

# **FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**TUESDAY  
JULY 12, 2022  
8:00 A.M.**

**PLANNING DEPARTMENT CONFERENCE ROOM**

## **MEETING NOTES**

PRESENT:

JOSEPH SEMIONE, CHAIRMAN  
MIKE FITZGERALD, VICE CHAIRMAN  
TODD RULISON, TREASURER  
JOSEPH GILLIS, SECRETARY (ZOOM)  
DAVID D'AMORE, MEMBER  
SUE COLLINS, MEMBER  
DR. GREG TRUCKENMILLER, MEMBER  
JAMES MRAZ, EXECUTIVE DIRECTOR  
KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH PC  
SCOTT HENZE, PLANNING DIRECTOR  
WARREN GREENE, FULTON COUNTY CENTER FOR REGIONAL GROWTH  
JACK WILSON, LIAISON, ECONOMIC DEVELOPMENT AND ENVIRONMENT COMMITTEE

### **I. MINUTES FROM JUNE 14, 2022 MEETING:**

MOTION : Accept as presented.  
MADE BY : Sue Collis  
SECONDED : Todd Rulison  
VOTE : Unanimous

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

MOTION : Accept as presented.  
MADE BY : Joe Semione  
SECONDED : Mike Fitzgerald  
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: Jack Wilson
2. FCCRG Report: (See attached.) Warren Greene

### V. **OLD BUSINESS:**

#### A. **Fulton County Site Inventory Report:**

1. Status Report:
  - FCCRG's Site Committee met on June 23, 2022 to review final report.

#### B. **Nexus Renewables Project:**

1. Status Report:
  - Nexus is reissuing an RFP to Engineering, Procurement and Construction (EPCs) companies for new pricing.
2. Option Term:
  - At June 14, 2022 meeting, IDA Board agreed to extend Option Term in Lease Agreement to December 31, 2022 contingent upon Nexus paying IDA's legal fee invoice sent to Nexus on March 2, 2022.
  - Jim Mraz emailed Nexus regarding the Board decision.
  - To date, no payment has been received.

### **C. Vireo Health Project:**

#### **1. Sale of Vireo Health to Verano Holdings:**

- Both companies are seeking shareholder approval of the proposed sale.
- Verano has made some changes to the interior layout of the 324,000 sf building currently under construction.

#### **2. Status of Construction:**

- Construction ongoing.
- Exterior walls complete.
- Site work ongoing.
- Work on interior should commence soon.

#### **3. PILOT/Lease:**

- Working with Vireo Health to complete the Lease/PILOT Agreements for its 324,000 SF building.

#### **4. Sales Tax Exemption:**

##### **a. Background:**

1) On July 13, 2021, the IDA Board adopted a Resolution regarding the Vireo Health Project that:

- a) Appointed Vireo Health as the IDA's Project Agent.
- b) Established the total project cost to be \$55,000,000.
- c) Approved granting up to \$2,251,520 in sales tax exemptions.
- d) Set July 31, 2022 as the date when the sales tax exemptions expire.

##### **b. Requests from Vireo Health:**

1) Vireo Health has submitted a formal request to:

- a) Increase the project cost from \$55,000,000 to \$77,465,438.
- b) Increase the amount of sales tax exemptions they can take from \$2,251,520 to \$3,284,535.
- c) Extend the deadline for taking sales tax exemptions from July 31, 2022 to May 31, 2023.

2) Vireo Health is making these requests because:

- a) Unanticipated costs incurred.
- b) Significant escalation in cost of building materials.
- c) Delays in completing project due to proposed acquisition by Verano Holdings and redesigning and re-permitting the project.

##### **c. Deadline for Receiving Sales Tax Exemptions:**

- IDA Board has been asked to extend the deadline for which Vireo can use their sales tax exemptions from July 31, 2022 to May 31, 2023.

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 extending the deadline for which Vireo Health of NY can use their sales tax exemptions from July 31, 2022 to May 31, 2023 and to authorize Kara Lais to submit an ST-60 Form to NYS Department of Taxation and Finance regarding this extension.

