

**Ulster County Industrial Development Agency
Minutes
April 18, 2012**

A regular monthly meeting of the Ulster County Industrial Development Agency was held at 8:00 a.m., Wednesday, April 18, 2012, Conference Room 117, Business Resource Center, Development Court, Kingston, NY.

The following agency members were present:

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 members were absent:

Paul Colucci	Assistant Chair/Assistant Secretary
James Malcolm	Assistant Chair/Assistant Secretary

UCDC Staff:

Melinda Beuf
Linda Clark
Lisa Fadelici
Lance Matteson

UCIDA Attorney and Bond Counsel:

A. Joseph Scott	Hodgson Russ LLP
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Additional Attendees:

Jessica DiNapoli	Times Herald Record
Paul Hakim	Representing Stavo Industries
James Maloney	Assessor, Town of Ulster and Chair Ulster County Economic Development and Tourism Committee
George Quigley	Stavo Industries
James Quigley	Supervisor, Town of Ulster
Gary Tomczyk	Treasurer, Kingston City School

Chair David O'Halloran 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.

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.

MINUTES

Motion: Steve Perfit, seconded by Robert Kinnin, moved to approve the Minutes of the March 14, 2012 meeting. A copy of said minutes is on file.

Vote: The motion was adopted.

FINANCIALS

Motion: Steve Perfit, seconded by Michael Horodyski, moved to approve the financials for the period ending March 31, 2012. A copy of said financials is on file.

Vote: The motion was adopted.

COMMITTEE REPORTS

Governance Committee. Committee Chair John Morrow, reported that the Governance Committee is scheduled to meet at 9:00 a.m., May 1, 2012.

Audit Committee. Committee Chair Steve Perfit had no report as the committee had not met.

Ready2Go Committee. Lance Matteson reported that the committee had met via conference call on March 20, 2012. The membership of the committee reviewed the legal agreement with the first developer project; since then the development agreement has been completed and the grant agreement with Central Hudson has been formalized. As soon as contracts are signed, the committee will meet again with the town and sign the agreement with the engineering consultant. When the distribution of funds begins, the members of the Agency would like to see monthly financial statements. In addition, the Chair requested Melinda Beuf speak to him after the meeting regarding ways to market the Ready2Go program.

PROJECTS

Stavo Industries

Lance Matteson reported that all three taxing authorities have approved the deviated PILOT as proposed. A copy of the Minutes of the Public Hearing held March 19, 2012 is on file. In addition, a copy of the Summary Statement of the Lease/Leaseback Transaction prepared by UCIDA Counsel is on file.

Chair O'Halloran stated that this deviated PILOT was proposed by the UCIDA. These are flat deviations. In this particular case, the PILOT has been stabilized for the duration of the PILOT Agreement. The benefit as to why we go to a dollar amount rather than a percentage is a double edge sword for the taxing authorities. If it was a percentage, the taxing authority, of course, as assessments increased, would receive more monies. However, the double edge to that, is whenever it is a percentage, it is based upon an assessment. That assessment can be challenged by the applicant; which is rightfully allowable for every property owner in certiorari arguments and appeals and legal costs would be borne. When it goes to a flat dollar amount, it removes the certiorari arguments and appeals. That is what has been proposed. The applicants are not able to appeal these tax dollar amounts. This is not based upon assessment; it is an agreed flat dollar amount. The positive to the taxing authorities is that it is net money; a much cleaner way of doing things. Thanks were offered to Gary Tomczyk, Treasurer, City of Kingston School District, Mayor Shayne Gallo, City of Kingston and Legislator James Maloney, Ulster County Legislature.

RESOLUTION CONCURRING IN THE DETERMINATION BY THE CITY OF KINGSTON PLANNING BOARD, AS LEAD AGENCY FOR A CERTAIN PROPOSED PROJECT FOR STAVO INDUSTRIES, INC.

Counsel A. Joseph Scott explained that the SEQR Resolution confirms the Negative Declaration Action of the City of Kingston Planning Board. As a state entity, the Agency is obligated to consider SEQR before any final action on the project is taken.

Motion: Steve Pefit, seconded by John Morrow, moved to approve said resolution.

Vote: The motion was adopted.

RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR STAVO INDUSTRIES, INC.

