes as the IDA but have the power to issue tax-exempt bonds for the benefit of not-for-profit borrowers.

- d. The IRS has ruled that CRC's can issue tax exempt financing for not-for-profit entities.

3. Formation of a Capital Resource Corporation:

- a. Three (3) steps would need to be taken to form 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. The Board would have to approve this request.
 - 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 would begin its existence.

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 and 2009.
- c. The CRC would be authorized to issue bonds.
- d. The CRC's operations would be limited to Fulton County.
- e. 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 would 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 from the CRC. 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.

5. Counties and Municipalities that currently have CRC's:

- a. Counties: (26)
 - Albany County Capital Resource Corporation
 - Allegany County Capital Resource Corporation
 - Canton Capital Resource Corporation
 - Cattaraugus County Capital Resource Corporation
 - Chautauqua County Capital Resource Corporation
 - Chemung County Capital Resource Corporation
 - Clinton County Capital Resource Corporation
 - Columbia County Capital Resource Corporation
 - Cortland County Development Corporation

Essex County Capital Resource Corporation
Jefferson County Civic Facility Development Corporation
Livingston County Capital Resource Corporation
Madison County Capital Resource Corporation
Montgomery County Capital Resource Corporation
Oswego County Civic Facilities Corporation
Otsego County Capital Resource Corporation
Rensselaer County Capital Resource Corporation
Saratoga County Capital Resource Corporation
Schenectady County Capital Resource Corporation
Schoharie County Capital Resource Corporation
St. Lawrence County Industrial Development Agency Civic Development Corp.
Ulster County Capital Resource Corporation
Warren and Washington (Counties of) Civic Development Corporation
Wayne County Civic Facility Development Corporation
Yates County Capital Resource Corporation

- b. Municipalities: (6)
Albany (City of) Capital Resource Corporation
Build NYC Resource Corporation
Montgomery (Town of) Capital Resource Corporation
Peekskill Facilities Development Corporation
Troy (City of) Capital Resource Corporation
Waterford (Town of) Capital Resource Corporation

6. Questions and Answers:

Q. What risks would there be to the IDA if a CRC was created and then deemed by New York State to no longer be eligible to issue tax exempt financing?

A. No risk to the IDA. There is a risk that NYS Law could be changed to eliminate the CRC's power to issue bonds. Any such change would be prospective.

Q. Would there need to be an Executive Director type position for a CRC similar to an IDA?

A. Yes. The structure of the CRC would parallel the structure of the IDA.

Q. Can some other entity other than a CRC issue tax exempt financing?

A. No local entity in Fulton County. The State Dormitory Authority has power to issue bonds for NFP corporations.

Q. Is there any chance that the NYS Legislature will re-establish the authority of an IDA to issue tax-exempt financing?

A. Possible but no such action has taken place in 10+ years.

Q. What would happen if a CRC was created and then the State abolished them?

A. The financing issued by the CRC would be valid. Any abolishment would be prospective and not retrospective.

Q. What can the CRC spend its funding on?

A. The CRC has the same authority as an IDA for spending funds.

Q. How would the CRC generate revenues?

A. By establishing a fee schedule similar to what an IDA does. The CRC would generate an administrative fee from the issuance of its bonds.

Q. Would the CRC be a public entity?

A. Yes. The CRC would be subject to all the requirements of the Public Authorities Accountability Act just like IDA's are.

Q. What would be the annual costs for operating a CRC?

A. There would be two (2) typical cost centers:

1. Annual audit.

2. Staff time to complete the reporting requirements under PARIS.

7. Previous Attempt to Create a CRC:

- In 2016, the IDA discussed creating a CRC and a potential project at FMCC was being discussed where tax-exempt bonds were being discussed.
- The IDA Board recommended to the Board of Supervisors that a CRC be created.
- The Board of Supervisors did not agree to create a CRC. There was a concern raised by the County Attorney that the debt of a CRC could become the responsibility of the County.
- Hodgson Russ had advised that there was minimal chance this could happen.

IDA DISCUSSION:

IDA ACTION:

MOTION:

MADE BY:

SECONDED:

VOTE:

VII. 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 :

VIII. NEXT MEETING:

Tuesday

*March 3, 2020

*** Note new date!**

8:00 a.m.

IX. CLOSE MEETING:

MOTION :

MADE BY :

SECONDED :

VOTE :

TIME :