

UCIDA

Ulster County Industrial Development Agency

ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY MINUTES September 11, 2019

A regular monthly meeting of the Ulster County Industrial Development Agency was held on Wednesday, September 11, 2019, at 9:00 A.M. at SUNY Ulster, 94 Marys Avenue, Room 101, Kingston, NY.

Roll Call:

The following agency members were present:

Randall Leverette	Chair	
Faye Storms	Vice Chair/Assistant Treasurer	
Michael Ham	Secretary	Arrived at 9:11 A.M.
Richard O. Jones	Treasurer/Assistant Secretary	
James Malcolm	Member	
Daniel Savona	Member	

The following agency members were absent (with notice):

Paul Andreassen	Assistant Secretary
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UCIDA Attorneys and Bond Counsel:

A. Joseph Scott, III, Esq.	Agency Counsel
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Additional Attendees:

Rose Woodworth	Agency Staff
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The meeting was called to order at 9:05 A.M. by Chair Randall Leverette.

Rose Woodworth read the roll and noted that a quorum was present.

READING OF THE UCIDA MISSION STATEMENT

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 Faye Storms, moved to approve the minutes of the August 14, 2019 meeting with the spelling corrections James Malcolm's and Charles Malcomb's last names. A copy of said minutes is on file.

Vote: The motion was unanimously adopted (5-0).

FINANCIALS

Treasurer Richard Jones reviewed the financial report with the board members. A copy of the report of the Treasurer is on file. First, Mr. Jones discussed the financials for the CRC: The only activity was interest income. Next, he discussed the financials for the IDA: He reported that the income classified as "Administrative Fees" reflects partial payment from Inness NY, LLC for its project and payment from Kingston Medical Assignment for the assignment project. The payment of \$4,000 classified as "Other Administrative" represents payment to the firm of the Executive Director and staff. There was also interest income for the month of August. Rose Woodworth noted that the bank followed through and correctly credited the bank interest to the CDs, so the interest shown for the month of August is higher than usual. James Malcom brought up the Agency's significant cash position and asked if the Agency could consider investing additional funds into CDs. Mr. Jones said that the idea could be further discussed when reviewing the budget.

Motion: Faye Storms, seconded by James Malcolm, moved to accept the monthly financial report, as presented.

Vote: The motion was unanimously adopted (5-0).

CHAIR'S REPORT

Chair Leverette presented his Chair's Report. As part of his report, the Chair reported on the following:

Note: Michael Ham arrived late with notice at 9:11 A.M. during the Chair's report.

- A. Kieffer Matter – The matter was resolved using one of the alternatives agreed upon in Executive Session during the last meeting.

EXECUTIVE SESSION

Motion: James Malcolm, seconded by Richard Jones, made a motion to deviate from the written agenda and go into Executive Session for the purpose of discussing current litigation.

Vote: The motion was unanimously adopted (6-0).
The board then entered into Executive Session at 9:12 A.M.

Motion: Michael Ham, seconded by James Malcolm, made a motion to come out of Executive Session.

Vote: The motion was unanimously adopted (6-0).

The board came out of Executive Session at 9:15 A.M.

No action was taken during the Executive Session.

Motion: James Malcolm, seconded by Richard Jones, made a motion to empower the Chair, along with counsel to execute the settlement regarding the Kieffer Litigation.

Vote: The motion was unanimously adopted (6-0).

CHAIR'S REPORT – continued

- B. FOIL Request – The FOIL request from the New England Regional Council of Carpenters was completed on August 30, 2019.
- C. Wildberry Lodge, LLC – The Chair had a conversation with Town Supervisor of New Paltz regarding the pending project, which had a hearing on June 30, 2019. The Applicant intends to come back to the Board once they finish working through zoning and SEQR issues. The Applicant also indicated they applied for CFA assistance.
- D. New York Department of Economic Development – A response to the letter inquiring as to whether or not the Agency will use the Federal Bond Volume Cap for 2019 was completed on September 1, 2019 . Counsel informed the department that the Agency will not need the cap, but if the circumstances change, a request will be sent.
- E. Live Stream – The Governor signed legislation requiring all IDAs to live-stream meetings and public hearings. He also signed legislation to grant power to the ABO to remove board and staff for failure to comply with compliance reporting. The Chair has directed Counsel to draft a media policy to replace the current audio policy and to create a more concrete policy for the Agency (staff and board members) with regard to protocols and standards for press interactions and outreach in general. Once the draft is completed, it will be presented to the Board.
- F. Utilizing Staff - Now that the Agency has staff, the Chair delivered the following reminders:

- a. All Agency meetings are to be arranged by professional staff who will coordinate availability and arrange the appropriate times based on the members' availability while maintaining the Agency's priorities and ability to consider other pending matters.
 - b. All Agency communication with outside vendors, consultants or government entities will go through professional staff. This procedure helps to ensure that all information is organized and in one location. This is especially necessary for the Agency to be able to respond to FOIL requests in a timely manner.
 - c. All documents for distribution at meetings will be prepared and distributed by staff in the form of meeting packets. All document dissemination pertaining to the Agency's information to any external organization should always originate from the Agency's office with board approval or with Chair and Counsel approval and under the signature of the Chair.
 - d. All members of the audience are welcome to comment at the appropriate time on agenda items only; public comment is not a question and answer session. With regard to public hearings, the public should be advised that the Agency may choose whether or not to answer. The Chair pointed out that not all agencies allow for public comment during monthly meetings.
 - e. Media questions should be directed to the Chair and Counsel after the meeting or via phone call to the Agency's office.
- G. IDA Records - OED has requested that the Agency arrange a pick-up for the remaining 70 boxes of documentation that are in their possession. Once obtained, the Agency will explore storage options, such as digitizing relevant information.

Counsel emphasized the importance of having control over all relevant documents for the Agency. There are several penalties associated with not complying with a FOIL request, including potentially having to pay the requesting entity's attorney fees associated with the request.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Rose Woodworth presented her Executive Director's Report. As part of her report, the Executive Director reported on the following:

- A. The webpage for the UCCRC is live and can be found on the IDA's website.
- B. Due to all of the changes the Agency has gone through this year, it will need to amend the 2019 budget and the proposed 2020-2022 budgets. The Agency will also need to prepare

the proposed 2023 budget. The finalized budgets are due to New York State by November 1, 2019.

- C. The rest of the currently scheduled meetings for 2019 will be held in Room 101.
- D. The Executive Director will work with Paul Andreassen to set up the next Governance Meeting.
- E. The Executive Director will work to coordinate schedules of the members of the Audit Committee to set up a meeting as soon as possible.
- F. The Executive Director received copies of the information sent to the various school districts showing Ulster County IDA PILOT project payment calculation and billing. Ms. Woodworth has emailed Tracey Williams, Director of Real Property, and Finance Director Burt Gulnick thanking them for the copies. She also asked them to send a similar package for the county tax bills that went out earlier this year.
- G. The Executive Director reported that the statuses of the following are pending review or action from Board Counsel:
 - a. The form that NexGen prepared for applicants to complete prior to the background check needs to be approved.
 - b. The release forms for Projects to be highlighted in the informational video by Ellenbogen needs to be approved.
 - c. The request for various background check documents from Brooklyn Bottling needs to be sent out.
 - d. Welcome letter for newly approved applicants outlining their next steps.
 - e. Finalized Housing Projects Policy document with the proper policy and section numbers so that it conforms with other Board policy documents.

COMMITTEE REPORTS

Audit Committee

Richard Jones, Chair of the Audit Committee, informed the board that he talked to Pattison, Koskey, Howe & Bucci, CPAs (“PKHB”) about performing the audit services for the current year. PKHB informed him that the fees were locked in for three years (2017-2019) based on a contract signed by the previous administration in December 2017. The combined IDA and CRC fees for 2019 will increase by \$150 to \$12,900. Mr. Jones hopes to bring the engagement letter to the October board meeting for the Board to

review and sign. PKHB informed Mr. Jones that the Agency will be working with a new principal for 2019 due to the ABO rule that only allows the same principal for five consecutive years. Mr. Jones has not yet been informed of who the new principal will be.

Richard Jones informed the Board that he met with the Executive Director to create a rough draft of what is to be done during the upcoming audit visits. Mr. Jones originally planned to have the Audit Committee complete the visits, but, due to time constraints and practicality, this will not be possible. Mr. Jones proposed asking the Executive Director's firm to make the required visits. This task would be billed separately from the current administrative fees. The Agency plans to conduct one visit per project this year, which is the minimum requirement. Mr. Jones pointed out that twice per year is recommended.

