FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

TUESDAY
APRIL 14, 2020
8:00 A.M.
PLANNING DEPARTMENT CONFERENCE ROOM

MEETING NOTES

PRESENT ON CONFERENCE CALL:

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
BRIANNA O'HARA, LEADER HERALD

I. ROLL CALL:

	Aye	Nay	Abstain	Absent
Dave D'Amore	X	___	___	___
Joe Semione	X	___	___	___
Todd Rulison	X	___	___	___
Jane Kelley	X	___	___	___
Mike Fitzgerald	X	___	___	___
Joseph Gillis	X	___	___	___
Tim Munn	X	___	___	___

II. MINUTES FROM MARCH 3, 2020 MEETING:

MOTION : Accept as presented.
MADE BY : Joseph Semione
SECONDED : Jane Kelley

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ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Dave D'Amore	X	___	___	___
Joe Semione	X	___	___	___
Todd Rulison	X	___	___	___
Jane Kelley	X	___	___	___
Mike Fitzgerald	X	___	___	___
Joseph Gillis	X	___	___	___
Tim Munn	X	___	___	___

III. BUDGET REPORT:

MOTION : Accept as presented.
MADE BY : Mike Fitzgerald
SECONDED : Joseph Semione
ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Dave D'Amore	X	___	___	___
Joe Semione	X	___	___	___
Todd Rulison	X	___	___	___
Jane Kelley	X	___	___	___
Mike Fitzgerald	X	___	___	___
Joseph Gillis	X	___	___	___
Tim Munn	X	___	___	___

IV. COMMITTEE REPORTS:

A. Nominating Committee:
- No report.

B. Audit Committee:
- Monthly Bank Reconciliation Reports: Joe Semione

DISCUSSION: Joe Semione approved the Monthly Bank Reconciliation Reports.

C. Governance Committee:
- No report.

D. Finance Committee:
- No report.

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

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

DISCUSSION: Joe Semione stated that he participated in the last FCCRG meeting that was conducted by conference call. He stated he provided the IDA report that was distributed to all FCCRG members.

VI. 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. Sales Tax Exemptions:
   - The IDA initially approved granting JR sales tax exemptions on the purchase of materials to be used in constructing the building and on the purchase of machinery and equipment to install in the building.
   - These sales tax exemptions were to be available to JR through December 31, 2017.
   - On January 30, 2018, JR filed an ST-340 with New York State's Department of Taxation and Finance (T & F) stating $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.
   - In 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) 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.

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2) 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.

- 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 amended ST-340 claimed $55,355.52 in sales tax exemptions.

3. 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.

4. Update Provided at February 11, 2020 Meeting:
   - JR's Counsel advised that the Auction was complete. Once tabulation was complete, figures would 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 amended ST-340 with T & F to revise what JR claims to be the sales tax exemptions they've taken.
   - Kara Lais advised JR Counsel that the IDA Board will not accept the amounts in the amended ST-340 without receipt of a written confirmation from T & F that they accept and approve the amount in the amended ST-340.
   - JR wants to proceed with an Early Lease Termination.
   - At its February 11, 2020 meeting, the IDA Board approved an early termination of the IDA's lease and PILOT with JR, subject to JR paying the required fees and to authorize the Chairman to execute all early lease termination documents.

5. Update Provided at March 3, 2020 Meeting:
   - On February 12, 2020, JR Counsel advised Kara Lais that the Auctioneer collected $35,748 in sales taxes from New York taxable buyers and that said amount was remitted to the NYS Department of Taxation and Finance on February 6, 2020.
   - On February 21, 2020, Kara Lais sent JR's Counsel an Early Termination Agreement for JR to execute and return along with a payment to cover Fitzgerald Morris Baker & Firth fees for working on this project as well as the lease termination fee payable to the IDA.
   - Upon receipt of the two (2) payments, the IDA Chairman will execute the Lease Termination Agreement.