Counsel Scott stated that in general, this resolution authorizes the Chairman to sign our typical straight lease documents. He continued by describing each section of the resolution as it applies to the project.

Motion: Steve Pefit, seconded by John Morrow, moved to approve said resolution.

Vote: The motion was adopted.

Wolf-Tec

Lance Matteson reported that all three taxing authorities have approved the deviated PILOT as proposed. A copy of the Minutes of the Public Hearing held March 19, 2012 is on file. In addition, a copy of the Summary Statement of the Lease/Leaseback Transaction prepared by UCIDA Counsel is on file.

Chair O'Halloran had a question regarding this project. He was looking at the original application that indicates a total estimated project cost of \$6,020,000. The transaction summary and documents shows a total estimated project cost of \$8,535,000. The project applicant, Ralf Ludwig, contacted Chair O'Halloran several days ago and stated that it was his understanding that the total estimated project costs were \$6,020,000. Chair O'Halloran asked for a clarification.

Counsel Scott responded that he believed that the figure was obtained from the application; perhaps he had a copy of an earlier draft of the application.

Chair O'Halloran requested that updates be made as follows:

1. Project Summary: Details of Proposed Straight Lease Transaction; 8. Business Terms:

FROM: The Agency fee is estimated to be \$85,350 (1% of the Project costs of \$8,535,000 (est)).

TO: The Agency fee is estimated to be \$60,200 (1% of the Project costs of \$6,020,000 (est)).

2. Approving Resolution (Page 4) NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:, Section 1.; D.

FROM: It is estimated at the present time that the costs of the planning, development, acquisition, construction, and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$8,535,000;

TO: It is estimated at the present time that the costs of the planning, development, acquisition, construction, and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$6,020,000;

RESOLUTION CONCURRING IN THE DETERMINATION BY THE CITY OF KINGSTON PLANNING BOARD, AS LEAD AGENCY FOR A CERTAIN PROPOSED PROJECT FOR WOLF-TEC, INC.

Motion: John Morrow, seconded by Steve Perfit, moved to approve said resolution.

Vote: The motion was adopted.

RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR WOLF-TEC INC.

Motion: Michael Horodyski, seconded by Robert Kinnin, moved to approve said resolution.

Vote: The motion was adopted.

Chairman O'Halloran reminded the members of the Agency that previously the Agency approved a per employee incentive for each company (Stavo and Wolf-Tec); \$1,000 per employee up to \$25,000 for the first year and \$1,000 per employee up to \$25,000 for the second 12 months, for a total commitment of \$100,000 for both companies. It was noted that these jobs may include retained jobs, but must be at the new location. Chair O'Halloran asked that prior to closing, Counsel inquire as to what method of payment the two companies would like – for transparency purposes checks to be issued or a reduction in fees.

Michael Horodyski stated that his preference was to see checks issued rather than a reduction of fees at closing. That method was agreed to by the members of the Agency.

PROJECT MONITORING AND ENFORCEMENT

Hudson River Valley LLC

Supervisor James Quigley, Town of Ulster, stated that there was an email circulated last week which stated SONYMA's position on the request that the town, on behalf of the parties covered by the PILOT Agreement, to obtain priority lien through a PILOT Mortgage. SOMYMA offered a second mortgage position, which in the final analysis did not improve the town or other taxing authorities position at all and if in fact, the PILOT mortgage resulted in a modification of the exiting default language in the PILOT Agreement it would be a detriment to the taxing authorities. He polled Gary Tomczyk, Treasurer, Kingston School District and Burt Golnick, Ulster County Commissioner of Finance, representatives of the other two taxing authorities, and it was agreed to between them to proceed with the existing language unmodified in the PILOT Agreement and drop the concept of the PILOT Mortgage. He could confirm that the beneficiary of the PILOT Agreement is current in all obligations to the town and other taxing authorities.

Chair O'Halloran asked if there was any action that the Agency needed to take.

Counsel Scott responded that the Agency has approved the terms of the settlement agreement so now it is just a matter of deleting that reference to the mortgage and getting things signed-off.

Supervisor Quigley stated that he will forward to Counsel an email referencing the drafts that have been circulated citing the sections.

Chair O'Halloran stated that this action will be formalized next month. He thanked Supervisor Quigley for his work in the matter.

