

FULTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

**TUESDAY
JULY 30, 2013
8:00 A.M.**

PLANNING DEPARTMENT CONFERENCE ROOM

MEETING NOTES

PRESENT:

JOE GILLIS, CHAIRMAN
LEN HOUSE, VICE CHAIRMAN
TODD RULISON, SECRETARY
GEORGE BEVINGTON, MEMBER
JAMES MRAZ, EXECUTIVE DIRECTOR
KARA LAIS, FITZGERALD, MORRIS, BAKER, FIRTH PC
RALPH OTTUSO, LIAISON, ECONOMIC DEVELOPMENT COMMITTEE
LEADER HEARALD

I. MINUTES FROM JUNE 6, 2013 MEETING:

MOTION : Accept as presented.
MADE BY : Todd Rulison
SECONDED : Len House
VOTE : Unanimous

II. BUDGET REPORT:

MOTION : Accept as presented.
MADE BY : George Bevington
SECONDED : Len House
VOTE : Unanimous

III. COMMITTEE REPORTS:

A. Nominating Committee:

- No report

B. Audit Committee:

- No report.

C. Governance Committee:

- Governance Committee has reviewed proposed changes to the Park Covenants for the Johnstown Industrial Park.
- These proposed changes will be discussed under New Business.

D. Finance Committee:

- No report.

IV. OLD BUSINESS:

A. Tryon Technology Park and Incubator Center Project:

1. Deed Transfer:

a. Environmental Site Assessment:

- Based upon the findings of the Environmental Site Assessment C.T. Male conducted at the former Tryon Campus, the IDA submitted requests for additional information and clarifications to NYSOGS/EDS on April 4, 2013.
- Responses have been received: See Handout.

b. IDA Options:

- Per the Agreement the IDA executed with NYSOGS and ESD, once it completed its Environmental Site Assessment, the IDA can either:
 - 1) Terminate the Agreement. Upon termination, the IDA would have no further obligation under the Agreement.
 - 2) Move to close on the transaction contemplated by the Agreement.

c. Next Steps for IDA:

1. If the IDA chooses to terminate the Agreement and not take Tryon:
 - a. IDA must send a letter to NYSOGS and ESD advising that it is terminating its Agreement and will not be accepting the deed to Tryon.
2. If the IDA chooses to accept Tryon:
 - a. IDA must send a letter to NYSOGS and ESD advising that it desires to accept Tryon and move to a closing.
 - b. NYSOGS, ESD and IDA would then finalize the form and content of the deed.
 - c. NYSOGS would convey Tryon to ESD.

- d. A closing would be held at which the land and buildings at Tryon would be conveyed by ESD to the IDA.
- e. It is estimated that it would take 2-3+/- months to close.

IDA DISCUSSION: Jim Mraz distributed and reviewed a document that he had prepared summarizing the information received from New York State in response to the environmental issues identified in C.T. Male's Phase I Environmental Site Assessment Report on the former Tryon Campus. Jim Mraz reviewed each of the ten (10) issues identified in his report. He reviewed what questions the IDA had presented to the State, as well as the responses the IDA received back from New York State.

Joe Gillis asked Kara Lais if the IDA would be assuming the liability for any cleanup if problems were discovered at a later date after title to the property was transferred to the IDA. Kara Lais stated, "Yes." She stated that the IDA has received all of the written documentation that the State currently possesses. Jim Mraz stated that the IDA has not received documentation to verify that certain tanks were removed and whether any other problems may have existed. He also advised that the State has also provided no information or documentation on the potential existence of any contamination and/or problems at the former Tryon site.

George Bevington stated that it's important to note that this site was used as a Youth Detention Facility. This use did not involve the possession and utilization of dangerous chemicals and substances. He stated this is not a Brownfield site. The site was used as a residential campus. He stated that the IDA has taken all the logical steps necessary in conducting its due diligence. He added that the IDA is acquiring this facility for \$0.

Joe Gillis stated that the IDA has conducted its due diligence in terms of identifying potential environmental liabilities on site. He stated that he does not think the State is hiding information. He added that when issues arose at Tryon, the State always responded appropriately to those issues.

Ralph Ottuso stated that environmental cleanup can be expensive. He cited the old former gas station is Gloversville as an example of the significant costs that can be incurred when trying to cleanup a site. He asked how big the tanks were that were used at Tryon. Jim Mraz stated that they were all smaller sized heating oil tanks. He stated when the buildings were originally constructed in the 60's and 70's, they were all heated by oil. In the 80's and 90's, the entire campus was converted to natural gas. It was during that time that the State went through and removed all of the original oil tanks. Jim Mraz stated that some of these tanks were removed at a time prior to when New York State began requiring formal closure reports when underground tanks were removed. He stated C.T. Male found no physical or visual evidence of any potential groundwater contamination.

