UCIDA

Ulster County Industrial Development Agency

Ulster County Industrial Development Agency
Minutes
January 14, 2015

A regular monthly meeting of the Ulster County Industrial Development Agency was held at 8:00 a.m., Wednesday, January 14, 2015, Karen Binder Library, 6th Floor, Ulster County Office Building, 244 Fair Street, Kingston, NY.

The following agency members were present:

Michael Horodyski	Chair
Floyd Lattin	Treasurer
John Livermore	Assistant Secretary
James Malcolm	Assistant Treasurer
John Morrow	Vice Chair
Mary Sheeley	Member

The following agency members were absent:

Robert Kinnin	Secretary

Office of Economic Development Staff:

Linda Clark
Suzanne Holt
Karl Schlegel

Office of Finance:

Christopher Rioux

UCIDA Attorney and Bond Counsel:

A. Joseph Scott	Hodgson Russ LLP

Additional Attendees:

T. J. Briggs	Ulster County Legislator
Paul Brown	New Paltz
Steven Greenfield	New Paltz
Rebecca Martin	KingstonCitizens.org
Tim Rogers	New Paltz
Jennifer Schwartz-Berky	KingstonCitizens.org
Dan Torres	New Paltz

Chair Horodyski called the meeting to order at 8:00 a.m.

PLEDGE OF ALLEGIANCE

The members of the Agency participated in the Pledge of Allegiance to the flag.

READING OF THE UCIDA MISSION STATEMENT

Chair Horodyski read the Mission Statement of the Agency.

> The mission of the Ulster County Industrial Development Agency is to advance the job opportunities, general prosperity and long-term economic vitality of Ulster County residents by targeting tax incentives, bonding and other assistance to foster creation and attraction of new business and the retention and expansion of existing business.

MINUTES

Motion James Malcolm, seconded by Mary Sheeley, moved to approve the Minutes of the December 10, 2014, meeting. A copy of said Minutes is on file.

Vote: The motion was adopted.

FINANCIALS

Motion: John Livermore, seconded by John Morrow, moved to approve the financials for the period ending December 31, 2014.

Vote: The motion was adopted.

SUSAN ZIMET – TOWN OF NEW PALTZ FEASIBILITY STUDY

Chair Horodyski announced that Susan Zimet, Supervisor, Town of New Paltz, called late yesterday to advise that she would not be attending the meeting.

JENNIFER SCHWARTZ BERKY – KINGSTONCITIZENS.ORG

Jennifer Schwartz Berky addressed the members of the Agency regarding the proposed Niagara Bottling plant in the Town of Ulster. She addressed the various actions that Kingstoncitizens.org have taken in collaboration with a coalition to ask the state to reconsider certain tax incentives and grants to Niagara Bottling. Kingstoncitizens.org was formed ten years ago by a small group of residents, led by Rebecca Martin, with advice and support from Ms. Schwartz Berky and others to increase transparency and civic engagement in local government through education and outreach. In the last decade they have seen many changes in their community; a whole new slate of elected officials in Kingston; many new community based organizations of volunteers; lots of positive developments. They believe that civic engagement is responsible for much of what is happening. They have led this coalition in the last four months because of significant concern over the Niagara Bottling proposal. Members may have seen community protests in the past over various issues, but this one they feel is different. In the case of Niagara, the public and all walks of life and across the political spectrum showed immediate concern over the prospect of selling what may be our most highly valued public natural resource, unless you can bottle air that is, to a private company. People have been concerned for many reasons. There appears to have been many decisions made behind closed doors before the public could weigh in. The amount of water promised posed a threat to the watershed surrounding Cooper Lake; it represented at least 25% of the safe yield of what could be the last remaining water available for any other form of development in and around Kingston. The Environmental Assessment Form filed by the applicant's consulting engineer and adopted by the Town of Ulster had omitted several significant aspects that would have triggered a more detailed review. It appeared that the elected and appointed officials who were supporting this very large project prior to any cost benefit evaluation or thorough state environmental quality review process. Their work has been step by step, to identify and highlight the need for more transparent inclusive process. It is based on what the community, and she means it in the broader

