

**Ulster County Industrial Development Agency
Minutes
February 8, 2012**

A regular monthly meeting of the Ulster County Industrial Development Agency was held at 8:00 a.m., Wednesday, February 8, 2012, Conference Room 108, Business Resource Center, Development Court, Kingston, NY.

The following agency members were present:

Paul Colucci	Assistant Chair/Assistant Secretary
Robert Kinnin	Assistant Chair/Assistant Secretary
Michael Horodyski	Assistant Chair/Assistant Secretary
John Morrow	Secretary
David O'Halloran	Chair
Steve Perfit	Treasurer

The following agency member was absent:

James Malcolm	Assistant Chair/Assistant Secretary
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UCDC Staff:

Linda Clark
Lisa Fadelici
Lance Matteson

UCIDA Attorney and Bond Counsel:

A. Joseph Scott	Hodgson Russ LLP
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Additional Attendees:

Steve Aaron	Birchwood Village
March Gallagher	Representing the Ulster County Executive's Office
Shayne Gallo	Mayor, City of Kingston
William Kemble	Daily Freeman
James Maloney	Assessor – Town of Ulster
Nancy Marco-John	Birchwood Village
Michael Oates	President, Hudson Valley Economic Development Corporation
James Quigley	Supervisor – Town of Ulster
Hugh Reynolds	Kingston Times
David Scarpino	Sr. Vice President/CFO HealthAlliance
James Shaughnessy	President, Board of Education, Kingston City Schools
Gary Tomczyk	Treasurer, Kingston City Schools

Chair David O'Halloran called the meeting to order at 8:02 a.m.

PLEDGE OF ALLEGIANCE

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

PUBLIC COMMENT

Chair O'Halloran opened the meeting for Public Comment. There being no individual(s) requesting the privilege of the floor, Chair O'Halloran closed the Public Comment segment of the Agenda.

AMENDMENT TO AGENDA

Motion: Robert Kinnin, seconded by Paul Colucci, moved to amend the Agenda to add, immediately following New Business, an Executive Session to discuss personnel matters.

Vote: The motion was adopted.

MINUTES

Motion: John Morrow, seconded by Michael Horodyski, moved to approve the Minutes of the January 11, 2012 meeting. A copy of said minutes is on file.

Vote: The motion was adopted.

FINANCIALS

Motion: John Morrow, seconded by Paul Colucci, moved to approve the financials for the period ending January 31, 2012. A copy of said Financials is on file.

Vote: The motion was adopted.

It was noted that the Birchwood Village Accounts Receivable in the amount of \$1,000 had been received several days ago.

HUDSON VALLEY ECONOMIC DEVELOPMENT CORPORATION

Michael Oates, President, Hudson Valley Economic Development Corporation (HVEDC) thanked the members of the Agency for the opportunity to address the members of the Agency. His comments, included, but were not limited to:

- The importance of regionalism and why the state is moving towards a regional approach in economic development
 - Governor's approach was to create 10 regional councils throughout the state with the idea that economic development would come up from a local level on a regional basis.
 - This is the second year of the regional approach.
 - The Governor has taken all economic development dollars within the state, put it in a "contest approach" for regions to apply for funding out of a \$800 million dollar pot of money which is a combination of 10 or 11 agencies within the state (i.e. housing/various urban development projects) and a \$200 million pot of money that regional councils are competitively trying to secure funding for priority projects.
 - This is a game of regionalism. One of the things that we do as a region is that we are ahead of the game by working together by identifying important industry clusters.
- Cluster development and how HVEDC is marketing the Hudson Valley and targeted the cluster industries.
 - Identification of key industry clusters which include Distribution/manufacturing, Semiconductors, Green Technology, Film Production, Financial Services, Food & Beverage, Tourism/Hospitality, Datacenters; Biotech & Pharmaceutical.

- Marketing strategy that has been put in place last year is an innovative approach via direct mail, email blasts, trade shows, etc.
 - Lance Matteson featured in the Green Tech/Solar Industry in Ulster County video
 - Tourism, Food & Beverage and Distribution are a large components within the county
- Food and Beverage Alliance Kick-off
 - Recent initiative that was kicked off last week at the Culinary Institute of America
 - 220 companies within the Hudson Valley represented to begin a dialog of looking to expand and create programming to expand that industry.
 - Highly successful event with the hopes of developing out a list of targeted programs that can support those companies.
- Property Showcases in Ulster County and how HVEDC can assist
 - Working closely with Lance Matteson and his team to identify and showcase those sites on our websites and social media outlets.
- Shovel Ready Program as a 2012 initiative.
 - New campaign to create a system that can identify properties on the market and have answers ready that the site selectors are requesting in advance.
 - Committee formed with representatives of all the Hudson Valley counties.

Chair O'Halloran informed the members of the Agency that previously the Agency had committed each year \$10,000 to HVEDC, which is a match to UCDC, which supplies \$10,000.

