

UCIDA

Ulster County Industrial Development Agency

**Ulster County Industrial Development Agency
Minutes
May 15, 2013**

A regular monthly meeting of the Ulster County Industrial Development Agency was held at 8:00 a.m., Wednesday, May 15, 2013, Karen Binder Library, 6th Floor, Ulster County Office Building, 244 Fair Street, Kingston, NY.

The following agency members were present:

Michael Horodyski	Chair
James Malcolm	Assistant Chair/Assistant Secretary
John Morrow	Secretary
Steve Perfit	Treasurer

The following agency members were absent:

Paul Colucci	Assistant Chair/Assistant Secretary
Robert Kinnin	Assistant Chair/Assistant Secretary

Offices of Business Services Staff:

Linda Clark
March Gallagher

UCIDA Attorney and Bond Counsel:

A. Joseph Scott Hodgson Russ LLP

Additional Attendees:

Anthony Bacchi	Golden Hill Nursing and Rehabilitation Center
Len Bernardo	TLB Management (a/k/a Skatetime 209)
Paul Brown	New Paltz
Richard Croce, Jr.	Viking Industries
Sean Denvir	Ryan, Roach & Ryan – representing Rondout Savings Bank
Jessica DiNapoli	Times Herald Record
Edward Farbenblum	Golden Hill Nursing and Rehabilitation Center
James Maloney	Assessor, Town of Ulster and Chair, Ulster County Economic Development and Tourism Committee
Nicholas Pizza	Hudson Valley Domicile (a/k/a Hudson Valley Sportsdome)
George Sifrie	New Paltz
Fawn Tantillo	Deputy Clerk, Ulster County Legislature
Jack Walsh	IBW 363 Electrical Workers

Chair Michael Horodyski called the meeting to order at 8:05 a.m.

PLEDGE OF ALLEGIANCE

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

P.O. Box 4265, Kingston, NY 12402-4265

Mr. James Malcolm requested that the members of the Agency observe a moment of silence in memory and honor of the passing of Nicholas Pizza's daughter's fiancée who died while serving his country in Afghanistan.

PUBLIC COMMENT

Chair Horodyski opened the meeting for Public Comment. The following individuals requested the Privilege of the Floor:

1. Mr. Jack Walsh, a Rosendale resident and a member of the political action committee of the Ulster County Local IBEW, addressed the members of the Agency. At the June meeting of the Agency he would like to talk about getting language placed in the IDA for Project Labor Agreements. He will be bringing with him other language from other counties that have Project Labor Agreements. There is nothing in here to protect the families of Ulster County.
2. Mr. Paul Brown, a resident of the Town of New Paltz, addressed the members of the Agency. He stated he wished to thank the UCIDA Agency members and the Agency for its practice of having local hearings. Mr. Horodyski recently came to his town, along with his staff and it was a pleasure to know that the Ulster County IDA has this practice of holding hearings in local communities. He had the privilege of attending and he also wants to thank the board for their support for Viking Industries. He thought that the 70+ jobs that Viking brings to the town; as a past chair of the New Paltz Planning Board for several years, he found them to be a wonderful corporate citizen. It epitomizes what the UCIDA is about and the kind of help it brings to businesses and communities and he appreciates Viking. He thanked the members of the Agency for what they do. He also noticed that the meeting was not that well attended and having held many public hearings himself, he was a bit sad because he knew that there was support for the project. But sometimes public hearings are the methodology for gathering information; only those opposed show up. It sometimes can give a board a false picture, but in the Planning Board he found if there was no controversy used in SEQR it influenced their decision. His final point today is that many in New Paltz, with Mr. Sifrie, a long time businessman, want to make sure that for the future meetings of the IDA they understand the probative facts that the Agency needs so that they can be intelligent in their bringing forth of information. A lot of times people make interesting comments at public hearings, but they have no probative value and sometimes it attacks the credibility of the speaker. He was hoping that they could get some guidance, and he would be more than happy to call and do the research on the UCIDA's website or look at New York State law, because the school board and the town board, which are the two taxing authorities, are beginning to take a look at this and they, as volunteer members, don't quite get what it is you need and how you need it, including the Planning Board. So what is the methodology whereby people bring forth probative data? Does it always come through the public hearing; do the taxing authorities, in particular, have a different entry method into your decision making and anywhere we can go in the next weeks and months to learn about that would be most helpful.

Mr. Steve Perfit pointed out to Mr. Brown that Ulster County was a taxing authority as well. The Agency considers all feedback from all three taxing authorities.

