

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

TUESDAY
FEBRUARY 9, 2021
8:00 A.M.

PLANNING DEPARTMENT CONFERENCE ROOM

AGENDA

PRESENT:

- ___ JOSEPH SEMIONE, CHAIRMAN
- ___ JANE KELLEY, VICE CHAIRMAN
- ___ MIKE FITZGERALD, TREASURER
- ___ JOSEPH GILLIS, SECRETARY
- ___ TODD RULISON, MEMBER
- ___ DAVID D'AMORE, MEMBER
- ___ JAMES MRAZ, EXECUTIVE DIRECTOR
- ___ KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH PC
- ___ SCOTT HENZE, PLANNING DIRECTOR
- ___ DR. LESLIE FORD, FULTON COUNTY CENTER FOR REGIONAL GROWTH
- ___ JOHN BLACKMON, LIAISON, ECONOMIC DEVELOPMENT AND ENVIRONMENT COMMITTEE

I. ROLL CALL:

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

II. MINUTES FROM JANUARY 12, 2021 MEETING:

MOTION :

MADE BY :

SECONDED :

ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Joe Semione	---	---	---	---
Jane Kelley	---	---	---	---
Mike Fitzgerald	---	---	---	---
Joseph Gillis	---	---	---	---
Todd Rulison	---	---	---	---
Dave D'Amore	---	---	---	---

NOTE: A transcript of the January 12, 2021 meeting has been prepared and posted on the IDA's website in compliance with Governor Cuomo's Executive Order suspending the Open Meetings Law.

III. BUDGET REPORT:

MOTION :

MADE BY :

SECONDED :

ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Joe Semione	---	---	---	---
Jane Kelley	---	---	---	---
Mike Fitzgerald	---	---	---	---
Joseph Gillis	---	---	---	---
Todd Rulison	---	---	---	---
Dave D'Amore	---	---	---	---

IV. COMMITTEE REPORTS:

A. Nominating Committee:

➤ No report.

B. Audit Committee:

➤ Monthly Bank Reconciliation Report: Dave D'Amore

C. Governance Committee:

➤ No report.

D. Finance Committee:

➤ No report.

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

1. Fulton County Report: John Blackmon, Liaison
2. FCCRG Report: (See attached.) Dr. Leslie Ford

VI. **OLD BUSINESS:**

A. **IDA Website:**

- Betsy Emery, Emery Designs, will review updated IDA website.

IDA DISCUSSION:

B. **Property on South Side of CR107:**

1. **Sale:**

- Sale was completed on January 11, 2021.
- Keys to buildings were turned over to Dave Huckans on January 13, 2021.

IDA DISCUSSION:

2. **Sewer Line:**

- Adirondack Septic finished powerjetting and vacuuming the sewer line on January 12, 2021.
- IDA Board authorized an expenditure of up to \$7,260.
- Adirondack Septic's final invoice was \$7,085.

IDA DISCUSSION:

C. **Repairs to Tryon Wastewater Pump Station:**

- IDA Board authorized an expenditure of up to \$1,000 in emergency repairs for Adirondack Septic to replace the floats in the pump station.
- Adirondack Septic's final invoice was \$776.50.

IDA DISCUSSION:

D. 2021 Goals:

- At the January 12, 2021 Annual Meeting, IDA Board identified potential goals for 2021:
 1. Identify potential sites for redevelopment and conduct desktop assessments on them.
 2. Contact National Grid to see if there’s ways to expedite any hurdles for potential projects.
 3. Conduct a Summit with the IDA’s economic development partners.
 4. Develop new revenue streams for the IDA.
 5. Conduct Board Training.

IDA DISCUSSION:

IDA ACTION:

MOTION:

MADE BY:

SECONDED:

ROLL CALL VOTE

	Aye	Nay	Abstain	Absent
Joe Semione	—	—	—	—
Jane Kelley	—	—	—	—
Mike Fitzgerald	—	—	—	—
Joseph Gillis	—	—	—	—
Todd Rulison	—	—	—	—
Dave D’Amore	—	—	—	—

VII. NEW BUSINESS:

A. ST-62:

1. Background:
 - a. ABO requires IDA’s to annually file an ST-62 Form titled “IDA Annual Compliance Report State Sales Tax Recapture.”
 - b. The ST-62 asks if an IDA:
 - Granted any sales tax exemption in the previous calendar year.
 - Moved to recapture sales tax benefits given to a company.
 - c. In 2020, the IDA:
 - Granted tax exemptions for the Benjamin Moore Expansion Project.
 - Recaptured sales tax exemptions from Johnstown Renewables.
 - d. IDA Chairman needs to be authorized to sign and submit this ST-62 for the fiscal year ending December 31, 2020.
 - e. ST-62 must be filed by March 31, 2021.

