

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

**TUESDAY
MARCH 8, 2022
8:00 A.M.**

PLANNING DEPARTMENT CONFERENCE ROOM

MEETING NOTES

PRESENT:

JOSEPH SEMIONE, CHAIRMAN
MIKE FITZGERALD, VICE CHAIRMAN (ZOOM)
TODD RULISON, TREASURER (ZOOM)
DAVID D'AMORE, MEMBER
DR. GREG TRUCKENMILLER, MEMBER
JAMES MRAZ, EXECUTIVE DIRECTOR
KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH PC (ZOOM)
SCOTT HENZE, PLANNING DIRECTOR
KENT KIRCH, FULTON COUNTY CENTER FOR REGIONAL GROWTH (ZOOM)

I. MINUTES FROM FEBRUARY 8, 2022 MEETING:

MOTION : Accept as presented.
MADE BY : Greg Truckenmiller
SECONDED : Dave D'Amore
VOTE : Unanimous

II. BUDGET REPORT:

MOTION : Accept as presented.
MADE BY : Joe Semione
SECONDED : Dave D'Amore
VOTE : Unanimous

III. **COMMITTEE REPORTS:**

A. Nominating Committee:

- No report.

B. Audit Committee:

- Monthly Bank Reconciliation Report: Joe Semione

IDA DISCUSSION: Joe Semione approved the Monthly Bank Reconciliation Reports.

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: None
2. FCCRG Report: (See attached.) Kent Kirch

DISCUSSION: Kent Kirch reviewed the CRG report that was attached to the Agenda. Joe Semione asked if a presentation could also be made to the IDA regarding the site study. Kent Kirch stated that he would follow-up with Ron on that. Joe Semione asked, if so, it would be nice to have that presentation at the May IDA meeting.

V. **OLD BUSINESS:**

A. **Nexus Renewables Project:**

- Nexus is still negotiating a construction contract.
- Site conditions are increasing project costs:
 - Significant tree clearing
 - Access Road
 - Wetlands
- According to Nexus, these conditions are adding over \$1.4 million in costs to project.
- As such, Nexus is seeking bids from other contractors.

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

B. Vireo Health Project:

1. Status of Construction:

- Construction ongoing.
- Cordos has completed installation of new waterline from CR117 to elevated tank.

2. Changes at Vireo Health:

a. Goodness Growth Holdings:

- Vireo Health now operates under a holding company called Goodness Growth Holdings.
- Vireo Health International was Vireo's publicly traded company.
- They rebranded that name to Goodness Growth Holdings to better reflect the current priorities of the company.
- Vireo Health of NY was a subsidiary of Vireo Health International.
- Vireo Health of NY is now a subsidiary of Goodness Growth Holdings.

b. Verano Holdings:

- Verano Holdings (VH) and Goodness Growth Holdings (GGH) have announced an agreement whereby VH will acquire GGH.
- VH is based in Chicago.
- VH is a multi-state cannabis operator providing access to regulated cannabis products. VH produces cannabis products sold under consumer brands, including Verano, Avexia, Encore, and MUV.
- VH's portfolio encompasses 15 U.S. states, including 12 production facilities comprising over 1,000,000 square feet of cultivation capacity. VH designs, builds, and operates dispensaries under retail brands including Zen Leaf and MUV.
- The Boards of Directors of both companies have both approved the transaction.
- The transaction should be completed some time in 2022.
- Vireo Health of NY will continue to operate and continue to hold the cannabis licenses in New York State.
- This transaction will not impact the 324,000 SF project under construction at Tryon.

3. PILOT:

- Vireo Health has yet to execute the PILOT Agreement for its 324,000 SF building.

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

C. Hoffman Carwash Project:

- Construction ongoing.

D. Winstanley Enterprises Project:

1. Tryon Technology Park Website:
 - Agreement between Winstanley and Fulton County regarding domain names has been drafted and being reviewed.
2. Tryon Brochure:
 - Winstanley has prepared a marketing brochure for Tryon.
 - Copies have been sent to:
 - Fulton County Board of Supervisors
 - Fulton County Center for Regional Growth
 - Town of Perth Town Board
 - Town of Perth Planning Board
3. Boundary Survey:
 - Winstanley has submitted a boundary survey on the property they desire to purchase from the IDA.
 - A couple of errors were found in the survey. Winstanley is having their surveyors correct the errors and resubmit.