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- Kara Lais' transmittal also requested that JR's Counsel send the IDA the final results of the Auction, the amount placed in escrow that will be turned over to the IDA for remittance to T & F and whether JR will be filing another Amended ST-340 Form with T & F.

- On February 27, 2020, Kara Lais received, by email, a letter from JR's Counsel stating that
  - On February 6, 2020, $29,882.85 in sales taxes generated on the sale of equipment to be used in New York State was transmitted to T & F.
  - JR will not be submitting another amended ST-340 to T & F.
  - JR offered to pay an additional sum to satisfy what it claims to be the total sales tax benefits JR received on the sale of equipment to be used in New York State.

- The letter did not mention the sales tax benefits JR received on the goods, machinery and equipment originally purchased.
- At this meeting, the IDA Board authorized the Executive Director to send the ST-62 form to T+F with a cover letter asking for T+F to acknowledge back to the IDA whether they recognize JR's original or amended ST-340 as correct.

6. Update:
   - James Mraz filed ST-62 form with cover letter with T & F. Letter requested T & F to confirm whether they acknowledge JR's original or amended ST-340 as correct. No responses has been received back from T+F.
   - Kara Lais contacted T & F's counsel
   - Terry Blodgett, County Treasurer, has advised that JR paid its 2020 County tax bills in the amounts of $1,968.75 and $456.75.
   - JR has advised Kara Lais that it will be paying the Fonda-Fultonville School tax bill in the amount of $4,801.66. This tax bill was just recently sent by Fonda-Fultonville School District to the IDA who in turn sent it to Johnstown Renewables.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. Kara Lais stated that she will be sending a separate letter tomorrow to T&F asking the same question that Jim Mraz asked in his letter to them. Kara Lais stated that she has sent several copies of the Lease Termination Agreement to JR but they have yet to sign it. She stated JR has sent her their version of the Lease Termination Agreement. She stated she wants them to sign the IDA's version so it can be filed in the County Clerk's Office.

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 retain the domain name Tryon Technology Park.

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2. Status Report:
   - Drafted narrative on Workforce Training in Fulton County to use on website
   - Drafted narrative on Strategic Location to use on website
   - Drafted narrative on Economy to use on website
   - Drafted narrative on Quality of Life to use on website
   - Drafted narrative on municipal infrastructure to use on website
   - Contacted EMSI and ESRI regarding purchasing data for website.

3. Activity Report of IDA Website:
   - E-mailed to IDA Board members.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He referenced the draft narratives that were attached to the Agenda. He stated that both EMSI and ESRI are companies that sell data for websites. He stated quotes from those entities are being obtained to compare against Statebook to determine which would be the best source of data to purchase to put onto the IDA's website. Tim Munn asked if this cost is still going to be shared? Jim Mraz stated that cost sharing is still a consideration.

C. 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

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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. Update provided at March 3, 2020 Meeting:

- At the February 11, 2020 IDA Board meeting, IDA Board members identified several questions about creating a CRC.
- Following that meeting, Jim Mraz contacted Joe Scott, Hodgson Russ and requested responses to their questions.
- The questions and responses are as follows:

Question: What are the costs involved with creating a CRC and who typically pays for those costs?

Response: We typically charge $5 - $9,500 for setting up a CRC. If there is a project that the IDA is setting the CRC up for, we would consider no charge or rolling any setup charge into the fees to do the financing for the project.

Question: If a CRC has no projects, do they still have to have an audit conducted?

Response: Yes.

Question: If a CRC has not generated any revenues from projects, where do the funds come from to pay for operating costs like audits and staff time for preparing PARIS Reports?

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Response: Funding from the County or from the IDA. We also have several CRC's that have an annual funding arrangement with the entities that they have done projects for (i.e., an annual fee). The annual fee funds the current operation costs of the CRC.