IDA DISCUSSION:

IDA ACTION:

MOTION: To authorize the Chairman to sign and submit Form ST-62 for fiscal year ending December 31, 2020.

MADE BY:

SECONDED:

ROLL CALL VOTE:

	Aye	Nay	Abstain	Absent
Joe Semione	—	—	—	—
Jane Kelley	—	—	—	—
Mike Fitzgerald	—	—	—	—
Joseph Gillis	—	—	—	—
Todd Rulison	—	—	—	—
Dave D'Amore	—	—	—	—

B. Board Training:

1. New York State Legislation Governing IDA's:

a) Background:

- There are three (3) New York State laws that govern how IDA's operate:
 - Sections 850-888 of NYS General Municipal Law
 - Public Authorities Accountability Act of 2005 (PAAA)
 - Public Authorities Reform Act of 2009 (PARA)

b) General Municipal Law:

- IDA's are created under Article 18-A of NYS's General Municipal Law (GML).
- Section 852 of GML states that it is the policy of New York State:
 1. "To promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation, economically sound commerce and industry and economically sound projects through governmental action for the purpose of preventing unemployment and economic deterioration by the creation of industrial development agencies which are hereby declared to be governmental agencies and instrumentalities."
 2. "To protect and promote the health of the inhabitants of this state by the conservation, protection and improvement of the natural and cultural or historic resources and environment and to control land, sewer, water, air, noise or general environmental pollution derived from the operation of industrial, manufacturing, warehousing, commercial, recreation, horse racing facilities, railroad facilities, automobile racing facilities and research facilities and to grant such industrial development agencies the rights and powers provided by this article with respect to industrial pollution control facilities."
 3. "To protect and promote the health of the inhabitants of this state and to increase trade through promoting the development of facilities to provide recreation for the citizens of the state and to attract tourists from other states."
- The IDA's Mission Statement reads as follows:

"The IDA's mission is to create and promote economic growth and prosperity for both residents and entrepreneurs in Fulton County. The IDA's role in Fulton County's Economic Development Program is to develop and maintain an inventory of shovel-ready sites for new and expanding businesses, offer financial incentives, as may be required, to encourage the creation of new and retention of existing jobs and expand the County's tax

base. In doing so, the IDA strives to make Fulton County a desirable place to live and do business.”

- Section 856 of GML states:
 1. An IDA shall be a corporate governmental agency, constituting a public benefit corporation.
 2. An IDA shall consist of not less than three (3) nor more than seven (7) members who shall be appointed by the governing body of each municipality and who shall serve at the pleasure of the appointing authority.
 3. A member shall continue to hold office until his successor is appointed and has qualified.
 4. Members shall receive no compensation for their services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of their duties.

- Section 857 of GML states:
 1. An IDA shall, to the extent practicable, stream all open meetings and public hearings on its website in real-time.
 2. An IDA shall post video recordings of all open meetings and public hearing on its website within five (5) business days of the meeting or hearing and shall maintain such recordings for a period of not less than five (5) years.

- Section 858 of GML authorize IDA's:
 1. To promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities, automobile racing facilities and continuing care retirement communities;
 2. To sue and be sued;
 3. To have a seal and alter the same at pleasure;
 4. To acquire, hold and dispose of personal property for its corporate purposes;
 5. To acquire by purchase, grant, lease, gift, pursuant to the provisions of the Eminent Domain Procedure Law, or otherwise and to use, real property, rights or easements therein necessary for its corporate purposes in compliance with the local zoning and planning regulations and to sell, convey, mortgage, lease, pledge, exchange or otherwise dispose of any such property in such manner as the agency shall determine;
 6. To make bylaws for the management and regulation of its affairs;
 7. With the consent of the municipality, to use agents, employees and facilities of the municipality, paying the municipality its agreed proportion of the compensation or costs;
 8. To appoint officers, agents and employees, to prescribe their qualifications, to fix their compensation and to pay the same out of funds of the agency;
 9. To appoint an attorney, who may be the counsel of the municipality, and to fix the attorney's compensation for services which shall be payable to the attorney, and to retain and employ private consultants for professional and technical assistance and advice;
 10. To make contracts and leases;
 11. To acquire, construct, reconstruct, lease, improve, maintain, equip or furnish one or more projects;
 12. To accept gifts, grants, loans, or contributions from, and enter into contracts or other transactions with, the United States, the state or any agency of either of them, any municipality, any public or private corporation or any other legal entity, and to use any such gifts, grants, loans or contributions for any of its corporate purposes;
 13. To borrow money and to issue bonds;
 14. To grant options to renew any lease with respect to any project or projects and to grant options to buy any project at such price as the agency may deem desirable;
 15. To designate the depositories of its money;
 16. To enter into agreements requiring payments in lieu of taxes. Such agreements shall be in writing and in addition to other terms shall contain: the amount due annually to each affected tax jurisdiction (or a formula by which the amount due annually to each affected tax jurisdiction (or a formula by which the amount due can be calculated), the name and address of the person, office or agency to which payment shall be delivered, the date on which payment shall be made, and the date on which payment shall be considered