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

E. Fulton County Sewer District No. 4: Tryon:

1. Back-up Generator at Tryon:
 - Advertisement for Bids to be put in newspaper on March 11th – 12th.
 - Bid documents will be available from Environmental Design Partnership starting on March 15th.
 - Bids Due: Tuesday, April 5, 2022 at 2:00 p.m.
2. Request from Lott Holdings:
 - Lott Holdings has requested consideration from the IDA Board to sell them lands located to the east of the property they recently purchased from the IDA.
 - The property would have at its northern border the stream that runs through the property and the southern border would be the County Road 117 right-of-way.
 - The parcel would contain approximately 20 acres.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He asked IDA Board members if they would have an interest in selling this parcel to Lott Holdings. It was the unanimous consensus of all present that the IDA Board would be willing to sell this parcel to Lott Holdings. Jim Mraz stated that a sale price has yet to be reached on this. Jim Mraz stated that he received a proposal from Ferguson & Foss to prepare a metes and bounds descriptions on the two (2) parcels that were originally proposed to be deeded to the Sewer District. He stated, now, that Ferguson & Foss will need to prepare three (3) metes and bounds descriptions on the three (3) separate parcels. Two (2) would be deeded to the Sewer District and one (1) would go to Lott Holdings. There was a general discussion regarding Ferguson & Foss' fee for performing three (3) surveys. After a brief discussion, it was the consensus of all IDA members present to authorize a fee of not-to-exceed \$5,000 to have all three (3) property surveys completed.

3. Survey:

- At February 8, 2022 meeting, IDA Board discussed deeding ownership of all sewer infrastructure at Tryon over to Fulton County Sewer District No. 4 once it's created.
- IDA Board discussed options for providing the District with access to all of this infrastructure.
- IDA Board decided to pursue:
 - 1) Deeding two (2) parcels of land over to the Sewer District.
 - 2) Retaining ownership of a tract of land along the secondary access road from CR107 to CR117
 - 3) Providing an easement to the Gloversville Water Department for the water booster station they own and operate.
- IDA Board discussed the need to have the two (2) parcels surveyed.
- IDA has received a proposal from Ferguson & Foss Surveyors to perform survey.
- Total Estimated Fee: \$2,500

IDA ACTION:

MOTION: To approve hiring Ferguson & Foss Surveyors to perform three (3) metes and bounds surveys at Tryon at a cost not-to-exceed \$5,000.

MADE BY: Dave D'Amore

SECONDED: Greg Truckenmiller

VOTE: Unanimous

4. Sewer Infrastructure Plans:

- The IDA Board recently hired C.T. Male to prepare Sewer Infrastructure Plans for the existing sewer system at Tryon.
- These plans would be submitted to Fulton County Sewer District No. 4 when the time comes for the IDA to transfer ownership on that sewer infrastructure to the Sewer District.
- C.T. Male is finishing up work on these Plans. I have reviewed and comments on several versions of the Plans. Final comments were submitted to C.T. Male on February 28th.

IDA DISCUSSION: Jim Mraz distributed a copy of the final plans C.T. Male had prepared. He asked if there were any questions. There were none.

VI. NEW BUSINESS:

A. Review Audit of IDA's 2021 Financial Statements:

1. Key Finding:

- Based upon West & Company's review of the IDA's 2021 financial records, West & Company has issued an "unmodified opinion."
- This is the best opinion the IDA can receive.
- The IDA has consistently received unmodified opinions on its audits.
- Audit was emailed to IDA Board members on February 25, 2022.

2. Presentation by West & Company:

IDA DISCUSSION: Mike Rossi stated that the overall Audit went very well. Mike Rossi stated that the Audit consists of two (2) separate reports. The first is a Schedule of Investments and the second is the actual Audit of the Financial Statements. He stated, with respect to the Schedule of Investments, West & Company found that the investments were presented fairly. He stated that the IDA is limited in what it can invest its funds into. He stated the actual investments listed in the report is zero. This is because the IDA has all of its funds in a checking account and money market account which both are less than a 1-year term. If the IDA were to invest into a CD with a term greater than 1 year, that would be considered an investment.