Mr. Brown responded that he was not worried about them. One project that they are looking at it could be a million and a half in taxes the first year that could be abated in some way by the UCIDA's action. Some members of the community think of it very simply, a \$1,000,000 could go to the school district, \$500,000 left over for the town and the county; of the \$500,000, \$400,000 to the town, \$100,000 to the county. He may be wrong with the math, but that is the ratio clearly as it is read now, and that is where they need

help. They need to understand that the school district has the largest of the tax ratables in their community. The way they are thinking is the school district has a "dog in the hunt" and has the biggest chunk; perhaps as much as two-thirds. The town and county get the final third, but of the final third, 80% goes to the town and 20% to the village. If they are wrong they want guidance. They were told months ago, that if three taxing authorities speak to the UCIDA and we think that this is a bad deal, again a point where they need knowledge, our school board was under the impression that they were commenting on the merit of the project and they had to be educated to the fact that their responsibility as a taxing authority is to give this board probative information on the benefit of the UCIDA arrangement. He thought that they were getting it. The town board is totally out of the picture; they don't get it yet as to who you are and what you do. They are all trying to learn and then there are two legislators representing New Paltz and they are in touch with them. Thank you for the reminder. You are absolutely right. But that is why our focus has been more on the school board and the town board.

Chair Horodyski commented that he thought that focusing on the taxing authorities is important because the Agency does weigh very heavily on their input into any proposed abatements, any proposed PILOTs. He thought another place to look is to review the Agency's policies and procedures all of which lay the ground work for how the Agency will go making a determination. So within each of those points, within that policy, any probative information you might have with regards to those points would certainly be pertinent from a public hearing standpoint.

Mr. Brown responded that all parties, individual citizens, interest groups and taxing authorities, use the vehicle of the public hearing as the sole method; what is the methodology, the behavior.

Mr. Perfit stated that on the Agency's webpage the most important thing to read is the Mission Statement. That is the most prevailing thing on how we make our decisions. Fortunately, we have public hearings, but basically we have to follow our Mission Statement first and foremost. After that we listen at the public hearings; it doesn't necessarily mean that the members will vote based upon the results of the public hearing. The members vote according to our Mission Statement.

Mr. Brown responded that the probative information is related to the Mission Statement. If their input is framed around the Mission Statement, they are speaking the language that the Agency wants to hear.

Mr. Perfit stated basically it is economic development and job growth for the county.

Chair Horodyski responded that just as a point of information, typically that Public Hearing record will stay open after the Public Hearing for the acceptance of written comments. That will certainly be taken into consideration before a decision is made.

Mr. Brown stated so there is no separate channel for the taxing authorities; the public hearing is the place.

Chair Horodyski closed Public Comment as no other individual requested the privilege of the floor.

MINUTES

Motion James Malcolm, seconded by John Morrow, moved to approve the Minutes of the March 27, 2013 meeting. A copy of said Minutes is on file.

Vote: The motion was adopted.

Chair Horodyski noted that the Minutes of the April 10, 2013 meeting were still in draft and will be considered at the June meeting of the Agency.

FINANCIALS

Mr. Perfit presented a copy of financials for the period ending April 30, 2013. He stated that in the future Agency members would also be provided with a more "operational kind of statement with budget versus actual. Basically we are on target budget wise.

Motion: James Malcolm, seconded by John Morrow, moved to approve the financials for the period ending April 30, 2013. A copy of said financials is on file.

Vote: The motion was adopted.

COMMITTEE REPORTS

Audit Committee. Mr. Steve Perfit, Chair of the Audit Committee, reported that the committee did not have a meeting. The next meeting will be a quarterly review and will be scheduled at the end of June.

Governance Committee. Mr. John Morrow, Chair of the Governance Committee reported that the Committee had met on April 16, 2013. A copy of said Minutes is on file. Discussion/action included, but was not limited to:

- Job Summary Spreadsheet – A copy of which is on file.
 - This is the work that went into PARIS where staff evaluated how each project stacked up against their original job creation goals and those that are shaded are projects that were underperforming in the 2012 analysis.
 - The Agency has a policy of underperformance of more than 20% being an issue
 - Brooklyn Bottling was underperforming by 21% - project terminated last year – no enforcement action that the Agency can take at this time.
 - Central Hudson showed an underperformance of 22%.
 - At this time there is an extensive amount of communications with Central Hudson. It appears that what they did is make two mistakes.
 - The reported construction jobs as their total jobs. Somehow they reported that they had 4 jobs in Ulster County while they have 189 jobs in Ulster County. So they misunderstood.
 - In their reporting, and of course we will fix that for next year, is that when the UCIDA set up their project, it was assumed that there would be construction jobs in 2011 and 2012. Their construction period actually ran from 2012 over to 2013. So their construction hours in 2013 go to the underlying construction jobs. There is a substantial record now and they are really well in excess of their jobs numbers, however these numbers were from the PARIS report.

- Gardiner Library showed underperformance by 37% - this was a bonding project and it is a not-for profit so there is no PILOT in effect that any enforcement activities can be taken on.
- Gateway showed underperformance by 43% - same situation. There is no PILOT – it was a bond project.
- Hudson Valley Domicile will be discussed further. It was noted that there was less underperformance from the year before.
- Northeast Panel and Trust – 100% underperformance. They are leaving the area and the project was terminated.
- St. Clara Church of God – substantial underperformance. But again a not-for-profit that has no tax benefits associates with it. We are also terminating the project at their request.
- TLB Management – 88% underperformance, which is a change from last year. Last year 9 jobs were reported and this year 4.36 jobs were reported. The PILOT has been terminated.

Mr. Perfit asked Counsel A. Joseph Scott that in the Agency's new contract(s) if there were claw back provisions?