Supervisor Quigley wanted it to be said that he thought SOMYMA was short-sighted in their conclusions. That this forces the taxing authorities to take the nuclear option the next time there is a default and that very well may end up with a diminishment of SONYMA's collateral and 400 jobs in Ulster County. Every one of the parties in this Agreement has expressed that if there is a future default, they are not going to be as lenient as they have been in the past.

Birchwood Village

Chair O'Halloran reported that Birchwood Village did not meet the April 12th, 2012 deadline for completion of payment of PILOTs in default. Continuing, he stated that on April 13, 2012, he signed and distributed to the applicant and others a Termination of the PILOT. Today, the new deed will be signed placing the property back on the tax roles and Counsel will take the document to the County Clerk's office and file. Speaking with the applicant, the Chair's assumption was that they are going to take the legal options in court for those tax years and work those out with the City of Kingston. Moving forward, they know that they have no option for a PILOT with the UCIDA on this particular project, they will work with the City of Kingston on a 581(a) assessment for the future years. With the PILOT removed/terminated under NYS Housing Law they have that right or option. The question was never whether it was an affordable housing project or if 581(a) should apply to it or not. It was a question of whether or not the project could have both. This will resolve this argument and the project will no longer be a PILOT for the UCIDA.

Continuing Chair O'Halloran stated that with reference to arbitration that the very language in our PILOT that provided for our ability to default and terminate also provides for the ability to arbitrate the assessed value of the facility while the project is subject to the PILOT Agreement.

Counsel Scott explained that on Wednesday a letter was received from one of Birchwood's counsel notifying that they wished to proceed with the arbitration process as outlined in the PILOT Agreement. Discussion with the Chair regarding the issue, from our prospective, under the arbitration provisions we are a participant. We select one of the three arbitrators. The way it is suppose to work under the documents is that Birchwood selects an arbitrator, the city selects an arbitrator, the City Assessor selects an arbitrator and the UCIDA selects an arbitrator. All fees and expenses are paid by Birchwood; it would seem that there is no liability or negative for the Agency to participate in that process assuming that that is what Birchwood wants to do.

Robert Kinnin asked if the PILOT is terminated wouldn't the arbitration terminate as well.

Chairman O'Halloran replied that the arbitration would be for the years within the PILOT.

Chairman O'Halloran stated that it was his opinion that the letter was a request for arbitration as well as a request for extension or delay of our decision for termination. It was immediately communicated to Birchwood's counsel that arbitration would not affect our termination date. It was his view that the applicant would need to come before the Agency to ask us to initiate arbitration. They did send a letter asking for arbitration. But how we operate, we meet monthly and applicants come before us. We will coordinate that when they are interested in that.

Michael Horodyski asked wasn't the whole point of arbitration that they had to be current? And if so, why are they being afforded arbitration?

Counsel Scott responded when he first received the letter he thought that it might be an effort to delay the termination. The PILOT Agreement clearly states that during the period of time that there is any arbitration they have to be making payments; they can't wait for the arbitration process to be completed. That would be a reasonable condition.

Chair O'Halloran responded that under the terms of the PILOT Agreement with the arbitration the applicant picks up all the costs. If we deny arbitration and they sue us to enforce the language within the document we are then engaged in litigation. He felt it was better to keep the doors open to progress.

Counsel Scott stated that he was always one for flexibility. He suggested that the Agency keep their options open. He recommended that a letter be sent to their counsel saying that we received your letter if you want to proceed with arbitration come and approach us. It certainly will keep us out of litigation.

Mr. Horodyski asked if the property goes back on the tax roles retroactively.

Counsel Scott responded no, as of March 1st. There is no way that anyone can go back and capture. It was his opinion that the better move would have been to pay the PILOT, keep the PILOT in effect, so that they would have more flexibility with the continuing negotiations with the city.

CEO Report

Lance Matteson reported as follows:

- Transition – Lance Matteson will be leaving June 15, 2012 – during the transition staff has assumed a significant amount of his work; especially Melinda Beuf and Linda Clark
- Some very promising leads
- Town of Marbletown – job retention program – possible Deviated PILOT – town supervisor has been informed of the negotiations.
- Wilmorite Application – SUNY New Paltz Dormitory – application is forthcoming
- Two great economic development projects in the Town of Ulster – large car dealership and medical arts building

OLD BUSINESS

None.