delinquent if not paid. Unless otherwise agreed by the affected tax jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. A copy of any such agreement shall be delivered to each affected tax jurisdiction within fifteen days of signing the agreement. In the absence of any such written agreement, payments in lieu of taxes made by an agency shall be allocated in the same proportions as they had been prior to January first, nineteen hundred ninety-three for so long as the agency's activities render a project non-taxable by affected tax jurisdictions;

17. To establish and reestablish its fiscal year; and
18. To do all things necessary or convenient to carry out its purposes and exercise the powers expressly given in this title.

➤ Section 862 of GML places certain restrictions on the funds of an IDA:

1. No funds of an IDA shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state. However, neither restriction shall apply if the IDA shall determine, on the basis of the Project Application before it, that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.
- 2(a). Except as provided in paragraph (b) of this subdivision, no financial assistance shall be provided to any project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost. However, tourism destination projects shall not be prohibited by this subdivision. "Tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region in which the project is located.
- 2(b). Financial assistance may, however, be provided to a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project costs, where:
 - i) The predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city, town, or village within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services.
 - ii) The project is located in a highly distressed area.
- 2(c). With respect to projects authorized pursuant to paragraph 2(b), no project shall be approved unless the IDA shall find, after a public hearing, that undertaking the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. Where the IDA makes such a finding, prior to providing financial assistance to the project, the chief executive officer of the municipality for whose benefit the IDA was created shall confirm the proposed action of the IDA.

➤ Section 874 of GML states:

1. IDA's shall be required to pay no taxes or assessments on property acquired by it, under its jurisdiction, control or supervision.

➤ GML authorizes IDA's to provide certain financial incentives to eligible projects:

1. Real Property Tax Exemptions (PILOT)
2. Sales Tax Exemption: (8%)
3. Mortgage Recording Tax Exemptions: (1%)
4. Bond Financing

c) Public Authorities Accountability Act of 2005 (PAAA) and Public Authorities Reform Act of 2009 (PARA):

➤ The primary purposes of PAAA and PARA were:

1. To create an independent Authority Budget Office (ABO) to:
 - a. Promulgate rules and regulations.
 - b. Receive and act upon complaints.
 - c. Initiate formal investigations in response to complaints or non-compliance.
 - d. Issue subpoenas pertaining to investigations.
 - e. Publicly warn and censure authorities for non-compliance.
 - f. Report suspected criminal activity to the attorney general.
 - g. Compel any non-compliant authority to submit an explanation.
 - h. Commence special proceedings in Supreme Court seeking an order for the production of documents or information.
 - i. Develop with the Attorney General a written acknowledgement for board members.
 - j. Assess the ability of individual authorities to implement PARA 2009 and set a date for which changes must be implemented by.
 - k. Recommend to appointing authority the suspension or dismissal of officers or directors.

2. To establish comprehensive reporting, auditing, governance and property disposition requirements including:

- a. Board Responsibilities:

- (1) Appoint a Chief Executive Officer (CEO) and Chief Financial Officer (CFO).
- (2) Execute direct oversight of CEO and CFO.
- (3) Create, review and monitor financial and management controls and operational decisions.
- (4) Adopt a code of ethics applicable to each officer, director and employee that, at a minimum, includes the standards established in Section 74 of the Public Officers Law.
- (5) Establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of management.
- (6) Establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the authority, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services.
- (7) Conduct an annual evaluation of the Board's performance.

The FCIDA Board complies with all of these requirements.