Counsel Scott responded affirmatively. All new projects.

Mr. Perfit asked if it is 100% claw back to day one.

Counsel Scott responded that it varies over time; the amount of claw back in the first couple of years is 100% and then it drops percentage wise over the term. So if there is a default or the company closes in year five, the amount of claw back is 80 or 70% or a diminishing percentage; but there is a claw back.

Mr. Perfit stated that as a point of information the Rockland IDA clawed back a project that was in the millions of dollars.

➤ Definition of Units with reference to Park Point

- What a unit is whether it is a 4 bedroom suite verses two bedroom
- It was the feeling of the committee that a 4 bedroom suite should not be a unit
- Park Point has both 2 bedroom and 4 bedroom suites
- It was agreed that an interpretation of a unit is a bedroom

Mr. Perfit asked why we were bringing this up since we do not have a formal application from Park Point.

Mr. Morrow responded because if someone applies they have something in writing that they can look at to see what the rules are going to be.

Mr. Perfit suggested that we really shouldn't put a name on it.

Ms. March Gallagher stated that there is a project coming before the Agency today that is coming under the same provision.

Mr. Morrow responded that Park Point brought this to light. It is kind of like the claw backs. Years ago no one thought about claw backs because they weren't really an issue and now they have become an issue and we are writing the rules.

Mr. Malcolm stated that we are making it easier for the applicant going into the process so they know what they are dealing with.

Chair Horodyski stated that he attended that Governance Committee meeting. Is that the right number, he did not know. He thought that Governance had a great discussion on it and it would be nice if the full compliment of the Agency was present today. Getting this out there is something to think about is important from the Agency's standpoint. You are dealing with one kitchen, two bathrooms and then you have 4 bedrooms. He thought applicants will look at a suite as one unit typically. Is that where we want to be; that is going to be the question. We drafted the policy thinking that it is very comprehensive and very clear and then we have an issue pop up.

Mr. Perfit replied that he did not have an objection to that; just mentioning the name of a project

Mr. Malcolm stated that he dealt with contracts on a daily basis and he always goes back to the rule of you know what everything is written in black and white, but it is red and gray. We have the ability to tweak things as we move along and when you get into this market of, for instance, Park Point, where you are going to have leaseback properties and everything else going on, it's kind of a new animal. It's becoming more prevalent out there so if we find that it merits change he thought that the Agency could sit and make adjustments.

Chair Horodyski asked members to take it back with them to contemplate what the spirit of the law might have meant, he thought to Mr. Malcolm's point it is important as an Agency to stay nimble and be able to react and to make good decisions in the interest of all of Ulster County. Discussion will continue next month.

➤ PILOTS – limited services hotels

- A B&B can be considered a limited services hotel
- Limited services hotels are those that do not have a full service restaurant on their property
- Staff of the Office of Business Services will design a survey using Survey Monkey, to solicit data from area hospitality businesses. Staff will approach the Lodging Coalition regarding the survey.
 - The survey is out right now to all the tourism properties and will go out again under the Lodging Coalition header as of Monday. Jackie Appeldorn of that group will be sending it out and we are getting some good data back.
 - It was thought that businesses may participate in the survey if they knew the results of the survey may assist in limiting benefits to competitors.

- UCCRC Application – Staff of the Office of Business Services would re-draft the application for the Ulster County Capital Resource Corporation to make it more in keeping with the application of the Ulster County Industrial Development Agency.

Ready2Go Committee. March Gallagher reported that the Ready2Go Committee has not met but there is a meeting scheduled. A Shovel-Ready Education Forum that will give Planning and Zoning Board members credits and will cover the Ready2Go process, the Shovel Ready bonding process. It is June 19, 2013 at 7:00 p.m. at SUNY Ulster.

PROJECTS

Viking Industries

Chair Horodyski reported on the Viking Industries Public Hearing held at 7:00 p.m., May 2, 2013 at the Town of New Paltz Town Hall. Chair Horodyski stated that the hearing was not well attended. Mr. Brown and Susan Zimet, Supervisor of the Town of New Paltz attended and made comments in support of Viking. It was a fairly short uneventful meeting. Viking Industries was touted as a major industry/employer; a major positive to the Town of New Paltz. That was the overlying comment; how much Viking Industries has helped New Paltz. A copy of said transcript is on file.

Counsel Scott gave an overview of the resolutions. The first resolution is a SEQRA resolution; the second resolution is the bond resolution. As the Chairman indicated this is essentially a re-financing of an existing project(s) of Viking Industries. The Agency did a project for them in 1998; a project for them in 2005. The UCIDA as a governmental body before we can take final action with respect to the project by way of considering the bond resolution, we need to consider any potential environmental impacts of the project. For that reason there is a draft for your consideration a SEQRA resolution. The meat of the SEQRA resolution, candidly, is on page 4 of the resolution, Section 1(B) which indicates that this project is a re-financing project and under the SEQRA regulations there are three sets of projects. There are Type 1 projects that are projects that are likely to have an environmental impact; Type 2 projects which are projects likely not to have an environmental impact; and then unlisted projects which are projects in the middle. Re-financing projects because they involve no new money, no new construction, no new equipment, no changes in the project other than the terms of the financing are by definition a Type 2 project, which as previously indicated are projects that have no environmental impact on the community or the area. The project is described in the paragraph immediately above, which talks about the 1998 project and the 2005 project that there was reconstruction, there were additions, there was machinery acquired with the proceeds of those two bond issues, but again there is no new money with this transaction other than some money to pay for closing costs.