Lance Matteson informed the members of the Agency that leads were received on a fairly regular basis from HVEDC which are anonymous leads that are available to all members of HVEDC. We can propose specific marketing projects or needs to HVEDC. The whole concept is to leverage resources that we don't have sufficient to do by ourselves.

Steve Perfit stressed the importance of the Hudson Valley Film Commission, supported by letters of support by New York State, and the need to make a concerted effort that Ulster County is not the only county supporting the Film Commission. If the burden was shared for this fabulous industry it would be wonderful. HVEDC should have a consortium with all participating counties to exchange ideas on how to do business.

Michael Oates stated that HVEDC has worked with Pat Kaufman, head of the Film Office for the Governor and Laurent Rejto of the Hudson Valley Film Commission. It is HVEDC's role to support Laurent Rejto and his organization because HVEDC sees the value in filming in the Hudson Valley. HVEDC has been working with Senator Gillibrand's office to create a forum throughout the Hudson Valley to talk together to make communities more film friendly.

Chair O'Halloran stated that what is needed is someone to help with the "ask" for funding in other counties.

Mr. Oates responded that he would be happy to assist. He thought there were opportunities available within the region.

Robert Kinnin asked if the \$20,000 that HVEDC is seeking from Ulster County was the universal amount of support from all counties within the region.

Mr. Oates responded yes, all counties participate at the \$20,000 level; however, other board members do come in at a higher level, i.e. Central Hudson, Orange and Rockland, Phillips, Pfizer, Pepsi, regional banks, etc.

Mr. Kinnin asked if Empire State Development contributed.

Mr. Oates replied no. No money comes from Empire State Development. All the money that comes from HVEDC comes from its investors - no state funding.

Paul Colucci asked what portion of the annual budget was salary.

Mr. Oates responded that salary and overhead was about 35-40%. There are only three people in the organization. Their offices are located in New Windsor at Steward Airport.

Chair O'Halloran thanked Mr. Oates for attending and giving an overview of the Hudson Valley Economic Development Corporation.

COMMITTEE REPORTS

Governance Committee. Committee Chair John Morrow reported that the members of the Governance Committee will be meeting at 9:00 a.m., February 14, 2012.

Audit Committee. Committee Chair Steve Perfit reported that the committee had not met. They would be meeting at the end of the quarter.

Ready2Go Committee. Lance Matteson reported that the committee had met via conference call last Monday. The committee is very close to having the legal paperwork ready; the legal Agreement with the consultant engineer and a draft agreement with the owner. They are very close to securing a signature on the first project and getting a deposit. The funds are in place, not only from the UCIDA, but from Central Hudson. The committee is eager to get this moving. Another solicitation of sites will be forthcoming, but first they want to get some tangible milestones under their belt on the first project.

RESOLUTIONS

Kingston Regional Senior Living Corporation – Woodland Pond at New Paltz

RESOLUTION AUTHORIZING AN AMENDMENT TO THE INDENTURE AND EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH TAX-EXEMPT VARIABLE RATE DEMAND CIVIC FACILITY REVENUE BONDS (KINGSTON REGIONAL SENIOR LIVING CORP. – WOODLAND POND AT NEW PALTZ – LETTER OF CREDIT SECURED PROJECT), SERIES 2007C IN THE AGGREGATE PRINCIPAL AMOUNT OF \$44,700,000, ISSUED BY ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY.

David Scarpino, Sr. Vice President/CFO of HealthAlliance and Woodland Pond as a member of HealthAlliance, addressed the members of the Agency. Woodland Pond is a CCRC in New Paltz with three components: independent living, skilled health center and memory care assisted living. There are two financial structures. Currently there is a letter of credit that expires October, 2012. In addition, all the entrance fees for the independent living cottages/apartments, those entrance fees, according to the bond documents, are earmarked to go to Sovereign Bank to pay down the variable rate demand bonds. Because of the economic environment, the fill-up has been slower than expected. They are now faced with a bond payment, an interest payment to the bond holders, March 15, 2012 in the amount of \$2 million and cash right now is inadequate to pay the bank and to make sure that the bond holders are made whole on their interest payments. They are requesting Sovereign Bank to (1) allow a reduction of the entrance fees because the housing market has been depleted in terms of people willing to move in. The bank has to permit us (as does the state) to reduce the fees because that money goes to them; (2) allow us to move \$1.1 million in entrance fees that would be earmarked for them, to be moved into an operating account so that we can pay the bond holders in

March; and (3) ask for an extension on the letter of credit for one year. These "asks" will go to the Credit Committee this Friday. The bank has been working positively with us and a positive outcome is expected.