6. **Update:**
   - Jim Mraz sent letter to Jason Brott asking if he would have any concerns about Fulton County creating a CRC. No response has been received

IDA DISCUSSION: Jim Mraz reviewed the update in the Agenda. Todd Rulison asked how long it would take to create a CRC? Jim Mraz stated that Bond Counsel has advised it could take 2-3 months. Mike Fitzgerald stated that Montgomery County has an active CRC already. He asked if Fulton County could partner with Montgomery County? Kara Lais stated that Montgomery County has already created its CRC. She stated that their Certificate of Incorporation would probably have to change if it was going to partner with Fulton County. She stated that Warren and Washington Counties have a joint CRC so it can happen.

D. Cushman Wakefield:

1. Background:
   - At its March 3, 2020 meeting, the IDA Board agreed to retain Cushman Wakefield to market Tryon.
   - Jim Mraz and Scott Henze met with three representatives of Cushman Wakefield and toured Tryon and Buildings 3 and 60

2. Agreement:
   - Cushman Wakefield has submitted a Listing Agreement for the IDA to execute.
   - Kara Lais has reviewed the Agreement and found it to be acceptable.
   - Key terms are:
     - 1 year: April 14, 2020 – April 13, 2021
     - 7% commission on all sales or leases.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. Joe Semione asked if Cushman Wakefield had established values for the two (2) buildings yet? Jim Mraz stated that they are currently working on comparables and will be developing values and sending them to the IDA shortly. Tim Munn asked if Cushman Wakefield will be marketing the shovel-ready sites at Tryon also? Jim Mraz stated, "Yes."

IDA ACTION:

MOTION: To authorize the Chairman to execute the Agreement with Cushman Wakefield.

MADE BY: Tim Munn
SECONDED: Joseph Semione

ROLL CALL VOTE :

Aye	Nay	Abstain	Absent

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Dave D'Amore	X	___	___	___
Joe Semione	X	___	___	___
Todd Rulison	X	___	___	___
Jane Kelley	X	___	___	___
Mike Fitzgerald	X	___	___	___
Joseph Gillis	X	___	___	___
Tim Munn	X	___	___	___

E. Renewal of CD

1. At the March 3, 2020 meeting, the IDA Board authorized renewing the CD with NBT Bank for 6 months.
2. The interest rate at that time was 1.45%
3. The CD matured on March 21, 2020. When the CFO and Vice Chairman went to sign papers to renew the CD, the rate had dropped to 0.2% a rate not much different that the rate on the money market account the IDA has with NBT. The rate drop occurred because of the market turmoil created by the coronavirus pandemic
4. As a result, it was decided to not renew the CD. The funds were returned to the money market. Once interest rates stabilize, consideration can be given then to invest into another CD.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He asked if there were any questions. There were none.

F. Tryon Electric Project

1. Background:

- National Grid will be installing a new, primary electric service for the a Tryon Technology Park
- National Grid's work will include:
  - Installing new overhead service from CR107 to CR117
  - Installing new underground electric service along CR117 to a point just past Vireo Health.
  - Install new underground service laterals to Vireo Health, wastewater pump station, water booster station and elevated tank
  - The service laterals will terminate at transformer pads.
- At its October, 2019 meeting, the IDA Board authorized hiring Tom's Electric to install new electrical services from the transformer pads at the wastewater pump station, water booster station and elevated tank into each of these facilities.
- The new underground service will start in front of Building 60 and run on the outside of CR 117 to a point just past Vireo Health.
- In the future, if a company comes in and locates somewhere at Tryon where the primary service is not extended to, that project will have to include extending the underground primary electric service to that site.

2. Status Report

- National Grid started work on the overhead line on April 6, 2020

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- National Grid is scheduled to start work on the underground service on April 16, 2020
- Fulton County is responsible for excavating and backfilling the trench the underground service will be located in as well as installing the precast concrete transformer pads.
- Fulton County Soil and Water Conservation District is providing the backhoe to excavate and backfill the trench for the underground service.
- Fulton County Highway Department is supplying a truck, skid steer and manpower to operate this equipment and the backhoe
- Vireo Health has been advised of National Grid's schedule. Vireo has been working with National Grid to coordinate the new service for their existing facility

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He stated that it's hopeful that National Grid will complete its work in May of 2020.