RESOLUTION DETERMINING THAT AN ACTION TO UNDERTAKE A CERTAIN REFINANCING PROJECT FOR VIKING INDUSTRIES, INC. IS A "TYPE II ACTION" AND NO FURTHER ACTION IS REQUIRED UNDER SEQRA.

Motion: John Morrow, seconded by James Malcolm, moved to approve the above referenced SEQRA resolution for Viking Industries.

Vote: The motion was adopted.

Mr. Perfit asked what the generated fee was.

Counsel Scott responded ¾% of 1% of the amount of the bond issue. We are still pricing the bond issue; it is actually closer to \$1.6 million. He had the amount listed as to not exceed \$2 million to give some coverage as we are doing the final sizing.

Chair Horodyski addressed Mr. Croce, representing Viking Industries that he was one of the success stories of what the IDA does here in working in concert with the town and the local municipalities. Congratulations and continued success to you in your business.

Counsel Scott stated that the second resolution authorizes the issuance of the bonds, the execution and delivery of the documents. There are a long series of whereas paragraphs where the prior history of the transaction is described. To echo the comments of the Chair, about being a poster child for good IDA projects and financing, the company came back to us seven years later, that says something about the value add that the IDA brings to the table. Additional parts of the whereas paragraphs talk about the public hearing that was held with respect to the project, but the meat of the resolution starts on page 6 where certain findings are made with respect to the project. It is a manufacturing project and clearly fits within the IDA statute; we are authorizing the issuance of not to exceed \$2 million of bonds to cover the re-financing. The terms of the financing will lower the debt service that the company is paying. There are a number of documents that will need to be signed in connection with that, including a new Installment Sale Agreement, but in terms of liability the UCIDA with respect to the project is unchanged. We receive the same insurance certificates; we receive the same indemnification. There is no change in the PILOT Agreement. The PILOT Agreement just continues out its existing term. There is no extension; there is no change in the terms of the PILOT Agreement. Basically the UCIDA transaction that was approved in 1998 and 2005 continues forward. The only change is in the terms of the financing.

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE BY ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF ITS INDUSTRIAL DEVELOPMENT REVENUE REFUNDING BOND (VIKING INDUSTRIES, INC. PROJECT), SERIES 2013A IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED TWO MILLION DOLLARS (\$2,000,000) AND THE EXECUTION OF VARIOUS DOCUMENTS RELATED THERETO.

Motion: John Morrow, seconded by Steve Perfit, moved to approve the above referenced Bond Resolution for Viking Industries.

Vote: The motion was adopted.

Golden Hill Nursing and Rehabilitation Center

Chair Horodyski introduced members of the Golden Hill Nursing and Rehabilitation Center Project, Dr. Anthony Bacchi and Mr. Edward Farbenblum.

Mr. Farbenblum addressed the members of the Agency regarding the project. They are purchasing the nursing home and implementing of a lot of programs that they anticipate a need for in Ulster County. They are not asking for bonding and they are not asking for a deviated PILOT; they are asking for a standard UTEP abatement.

Mr. Perfit stated that in the newspaper today it speaks about the major layoffs or a decrease in jobs. Do you have an overall projection on where you are going with this.

Mr. Farbenblum responded that the layoff notices went out from the county. The county is laying off all the employees. When they purchase the facility they will hire a substantial number of employees. Their application speaks to what they are comfortable warranting. They have a staffing chart which shows hiring of about 280 employees. The county has at present just shy of 330. They will retain a certain number of those for Golden Hill business that they are going to have to wrap up. They are keeping 3 people in the business office to manage receivables over the next 3 years because they will have lag time with the close out. They are keeping Sherri Cross and a handful of nurses over to the Department of Public Health. There is also going to be a wave of attrition due to retirements. From discussion, there

are employees with vested pensions and they are going to take them at this point and they are going to absorb almost all of the remainder. They will lose a handful – predominantly due to retirements.

Mr. Malcolm stated that the impact sometimes the media comes out and it's like they wiped out 500 jobs.

Mr. Farbenblum thought that they would lose a handful he would say. The other thing he would say, they are going to have a re-jiggering of jobs. They will be hiring more nurses and there will be fewer people in housekeeping and activities.

Mr. Perfit stated so it's like you are new project. The overall projection is that you are an economic benefit to the county. The overall perspective that hit the newspaper today was not favorable.

Dr. Bacchi stated that the real idea is to improve some of the care by bringing in new specialty programs. For example the county is lacking a congestive heart failure program so that if a patient is admitted to the hospital there is no out-patient rehab for them. There is no program available within the county for Parkinson's disease. They have state-wide approval and recognized programs for both. They want to implement them; we will have to hire additional staff and train these individuals specifically for these programs.