sense, what it wants for itself. They agreed several years ago when they worked on sustainable economic development with Ulster Tomorrow together with you, the Ulster County IDA, a plan that was adopted by the County Legislature that called for a culture of collaboration and identified specific clusters for us to development together proactively. We are asking the UCIDA, the Ulster County government and SUNYUlster, as well as the Regional Economic Development Council, the State of New York and any other decision makers involved in the serious responsibility of economic development to provide them and the public with a thorough set of criteria by which they may evaluate the cost and benefits of proposals such as Niagara. Jobs are very important; but what do we give up in exchange. Should we promise a valuable and potentially scarce public good, our water, to private profit while an aggressive pricing structure that makes the smallest and poorest pay nearly forty times more than the bottler per gallon? Would a less aggressive pricing structure provide the revenue the Kingston Water Department needs to maintain our infrastructure? Would state and local incentives offered more productively to small businesses or to repair infrastructure. Regarding jobs, did you know that in the last two decades 65% of all jobs were created by micro-business and large business created fewest in our country. What smaller, more locally owned business, would grow far more quickly and sustainably with far fewer incentives. How many of Niagara's promised jobs will go to area residents who badly need work. Highly creditable labor studies show about 80% of new jobs created in company relocation to a new site are also transplanted. They would be glad to provide that information. What of the tax liabilities. What is borne by the rest of us and more importantly, what are the potential environment impacts, locally and globally in any proposal that comes before the Agency. They ask that the Agency considers how you decide about the costs and benefits that come before. They ask that in your revision of the Uniform Tax Exemption Policy you consider these and many other factors in your decision to award PILOTs or any other kind of support for projects. They also ask that you make the information clearer to the public through the website and access to your organization upon request from the public. They would very much like to work with the Agency to consider these policies.

COMMITTEE REPORTS

AUDIT COMMITTEE

Committee Chair Floyd Lattin reported that the Audit Committee had not met.

GOVERNANCE COMMITTEE

Committee Chair John Morrow reported that the Governance Committee will have a committee meeting at 4:00 p.m., this Friday, January 16, 2015. Committee Chair Morrow invited all members of the UCIDA to attend the meeting. This is an open meeting.

Committee Chair Morrow requested that each member of the Agency complete the Acknowledgement of Fiduciary Duties and Confidential Evaluation of Board Performance and return same to staff upon completion.

READY2GO

Suzanne Holt reported that no committee meeting was held.

2015 ORGANIZATIONAL RESOLUTION

The following slate of officers was offered for 2015:

Michael Horodyski, Chairman
John Morrow, Vice Chairman

Robert Kinnin, Secretary
Floyd Lattin, Treasurer
John Livermore, Assistant Secretary
James Malcolm, Assistant Treasurer

Motion: James Malcolm, seconded by John Livermore, moved to adopt the proposed 2015 Slate of Officers for the Ulster County Industrial Development Agency.

Vote: The motion was adopted.

Confirmation of Regular Agency Meeting Schedule	8:00 a.m. the second Wednesday of each month
Officers of the Agency	Michael Horodyski, Chairman John Morrow, Vice Chairman Robert Kinnin, Secretary Floyd Lattin, Treasurer James Malcolm, Assistant Treasurer John Livermore, Assistant Secretary
Appointment of Chief Executive Officer and Staff to the Agency	Michael Horodyski, CEO
Appointment of Chief Financial Officer to the Agency	Christopher Rioux, CFO
Staff of the Agency	Ulster County Office of Economic Development
Appointment of Accounting Firm of the Agency	Pattison, Koskey, Howe & Bucci CPAs PC
Appointment of Agency Counsel	Hodgson Russ LLP
Appointment of Bond Counsel to the Agency	Hodgson Russ LLP
Appointment of Bank of the Agency and Accounts	Catskill Hudson Bank
Approval and Confirmation of Agency Policies	Mission Statement Code of Ethics Compensation Policy Defense and Indemnification Policy Enforcement of Agency Projects Policy Fee Schedule Policy Grant Funding Criteria and Application Investment and Deposit Policy Procurement Policy Property Disposition Policy Travel Policy and Reconciliation of Expense Uniform Tax Exemption Policy Uniform Tax Policy Matrix Whistleblower Policy
Appointment of Contract Officer	Michael Horodyski
Appointment of Investment Officer	Michael Horodyski
Appointment of Governance Committee Members	John Morrow, Chair Robert Kinnin James Malcolm
Appointment of Audit Committee Members	Floyd Lattin, Chair

	John Livermore Mary Sheeley
Appointment of Finance Committee Members	Michael Horodyski, Chair Robert Kinnin Floyd Lattin John Livermore James Malcolm John Morrow Mary Sheeley

Motion: John Morrow, seconded by Mary Sheeley, moved to adopt the 2015 Housekeeping Resolution as offered for the Ulster County Industrial Development Agency.

Vote: The motion was adopted.

OLD BUSINESS

Darienlake – Kingston

Counsel Scott reported that there has been no communication from the project applicant's counsel. Counsel will have something more definitive at the next meeting.

Ulster Commons

Counsel Scott stated that there was nothing new to report. Chair Horodyski requested that an update be provided at the next meeting of the Agency.