With respect to the Audit of the Financial Statements, Mike Rossi stated that it went very well. He commended Carol Ellis for providing all of the information West & Company needed to complete its Audit in early January.

Mike Rossi then reviewed the entire draft Audit. He stated their opinion is now located on the first page. Their opinion is that the Financial Statements were presented fairly and West & Company issued an Unmodified Opinion, which is the highest opinion available. He then reviewed pages 4-13, which is the Management Discussion Analysis (MDA) component of the Audit. He stated this MDA is included to provide a reader with an understanding of what happened with the IDA over the past year. He then reviewed page 11, which showed that the IDA's assets increased year to year due to the sale of land to Vireo. Mike Rossi then reviewed page 12, which showed the long-term debt associated with the Crossroads Business Park Project. Mike Rossi then reviewed the remaining pages of the Audit. He stated that the notes included in the Audit are unchanged from 2020 except for the numbers being updated. He then reviewed pages 22-23, which provides a second opinion regarding the IDA's Internal Financial Controls. He stated, based upon their review, West & Company found no issues with the IDA's Internal Financial Controls. The final page reviewed was page 24, which included the Schedule of Bonds that are outstanding with respect to the YMCA Project. Upon completion of his review of the Audit, Jim Mraz asked if there were any questions. There were none.

IDA ACTION:

MOTION: To approve the 2021 Audit as submitted by the West & Company and authorize West & Company and the Executive Director to file the Audit in PARIS and with Fulton County Treasurer, Commissioner of Department of Economic Development, NYS Comptrollers and to post it on the IDA's website.

MADE BY: Dave D'Amore
SECONDED: Greg Truckenmiller
VOTE: Unanimous

B. IDA's 2021 Annual Report:

- IDA's 2021 Annual Report has been prepared in accordance with the ABO's requirements.
- Report was e-mailed to IDA Board members on February 28, 2022.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He asked if there were any questions regarding the 2021 Annual Report. There were none.

IDA ACTION:

MOTION: To approve the 2021 Annual Report and authorize and direct the Executive Director to file the Annual Report under PARIS and with the Board of Supervisors and post the report on the IDA's website.

MADE BY: Greg Truckenmiller

SECONDED: Mike Fitzgerald

VOTE: Unanimous

C. Vireo Health Project:

1. Background:

- In 2021, the IDA authorized sales tax exemptions be provided to the proposed Vireo Health Project.
- Total Project Cost : \$55,000,000
- Total Costs Subject to Sales Tax : \$22,144,000
- Total Sales Tax Exemptions Approved : \$ 1,771,520

2. ST-340:

- Any company receiving sales tax benefits is required to file an ST-340 Form with the NYS Department of Taxation and Finance.
- ST-340's must be filed by the end of February for the previous year.
- Vireo Health filed their ST-340 with T & F. See attached.
- ABO wants IDA's to review these forms to verify that the project met or exceeded its total project cost.
- Total Sales Tax Exemptions Claimed in 2021 : \$1,086,510
- Total Sales Tax Exemptions Available : \$ 685,010

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He stated that the ABO desires to have IDA's review the ST-340 forms when they are filed each year to ensure that the company's approved to receive sales tax exemptions and not taking more exemptions than that are authorized by the IDA Board. He reviewed the information on the Agenda. He asked if there were any questions. There were none.

D. Hoffman Carwash Project:

1. Background:

- In 2021, the IDA authorized sales tax exemptions be provided to the proposed Hoffman Carwash Project.
- Total Project Cost : \$ 6,600,000
- Total Costs Subject to Sales Tax : \$ 3,700,000
- Total Sales Tax Exemptions Approved : \$ 296,000

2. ST-340:

- Any company receiving sales tax benefits is required to file an ST-340 Form with the NYS Department of Taxation and Finance.
- ST-340's must be filed by the end of February for the previous year.