Mr. Farbenblum stated that if the members of the Agency were to review the business plan that was submitted, we have a line item for additional therapy costs.

Mr. Malcolm asked if they saw themselves doing capital improvements to the facility.

Mr. Farbenblum responded that right now they are budgeting right now, a capex (capital expenditure) budget of about three and a half million dollars of capex. There is a little bit of site work, a lot of esthetic work. A lot of it is an esthetic improvement.

Dr. Bacchi stated that right now the facility is a 1970 building that is very institutional and we want to change it to a "friendlier" environment.

Mr. Farbenblum stated that there was a "wave" in the latter part of the 20th century to make these types of facilities feel very institutional and now the trend is against that. What we propose to do is make it less antiseptic. One of the things is that they are budgeting a couple of hundred thousand dollars for wall coverings in the public areas; we are opening at least six, probably twelve lounge areas or common social spaces. That will require some demo so that is more of the architecture work we are speaking about. We are going to build a 4,000 sq. foot therapy gym in the south building. There is an item by item budget.

Dr. Bacchi also indicated that they would be updating the rooms as well.

Mr. Malcolm responded that they are all doing it; every hospital out there in the last five to six years. He deals with it on a day to day basis; everyone is upgrading. It's not as if you want to go there on vacation, but it does make the stay a little bit better.

Dr. Bacchi stated that particularly when you have a facility that still has the cranking beds.

Mr. Farbenblum added that a lot of the equipment is beyond its useful life and needs to be replaced.

RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER OF ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY TO HOLD A PUBLIC HEARING REGARDING A PROPOSED PROJECT TO BE UNDERTAKEN FOR THE BENEFIT OF GOLDEN HILL ACQUISITION, LLC

Motion: Steve Perfit, seconded by John Morrow, moved to approve the Public Hearing Resolution for Golden Hill Acquisition, LLC.

Vote: The motion was adopted.

Ms. Gallagher stated that the Public Hearing will be scheduled as soon as possible. The members of the Agency and the project applicant will be notified of the date/time/location. It will likely be right after Memorial Day at Kingston City Hall.

Fort Shandaken Associates II L.P./Spotted Dog Ventures, LLC – a/k/a The Emerson

Chair Horodyski stated that this resolution is basically to allow for a refinance of current debt with Rondout Savings.

Mr. Sean Denvir, an attorney in Kingston, announced that he was representing Rondout Savings Bank. He was here to answer any questions.

Chair Horodyski asked members of the Agency if they had any questions. He thought that it was a straight forward rate re-finance, with no new money.

Mr. Denvir responded that there is no new money. There were two instruments; one a regular mortgage and the other was just a credit line mortgage which had been maxed out for a time.

Mr. Perfit asked what the amount was of the re-financing.

Mr. Denvir responded 3.8 million. It was originally 4.

Counsel Scott stated that they are asking the Agency to sign.

Mr. Perfit asked if this was fee-based.

Counsel Scott stated that a post closing fee will be collected. We have all the normal indemnifications and insurances, etc.

Mr. Perfit asked and the fee is?

Counsel Scott responded that the fee on post closing matters starts at \$500. He was going to work with staff in coming up with an actual number. That would be the range.

RESOLUTION AUTHORIZING THE EXECUTION BY ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MODIFICATION OF MORTGAGE AND RELATED DOCUMENTS IN CONNECTION WITH THE FORT SHANDAKEN ASSOCIATES II L.P./SPOTTED DOG VENTURES, L.L.C. PROJECT

Motion: John Morrow, seconded by Steve Perfit, moved to approve the 2013 Mortgage Modification Resolution for Fort Shandaken Associates II L.P./ Spotted Dog Ventures, LLC.

Vote: The motion was adopted.

PROJECT MONITORING AND ENFORCEMENT

Hudson Valley Domicile (a/k/a Hudson Valley Sportsdome)

Chairman Horodyski recused himself from discussion and left the room.

Counsel Scott reminded the members of the Agency that there is potentially litigation involving the second item so if the members wished to go into Executive Session to discuss this matter, it might not be a bad idea.

Mr. Malcolm thought that the Agency should.

It was determined that the Chair should be present for Executive Session.

EXECUTIVE SESSION

Motion: James Malcolm, seconded by Steve Perfit, moved to adjourn into Executive Session.

Vote: The motion was adopted.

The Agency adjourned into Executive Session at 8:47 a.m.

Motion: Steve Perfit, seconded by James Malcolm, moved to adjourn out of Executive Session.

Vote: The motion was adopted.

The Agency adjourned out of Executive Session at 9:02 a.m.

No official actions were taken during Executive Session.

Hudson Valley Domicile (a/k/a Hudson Valley Sportsdome)

Once again Chairman Horodyski recused himself from discussion and left the room.

Agency member Steve Perfit was Acting Chairman of the Agency during this part of the Agency's Agenda.

Acting Chair Perfit stated that continuing in the discussion of Hudson Valley Domicile, in discussion with the Agency's Executive Director there has been an update of some numbers and the Agency is going to table discussion until next month to allow for additional discussion(s) with the project applicant.