- b. Board Training:

- New IDA Board members must participate in State-approved training regarding their legal, fiduciary, financial and ethical responsibilities as directors of the authority within one year of appointment to the board.
- New Board members must complete this training within one (1) year of their appointment to the Board.
- IDA Board members must participate in continuing training as may be required to remain informed of best practices, and regulatory and statutory changes relating to effective oversight of management and financial activities of authorities.
- All FCIDA Board members have completed their required State-approved training.

c. Extension of Credit:

- An IDA Board is prohibited from extending or maintaining credit, arranging for the extension of credit, or renewing an extension of credit, in the form of a personal loan to or for any officer, board member or employee of the IDA.

d. Committees:

1. Audit Committee:

- An Audit Committee must be established and comprised of at least three independent members who shall constitute a majority on the Committee.
- Members of the Audit Committee should be familiar with corporate financial and accounting practices. The Audit Committee must recommend to the board the hiring of a CPA firm, establish compensation to be paid to the CPA firm and provide direct oversight of the performance of the independent annual audit performed by the CPA firm.

2. Governance Committee:

- A Governance Committee must be established and be comprised of at least three independent members who shall constitute a majority on the Committee.
- The Governance Committee must keep the board informed of current best governance practices, review corporate governance trends, update the authority's governance principles, and advise appointing authorities of the skills and experiences required of potential board members. In addition, PARA requires that the committee examine ethical and conflicts of interest issues; perform board self-evaluations; and recommend by-laws which include rules and procedures for conduct of board business.

3. Finance Committee:

- If the IDA issues debt, it must establish a Finance Committee. The Finance Committee must have at least three independent members who shall constitute a majority on the committee.
- The Committee shall review proposals for the issuance of debt by the authority and its subsidiaries and make recommendations.

The FCIDA has all three (3) of these required Committees.

e. Independence:

- PARA stated that a "majority" of Board members appointed on or after January 13, 2006 must be "independent". An "independent" member is one who:
 1. Is not, and in the past two years has not been, employed by the public authority or an affiliate in an executive capacity.
 2. Is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than \$16,000 for goods and services provided to the public authority or received any other form of financial assistance valued at more than \$15,000 from the public authority.
 3. Is not a relative of an executive officer or employee in an executive position of the public authority or an affiliate.
 4. Is not, and in the past two years has not been, a lobbyist registered under a State or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate. The new Audit Committee would be required to make recommendations to the board concerning the engagement of a certified independent accounting firm, compensation to be paid for same, and to provide direct oversight of the engagement.

➤ **PARA changed PAAA as follows:**

Board members, including the chairperson, may serve as the chief executive officer, executive director, chief financial officer, comptroller, or hold any other equivalent position while also serving as a member of the board. However, no chair who is also the chief executive officer shall participate in determining the level of compensation or reimbursement, or time and attendance rules for the position of chief executive officer.

f. **Financial Disclosure:**

- Board members, officers, and employees must file annual financial disclosure statements with the County Board of Ethics pursuant to Article 18 pursuant to the Act.
- All FCIDA Board members file their financial disclosure forms with the Fulton County Attorney.

g. **IDA Statement:**

- PARA requires that all new IDA Board members, at the time of appointment, must sign an Acknowledgement of Fiduciary Duties and Responsibilities statement that acknowledges that they understand their fiduciary responsibilities.
- All FCIDA members have signed this Acknowledgement.

IDA DISCUSSION:

VIII. 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 :

ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Joe Semione	—	—	—	—
Jane Kelley	—	—	—	—
Mike Fitzgerald	—	—	—	—
Joseph Gillis	—	—	—	—
Todd Rulison	—	—	—	—
Dave D'Amore	—	—	—	—

TIME :

MOTION : To go out of Executive Session.

MADE BY :

SECOND :

ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Joe Semione	—	—	—	—
Jane Kelley	—	—	—	—
Mike Fitzgerald	—	—	—	—
Joseph Gillis	—	—	—	—
Todd Rulison	—	—	—	—
Dave D'Amore	—	—	—	—

TIME :

IX. NEXT MEETING:

Tuesday
 March 9, 2021
 8:00 a.m.

X. CLOSE MEETING:

MOTION :

MADE BY :

SECONDED :

ROLL CALL VOTE :

	Aye	Nay	Abstain	Absent
Joe Semione	—	—	—	—
Jane Kelley	—	—	—	—
Mike Fitzgerald	—	—	—	—
Joseph Gillis	—	—	—	—
Todd Rulison	—	—	—	—
Dave D'Amore	—	—	—	—

TIME :