- Hoffman Carwash filed their ST-340 with T & F. See attached.
- ABO wants IDA's to review these forms to verify that the project met or exceeded its total project cost.
- Total Sales Tax Exemptions Claimed in 2021 : \$ 47,392.99
- Total Sales Tax Exemptions still Available : \$248,607.01

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

E. Benjamin Moore Project:

1. Background:

- In 2021, the IDA authorized sales tax exemptions be provided to the proposed Benjamin Moore Project.
- Total Project Cost : \$17,750,000
- Total Costs Subject to Sales Tax : \$ 9,000,000
- Total Sales Tax Exemptions Approved : \$ 720,000

2. ST-340:

- Any company receiving sales tax benefits is required to file an ST-340 Form with the NYS Department of Taxation and Finance.
- ST-340's must be filed by the end of February for the previous year.
- Benjamin Moore filed their ST-340 with T & F. See attached.
- ABO wants IDA's to review these forms to verify that the project met or exceeded its total project cost.
- Total Sales Tax Exemptions Claimed in 2021 : \$ 637,280
- Total Sales Tax Exemptions still Available : \$ 82,720

3. Request to Increase Total Sales Tax Exemptions:

- On March 1, 2022, the IDA received an e-mail from Benjamin Moore asking that the total sales tax exemptions for their Expansion Project be increased from:

		<u>Current</u>	<u>Proposed</u>
Total Costs Subject to Sales Tax	:	\$9,000,000	\$10,400,000
Total Sales Tax Exemptions	:	\$ 720,000	\$ 832,000

- The reasons cited by Benjamin Moore for making this request are:
 - Project cost increase due to design changes.
 - Project cost increased due to inflation.
 - See attached Resolution.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda regarding the amount of sales tax exemptions Benjamin Moore had taken in 2021. He asked if there were any questions. There were none.

Prior to beginning discussions on the next item on the Agenda, Joe Semione stated that he has a conflict of interest because his company does business with Benjamin Moore. As a result, Joe Semione recused himself and left the meeting at 9:00 a.m.

Jim Mraz reviewed the information on the Agenda regarding Benjamin Moore's request for an increase in the total value of sales tax exemptions to be approved by the IDA Board for their expansion project. He reviewed the Resolution that was attached to the Agenda regarding this request. He asked Kara Lais if there was any additional information that she wanted to provide. She stated there was none. Jim Mraz asked if there were any questions. There were none.

IDA ACTION:

MOTION: Approve the resolution approving of an increase in the sales tax exemption in connection with the Benjamin Moore & Company Project.

MADE BY: Greg Truckenmiller

SECONDED: Mike Fitzgerald

VOTE: 4 in favor, 0 opposed, 1 abstained (Joe Semione)

(Joe Semione returned to the meeting at 9:05 a.m.)

F. Crossroads Business Park:

- The City of Gloversville Planning Board has recommended to the Gloversville Common Council that the zoning for the Crossroads Business Park be amended to include single and multiple family housing in the Park.

G. Board Training:

1. Bylaws:

a. Background:

- IDA Board adopted its Bylaws initially in March, 2007.
- The Bylaws were revised in 2010.
- Since 2010, there have been changes to laws governing IDA's and changes to ABO Policies that are the basis for proposing amendments to the Bylaws.

b. ABO Input:

- Prior to starting work on the Bylaws, an email was sent to the Authority Budget Office asking 2 questions:
 1. Whether just a majority of IDA Board members must be "independent" not the entire Board.
 2. Can a member of an IDA Board also serve as the Executive Director?
- **With respect to Question 1, here is what the ABO provided:** Industrial development agencies are considered local authorities as defined in Title 1, Section 2(2)(c) of Public Authorities Law (PAL). Section 2825(2) of PAL requires that with the exception of ex-officios, the majority of board members for every state or local authority must be independent. This means that if a public authority has a nine member board, with four ex-officio members, three (3) of the remaining five (5) appointees to the board must be independent. Section 2825(2) defines an independent member as one who:
 1. Has not been employed by the public authority or an affiliate in an executive capacity over the past two (2) years;
 2. Has not been employed by an entity that received more than \$15,000 from the public authority or received any other form of financial assistance of more than \$15,000;