Mr. Pizza thanked the members of the Agency for their condolences on the untimely passing of his daughter's fiancée.

TLB Management (a/k/a Skatetime 209)

Chair Horodyski returned to the room. He stated that nothing has happened necessarily with regard to TLB Management.

REPORT FROM THE OFFICE OF BUSINESS SERVICES

Hudson Valley Economic Development Corporation

March Gallagher presented an invoice for payment from the Hudson Valley Economic Development Corporation (HVEDC). A copy of said invoice is on file. The invoice is in the amount of \$20,000 for the 2013 Annual Membership Dues. The Ulster County Development Corporation already approved and made payment of half of the invoice. Typically, the UCIDA pays the other half. Almost all leads that are not originating from within the county now come from HVEDC rather than Empire State Development. Often the Office of Business Services will receive one to two leads per month, sometimes as many as one or two a week from this organization about businesses and projects looking for locations. We have also found that on a couple of their industry sectors we are getting a lot of traction especially in the food and beverage sector where they have created the Hudson Valley Food and Beverage Alliance. They are providing value. She also recommended that Mr. Larry Gottlieb be invited at a mutually convenient time, to speak to the members of the Agency regarding their regional activities.

Motion: Steve Perfit, seconded by John Morrow, moved to approve a \$10,000 payment for the UCIDA's portion of the 2013 Membership Dues to the Hudson Valley Economic Development Corporation.

Vote: The motion was adopted.

Resolution 157

Ms. Gallagher updated the members of the Agency regarding Resolution 157 which was passed last year by the Ulster County Legislature. It has certain reporting requirements on the UCIDA. A proposed response to Resolution 157 with supporting documentation, including a copy of the adopted resolution, is included in the Agency's board materials. Additionally, contained in Resolution 157 is a request for pending projects; Kirchhoff was a pending project in 2012 and the cost benefit analysis for that project was included.

Mr. Perfit stated that he was concerned with that requirement, as has been discussed in the past. We already have an Agency that we report to, the ABO, Authorities Budget Office. For the Ulster County Legislature to demand this, he thought was inappropriate. He did not think it was called for in the Agency's Charter, not called for in the state regulations. He did not think it should be a legislative action that they can impose upon us.

Chair Horodyski responded that might be a fight to be had that they passed a resolution to require this of us. He thought it all came about at the time where the IDAs were persona non grata.

Mr. Perfit stated that the Agency has a very strong reporting agency already. Why do we have to report to the Ulster County Legislature. As an example, Mr. Perfit, gave an example of what was going on in other counties. Sullivan County right now is in the middle of a 1.2 billion PILOT for the Concorde project. It was all approved, passed on and commented on. All of a sudden the Sullivan County Legislature says, stop. We want to look at this a little more carefully and basically, the opinion of their IDA counsel and the IDA, the Sullivan County Legislature does not have the right to do this. If we approve something, fire us. That is all you can do. He was not OK with this legislative action.

Ms. Gallagher responded that she also wanted it noted that there is a memorandum to the file that Melinda Beuf prepare which documents certain differences in what we are reporting versus what was asked for. Because we find as staff, trying to fulfill the requirements of Resolution 157 that they are asking for things that are either not collected or not relevant or difficult to obtain. So we documented this and it will be included in the Office of Business Services files so that we can have a track record going forward of what we were able to provide versus what we weren't able to provide and as a part of that, we also have some changes that we are going to incorporate into future data collection in terms of what we collect from projects and what we include on project applicants so that the Governance Committee

moves forward with any changes to the application process we can incorporate desired data collection into that. This will make future reporting much easier. Having this due the same day PARIS is due is almost physically impossible to fulfilled because PARIS is required to be reviewed to implement this.

Mr. Perfit again stated that his feeling was that the Agency should “kick back” and say almost everything you asked for is contained in our PARIS Report. Read it; it is public information. We don’t think that the excess information is required or necessarily in our Charter.

Chair Horodyski stated that he understood, but he was going to respectfully suggest that as it has already been put together this year, it is put together well, and it highlights everything that is asked of us. We have a nice support staff with the Office of Business Services as opposed to relying on UCDC. We want to work collaboratively with everyone in the county to further economic development.

Mr. Perfit asked what the legality of this Resolution is to impose anything on us, from the Ulster County Legislature, he believed was illegal. Mr. Perfit believed that a legal opinion is required that we are not required to do this but we may give it to you voluntarily.

Ms. Gallagher responded that a response was filed last year.

Chair Horodyski stated that we should do that. In the letter to Mr. Donaldson the fact that we are providing this out of the goodness of our heart and are under no regulatory requirement to provide this information.

Flow Chart

Ms. Gallagher presented the PILOT Flow Chart.

Chair Horodyski stated that this was a request made by Paul Brown, from the Town of New Paltz. The Flow Chart shows exactly what our process is and how an application moves through our process. It was an enlightening exercise putting this together on paper. It is really comprehensive and highlights either a bond program or leaseback program.

Ms Gallagher indicated that there was one error. In the Process for Bond an Inducement Resolution should be added to the Public Hearing Resolution box.

Motion: Steve Perfit, seconded by John Morrow, moved to approve the UCIDA Flow Chart(s) as amended.