Counsel Scott stated that what Woodland Pond was experiencing locally in the slow-down in the purchase of units and payment of entrance fees occurring in accordance within the original schedule is not unusual given the real estate market. What is being asked here are some amendments to the original documents. We responded by preparing the resolution for consideration by the members. The issue that Woodland Pond is confronting is that the bond payment is in March and they expect a review and approval by the bank in the next several days. What the Agency is doing is giving consideration to their request, subject to the bank's review and consent, but by considering it today that makes it timely for taking action in advance of the large bond payment.

Paul Colucci asked if there was any way to confirm that Woodland Pond was compliant with their PILOT Agreement.

Counsel Scott stated that he would confirm this.

It was unanimously agreed that the fee for this transaction would be \$1,000.

Motion: Steve Perfit, seconded by John Morrow, moved to approve the resolution with the condition that the applicant was in good standing with their PILOT Agreement.

Vote: The motion was adopted.

Birchwood Village

RESOLUTION AUTHORIZING THE TERMINATION OF THE PILOT AGREEMENT IN CONNECTION WITH THE BIRCHWOOD VILLAGE LIMITED PARTNERSHIP PROJECT.

Chair O'Halloran stated that Birchwood Village was identified as "not in compliance" with PILOT payments in 2011. Two months ago a Notice of Default was issued. Outstanding liability tables were passed out to the members of the Agency. A copy of said documents is on file.

Steve Aaron representing Birchwood Village addressed the members of the Agency. He stated that he had no quarrel with this board. In 2004 he and then Mayor Sottile sat down in 2004 and started to discuss the possibility of building some additional affordable housing in the City of Kingston. At that time, the focus was senior housing. It was at that time there was significant discussion about workforce housing. Workforce housing is called, by certain developers, people who are at the lowest end of the income spectrum or possibly not even working. That is a fallacy in the way the program is structured because the point system allows for more points if you get into the lower income bands. It is a "push/pull situation" to get sufficient points when you go to put your competitive application before the state. When you get down into the lower income bands you might be serving people who are working, you could be serving people who are not working, however, if you want to get funding you need to get the points.

The bottom line was that the Mayor then suggested the need for working family housing in the City and in the County. He convinced Mr. Aaron that rather than do senior housing we should do this type of housing. Not exactly his business model. He saw the value of it and the benefit to the community. During this whole process, he was asked to provide an economic development study to support the theory that working family housing is a tool in the economic development toolbox. During that same period of time he sat on the Ulster County Housing Consortium with Chester Straub the then President of UCDC. Significant conversations about workforce housing and economic development began and what role the county could play vis-à-vis the UCIDA. A successfully negotiated PILOT Agreement with the City of Kingston was reached. It was approved by the Common Council.

Affordable housing does not work without some sort of a PILOT; whether it be a PILOT like we did in the Town of Esopus under Article 11 of the Housing Finance Law where we created a Housing Development Fund Corp. which gave the necessary legal exemptions. The PILOT that was negotiated with that town board was a legal PILOT; or whether it be this very unique way we approached this particular project, Birchwood Village, where we actually used the UCIDA's inducement in order to support the PILOT. It is important to say today that we negotiated a PILOT with the City of Kingston, passed by the Common Council, and that PILOT would have represented approximately \$50,000 per year in total payments to the City, County and School District. It was done with the consent of the then Mayor and Superintendent as to how that PILOT was to be split. They did it pro-rata with what the school district would have gotten percentage wise if we were just a regular income producing property.

Ever since the re-val, Mr. Aaron has been in touch with the UCIDA representative ... since the property went to under a \$2 million dollar assessment all the way up to an \$8 million investment. The current assessment at Birchwood Village puts us in a situation that we are assessed higher per unit than all the market rate housing in the city of Kingston, including those with swimming pools and tennis courts. There is an assessment issue out there; it appears not to be an UCIDA issue, we were told that this was something that had to be worked out with the city assessor. Stepping back again for history sake, whatever assessment the city gave us at the time we agreed to do the UCIDA inducement, and by the way we did not take your bonds, all we did was work through the process. It helped the county show that there was an opportunity for the county to participate in economic development vis-à-vis Birchwood Village and its workforce housing component. We could have gotten the necessary tax exemption status again through this Article 11 process, and sales tax exemption and everything else flows through that, but again because we thought we were entering into a real partnership with the UCIDA we opted to participate and cooperate and pay in excess of \$130,000 in UCIDA inducement fees. Everything was working fine until the re-val; there were no issues. The re-val took our assessment and literally tripled it. They attempted to negotiate a resolution with the then assessor. She was not available for those discussions and unfortunately and those that know how tax challenges works, "snooze you loose". We did challenge the assessment, Board of Assessment Review which basically said no. We filed the necessary Article 7s; one of the Aldermen was able to get us a meeting with the assessor. We did have conversation with her about the assessment being grossly overstated. She conceded that that was correct and she lowered it, however, she did not lower it to a point to where it was economically feasible for the project.