VII. NEW BUSINESS:

A. Tryon Technology Park:

1. Background:
   - When the IDA took title to the former Juvenile Detention Facility, it decided to establish a lot sale price on land at $20,000/acre.
   - The IDA has relied on Fulton County and the Fulton County Center for Regional Growth to market Tryon.
   - IDA Board has added Cushman Wakefield to the team marketing Tryon.

2. Proposed Lot Sale Price:
   - Cushman Wakefield recommends that the lot sale price for land at Tryon be changed to $27,500/acre.
   - It is proposed to allocate some of this increase to compensate the three (3) entities that market Tryon on behalf of the IDA when land is sold or leased
   - With a $27,500/acre lot sale price, it is proposed that the following amounts be allocated:

Cushman Wakefield (7%)	:	$1,925/acre
FCCRG	:	$1,750/acre
Fulton County	:	$1,750/acre

   - A total of $5,425/acre would be paid to those entities marketing Tryon when land is sold.
   - The IDA would earn $22,075/acre.

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IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. Joe Semione stated that he has no problem sharing revenues from lot sales with the three (3) entities referenced above. He stated he would prefer that the amounts paid be a percentage and not a fixed number. He stated if a company negotiated a lower lot sale price with the IDA, the IDA would lose revenues if these entities were paid a fixed amount per acre as opposed to a percentage. Joe Semione recommended that Cushman Wakefield be 7% and the FCCRG and Fulton County be 6%. Joe Gillis asked what does the FCCRG do to market Tryon? He stated he never hears a marketing report from them. Jim Mraz stated that the FCCRG, for example, recently attended the Site Selector Guild's annual meeting. At that meeting, they met with Corporate Site Selectors and marketed Tryon to them. He stated the FCCRG attends other conferences where they market Tryon to those in attendance. He stated the FCCRG also sends out blanket e-mails which markets Tryon to folks receiving these e-mails. He stated when companies contact the FCCRG about potential sites for a new business, the FCCRG presents Tryon to that company to see if they would be interested in one of the sites there. Jim Mraz stated these are just some of the examples of how the FCCRG is marketing Tryon. Jim Mraz asked if there was any further discussion. There was none.

IDA ACTION:

MOTION: To approve increasing the lot sale price for land at the Tryon Technology Park to $27,500/acre and to compensate the three (3) entities marketing Tryon as shown below:

Cushman Wakefield (7%)	:	7%
FCCRG	:	6%
Fulton County	:	6%

MADE BY: Joseph Semione
SECONDED: Mike Fitzgerald

ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Dave D'Amore	X	___	___	___
Joe Semione	X	___	___	___
Todd Rulison	X	___	___	___
Jane Kelley	X	___	___	___
Mike Fitzgerald	X	___	___	___
Joseph Gillis	X	___	___	___
Tim Munn	X	___	___	___

B. <u>Lawn Mowing Quotes:</u>

- A Request for Quotes (RFQ) was distributed to three (3) companies/individuals to mow lawn at the Tryon Technology Park in 2020.
- Quotes were due by April 8, 2020.
- Quotes based upon performing the following work:
  - Finish Mowing : 7
  - Brush Hog : 3

- Following quotes were received:

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Company	3 Brush Hog/Flail	7 Finish Mowing	Total
Greenscapes	**$3,360**	**$3,120**	**$6,480**
James Esper Landscaping	$2,940	$5,550	$8,490
Evergreen Landscaping	$4,404	$4,396	$8,800

- 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
2019	:	$8,934	:	Evergreen

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He asked if there were any questions. There were none.

IDA ACTION:

MOTION: To authorize the Chairman to sign an Agreement with Greenscapes in the amount of $6,480 to provide lawn mowing services at the Tryon Technology Park in 2020.