MADE BY: Greg Truckenmiller

SECONDED: Mike Fitzgerald

VOTE: Unanimous

d. Public Hearing:

- Vireo's request for an increase in the total sales tax exemptions they can claim will result in providing more than \$100,000 in additional benefits to the project. As a result, a public hearing must be held.
- Public hearing will be held on Tuesday, July 26, 2022, at 10:00 a.m. in Perth Town Hall.
- See attached Resolution.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He referenced the Resolution that was attached. He asked Kara Lais if there was any explanations needed regarding the Resolution. She stated this is the standard resolution the IDA uses to schedule a public hearing.

IDA ACTION:

MOTION: To approve a Resolution authorizing a public hearing with respect to the Vireo Health of New York's Perth Facility Expansion Project in connection with an increase of the authorized sales tax exemption.

MADE BY: Dave D'Amore

SECONDED: Joe Semione

VOTE: Unanimous

**D. Hoffman Carwash Project:**

- Construction ongoing.

**E. Winstanley Enterprises Project:**

- Winstanley's Tryon Technology Park website is now up and running:  
[www.tryontechnologypark.com](http://www.tryontechnologypark.com).

**F. Fulton County Sewer District No. 4: Tryon:**

1. Back-up Generator Project:

- EDP has approved Koval's submittal on generator and automatic transfer switch.
- Both items have been ordered by Koval.

2. Sale of Land to Lott Holdings:

- Waiting for survey to close.
- Lott Holdings has asked if they could start work on the property they are going to purchase from the IDA.

IDA DISCUSSION: Jim Mraz stated that he spoke with Randy Lott who asked if he could get started working on the 13.3+/- acres he would be purchasing from the IDA. He stated he wants to start work on tree clearing and some site grading. He stated that Randy Lott would supply the IDA with an insurance certificate naming the IDA as an additional insured. Jim Mraz asked if there were any questions. There were none.

MOTION: To authorize Lott Holding to commence work on the property they will be purchasing from the IDA contingent upon Lott Holdings filing an insurance certificate with the IDA naming the IDA as an additional insured.

MADE BY: Joe Semione  
SECONDED: Sue Collins  
VOTE: Unanimous

3. Survey:

- At March 8, 2022 meeting, IDA Board authorized Ferguson & Foss to complete survey work on three (3) potential parcels of land at Tryon.
- The three (3) parcels included:
  - Two (2) parcels to be deeded to Fulton County Sewer District No. 4.
  - One (1) parcel to be deeded to Lott Holdings.
- Survey work ongoing.

4. 90-Day Notice to New York State:

- Kara Lais sent the 90-day letter to the State dated June 9, 2022.
- 90-day period ends on September 8, 2022.
- On June 28, 2022, the ABO sent an e-mail to the IDA asking for additional information on the personal property being transferred.
- Jim Mraz provided Kara Lais with a summary of what was being transferred.
- On June 29, 2022, Kara sent the requested information to the ABO in a revised 90-day notice.

**VI. NEW BUSINESS:**

**A. IDA Investments:**

1. Background:

- General Municipal Law authorizes IDA's to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:
  - 1) Special time deposit accounts.
  - 2) Certificates of deposit.

- 3) Obligations of the United States of America
- 4) Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America.
- 5) Obligations of the State of New York.
- 6) Obligations issued pursuant to Local Finance Law '24.00 or '25.00 (with approval of the State Comptroller) by any municipality, school district or district corporation other than the Agency.
- 7) Obligations of public authorities, public housing authorities, urban renewal agencies and industrial development agencies where the general State statutes governing such entities or whose specific enabling legislation authorizes such investments.
- 8) Certificates of Participation (COPs) issued pursuant to GML '109-b.
- 9) Obligations of this local government, but only with any moneys in a reserve fund established pursuant to GML.