Mr. Jones also met with the Executive Director to discuss revisions to the form used to collect data for the PARIS Report. They have the new form drafted but plan to meet next week to continue discussion. Chair Leverette suggested that Mr. Jones present the revised documents to the Audit Committee at the next meeting and once approved, present them to the full Board. The Executive Director noted that, at a prior meeting, the Board discussed getting these forms out to the projects by October 15, 2019 or November 1 at the latest in hopes that the Agency will receive responses in a more timely manner.

Finance Committee

No report. A meeting is scheduled after today's Board Meeting.

Governance Committee

No report. Paul Andreassen is absent with notice.

OLD BUSINESS

Brooklyn Bottling of Milton, New York, Inc.

Chair Leverette introduced Mike Bonforte, Regional Controller of Brooklyn Bottling of Milton, New York, LLC, and the Applicant's attorney, Christine Konefal, to discuss the additional questions that the Board had prior to public hearing. Mr. Jones asked if the Applicant had considered using a contractor from the local area instead of Schenectady. Mr. Bonforte explained that they have not reached a final contract, but the contractor from Schenectady did have the lowest bid by a wide margin. Mr. Bonforte explained that they have completed 95% of the contract, but they are having difficulty reaching a final agreement because the contractor will not take design responsibility on a pre-fabricated building. Mr. Malcolm explained that the responsibility usually defaults to the manufacturer. Mr. Malcolm recalled that the project has a long-standing relationship with the contractor and has utilized their services in the past. Mr. Bonforte responded to Mr. Malcolm and stated that while they have not previously utilized the contractor, the Senior Plant Managing Engineer knows the company personally, which has created a high level of comfort between the Applicant and the contractor.

Mr. Jones expressed his disappointment that the Applicant has threatened to leave the area in favor of Somerset, New Jersey if they are not awarded the points for retained jobs on the UTEP. Chair Leverette inquired as to whether they have any document to show that the Project has entered into agreement to move to Somerset, New Jersey, like proof of working with a real estate agent. Mr. Bonforte explained that they do not have any documentation, and the idea is just a business approach. Mr. Malcolm suggested to Mr. Bonforte that trying to leverage the Agency is not a good approach. Mr. Bonforte explained that the company consists of nine operating entities, including a location in Somerset. When reviewing the UTEP with the owner, he expressed that if the UTEP does not work in their favor, they are able to move to the location in Somerset. Chair Leverette expressed that the issue in question is the difference between a ten-year and fifteen-year PILOT. The Chair believes that the Project is worthy of the Board's consideration, but is questioning if it is worthy of a fifteen-year PILOT, especially when considering that other projects qualifying for a fifteen-year PILOT had brought in more jobs.

The Chair noted that the application indicated that the Project will receive a \$455,000 credit from Empire State Development ("ESD") but further noted that the offer letter specifies "up to \$455,000 can be awarded." Mr. Bonforte explained that they may not get the full credit, but it is directly related to sustained job growth. Mr. Leverette then pointed out that the document is not executed and expired after 60 days. The letter also required submission of a consolidated funding application ("CFA"). Mr. Bonforte explained that the document was signed, and the requested CFA has been submitted to ESD. Mr. Bonforte has email confirmation from the ESD representative and stated that he can submit the signed commitment, and the CFA as an attachment to the Project's application. Mr. Malcolm asked if the state has a claw back agreement. Mr. Bonforte explained that ESD offers multiple programs, but the organization chose the Job Growth Excelsior Program. This program requires sustained job growth which is to be audited each year and is subject to a claw back agreement. The hiring is phased in, in the same manner that Mr. Bonforte structured the job numbers for the Project's Application to the Agency. Mr. Bonforte then stated that he believes the employment numbers will be much higher than stated on the application because the company recently secured a contract with a major national beverage company.

Mr. Bonforte explained that the Project requested a fifteen-year PILOT because they hoped to take advantage of the full amount, but if the Board decided that it was only worthy of a ten-year PILOT, he would be happy. The Applicant is hoping to get all of the details finalized quickly so construction can begin prior to the cold weather. The proposed contractor has already stated that if they do not have the concrete poured before December, they may need to wait until next season. To help speed up the process, Mr. Jones suggested skipping the 2-3 points that the Applicant is trying to claim for retained jobs, and, instead, gain 3 points by using a local contractor who utilizes workers from Ulster County.