MADE BY: Todd Rulison
SECONDED: Joseph Gillis

ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Dave D'Amore	X	___	___	___
Joe Semione	X	___	___	___
Todd Rulison	X	___	___	___
Jane Kelley	X	___	___	___
Mike Fitzgerald	X	___	___	___
Joseph Gillis	X	___	___	___
Tim Munn	X	___	___	___

C. <u>Leasing Lands at Tryon Technology Park:</u>

1. <u>Background:</u>
   - In 2019, R & R Farms paid the IDA $30/acre to lease approximately 40 acres.

2. <u>2020 Lease Agreement:</u>
   - R & R Farms desires to lease the same land in 2020 at the same $30/acre.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He asked if there were any questions. There were none.

IDA ACTION:

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

MADE BY: Joseph Gillis
SECONDED: Joseph Semione

ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Dave D'Amore	X	___	___	___
Joe Semione	X	___	___	___
Todd Rulison	X	___	___	___
Jane Kelley	X	___	___	___
Mike Fitzgerald	X	___	___	___
Joseph Gillis	X	___	___	___
Tim Munn	X	___	___	___

D. New Prevailing Wage Requirements on Industrial Development Agency Projects:

1. Background
   - On April 2nd, the New York State Assembly and Senate passed the Governor's budget bill which contains provisions imposing prevailing wage requirements on certain projects receiving financial assistance from New York State industrial development agencies (IDAs).
   - Two key terms: **Covered Projects** and **Paid for in whole or in part by public funds**

2. Covered Projects
   - The legislation provides that **"covered projects"** would be subject to the prevailing wage requirements contained in Section 220 and 220-b of the Labor Law of New York State.
   - **"Covered projects"** are defined as construction work done under contract which is **"paid for in whole or in part out of public funds"** where the amount of all such public funds, when aggregated, is **at least thirty percent (30%) of the total construction project costs and where project costs are over $5 million.**

3. Public Funds
   - As defined in the legislation, "paid for in whole or in part out of public funds" means:
     - Payment of money by a public entity directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment;
     - Savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of the tax credits, ***tax abatements, tax exemptions*** or tax increment financing; and any other savings from reduced, waived or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity;
     - Money loaned by the public entity that is to be repaid on a contingent basis; or
     - Credits that are applied by the public entity against repayment of obligations to the public entity.

4. Applicability to IDAs
   - These prevailing wage requirements would be applicable to IDA's

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5. Exceptions

- The legislation provides a number of exceptions to the definition of "covered projects."
- Examples include low income housing projects, projects funded with Downtown Revitalization Initiative moneys and projects that have a project labor agreement.

6. Public Subsidy Board

- The legislation would also create a Public Subsidy Board (PSB) whose **members would be appointed by the Governor**. The membership would consist of:

  - 1 member upon recommendation of the President of the Senate
  - 1 member upon recommendation of the Assembly Speaker
  - Commissioner of Labor
  - President of the Empire State Development Corporation
  - Director of the Division of the Budget
  - 2 members representing employees in the construction industry of whom
    - One would be a representative of the largest statewide trade labor association representing building and construction workers
    - One would be a representative of the largest trade labor association representing building and construction workers with membership in New York City
  - 2 members representing employers in the construction industry of whom
    - One would be a representative of the largest statewide organization representing building owners and developers, either for-profit or not-for-profit,
    - One would be a representative of a statewide organization representing building owners and developers, either for-profit or not-for-profit, representing a region different than the region primarily represented by the other employer representative).