NEW BUSINESS

Authorities Budget Office Correspondence - Grants

Chair O'Halloran reported that correspondence has been received from the State of New York Authorities Budget Office regarding the periodically awarding of grants to not-for-profit organizations to fund operations or projects that support business for workforce development in Ulster County. A copy of said letter is on file. Chair O'Halloran has requested that Counsel respond on behalf of the Agency.

Counsel Scott stated that roughly three-four months ago the ABO came out with an informal opinion where they were critical of IDAs that used grants to provide grants for companies. Many IDAs have been doing this for a number of years. Our view is that the ABO is taking a narrow view of what IDAs can do and cannot do. In one of the pieces that they put out subsequent to their original report, they did step back and say this was not a formal legal opinion on their part. It was their view on what IDAs can and cannot do. He will try to get a letter to the Chairman by the end of the week but not later than next week in order to provide a timely response. It was his opinion that the Film Commission and the Center for Innovation grants are clearly within the purposes of the IDA.

Mr. Matteson drew attention to the fourth paragraph of the letter from the ABO which referenced loans. It was his observation that the UCIDA never made loans; it is an example of a boiler-plate thing; they are not thinking this through.

Hudson Valley Film Commission

Steve Perfit provided an update on the efforts of the Hudson Valley Film Commission to obtain additional funding from other county IDAs. Mr. Rejto has gotten very aggressive and put together an impressive package by county. There was very good success in Orange County; perhaps a grant of \$25,000. An appointment has been made with Sullivan County as well.

Appointment of Special Committee – Alternate Operating Plan/TechCity Relocation of Offices

Chair O'Halloran stated that as Lance Matteson pointed out funding for UCDC was cut by the County Executive and confirmed by the County Legislature from \$400,000/yr. to \$325,000/yr. for 2012. In addition, no contract exists for 2012 at this time. UCDC is in a financial challenge. The UCDC Board has been working on strategies on how to reduce budgets and last longer. They know they cannot afford the CEO position that they have now under their present budget constraints. The Agency's relationship with UCDC is a good relationship and works for our board, however, unlike UCDC, if they collapse, it would certainly mean those private developers and others would have to take up the slack to show potential suitors of Ulster County. The UCIDA is an absolute necessity for economic growth and we must have a way to continue on in the event that UCDC does not continue. He was very confident that UCDC will figure out a way to re-invent itself and more importantly, those that are above it, the County Executive and the County Legislature will recognize the importance of economic development and fund it for its continual sustainability. That is what really has to happen. UCDC cannot re-budgetize itself to success. It cannot figure out a new lower budget and be successful. That is not an option; that is the option that they are working under. This does not lead to growth for economic development and will be ineffective.

Continuing, being pragmatic, Chair O'Halloran, thought that there needs to be a Plan B. He asked who would be willing to work on an alternate operating plan for the Agency. He thought it would be worthwhile to be pro-active and sort out various options. Chair O'Halloran has asked that Ms. Beuf get information from TechCity. He thought that TechCity would provide a very attractive lease option for the Agency.

It was unanimously agreed that Chairman O'Halloran, Michael Horodyski, Steve Perfit and John Morrow will serve on the committee.

Trade Show Grants

Chair O'Halloran announced that he has requested Melinda Beuf prepare a presentation to assist manufacturer's in booth expenses at trade shows. This will be explored at the next meeting of the Agency.

Hudson Valley Center for Innovation

Counsel Scott recommended that prior to the release of the \$25,000 to the Hudson Valley Center for Innovation that a Grant Agreement be prepared and signed by a representative of the Center for Innovation.

Motion: John Morrow, seconded by Robert Kinnin, moved that a Grant Agreement be signed by the Hudson Valley Center for Innovation and that once the Agreement has been signed, the \$25,000 grant be paid in view of the audited financials submitted by the Center as mandated at the March 14, 2012 meeting of the Agency.

Vote: The motion was adopted.

ADJOURNMENT

Motion: John Morrow, seconded Michael Horodyski, moved to adjourn.

Vote: The motion was adopted.

Meeting adjourned at 9:27 a.m.

Respectfully submitted,

John Morrow
Secretary