Chairman O'Halloran stated that there are three tax years that are in delinquency ... 2009, 2010 and 2011. It was his understanding that 2009 has been grieved and denied; is 2009 the one you did not appeal?

Mr. Aaron responded that 2009 was the one that they did appeal. It was denied not on the merits. The Judge said that there was an arbitration clause in the UCIDA PILOT – arbitrate. That is currently under appeal.

Chairman O'Halloran stated that '09 is under appeal and 2010 was grieved, denied and you did not appeal. Is that correct?

Mr. Aaron appears that '10 is a problem. It is suggested that if the Judge's decision about arbitration is correct, '10 could be covered in arbitration.

Chair O'Halloran that is your basis for not paying it at this time?

Mr. Aaron responded no.

Chair O'Halloran asked what is your basis for not paying – it's not under appeal, not under grievance at this time. It is just an owed tax. What is your basis for not paying the \$76,000 for 2010?

Mr. Aaron responded that part of the reason that he is here today is to offer some sort of payment plan, or some good will gesture on his part to try to mitigate the problem by paying something.

Chair O'Halloran responded that you do understand that unlike taxes throughout the rest of this community where, for example, a homeowner or a local business does not pay their taxes in 2009, 2010 and 2011, those taxing authorities, the school district and the town/city you reside, would be made whole by the County of Ulster, who would then be made whole by the tax sale process. In those cases there is a mechanism. When you are in a PILOT Agreement the taxing authorities, Ulster County itself, City of Kingston and the Kingston City School District have holes in their budgets that are not filled by anyone, so right now you have potentially teachers laid off, fire departments and pot holes that can't be filled, because no one is making your holes in the budget filled. Taxing authorities are required to have balanced budgets; they can't have debt and deficits like the federal government. They are stuck. You have exhausted your legal appeals and rights for 2010, why haven't you paid that bill?

Mr. Aaron replied that assuming the Judge is correct and this is not something that is subject to a normal tax challenge process Article 7 and in fact should be arbitration then it takes this out of that arena now as to you should pay and if you win you get it back. The other point, recognizing that budgets are in trouble, a number of public workers live in our facility, as well as people who are clients of Gateway, etc. To that end, we do have a unique situation here as we are serving some of the clients you just mentioned. The most important thing, it is like going into a hardware store and they want to show you that you are getting a deal and they mark it up 100% and then mark it down 50% and say look at the bargain I'm giving you. The re-val is clearly flawed; there is no one that can argue in a court of law, an assessment review board or the court of public opinion, you can't have affordable housing going from \$2 million to \$6 or \$8 million overnight and then dropping it down again to \$2 million. There is something wrong with the assessment process as it has been applied.

Chair O'Halloran stated the other point is that you weren't here complaining to us during the 100% exemptions. Because the UCIDA PILOT Agreement provided 100% exemption of taxes for 2006, 2007 and 2008 and all you had was your original land taxes at that time. You received 3 years of 100% benefit, which I assumed that you had a tax rate built into your affordable housing that you have been putting away to pay bills as they came due. It is hard for us to sit here today knowing that not one penny has been paid towards these bills, especially 2010. He would accept arguments of why when you are in legal fight, why it is not in your best interest to pay a bill. But 2010 is not a legal fight.

Mr. Aaron responded that there is an appeal of the Judge's opinion. We are saying we should be in court. The Judge is saying no you should be in arbitration.

Chair O'Halloran responded isn't that for 2009?

Mr. Aaron replied no this would be going forward. We filed an Article 7 for 2011; we brought in different counsel Not filing for 2010 was prior legal counsel's law office failure. Now we go ahead to challenge 2011, right now the city, even though we have had some substantive meetings and were heading towards a resolution, now counsel has recommended to the city that it file a motion to dismiss our Article 7 reciting the arbitration clause in the UCIDA PILOT as the basis for that. We are all in favor of resolution and whether it comes by arbitration or whether it comes perhaps with me spending a little more time with this board to discuss how we can work together to come to a resolution. He was sure that the City did not want to own Birchwood Village.

Chair O'Halloran asked Mr. Aaron if he had a payment plan or offer for the Agency today to consider.

Mr. Aaron responded that he did not come prepared with a payment plan, but that he will. He did make an effort to make a payment on these tax years even though they were in litigation and unfortunately the city would not accept it.

Mr. Perfit stated that he deals with a lot of commercial clients and various types of housing. He had a document from Rockland County, a big client of his dealt with the IDA with a ten year IDA and they had to lay off their people and close that after seven years. The county IDA encouraged the county taxing authorities to end the PILOT and to settle with all the taxing authorities. His understanding is once it is closed is that there is no retro-activity. Once it is settled and it is done, you can't go back to change your assessment. If it is wrong, it is up to the courts to decide; we are not the courts. He was looking at a seven year PILOT, the first four years you paid "zippo" in taxes. The past three years, with interest and penalties, \$331,000, that works out to \$45,000 per year, and maybe you can negotiate the penalties somewhat. Why don't you just make a deal and pay it up.