Todd Rulison stated that he originally had a concern over what it may cost to deal with any potential environmental liabilities that exist on the site. However, given the IDA's plan to try to sell a vacant lot first to generate revenues that could be used to deal with some of these potential liabilities has eased his concern. He stated he now sees little risk for the IDA moving forward with acquiring Tryon.

Joe Gillis asked what would happen if the IDA chose not to take the site over. Jim Mraz stated that would be up for the State of New York to decide.

Jim Mraz stated that the agreement the IDA signed with ESD and NYSOGS last year stipulated a process that the IDA would have to go through with respect to deciding whether or not to acquire the former Tryon site from the State. That process included going through the Environmental Site Assessment process that

the IDA has now completed. He stated the IDA Board is now faced with deciding whether it wants to move forward with this project and take title to Tryon or whether to walk away from this transaction. He stated those are the two (2) options identified in the IDA's Agreement with the State. Jim Mraz asked Kara Lais if his description accurately describes what the Agreement stipulates. Kara Lais stated, "Yes."

Jim Mraz distributed and reviewed the resolution approving of the transfer of the former Tryon facility from the State of New York to the Fulton County Industrial Development Agency and authorizing the execution and delivery of required closing documents. Jim Mraz reviewed the form and content of this resolution. He stated that this is the resolution that he is asking the IDA Board to vote on to decide whether it wants to proceed to closing on Tryon or to walk away from this transaction. He stated that a vote in favor of this resolution would be to support moving to closing. He stated a vote against this resolution would be a vote to walk away from this deal. He asked IDA members if they had any questions on the resolution. There were none.

IDA ACTION:

MOTION: To approve the resolution as presented.

MADE BY: Todd Rulison

SECONDED: Joseph Gillis

VOTE: Unanimous

2. Road Construction Project:

- Fulton County obtained a \$2.0 million grant from ESD to install new water and sewer lines and reconstruct a portion of the existing interior access road at Tryon.
- Given that title to property will not be secured for another 2-3 months, this project will now not start until 2014.

IDA DISCUSSION: Jim Mraz stated that given that the closing on Tryon will not occur probably until end of September, the road project will now not start until spring of 2014. George Bevington recommended that the design work still be completed by the end of the year so that the project can be put out bid in early 2014. Jim Mraz stated that that is what the plan will be. Jim Mraz stated that this will be a County and not an IDA project. He stated the intent would be to try and have a contract awarded at the March Board of Supervisors' meeting so that a contractor would be prepared and ready for work to start up when weather permitted in the spring of 2014.

V. NEW BUSINESS:

A. Park Covenants for Johnstown Industrial Park:

1. Background:

- a. When the Johnstown Industrial Park (JIP) was constructed in 1989, the IDA adopted Park Covenants.
- b. The initial Park Covenants were adopted on May 9, 1989.
- c. The Park Covenants were amended on May 29, 1991.
- d. The Park Covenants will remain in effect through December 31, 2030.

2. Proposed Changes to the Park Covenants:
 - a. Several changes are being proposed to the Park Covenants. The changes involve adding/deleting permitted uses to add clarity to the Park Covenants.
 - b. See Handout.

3. Procedure for Amending Park Covenants:
 - a. IDA Board must submit proposed changes to City of Johnstown Common Council for their review and approval. Approval is needed per Article V, B of the 1989 Agreement between the City of Johnstown and Fulton County Industrial Development Agency regarding the Johnstown Industrial Park.
 - b. IDA must provide written notice to and an opportunity to be heard to all property owners in the Johnstown Industrial Park.

IDA DISCUSSION: Jim Mraz stated that George Bevington has identified a couple of concerns and questions regarding the proposed changes to the Park Covenants for the Johnstown Industrial Park. George Bevington stated that he just recently had a chance to review the draft changes to the Covenants. He asked if it would be acceptable to hold on taking any action on these proposed changes until he had a chance to discuss his questions with Jim Mraz. Jim Mraz stated the IDA was under no timeline to have to make these changes. It was the unanimous consensus of all IDA members present to have George Bevington meet with Jim Mraz to discuss the proposed changes.