- At present, the IDA invests moneys not immediately needed in a money market account earning 0.01%.
- CD's are paying 0.15%

2. Treasury Bills:

- Treasury or T-Bills are short-term government securities with maturities ranging from a few days to 52 weeks.
- West & Company has advised that the IDA can invest funds in T-Bills.
- Rates change daily. Latest rates are:
 

3 months	:	1.75%
6 months	:	2.50%
9 months	:	2.64%
12 months	:	2.88%

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. He stated that Treasury Bills represent an option for the IDA to invest some of its funds not required for short-term expenditures. Mike Fitzgerald stated that, in his opinion, U.S. Treasury Bills would fall under items 3 and 4. He stated, unlike CD's and Money Market accounts, U.S. Treasury Bills are not covered by FDIC insurance up to \$250,000. He stated, however, since the IDA has most of its reserve funds in a single Money Market account, that Money Market account is only covered for up to the \$250,000 maximum, by the FDIC. Joe Semione asked if US Treasury Bills rates change daily? Mike Fitzgerald stated, "yes." Todd Rulison asked if rates get locked in? Mike Fitzgerald stated, "yes." Todd Rulison asked Kara Lais if she was aware of other IDA's that invest in Treasury Bills? She stated she was aware of other IDA's that do so.

Mike Fitzgerald stated that he would be recusing himself from further discussions. He said he has a potential conflict of interest since he is an employee of NBT Bank. Mike left the meeting at 8:19 a.m.

3. Investment Policy:

- The IDA Board adopted an Investment Policy on August 14, 2018.
- The Investment Policy identifies all of the investments the IDA can make. The list is the same list identified in General Municipal Law.
- If the IDA Board desires to invest funds in U.S. Treasury Bills, it is recommended that this Investment Policy be amended to specifically state U.S. Treasury Bills is an acceptable type of investment for IDA funds.

IDA DISCUSSION: Jim Mraz stated that Carol Ellis contacted NBT Bank to discuss with them the process for acquiring Treasury Bills. He stated that working with NBT Bank was preferred since that is the bank the IDA has its checking account and Money Market account with. He stated that the bank official recommended that the IDA's Investment Policy specifically state that it can invest funds into U.S. Treasury Bills/Securities. He recommended that the IDA Board adopt a motion to amend the IDA's Investment Policy to specifically state that U.S. Treasury Bills/Securities would be an acceptable type of investment for IDA funds.

IDA ACTION:

MOTION: To amend Section 10 of the IDA's Investment Policy to specifically state U.S. Treasury Bills/Securities as an acceptable type of investment for IDA funds.

MADE BY: Joe Semione  
SECONDED: Dave D'Amore  
VOTE: Unanimous

IDA DISCUSSION: There was a discussion regarding how to invest funds into Treasury Bills. There was a motion made to transfer a \$1 million from the IDA's Money Market account and invest \$250,000 each in 3-month, 6-month, 9-month and 12-month Treasury Bills. A second was offered on that motion. Before voting on that motion, a second motion was made to transfer \$1 million from the IDA's Money Market account and invest \$500,000 into a 6-month and \$250,000 each in a 9-month and 12-month Bill.

MADE BY: Joe Semione  
SECONDED: Joe Gillis  
VOTE: 3 in favor, 3 opposed

Therefore, the second motion was defeated.

The Board then voted on the original motion:

MOTION: To authorize the CFO to transfer \$1 million from the IDA's Money Market account at NBT Bank into a 3-month, 6-month, 9-month and 12-month Treasury Bills each containing \$250,000 at NBT Bank.

MADE BY: Joe Gillis  
SECONDED: Dave D'Amore  
VOTE: Unanimous

The original motion was passed.

(Mike Fitzgerald returned to the meeting at 8:38 a.m.)

**B. Labor Market Analysis Report:**

1. Background:

- In 2014, Fulton County hired DCG Corplan to prepare a Targeted Industry Analysis for the Tryon Technology Park.
- A component of that Analysis was the preparation of a Labor Market Analysis Report.
- The Report contained key information about the labor market that Tryon is located in.
- The Report was completed in March, 2015.
- The information in this Report is what companies look for when evaluating shovel-ready sites.