Paul Colucci in referring to the Comparative Assessment of Apartment Complexes in Kingston, remarked that it does not indicate how many units are in each one of the projects.

Chair O'Halloran responded that it is a per-unit cost; it doesn't say how many units.

Mr. Colucci replied you don't give us the total units on how you arrived on your price?

Mr. Aaron responded that these complexes are amenity rich and are in better neighborhoods.

Mr. Aaron stated that he understands that today there is a possibility that the Board may take action in revoking the PILOT Agreement. What he read in the newspaper was that he would have 120 days which would perhaps give us an opportunity to work something out. We don't think that revoking the PILOT is going to make this any easier or better. We think it only makes it worse and more difficult to make a resolution. He respectfully requests the board, what he believed was the original intent, which is to give him the 120 days whether the 120 days begins from the prior board meeting or today. He respectfully requests that the board provide additional time. He stated that he did receive a letter from the City suggesting that we contact them to discuss a payment plan, directing him to Corporation Counsel. He did not believe that anyone was in peril, other than the residents that are living there.

Mayor Shayne Gallo stated that it was true our situation is that we have to make the other taxing authorities whole. In 2010 the City had 110 homes in foreclosure and out of those 110 homes, he believed they took 40 or 50 "in rem" procedures. January 6, he believed they had over 50 scheduled to be taken "in rem". He believed that it was down to 30 because the balance apparently have paid their taxes that were owned and due. You hit it on the head, if we don't collect those tax dollars under this agreement, then he has to make some tough decisions with respect to budget ... i.e. who he is going to layoff, what services he is going to discontinue, etc. With respect to the comments made by Mr. Aaron of the legal matters that are currently in the third department on appeal. The city motioned to dismiss; in 2009 the decision was to go to arbitration with regard to the issue. Mr. Aaron said it best earlier, you snooze you loose. You should have gone to arbitration then. In 2010 there was no claim filed. So now we are in appeal, and counsel has advised to move to dismiss the appeal for the failure on the part of Mr. Aaron for failing to arbitrate in a timely manner. The other issue as part of our motion to dismiss is that Mr. Aaron did not raise in the lower court proceeding the application of 581(a) to the PILOT. These are the two issues we are raising in this appeal and in the motion to dismiss. It is not accurate what Mr. Aaron represents about the legal proceeding in play.

Chair O'Halloran asked if what you are talking about was just for 2009.

Mayor Gallo confirmed that. Prior to this board issuing the default notice, there was substantive discussion, with an offer on the table; it was unacceptable. He stated that he has a fiduciary duty to the taxpayers of the City of Kingston

for the reasons stated earlier. In good conscience it would be unconscionable to accept an offer of \$50,000 to resolve this matter. Mr. Aaron was also advised with respect to the application of 581(a) at the December meeting, that the City would be willing, with the assessor and our outside counsel, to discuss and fairly consider the application of 581(a) from 2012 on, not retroactive; not simultaneously with the PILOT. So for all those reasons, the City has no alternative but to move to dismiss the appeal and hope that this board does the right thing on behalf on all those citizens and local businesses in Kingston who pay their taxes. Another point that was just brought to his attention, for 2012 Mr. Aaron is paid in full for Chambers, but none the less he is disputing same. It is interesting; in another taxing jurisdiction he's paid it in full, but he is disputing it. The City of Kingston would appreciate it if he would do the same to make the City taxing authority whole. He certainly hoped that this board does the right thing with this issue because it is a very serious issue and it does affect his budget and affect the well being of the city.

Mr. Perfit asked if there was an absolute time limit on this and we stuck to whatever we said in the past would that be a course that you could work out an agreement or do you think no agreement is possible.

Mayor Gallo responded that if this board does extend, or provide a time limit for that purpose, if the offer is in the best interests of the City of Kingston and the assessor, outside counsel and corporation counsel will agree, than perhaps we can work it out. But at this point, given what the background is, given what the offer that is on the table, given the matter in which this has been handled at this point there will be no discussion, it is in the courts. It is on for oral arguments in March and that is where we are at.

Mr. Perfit stated that we are not the decision maker on the issues, we are just the decision maker to terminate the PILOT or not.