14 Pine Street

Counsel Scott stated that there was nothing to report. Counsel Scott will send a letter to the project applicant and will report back at the March meeting of the Agency.

NEW BUSINESS

Hudson Valley Economic Development Corporation (HVEDC)

Ms. Holt reported that HVEDC billed Ulster County in the amount of $10,000. In the past the Agency has paid half and the former UCDC, (now UCEDA) has paid half. Ms. Holt stated that HVEDC is the marketing team for the seven county region. Many times New York State feeds the leads that come in to HVEDC. Ulster County interacts with them on a lot of potential new businesses and also they have a number of initiatives, for example the Food and Beverage Hub, etc. Their philosophy right now is collaboration with the businesses within the seven county region to foster growth that way. They are a useful partner. There is a board that meets every month. Ms. Holt and/or a member of her staff attend on behalf of Ulster County.

Motion: Floyd Lattin, seconded by Mary Sheeley, moved to pay one-half of the 2015 membership fee in the amount of $5,000 for Ulster County's membership in the Hudson Valley Economic Development Corporation.

Vote: The motion was adopted.

Authorities Budget Office Policy Guidance – Issued January 13, 2015
Restrictions on Grants and Loans Made by Public Authorities

Chair Horodyski brought to the attention of the members of the Agency the newly released restrictions on grants and loans made by public authorities by the Authorities Budget Office. A copy of which is on file. Currently, we engage people in Contract for Services, not grants, what we believe to be consideration on both sides when we provide funding. This speaks pretty clearly that IDAs are not allowed to grant or loan money. Deferring to Agency Counsel A. Joseph Scott, Chair Horodyski asked him to review what has been done in the past from a strategy standpoint.

Counsel Scott stated that with this pronouncement, even though it is described as new at the top, it is really a continuation of discussions and policies from the ABO and the Office of the State Comptroller (OSC) over the last ten to fifteen years. It has created some tension in the communities of IDAs because IDAs have monies/funds and many IDAs have loan programs and flies directly in the face in these legal pronouncements. Many IDAs also have grant programs. Again it flies in the face of both the formal and informal pronouncements of the OSC and the ABO. Frankly, it is a question of interpretation. It has not been interpreted by any court in terms of the powers of IDAs to do this. What they have tried to do to protect their clients with respect to these pronouncements is to structure the documents as a Contract for Services as opposed to an enumerated Grant Agreement. The Contract for Services provides for consideration on our part and consideration on the part of the recipient. There is specific language in the IDA statute empowering IDAs to enter into contracts so that is frankly what we are hanging our hat on. Again, there has been no court case reviewing this. It is a question of dealing with what we think are very restrictive interpretations on the part of state regulators in dealing with the ongoing business and the ongoing demands on IDAs to provide economic development services. Another element that they have interjected to address this issue is that the CRCs that have been created have broader powers than the IDAs. What they have been doing is some instances, is structuring grants and/or loans through CRCs. That might be something that this IDA may wish to consider on a going forward basis. It may be something that may be looked at the Governance Committee level in terms of reviewing it and making some recommendations.

Chair Horodyski asked if Counsel had a white paper that details the differences between the Capital Resource Corporation and the IDA.

Counsel Scott responded no, but they could certainly prepare one easily.

It was unanimously agreed that that would be very helpful.

Mr. Floyd Lattin asked if this was coming out from the Attorney General.

Counsel Scott responded that this is the Authorities Budget Office which is a state created entity that was created as part of the public authorities accountability act. It is another regulatory office. The other regulatory offices are the Office of the State Comptroller and the Attorney General's Office.

Mr. Lattin stated that if the Attorney General is not moved to enforce this interpretation?

Counsel Scott responded that is correct.

Mr. Lattin asked if there any guidance from his office as to his intentions to do this.

Counsel Scott replied that typically you see enforcement if you will, if an IDA is audited by the Office of State Comptroller they may be "written-up" in the exit audit. We see that you have done grants. We don't see any authority for you for doing so and we would suggest that you not do that in future. That is the extent of the policing action if you will with respect to enforcement of this. With all due respect to the state regulatory, oftentimes what happens and our friends in the media are always looking to report on IDA's actions, the headline is "OSC is Critical of IDA Action". While it is not legally problematic for the IDA, it certainly is to be blunt, a political embarrassment. Some of their clients have a zero tolerance for that activity so they cut this off. That unfortunately takes a tool out of your toolbox with respect to assisting local business.

Mr. James Malcolm stated that it is virtually impossible to get in a dialogue with the local media. People are going to write what they want to write.

PUBLIC COMMENT

Chair Horodyski opened the meeting for public comment. He announced that comments will be limited to three minutes per speaker.