B. Interest Assessment Surcharge:

- On July 18, 2011, the IDA received a Notice from the NYS Department of Labor stating:
 - Since 2009, New York State has borrowed over \$3 billion from the federal Unemployment Insurance (UI) Trust Fund.
 - New York's 2011 interest payment was **\$95 million**
 - In order to make this interest payment, New York State decided to assess a "temporary charge" on employers, called an Interest Assessment Surcharge (IAS).
 - IDA's 2011 IAS was \$21.25.

- On July 6, 2012, the IDA received another notice from the NYS Department of Labor stating:
 - New York State still owes the Federal Government approximately \$3.5 billion to the federal Unemployment Insurance Trust Fund.
 - New York's 2012 interest payment was **\$102 million in interest**
 - IDA's 2012 IAS was \$12.75.

- On July 9, 2013, the IDA received another notice from the NYS Department of Labor stating:
 - New York State still owes the Federal Government \$3.5 billion to federal Unemployment Insurance Trust Fund.
 - New York's 2013 interest payment is **\$85 million.**
 - New York State has now paid **\$282,000,000** just in interest over the past 3 years
 - IDA's 2013 IAS is \$12.75.

IDA ACTION:

MOTION: To authorize the payment of the IDA's 2013 IAS.
MADE BY: George Bevington
SECONDED: Joseph Gillis
VOTE: Unanimous

VI. OTHER BUSINESS:

A. Executive Session:

1. Background:

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 : Todd Rulison
SECOND : Len House
VOTE : Unanimous
TIME : 8:35 a.m.

MOTION : To go out of Executive Session.
MADE BY : George Bevington
SECOND : Len House
VOTE : Unanimous
TIME : 8:55 a.m.

VII. TRYON TECHNOLOGY PARK AND INCUBATOR CENTER PROJECT:

A. Vandalism:

- On July 18, 2013, vandalism was discovered at Tryon.
- Damage was done to the electrical wiring and equipment at the wastewater pump station, as well as electrical wiring servicing other buildings. At present, the pump station is inoperable and must be repaired.
- OGS and OCFS were contacted. Both advised that New York State does not carry property insurance on State facilities. As a result, no insurance claims can be filed to repair the damage.
- C.T. Male was asked to conduct an assessment of the damage and provide a cost estimate to repair it. C.T. Male has estimated the cost to make all the repairs, as well as to install security fencing around the pump station, to be approximately \$96,000.
- The next round of Consolidated Funding Applications (CFA) must be submitted by 4:00 p.m., on Monday, August 12, 2013.
- Fulton County's Economic Development/Environmental Committee will be meeting on July 30th at 3:00 p.m. to discuss a proposal for the County to submit an application to Empire State Development's Regional Council's Capital Fund and request a \$48,000 grant to pay for 50% of the cost to repair the damage done at the Pump Station as well as to install security fencing.
- The local share would be \$48,000.

DISCUSSION: Jim Mraz reviewed some pictures of the vandalism that was done at the Pump Station at the Tryon site. He stated the vandalism has rendered the Pump Station inoperable. He stated it is not a question of whether or not the Pump Station has to be fixed. He stated the Tryon Technology Park and Incubator Center Project cannot move forward without this station being repaired.

Jim Mraz reviewed the steps Fulton County has taken to try and better secure Tryon. He said a swing gate has been installed on the main access road to keep vehicles out. Barricades have also been placed on both sides of the gate to keep vehicles from trying to go around the gate. Jim Mraz stated additional security and surveillance measures are also being taken.

He asked IDA members if they would be willing to make a contribution toward the local share of the grant application Fulton County will be asked to consider. It was the general consensus of all IDA members present that the IDA should make a contribution. Jim Mraz stated that the IDA had \$20,000 budgeted for the Tryon Technology Park Project for 2013. He stated approximately half of those funds have been spent to date on the Environmental Site Assessment and Asbestos Containing Materials Reports. It was the consensus of all IDA members present to use the balance of this budget appropriation to provide to the County to help pay for the local share of this grant application.

IDA ACTION:

MOTION: To authorize a contribution of \$10,000 to Fulton County to use towards the local share of a grant application the County may file with the State of New York to obtain grant funds to repair the damage done at the Pump Station as well as installing security fencing.

MADE BY: George Bevington

SECONDED: Joseph Gillis

VOTE: Unanimous

VIII. CLOSE MEETING:

MOTION : To close the meeting.

MADE BY : Len House

SECONDED : Todd Rulison

VOTE : Unanimous

TIME : 9:10 a.m.