Mr. Aaron stated that he has obtained a copy of correspondence between counsel and he admitted that the letter was unartfully written at best. The offer was not \$50,000. In reading this letter, he would have come to the same conclusion. They had taken the position throughout this entire process, based upon opinion letters from other counsel, that the PILOT Agreement is the method for payment and the amendment to the real property tax law, 581(a), is the instruction to the assessor as to how to assess. We don't believe that 581(a) methodology of assessment and IDA PILOT are incompatible. Our offer to you and it wasn't on that day, it was after, was kind of along the lines of what Chairman O'Halloran had suggested. We absolutely believed that 581(a) applies. In a way, Mr. Maloney and I have had some conversation about this. When he first read the judge's opinion he asked if we were going to appeal this. This becomes the presiding future IDA affordable housing, should an IDA get involved in affordable housing anywhere in the state, this could be the benchmark decision. Yes, of course, we have to appeal it. We don't agree that it was not properly pled. But then again the attorney may have made an error. We said we were prepared to pay whatever 581(a) numbers are ... somewhere in the neighborhood of \$80,000 ... and in a good faith gesture, whether it be because we concede that 2010 might not be in play, again we have to have arbitration in order to get 2010 back in the picture, or just in the interest of trying to resolving this in everyone's best interest the offer was to add \$50,000 to whatever we believed we owed under the UCIDA PILOT.

Mayor Gallo responded them why would we apply 581(a)'s application when you didn't raise it in the lower court procedures. He was not gong to debate this; he has made is position clear.

Mr. Gary Tomczyk, on behalf of the City of Kingston School District, stated that they had turned over the 2011/2012 school bill to the city on January 10th and that number is not included here. He also stated he is also the tax collector for the school district, he receives the calls from the senior citizens crying that they are going to loose their house, and the first thing they ask, can you take payments, can you help me in anyway, they are willing to pay their share as they go along. I tell them once it gets to the city and/or county they can work with you. These poor people realize that they

have a tax responsibility; they are willing to pay their share as they go along. I can't expect to tell them, no don't pay it because someone else is getting away without paying a dime. It is very difficult.

Mr. Kinnin asked how much the tax bill was that was just turned over to the City.

Mr. Tomczyk responded \$51,549.08.

Chair O'Halloran addressed the members of the Agency, he wanted to remind the members that as their Chairman, he works with these taxing authorities. It is very difficult when you come to a tax authority to talk on a project which we believe in for economic development, which can bring jobs and investment into the community and on their backs are tax bills to constituents and the members of their community. We are asking them to consider deviated PILOTS, we are asking them to agree to our adopted PILOTS, sales tax exemptions and mortgage recording exemptions. Five years ago this was done by an UCIDA board when they asked for this particular PILOT, in addition to sales tax exemption through a lease back program, mortgage recording tax and these communities accepted that because they too believed in economic development. The whole reason we, as a board, chose to take this path in enforcing the default and enforcing the obligations of the PILOT Agreement is because we need to be able to knock on these taxing authorities' doors and ask for their support in what we all believe - which is economic development in Ulster County. It is vital that we take responsibility of the collection side of this as well. It is one of our responsibilities, if we are going to be in good faith, asking for help in the future in economic development in these communities.

Mr. Colucci asked if the Chair could bring the agency members back to a similar situation with the Head Trauma Center in the Town of Ulster. He asked that he be reminded about the issues surrounding that project.

Chair O'Halloran noted that we treated both applicants the same.

Mr. Colucci stated that we need to be consistent.

Supervisor James Quigley responded that the Head Trauma Center was two years behind in payments. It amounted to \$760,000±. The agreements that were made that when the letter of default was issued and the attorney for the Head Trauma Center showed up here, he came with a \$130,000 check. Two months later, after we continued conversations, he came back to this table with a \$370,000 check, without an agreement in place to settle the issue it was in good faith. The offer that was put on the table was a payment plan of \$7,500 per month to liquidate the unpaid balance over a future set period of time and in agreement for the payment plan the town, the school district and county agreed to waive the interest and penalties. He wanted to stress that they have made those payments on time and in addition they have paid in advance their 2012 PILOT Agreement and we still don't have a documented deal with the Head Trauma principals because we are working out the details with SOMYMA on a PILOT mortgage. The important point to note here we've had the Head Trauma Center, they came to this table, they made a statement, they presented a check, they kept their side of the bargain without an agreement in place.

Chair O'Halloran stated that it is an example of how the UCIDA used its authority to keep an applicant to honoring their agreement. Mr. Aaron brought up a point and he wanted to make sure members understood their options today. When we dealt with the two PILOTS in default we came to this board and explained what we found and what our plans were going forward. When we talked about the process, the default process because we were doing them in parallel, we reviewed the one language of the Head Trauma Center default process which afforded a two step process ... (1) a notice of default that we sent out in July and (2) it required then after the notice of default provided 60 days to issue a default which they would then within the language of their PILOT Agreement would have 60 days to cure and failure to do so would place them back on the tax roles. So with the Head Trauma Center it was total process from the day we took action of 120 days. We did make statements to the fact that what was assumed for both of these PILOTS. In

actuality, in the Birchwood case, it requires notice of intent which we sent to the applicant two months ago, and then when we issue the default, it would be immediately be placed on the tax roles; there would no opportunity for 60 days to cure. There is a difference in language.