1. Rebecca Martin, a resident of Kingston, addressed the members of the Agency. She stated that with reference to the comment about the media it was her opinion that sometimes it was very difficult to find information on the web as a citizen to be able to identify or search and/or understand what the IDA actually does or all of the options there are. She was here to ask a question. She asked what was the discretionary decision that the IDA would make in the way of the Niagara Bottling proposal.

Chair Horodyski declined to answer the question. The UCIDA has not received an application from Niagara Bottling.

Mr. Martin continued that she knew that it was not on the table. The reason she asked is because there is confusion and perhaps there is a way to clarify that on the website at some point when the public is involved.

Chair Horodyski responded that the process would be Niagara, or any business, would apply for benefits. The UCIDA would host a public hearing in the community that is affected by that project; the Agency would take the comments, not saying that those comments are the "end all – be all" of the discussion. The UCIDA has an Uniform Tax Exemption Policy that the Agency follows whereby we try not to bring in emotions into the decisions. We try to use the Uniform Tax Exemption Policy and the Points Calculator to clearly identify projects that warrant tax incentives. From that public hearing, those comments are taken, the Points Calculator and Application are reviewed and the project in general is reviewed and from that point a decision is granted. We work off that Uniform Tax Exemption Policy, which means a Deviated PILOT – not a normal PILOT. It can be among other things, an extension of term or a more aggressive or less aggressive tax structure that would normally be provided under the Agency's regular Uniform Tax Exemption Policy. Those instances, per policy, we are not required to do so per the regulations, but per our own policy in Ulster County, the Agency would go back to each affected taxing jurisdiction. In Ms. Martin's case it would be the City of Kingston, Kingston School District, Town of Ulster and the County and see what their thoughts were on a specific arrangement. If there is dissent there, we would normally not entertain that PILOT. The Uniform Tax Exemption Policy is on the website.

Mr. Malcolm stated that any document may be FOILED.

Ms. Martin asked about the Start-Up New York Program. She asked how clear is the UCIDA on how that program works.

public that was witnessed to this, there was a tremendous amount of demonstrably inaccurate information presented and so that is what will come to you when it comes to you. On top of everything else, he was going to raise the question that the information that the Agency is going to receive will be challenge for its accuracy. They are going to ask for reimbursement, but it is full of misinformation. He believes that Dave Clouser was trying to encourage the town board to actually back away from this proposal, because in two separate points in his presentation. At one point he says because it turns out that the village was planning to expand their own capacity that maybe the town could "tie into that" instead of this particular location. Dave Clouser said to the town board, the town and village can get together and use that plant. He thought that was a great gesture and he really hoped that works out. A little bit later in his slide about next steps he said that we suggest that collaboration with the village. That is going to be in his report. He is taking that to be that Dave was offering them a way to get out of this problematic feasibility study that they are about to propose to the Agency. The misinformation that it contains is something else that is going to be challenged. The Agency would theoretically be accepting as proper, as submitted, because you do not know that it contains this misinformation. It is going to be challenged on that basis. In addition, there was a long presentation that was made that he believed that the Agency was made aware of because there was a quote from the chair in the newspaper referring to it about the transparency of the process. They were, unfortunately, subjected to a three hour presentation before public comment was allowed. This stack of documents were distributed to the public that night. He read all those documents and he heard the presentation and he is going to turn this over to this organization. Not once in this entire set of documents, nor the presentation that accompanied it was the location ever mentioned; not a single time. They were nice enough to staple to the top of it the school board's resolution of opposition to the location and the steps that the school board plans to take to oppose it. Even though he is not here to speak on behalf of the school board, this is an officially adopted resolution that appears on their website. It was presented by the town board, not the school board in their documentation. In summation, he will be presenting the towns so called transparency; it includes a copy of their shovel ready grant application that should make it clear that they are not actually delivering to you the deliverable that they need to deliver to get their reimbursement according to the terms of this contract. They are not giving you a viable site plan. The letter that Dave wrote about how he came about the alternative property and he is going to ask for the time being that no matter when Susan arrives, no matter when a feasibility study gets to your desk that you advise the Supervisor and the Town Board of New Paltz that you are unable to reimbursement them at this time because of matters that require further investigation about whether the deliverables meet the standards of the contract.

There being no further requests for the Privilege of the Floor, Chair Horodyski closed the Public Comment section of the Agenda.

ADJOURNMENT

Motion: Mary Sheeley, seconded by Floyd Lattin, moved to adjourn the meeting

Vote: The motion was adopted.

The meeting was adjourned at 8:52 a.m.

Respectfully submitted,

John Livermore
Assistant Secretary