- The PSB would have the authority to examine and make recommendations **having the full force and effect of law** on matters including:
  - The minimum threshold percentage of public funds;
  - The minimum dollar threshold of projects;
  - The construction work excluded as a "covered project";
  - The definition of "construction"; and
  - Particular instances of benefits, monies or credits as to whether or not they constitute "public funds"
- In making its recommendations, the PSB would examine the impact of such thresholds and circumstances on private development in light of available public subsidies, existing labor market conditions, prevailing wages, and the extent such adjustments could mitigate adverse impacts.
- The **PSB is additionally empowered to issue binding determinations**, based on documents or testimony, or both, in its sole discretion. **Any determination issued by the PSB would be final and could not be appealed to the Commissioner of Labor, nor would any private right of action be available to any individual.**

7. Enforcement

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- Any construction work deemed to be part of a "covered project" would become subject to Sections 220, 224-b, 224-c and 220-b of the Labor Law of New York State:
  - Owners or developers of "covered projects" would be required to certify under penalty of perjury within five (5) days of commencement of construction whether the project is subject to these requirements;
  - Owners or developers would be entitled to seek guidance from the PSB;
  - Owners or developers would be required to retain original payroll records;
  - The public entity providing any of the public funds would be required to identify the nature and dollar value of such funds (and whether such funds are excluded from such determination); and
  - The Commissioner of Labor would be authorized to issue rules regarding these provisions.

8. Effective Date

- When signed into law by the Governor, the legislation would go into effect on **January 1, 2022** and would apply to contracts for construction executed, incentive agreements executed, procurements or solicitations issued, or applications for building permits on or after such date.
- It should be noted that the legislation would not apply to any appropriations of public funds made prior to January 1, 2022, or to re-appropriations of such funds first appropriated prior to such date.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He stated this is a new State mandate that all IDA's will now have to comply with. He stated it will require IDA's to review every project and to determine if it meets the thresholds established in the Legislation for when an IDA project must pay prevailing wages. Kara Lais added that IDA's will need to have a complete understanding of a project's financing in order to determine if a project meets these thresholds. For example, if a project is receiving grant funding from other sources beyond the IDA, the IDA will need to know that to factor those dollars into the determination of whether the project meets these thresholds or not. Mike Fitzgerald asked whether a NYS 503 Loan would be considered public funds? Kara Lais stated this is one of the many questions that still need to be determined.

VIII. OTHER BUSINESS:

A. Invoice from Fitzgerald Morris Baker Firth, P.C.:

- Invoice received from Fitzgerald Morris Baker Firth, P.C. for legal services they performed for an economic development project.
- Total: $2,368.00

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. Joe Semione asked if this cost could be shared with the FCCRG and Fulton County? Jim Mraz stated that all of the work Fitzgerald Morris Baker Firth performed on this project was for the IDA and not anyone else. Fulton County and the FCCRG used their own counsel to provide them with legal guidance. Jim Mraz stated that, in the future, the IDA may want to discuss with its partners about the potential for cost sharing at the beginning of a potential project. Joe Semione agreed saying that the IDA should have an understanding with its partners that, if a project does not come to fruition, that the IDA's cost be shared three (3) ways.

IDA ACTION:

DRAFT

MOTION: To authorize a payment in the amount of $2,368.00 to Fitzgerald Morris Baker Firth P.C. for legal services performed on the economic development project.

MADE BY: Joe Semione
SECONDED: Todd Rulison

ROLL CALL VOTE:

	Aye	Nay	Abstain	Absent
Dave D'Amore	X	___	___	___
Joe Semione	X	___	___	___
Todd Rulison	X	___	___	___
Jane Kelley	X	___	___	___
Mike Fitzgerald	X	___	___	___
Joseph Gillis	X	___	___	___
Tim Munn	X	___	___	___

IX. NEXT MEETING:

Tuesday
May 12, 2020
8:00 a.m.

X. CLOSE MEETING:

MOTION : To close the meeting
MADE BY : Dave D'Amore
SECONDED : Tim Munn

ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Dave D'Amore	X	___	___	___
Joe Semione	X	___	___	___
Todd Rulison	X	___	___	___
Jane Kelley	X	___	___	___
Mike Fitzgerald	X	___	___	___
Joseph Gillis	X	___	___	___
Tim Munn	X	___	___	___

TIME : 9:10 a.m.

DRAFT