Counsel Scott stated that the language is also clear that regardless of the language in the agreement talked about course of conduct or comments made or ability to waive or not waive it doesn't foreclose you from moving forward regardless of what action or what statements have been made. So while there have been statements made regarding the 120 days we were treating the two matters in parallel and consistently and the documents are actually set up slightly differently so that there isn't that same avenue under the documents. That does not mean that the board doesn't have to take that or decide not to take that tack, so you really have a fair amount of flexibility as to what direction you want to take. You are poised given the notices that have been delivered to terminate if that is the sense of the board.

Chair O'Halloran stated that he personally informed both applicants in June, 2011. He informed the Head Trauma Center and informed Mr. Aaron and his legal counsel. So this process has been going on; we made it official back in June.

Mr. Perfit recommended a middle of the road motion. He would like to move the default notice again forward sixty days definite termination with a report back to this board in thirty days from the taxing authorities that good faith negotiations are going on,.

Chair O'Halloran was not comfortable with that. We have a resolution in front of is that will provide a date certain of default.

Michael Horodyski stated that the default has been issued. His feelings were that Mr. Aaron's comments about our board action with regard to the default were reprehensible, certainly to the paper. He would be more comfortable saying that you have 60 days from that time.

Chair O'Halloran stated that what he asked counsel to do is in the resolution there is a date of April 12, which is 120 days from the initial notice date. It provides the full 120.

Mr. Horodyski responded that he did not believe that this will end well. He thought that it will end up in default and it will end up back to the taxing authorities to move it forward.

Counsel Scott walked the members of the Agency through the resolution.

Chair O'Halloran called upon James Maloney, Assessor, Town of Ulster, asking about the significance of the March 1st date for assessors.

Mr. Maloney responded that March 1st in New York State is known as Tax Status Date. An assessor places a value on a property as to its condition.

Chair O'Halloran asked if our actions take place after March 1st – how does it affect the taxing jurisdictions.

Mr. Maloney responded March 1st would not have any effect on this. If the UCIDA chose to put this property in default the Assessor of the City of Kingston would probably have until the last week in April to put this property on the city's assessment rolls.

Chair O'Halloran stated before we put a date in the resolution, he respected what both Messrs. Perfit and Horodyski have said, but he did want to remind the Agency the importance of working with our taxing authorities on both sides of the spectrum. We are asking in the same Agenda asking for their cooperation and help on PILOTs which we are trying to extend to individuals and companies to encourage economic development. He believed that the Mayor of the City of Kingston would like to see action today – when they say action, they would like us to terminate today.

Chair O'Halloran sought confirmation from the Mayor of the City of Kingston on their preference of terminating the PILOT today.

Mayor Gallo confirmed this – by stating yes – today.

Chair O'Halloran asked the school district's preference to provide the 60 days or terminate today?

Mr. Tomczyk responded that he could not speak on behalf of the board. He introduced Mr. James Shaughnessy, President of the Board of Education.

Mr. Shaughnessy replied that he would have to defer to Mr. Tomczyk's judgment.

Mr. Tomczyk responded that representing the taxpayers as the mayor does, he would prefer a quick settlement.

CEO Matteson asked counsel if there is any difference in terms of how the property will be handled going back on the rolls in terms of timing whether the default issues immediately today or whether it issues on April 12th will the property go back on the tax roles at the same time, in the same tax year.

Counsel Scott responded it will be in the same tax year – it will be two months later on.

Mr. Matteson commented so the impact on the taxpayers from the point of view of being back on the tax rolls will be identical.

Counsel Scott responded, essentially.

Mr. Horodyski commented with all due respect to the City of Kingston the City of Kingston School District, we were working on a 120 day time frame in December and only from the discovery of a documentation glitch did we know that we now have the ability to default today. So in respect to our decision we made in December the time table that we set forth at that time was good in the sense that we were moving it forward. Certainly from Kingston's standpoint it would behoove them to show, and rightfully so, a stance that we need to collect past-due amounts, he believed that to default today, he believed that we should honor our original statement.

Mr. Colucci stated that he concurred with Mr. Horodyski. We have been operating under the auspices that we were going to give 120 days. He was hoping that with the taxpayer sitting here in this room today that he would recognize that he has a short window and maybe in good faith they can negotiate.

Chair O'Halloran stated that there was one other condition that the Agency may wish to attach before putting the sixty days in there, we may want to include a provision regarding legal fees.

The members of the Agency responded that it was included in the resolution.

Chair O'Halloran responded that he wasn't saying that, if he defaults and doesn't pay, we don't receive our legal fees. What could be done to ensure our legal fees which he was concerned about getting, we could, as a condition of this document, add 7 days or 30 days.

Mr. Perfit offered a point of order - it is already written, February 9th. (Section 2. (B))

Chair O'Halloran thanked Mr. Perfit.