3. Is not a relative of an executive of the public authority or affiliate; and has not been a lobbyist over the past two (2) years. Ex-officio board members, by statute, are considered independent. While it is not prohibited, as a best practice the ABO does not recommend that a majority of appointed board members have a political or employment relationship to the government for whose purpose the public authority was created.
- **With respect to Question 2, here is what the ABO provided:** Unless it is stipulated in an authority's enabling statute, this is permissible, but public authorities are required to adopt a conflict of interest policy and code of ethics to guide them. Section 2824(7) of Public Authorities Law (PAL) requires the adoption of a conflict of interest policy for employees and board members, which should include determining when it is necessary for any board member to recuse themselves from discussions or votes when a conflict of interest might exist. Please see ABO Recommended Practice: Conflict of Interest Policy for Public Authorities for more information. Additionally, the ABO's Model Code of Ethics is intended to provide guidance to authorities in creating and/or amending their own code of ethics.

Caution should always be taken to ensure that any conflicts of interests are disclosed and the board members, including any that are serving as the executive director, acknowledge their role and fiduciary duty to the public authority they serve. If a situation comes before the board in which a board member perceives that there may be a conflict of interest, the board member should disclose such conflict to the board and the board shall decide whether that board members needs to recuse themselves from the discussion. PAL Section 2824(h) requires board members to sign an Acknowledgement of Fiduciary Duty, including agreeing to disclose to the board any conflicts, or the appearance of a conflict, of a personal, financial, ethical, or professional nature that could inhibit them from performing their duties in good faith and with due diligence and care. Please see ABO Policy Guidance 10-01: Acknowledgment of Fiduciary Duty.

In addition, PAL Section 2824(3) dictates that no chair who is also the chief executive officer can participate in determining the level of compensation or reimbursement, or time and attendance rules for the position of chief executive officer.

c. Summary of Proposed Amendments:

- Adding a section on Member Qualifications.
- Updating the duties and responsibilities of Members.
- Changing the word "All" to "A Majority" of the members of the Agency shall be independent.
- Changing wording in Separation of Agency and Management that a Member may also be the Executive Director. At present, the wording says a member shall not serve as the Executive Director. See information below.
- Added language to the section on Manner of Voting.
- Updated what the contents of the Agency's Annual Report must include.
- Added a new article on Indemnification of Members, Officers and Employees.

d. Indemnification:

- With respect to Indemnification, Fulton County's Public Officials Liability Policy it has with NYMIR includes the IDA, its members, officers and employees.
- NYMIR added the IDA in 1999 and continues to provide that coverage today.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He reviewed each of the proposed amendments to the Bylaws. He asked if there were any questions. There were none.

MOTION: To approve the proposed amendments to the Bylaws as presented.

MADE BY: Joe Semione

SECONDED: Dave D'Amore

VOTE: Unanimous

2. Real Estate Purchase Options:

a. Background:

- A real estate purchase option is a contract on a specific piece of real estate that allows the buyer the exclusive right to purchase the property.
- Once a buyer has an option to buy a property, the seller cannot sell the property to anyone else. The buyer pays the seller a fee for the option to purchase the property. The option usually includes a predetermined purchase price and is valid for a specified term. However, the buyer does not have to buy the property, whereas the seller is obligated to sell to the buyer within the terms of the contract.
- Options include an agreed-upon price for the property. If the buyer doesn't buy the property within the timeframe specified in the option, the seller keeps the money used to buy the option and the option expires.

b. IDA's Use of Purchase Options:

- The IDA has used Purchase Options in the past.
- Most recently, the IDA executed, in 2020, a Purchase Option with Vireo Health of NY to sell them 92+/- acres of land at Tryon.
- Vireo executed its Purchase Option in 2021 and purchased the 92+/- acres for the price stipulated in the Purchase Option.

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 : Dave D'Amore
SECOND : Greg Truckenmiller
VOTE : Unanimous

TIME : 9:11 a.m.

MOTION : To go out of Executive Session.

MADE BY : Dave D'Amore
SECOND : Greg Truckenmiller
VOTE : Unanimous

TIME : 10:10 a.m.

VIII. NEXT MEETING:

Tuesday
April 12, 2022
8:00 a.m.

IX. CLOSE MEETING:

MOTION : To close the meeting.
MADE BY : Dave D'Amore
SECONDED : Greg Truckenmiller
VOTE : Unanimous

TIME : 10:11 a.m.