Mr. Ham brought up the apprenticeship program and noted that on the application the Project answered yes to the question regarding having a certified apprenticeship program. Mr. Ham noted that it is an internal program which is not recognized as a New York State Apprenticeship Program, and therefore the answer on the application should be changed to "no." Mr. Ham also stated that they should not have answered that they will be using construction labor of 25% from Ulster County or the contiguous counties since they still do not have a contract in place with a contractor, and therefore that question

cannot be accurately answered. Mr. Ham also stated that if the Project uses the contractor from Schenectady, he finds it very unlikely that said contractor will hire a new crew from Ulster County. Mr. Bonforte assured the Board that the contractor plans to post jobs locally and source this crew primarily from Ulster County. Mr. Malcolm suggested that the Applicant add wording to the contract that explicitly requires the contractor to utilize local labor.

The Chair called attention to the documents from the People's United Bank which outlines the line of credit. There is a hand-written note on the letter that states that the line of credit is subject to IDA approval. Mr. Bonforte stated that that is an old letter and explained that the note is present because the Project will not sign until they receive a commitment from ESD and the IDA. The Chair suggested that Mr. Bonforte provide all current relevant documents and reminded Mr. Bonforte that he has agreed to provide the board with the completed CFA, the executed Empire Development documents and all relevant documents outlining the credits that will be received from ESD.

Mr. Bonforte explained that he does not believe the Project will be able to find a contractor, local or otherwise, with a lower bid than the current potential contractor. He stated that the contractor has held the price firm for three months while the Project continues to finalize the funding. Mr. Malcolm explained that the contractor is able to keep the rates lower because they are non-union and do not have the overhead that a union contractor faces such as set wages and benefits. Mr. Jones stated that he would be more likely to vote "yes" if the Project planned to use local labor. Mr. Malcolm stated that the screening process put in place by the Chair is good because the Board cannot force the use of local labor, but they can convey their desire to see it utilized. The Chair added that they not only like to see local construction labor but also local jobs created, and he reminded the applicant that the ultimate goal of the Agency is to look out for the taxpayer. Mr. Bonforte emphasized that the company signed a three-year contract with a national brand and assured the board that there will be a substantial need for hiring. The brand is interested in co-funding a production line increase as part of entertaining the idea of another project to increase the production facility. Mr. Bonforte clarified that the current application being discussed is for the warehouse specifically.

Mr. Ham asked for clarification on the wage updates and if overtime and medical benefits have been backed out. Mr. Bonforte stated that the application now shows base salaries only and that the benefits for non-union employees is basically 60/40 split co-insurance. Mr. Bonforte also explained that the Applicant provides a separate benefits package to the union employees that the company pays on their behalf.

Ms. Storms had a question regarding the wages for basic skilled manufacturing listed on page 27. Calculations show that the applicant is paying about \$1,500 per year higher than living wage. The Project has already been moved to Public Hearing, and there is no further action to take until the Applicant provides the updated documents that the Board has requested.

Status of Pending Projects

Agency Counsel reported on the status of pending projects:

- Wildberry Lodge, LLC – Project is completing SEQR process. No action can be taken until the process is completed.
- Kingston Medical Assignment – Transaction has been completed. Documents have been signed and released, and the fees of the Agency have been paid.
- Inness NY, LLC – 50% of the IDA fee has been paid, and the interim sales tax letter has been delivered. Counsel is working on draft documents and expects to close in November 2019.
- Brooklyn Bottling of Milton, New York, Inc. –Applicant has submitted a revised application and written responses to the IDA follow-up questions. The Agency is working to set up a public hearing. The Agency is also waiting on updated documentation from the Applicant.

PUBLIC COMMENT

Public comments were received as follows:

Bill Kimball asked why the board was able to discuss information on the confidential document from Brooklyn Bottling that was distributed. Counsel clarified and explained that one document was confidential due to bank information, and there was also another packet containing the application with confidential annotations from Agency Counsel.

Ilona Ross asked if there has been an analysis that shows whether tax revenue generated is worth the credits given by the IDA. She also asked if IDA law prohibits the Board from having social judgement on a project. James Malcolm explained that it's hard to quantify the growth fostered by a project. Richard Jones added that RIT has developed a model that can be used to calculate the spillover effect.

Mike Baden, Supervisor of the Town of Rochester, asked if the town has received a copy of the final contract for Inness NY, LLC. The Chair stated that they have not closed yet, but the town will receive a copy of the documentation once they do.

Before the meeting was adjourned the Board observed a moment of silence to remember the souls lost on 9/11.

ADJOURNMENT

Motion: James Malcom, seconded by Michael Ham, moved to adjourn the meeting.

Vote: The motion was unanimously adopted.

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The meeting was adjourned at 10:33 A.M.

Respectfully submitted,

Michael Ham, Secretary