Mr. Kinnin asked counsel if the \$50,000 escrow was sent back to the applicant as well.

Counsel Scott responded yes.

Chair O'Halloran stated that as Chairman he personally expressed that both projects were running a 120 day course; however, he also has to knock on the taxing authorities' doors for applicants in the future and understanding that we are acting on the taxing authorities' behalf in this matter and the taxing authorities are asking for immediate termination. He has a hard time voting for 60 days.

Mr. Perfit stated again that the Agency should stand by their word, but also the taxing authorities have their own remedies in court and they can pursue those remedies. He would like to see a good faith payment, non-refundable to the city right after this meeting.

Chair O'Halloran responded that he liked that idea. We have a 2010 tax bill here that has no legal standing, why don't we put the February 9th date on that payment.

Mr. Perfit suggested within 30 days because some people don't have this as pocket change.

Chair O'Halloran stated they have already showed us an escrow account in the amount of \$113,000.

Mr. Perfit stated that we should give them at least a week.

Mr. Horodyski asked to call for a vote.

Counsel Scott sought clarification and the following amendments to the resolution were offered:

Section 1. The Agency finds and determines as follows: (A) that notice of the defaults under the Payment in Lieu of Tax Agreement have been provided to the Company in accordance with the terms of the Payment in Lieu of Tax Agreement, and (B) that the Company remains in default under the Payment in Lieu of Tax Agreement. Accordingly, the Agency is ready and hereby authorized to continue exercising its remedies under the Payment in Lieu of Tax Agreement, including the termination of the Payment in Lieu of Tax Agreement.

Section 2. The Agency hereby determines to forebear the exercise of its rights under the Payment in Lieu of Tax Agreement, and authorizes a forbearance period as follows:

(A) *That Agency staff and/or Agency Counsel sends written notice of its determination to terminate the payment in Lieu of Tax Agreement to Ulster County, the Kingston City School District and the City of Kingston.*

(B) (1) *That the Company pays to the Agency the administrative fee and counsel fees of the Agency no later than Thursday, February 9, 2012 at 4:00 p.m., local time;*

(2) *That the Company pays to Ulster County, the City of Kingston and the Kingston City School District the amount of unpaid real estate taxes, interest and penalties for the 2010 fiscal year and 2010-2011 fiscal year, as applicable, no later than Wednesday, February 15, 2012 at 4:00 p.m., local time; and*

(3) *If the payments are not timely received, the forbearance period provided in this Resolution shall end.*

(C) *In any event, the forbearance period will end and the Agency shall terminate the Payment in Lieu of Tax Agreement on April 13, 2012, unless the Company has cured all the defaults under the Payment in Lieu of Tax Agreement by April 12, 2012.*

Motion: Paul Colucci, seconded by Michael Horodyski, motioned to adopt said resolution as amended Authorizing the Termination of PILOT Agreement for Birchwood Village Limited Partnership Project.

Vote: The motion was adopted.

PROJECTS

Stavo Industries, Inc. - Wolf-Tec

CEO Matteson stated that Stavo Industries and Wolf-Tec real estate contracts had not yet been signed.

Chair O'Halloran responded that since this is a public meeting, he would like to defer conversations on Stavo Industries and Wolf-Tec because they have not closed and they are in a pending real estate matter. He would prefer to discuss this at the next meeting. The members of the Agency agreed.

PROJECT MONITORING AND ENFORCEMENT

Hudson River Valley LLC (a/ka/ Head Trauma Center)

Counsel Scott reported that Supervisor Quigley previously gave a very good update on the matter. He expected to have documents out to SONYMA next week about the draft PILOT Agreement. There will more to report at the next meeting.

CEO REPORT

CEO Matteson reported as follows:

- Attended the IDA Conference sponsored by New York State Economic Development Corporation

OLD BUSINESS

Legislation on Posting of Board Materials on Website

Counsel Scott stated that he would coordinate with Linda Clark on this matter.

Ms. Clark asked if financials and the unapproved minutes of the previous meeting needed to be posted prior to the meeting. Currently this is not being done.

Counsel Scott stated that he would look into it and get back to Ms. Clark.

Micandea

CEO Matteson stated that there was nothing to report.

ABO Training

Agency members were asked to sign up for the training as soon as possible.

EXECUTIVE SESSION

Motion: Michael Horodyski, seconded by Robert Kinnin, moved to adjourn into Executive Session for the purpose of discussing personnel matters at 9:53 p.m.

Vote: The motion was adopted.

Motion: Paul Colucci, seconded by Robert Kinnin moved to adjourn out of Executive Session at 10:14 a.m.

Vote: The motion was adopted.

ADJOURNMENT

Motion: Steve Perfit, seconded by Michael Horodyski, moved to adjourn.

Vote: The motion was adopted.

Meeting adjourned at 10:15 a.m.

Respectfully submitted,

John Morrow
Secretary