2. Proposed Update to Labor Market Analysis Report:

- The 2015 Labor Market Analysis Report is now 7 years old. As such, the information in the report is outdated.
- The Pandemic has also had impacts on the labor market.
- Winstanley Enterprises was contacted to see if they would be interested in having an updated Report prepared to assist in their marketing of Tryon. Winstanley offered its support for preparing an updated report.
- The FCCRG was also contacted to see if they would like to see an updated Report prepared. The FCCRG agreed and offered input on the scope of work.
- DCG Corplan was contacted and asked for a quote to prepare an updated Labor Market Analysis Report.
- DCG Corplan's Quote: \$18,500
- Winstanley has offered to pay for 75% or \$13,875 of this cost. The IDA's share would be \$4,625. IDA would pay cost upfront and then seek reimbursement from Winstanley.
- DCG Corplan requested an upfront payment of 1/3 or \$6,105 with the balance due once the final report was prepared.

IDA DISCUSSION: Jim Mraz reviewed the information on the Agenda. There was a brief discussion on whether or not to ask the CRG to financially participate in this update. After a brief discussion, it was the consensus of all present to have the IDA pay for the local share of this project.

IDA ACTION:

MOTION: Authorize the Chairman to execute an Agreement with DCG Corplan in an amount not-to-exceed \$18,500 with an upfront payment of 1/3 due at the signing of the contract with the balance due once the final report is prepared with the IDA paying the local share of \$4,625.

MADE BY: Sue Collins  
SECONDED: Greg Truckenmiller  
VOTE: Unanimous

## C. Board Training:

### 1. Sales Tax Exemptions:

#### a. Background:

- IDA's are authorized to provide sales tax exemptions to eligible projects.
- Sales tax is currently 8%: 4% is State sales tax and 4% is Fulton County's sales tax.

#### b. Appointing an Agent: Form ST-60:

- As a government entity, an IDA is exempt from paying sales taxes on its purchases. However, IDA's typically do not make purchases for an industrial development project. An IDA typically appoints as its Agent for this purpose a:
  - business or developer,
  - contractor, or
  - subcontractor
- Purchases made by a properly appointed Agent within the authority granted to it by the IDA are deemed to be purchases made by the IDA and are exempt from sales tax.
- An IDA must file with the Tax Department **Form ST-60, IDA Appointment of Project Operator or Agent For Sales Tax Purposes**, each time it appoints an Agent to receive sales tax exemption benefits. (See attached.)
- The IDA must file Form ST-60 within 30 days of appointing an agent.
- If the IDA authorizes an Agent to appoint other persons as Agents of the IDA, the Agent making the appointment must inform the IDA that it has appointed someone as Agent and the IDA must file Form ST-60 within 30 days of the date of the new Agent's appointment.
- In addition, an IDA must include the terms and conditions described in General Municipal Law §875(3) in each resolution or project document that:
  - establishes a project, or
  - appoints an Agent
- Each Agent appointed by an IDA must agree to those terms and conditions prior to receiving any sales tax exemption benefits.

#### c. Amending or Revoking an Agent's Appointment:

- If an IDA amends, revokes or cancels its appointment of an Agent, or if an Agent's appointment becomes invalid for any reason, the IDA must, within 30 days, file a statement with the Tax Department at the address listed on Form ST-60 that identifies the Agent and explains that the Agent's appointment has been:
  - amended, revoked, canceled, or is otherwise no longer valid; and
  - the effective date of the change
- The IDA should attach a copy of the original Form ST-60 filed for the Agent's appointment to the letter.