Vote: The motion was adopted.

Mr. James Maloney requested to ask a question. Under Deviated and/or Standard PILOT or no PILOT. He stated that he sees Publication/Posting/Notice of Public Hearing to Taxing Authorities. Shouldn’t there also be even that an application has been received and a notice sent to the tax authorities.

Ms. Gallagher responded that they are notified of the public hearing, not necessarily about the application.

Mr. Maloney asked shouldn’t they be sent and notified when an application has been received?

Ms. Gallagher responded that there is no requirement at this time.

Chair Horodyski stated that we could consider that. The more information that gets out there the better. He did not want to overburden the administrative staff.

Mr. Malcolm stated then what happens is that the public entity shows up and you have to go through the “dog and pony show”, this is just they’re here, it isn’t the public hearing. He didn’t see anything wrong with letting them know that an application has been received. He didn’t see a problem.

Chair Horodyski stated that he didn’t think that the Agency can necessarily make that happen, and it is not necessary to change or update the flow chart. That could be part of our policy. He thought the flowchart was comprehensive notwithstanding Mr. Maloney’s comments. It is really reflective of what we are doing right now and certainly gets the information out there.

CORRESPONDENCE

Bond Information Memo

Counsel Scott stated that with reference to the Public Information Memo, he is in an uncomfortable position as he is commenting on another law firm’s legal product.

Ms. Gallagher stated that counsel gave us a similar memo last month that was in member’s packages that was much more comprehensive than this, but you have received this in the interim and we thought that it should be communicated to the members of the Agency. She stated that counsel didn’t have to speak directly to this memo, more to the changes in general.

Counsel Scott stated that the interesting thing about the memo that Bond Schoeneck & King prepared and the memo that was distributed at the last meeting is that there has been a change in the Governor’s legislation. In the original Governor’s bill, what he did was he took away the ability of IDAs to grant the 4% sales tax for projects. That went away in the actual legislation. The actual legislation brought back the retail prohibitions and that is described on the back page of the memo under Retail projects. If we have a retail project come to us now, the general rule is that we cannot do it unless it is a tourist destination project or it provides a good or service not otherwise reasonably accessible to people in the community or it is located in a distressed area. A distressed area has an income and family assistance definitions within the statute and it also means an Empire Zone area. If the area is designated as an Empire Zone you can do a retail project within that area. The other change with regard to sales tax is that it imposes more reporting requirements on the IDAs and the applicant. Other administrative requirements are it imposes an obligation upon us to post, not only our Minutes and our Resolutions, but also our agreements on our website. It also states that we need to supply hard copies to anyone asking for them at no cost. He had some problem with that, if you are posting them on the website then why are they asking for hard copies. And under FOIL you are obligated to deliver hard copies of documents to them, but you can charge back photocopying. Under this legislation there is no provision for photocopying charges. It is administratively burdensome and financially burdensome to IDAs. Under sales tax exemption recapture, they talk about recapture of sales tax benefits. It is somewhat interesting; he felt it was contrary to what people think about recapture. Our IDA has a recapture policy; it is tied to jobs, job retention, job creation, completion of the project, the operation of the project. This recapture is tied to if they misuse your sales tax letter. Suppose they use it after the term we had stated in the sales tax letter. They use it for operating costs, opposed to capital costs. If we know about it, we are suppose to recapture that amount. What this is forcing us to do as counsel, is that we have a special standalone state regulation recapture agreement where it spells out recapture if they violate the terms of this sales tax provisions. What we are really concerned about, how firm is this obligation on us. Should we take a mortgage on the property to confirm that we are going to get this money back. The state has all these resources to go after companies for failure to adhere to sales tax rules; they have the power to subpoena, warrants, closing your business, going after the principals individually. Why does the IDA have to hire a lawyer to go after some company for sales tax.

Mr. Perfit asked how we are supposed to know about this.

Counsel Scott responded that one of his firms significant practice areas, other than our municipal finance practice area, is our state and local tax area. We have a lot of contacts at the Department of Tax and Finance and we are trying to set up a meeting with them to get a little more detail on that.

Mr. Perfit stated that this creates a nightmare for the vendors to report to somebody those Certificates of Exemptions, which he did not believe that they do. They keep them on file.

Ms. Gallagher stated that we actually collect right now annually the total value of exemptions for sales tax for PARIS reporting purposes. It is generally only through that construction period of the project, so it does not live on. And we have had a project recently, STAVO, seemed to misunderstand what the sales tax exemption applied to and under the former Chair we actually had to do some back and forth educating the project that things like fuel oil during construction were not covered. We will continue to monitor those like we have in the past.

Chair Horodyski stated that this highlights the fact that our reporting requirements are not going to be any less burdensome going forward.

OLD BUSINESS

Birchwood Village

Ms. Gallagher reported that there has been some "back and forth" with Birchwood Village. Steve Aaron did call yesterday and he wanted to further confirm that if he is able, in parallel with the arbitration process, to separately negotiate an arrangement with the city and school district that requires the IDA's participation that he is hoping that the Agency will still be willing to entertain that. She communicated to him what the Agency had decided at their last meeting which is bring us a deal where you have negotiated with all parties and we will consider it.

Chair Horodyski stated that he had a quick text from former Chair David O'Halloran just wondering if it was alright to give Mr. Aaron Chair Horodyski's cell phone number; which he graciously said was OK. He has yet to receive a telephone call. He did receive a call, and he returned the call to Mayor Gallo's office in the City of Kingston, and he couldn't get through his fire wall. He ended up speaking with Zwieben's office and communicated the fact from the Agency's standpoint we have a very clear policy. Certainly, if the City and Birchwood can strike a deal and they need the assistance of the UCIDA to help that deal, we would be happy to listen, but not until everyone is on the same page, because the UCIDA did not want to broker the deal.

Counsel Scott stated that what you have is email correspondence back and forth, counsel has been getting copies of emails from a company called John H. Fenimore at Triple A. They are the arbitration organization that the company and the city have reached out to set up the arbitration process. He stated that he has been very clear and upfront to the City's counsel, Birchwood's counsel that the UCIDA has said we will "play along" and participate in the arbitration, but there are two conditions we are not going out of pocket for the cost of the arbitration and past legal fees are going to be paid. People understand that, but whether it is going to happen or not he did not know. His last call with company counsel yesterday was you know there is nothing in the documents that conditions arbitration on the payment of fees. He responded that he would bring that back to his client that is certainly not consistent with the spirit of the transaction, not consistent with you wanting us to participate in the transaction. He indicated that he would go back to his client. He did make clear that if they do go forward on the arbitration, what they will do will make arrangements for our arbitrator to be paid. There was some discussion on how that would happen, whether we would get the money and hold it in escrow and then we would pay the arbitrator or whether the payment agreement between the arbitrator and

us would actually be between the arbitrator and Aaron and then we would have no obligation. There is some flurry of activity here, again he has tried to be helpful with the corporation counsel in terms of giving him information about the transaction, what he can do, what he can't do. He will just keep the members apprised.

Chair Horodyski stated that his understanding was that they had to be current, even if they were putting it in escrow, is that not accurate.

Counsel Scott responded that they have taken a fine reading of the document and it has gotten him thinking about it on a going forward basis. The contract says that they need to pay our fees and the contract also needs to say that they need to pay the unpaid PILOT payments. Going into arbitration doesn't mean that you don't have to pay your PILOT payments while you are in arbitration. The court has interpreted that provision to say, yes, they are in violation of the contract, but there isn't a condition going into arbitration that you pay. He was not sure he would take that position, but the court has taken that position.

Ms. Gallagher pointed out that in her conversations with Mr. Aaron, he seems to dispute counsel's fee for the UCIDA and is offended with the idea that we would possibly windup going back to the court saying that the arbitration didn't start because he hasn't paid the legal fees that are owed to UCIDA counsel. She thought it was for the Agency to decide. The Agency had made a decision previously that he owes money and he should pay it before proceeding.

Mr. Malcolm asked if Mr. Aaron has ever apologized for calling the members of the Agency racists.

Chair Horodyski responded yes. How does the Agency feel. We established that policy before that we were going look to be "squared up" and current before we moved forward. Are we still going to remain true to that? Again, if there is some deal that encompasses the payment of what needs to be paid and the city is in agreement and the school is in agreement and everybody is in agreement, we will be happy to come to the table hear it.

Ms. Gallagher asked counsel if there was any risk to the Agency that the court would look askance on the requirements that he become current on the legal bills and that he put money in escrow to cover the Agency's portion of the arbitrator's fees since these are not in the previous agreements and if so, what is the risk to the Agency from a judicial perspective?

Counsel Scott responded that it is hard for him to answer that. He thought that the risk was very low because any court that looks at this, there has been five to ten years litigation here and the parties haven't frankly played ball at all and we are just trying to be reasonable in our position. At one point, while speaking to the arbitrator, he said, well maybe we'll go forward with just the city and the company. Counsel responded that the documents said three parties, three arbitrators. So do we commence an action then saying that they are going forward without following the terms of the document. There is a lot of "fluff" there and in terms of the Agency's liability to them for failing to cooperate when they haven't adhered to the terms of the documents, he felt that that was very low.

Chair Horodyski stated then the worst case scenario would be that the court forced us to the table.

Counsel Scott agreed and offered another possible scenario that they go forward with two arbitrators and the company and the city figured out for themselves without us there. He didn't think that would be necessarily harmful to the Agency, as they are trying to work it out anyway.

Mr. Perfit predicted that a week from Friday there will be a last minute shuffle with Mr. Aaron because on the 26th the money is due to the arbitrator, unless he has paid it already and he will be calling us again.

NEW BUSINESS

Ms .Gallagher reminded them members of the Agency, that a copy of the State Comptroller's Report for Fiscal Year 2011 was in their respective board packages. A copy of said report is on file.

ADJOURNMENT

Motion: John Morrow, seconded by Steve Perfit, moved to adjourn the meeting

Vote: The motion was adopted.

The meeting was adjourned at 9:33 a.m..

Respectfully submitted,

John Morrow

Secretary