- d. Recordkeeping and Reporting Requirements:
- An IDA must keep records of the sales tax exemption benefits it provides.
  - It is also required to report the sales tax exemption benefits it provides to an Agent by filing Form ST-60 with the Tax Department within 30 days of conferring the exemption benefit.
  - If the IDA fails to report the sales tax exemption benefits or make records available to the Department upon request, the IDA shall be prohibited from providing sales tax benefits until the IDA comes into compliance with all such requirements.
- e. Annual Compliance Report: Form ST-62:
- An IDA must file **Form ST-62, IDA Annual Compliance Report – State Sales Tax Recapture**, within 90 days of the end of the IDA’s fiscal year. (See attached.) The report must include details of:
    - the terms and conditions of each of its projects;
    - the IDA’s activities and efforts to recapture any State sales tax exemption benefits due; and
    - any other information required by either the:
      - o Commissioner of Taxation and Finance, or
      - o Commissioner of Economic Development.
  - The IDA must file the ST-62 with the:
    - Commissioner of Taxation and Finance,
    - Director of the Budget,
    - Commissioner of Economic Development,
    - State Comptroller, and
    - Board of Supervisors
  - The IDA annually files Form ST-62 in February.
- f. Recapture Requirements: Form ST-65:
- An IDA must recapture any State sales tax exemption benefits that were claimed by an Agent whenever the benefits were:
    - not entitled or authorized to be taken;
    - in excess of the amounts authorized (see ST-340);
    - for unauthorized property or services; or
    - for property or services not used according to the terms of the project contract with the IDA.
  - An IDA must remit recaptured sales tax exemption benefits to the Tax Department using **Form ST-65, IDA Report of Recaptured Sales and Use Tax Benefits**. (See attached.) The IDA must file Form ST-65 within 30 days from when the IDA comes into possession of the recaptured funds.
  - An Agent must cooperate with the IDA in its effort to recapture State sales tax exemption benefits. Where an Agent fails to cooperate, IDAs have an obligation to commence an action or proceeding against an Agent to recover unauthorized sales tax if necessary.
  - Any failure by an Agent to pay over improper sales tax exemption benefits to an IDA could also result in an assessment to the Agent for the State sales tax due, plus applicable penalties and interest. The IDA must cooperate with the Department, for example, by sharing the relevant documents and information in the event that the Department elects to issue an assessment.

g. Agent Activities:

1) Purchases: **Form ST-123:**

- Once appointed, Agents can make purchases to acquire, built, or equip a project exempt from sales tax.
- Exempt purchases are only allowable to the extent provided by the terms of the Agent's IDA project contract.
- To make qualifying purchases exempt from sales tax, Agents use **Form ST-123: IDA Agent or Project Operator Exempt Purchase Certificate**. (See attached.)

2) Reporting Requirements: **Form ST-340:**

- After the end of each calendar year, each Agent appointed directly by an IDA must file with the Tax Department **Form ST-340, Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)**. (See attached.)
- Form ST-340 is used to report the total value of all State and local sales and use taxes exemptions claimed during a calendar year under the terms of the project contract, including the value of the exemptions claimed by:
  - the agent itself; and
  - the agent's sub-agents, contractors, subcontractors, consultants and others, whether or not appointed as agents of the IDA.
- Form ST-340 is due on the last day of February in the following calendar year.
- Agents must file a copy of the ST-340 with the IDA.
- IDA Board must annually review the ST-340 forms to ensure that the Agent is not taking more sales tax exemptions than were authorized by the IDA.

h. Summary:

1) IDA Responsibilities with Sales Tax Exemptions:

- Adopt resolution establishing a project and appointing an Agent.
- File ST-60 when an Agent is appointed.
- File ST-62 every February.
- File ST-65 if recapture of sales taxes if needed.
- Review ST-340 forms.

2) Agent Responsibilities with Sales Tax Exemptions:

- Submit Project Application requesting sales tax exemptions.
- Once appointed as an Agent, start making purchases using ST-123.
- File ST-340 with State and IDA.
- Repay sales tax exemptions if IDA seeks to recapture.
- Keep records.

**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 : Mike Fitzgerald  
VOTE : Unanimous

TIME : 8:56 a.m.

MOTION : To go out of Executive Session.

MADE BY : Sue Collins  
SECOND : Dave D'Amore  
VOTE : Unanimous

TIME : 10:05 a.m.

**B. Air Conditioner for Conference Room:**

MOTION: To authorize the purchase of two (2) portable air conditioner units for use in the Conference Room.

MADE BY: Sue Collins  
SECONDED: Dave D'Amore  
VOTE: Unanimous

**VIII. NEXT MEETING:**

Tuesday  
August 9, 2022  
8:00 a.m.

**IX. CLOSE MEETING:**

MOTION : To close the meeting.  
MADE BY : Sue Collins  
SECONDED : Joe Semione  
VOTE : Unanimous  
  
TIME : 10:06 a.m.