

NCIDA/NCDC REGULAR BOARD MEETING MINUTES

Wednesday, May 13, 2009 – 9:00 a.m.

Meeting Place: Niagara County Industrial Development Agency
6311 Inducon Corporate Drive, Suite One
Sanborn, New York 14132

1.0 Meeting Called to Order

The regular meeting of the Niagara County Industrial Development Agency was called to order by Chairman Sloma at 9:00 a.m.

2.0 Roll Call

Henry M. Sloma, Chairperson	Present
Mayor Michael Tucker, 1st Vice Chairperson	Excused
Stephen F. Brady, 2 nd Vice Chairperson	Present
Deanna Brennen, Secretary	Present
Angelo Massaro, Assistant	Present
John J. Petrozzi, Member	Present
Joseph C. Frain, Member	Present
Robert Connolly, Member	Present
Rev. Kevin Dobbs, Member	Present

3.0 Chairman Sloma led the Pledge of Allegiance.

4.0 Introduction of Guests

William L. Ross	Chairman, Niagara County Legislature
Rose Mary Warren	Taxpayer
Thomas Homme Jr.	Opportunities Unlimited of Niagara

Staff Present

Samuel M. Ferraro, Executive Director
Larry Witul, Assistant Director
Susan Langdon, Marketing/Project Manager
Gary Kelsey, Manager of Finance
Michael Dudley, Accounting Associate
Mark Gabriele, Agency Counsel
Mary P. Melloni, Recording Secretary

5.0 Approval of NCIDA Meeting Minutes

5.1 NCIDA Regular Meeting of April 8, 2009

5.2 NCIDA Special Meeting of April 27, 2009

Ms. Brennen indicated that she reviewed the minutes and found them to be in order.

Ms. Brennen made a motion, seconded by Mr. Brady, to approve the meeting minutes of April 8 and April 27, 2009. Motion passed.

6.0 NCIDA Committee Reports

6.1 Audit Committee

6.1.1 Agency Payables

Mr. Frain stated that the Payables were reviewed and found to be in order, and the Audit Committee is recommending approval.

6.1.2 Agency Financial Report

Mr. Frain stated that the Agency financial report through April 30, 2009 was found to be in order and the Audit Committee recommends approval.

Mr. Connolly made a motion, seconded by Reverend Dobbs, to approve the Payables and Agency Financial Report. Motion passed.

6.1.3 Special Purpose Statement: Niagara Industrial Suites MTF

Mr. Frain indicated that a memorandum regarding this report was provided. The Committee reviewed this and recommend approval of the split as defined in the memorandum [*which will be attached hereto and made a part hereof these minutes*].

Mr. Petrozzi made a motion, seconded by Mr. Brady, to approve the split as requested and on the recommendation of the Audit Committee. Motion passed, with Chairman Sloma registering an abstention.

Mr. Sloma explained that this is the building located at 2205 Niagara Falls Boulevard that is owned by the Agency and the NFTA.

6.2 NCDC Review Committee Report

Ms. Brennen stated that there is nothing to report at this time.

6.3 Real Property Committee Report

Mr. Petrozzi stated that the Real Property Committee met with all the partners on the other building on Niagara Falls Boulevard that is co-owned by the Agency, the NFTA and the Smith Brothers. There was agreement on the handling of the funds.

Mr. Gabriele stated that as a result of this meeting, one thing the partners all agreed upon was an evaluation of the building. It has been owned by the Agency/partners for over 20 years and there is a small mortgage balance on it. However, the actual value of the building has not been determined in that period of time and the partners have agreed to hire an appraiser to accomplish this. Chairman Sloma stated it is very appropriate at this time in order to determine the value of the property since it stands in the footprint of the NFIA and eventually the airport will need parking, etc.

6.4 Governance Committee Report

Mr. Brady explained that the Committee met and at this time there are no specific recommendations for the Board. They spoke at some length about a potential clawback policy, as well as the local hiring proposal, specifically recommendations made by Mr. Massaro. Agency Counsel has been asked to provide further information and guidance in this area and a subsequent meeting will be held next month.

Mr. Gabriele explained that the clawback language would allow, upon an occurrence of fraud, whether in the application or throughout the PILOT period, the ability of the Agency or affected taxing jurisdictions to clawback those benefits which were previously provided. He stated that with the Agency's limited staff and finances, General Municipal Law and the language in the documents will allow the affected taxing jurisdiction to deem it appropriate to investigate and bring these actions of fraud against the companies involved. Based on a few questions, they will be looking to make it inclusive to the taxing jurisdictions.

7.0 NCIDA Unfinished Business

7.1 Budwey's Market Place, LLC

Mr. Witul explained that the project is a grocery store that will be located in the Town of Newfane. This is a \$1.5 million investment and they are requesting a 10-year commercial PILOT. Close to 70 people showed up for the public hearing which was held in the Town of Newfane. All speakers urged the Agency to support the benefits being proposed to the project. The Agency also received approximately 75-100 letters and e-mails from people in the community requesting the Agency's support of the project.

7.1.1 Final/Inducement Resolution

Mr. Frain made a motion, seconded by Mr. Brady to approve the Final Inducement resolution.

RESOLUTION AUTHORIZING THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY TO (i) UNDERTAKE A CERTAIN PROJECT FOR THE BENEFIT OF **BUDWEY'S MARKET PLACE, LLC**, AS MORE FULLY DESCRIBED BELOW; (ii) DETERMINE THAT THE PROJECT WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; (iii) NEGOTIATE AND EXECUTE A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT, PILOT MORTGAGE AND RELATED DOCUMENTS; AND (iv) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, RENOVATION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH THE PAYMENT-IN-LIEU-OF-TAX AGREEMENT TOGETHER WITH A MORTGAGE TAX EXEMPTION FOR THE MORTGAGE RELATING THERETO, AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR ANY OTHER FINANCING RELATED TO THE PROJECT.

7.0 NCIDA Unfinished Business

7.1 Budwey's Market Place, LLC

7.1.1 Final/Inducement Resolution

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>Yea</u>	<u>Nea</u>	<u>Abstain</u>	<u>Absent</u>
Henry Sloma	[X]	[]	[]	[]
Michael W. Tucker	[]	[]	[]	[X]
John J. Petrozzi	[X]	[]	[]	[]
Stephen Brady	[X]	[]	[]	[]
Kevin Dobbs	[X]	[]	[]	[]
Deanna Brennen	[X]	[]	[]	[]
Robert Connolly	[X]	[]	[]	[]
Angelo Massaro	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted

7.2 Pyrotek, Inc. (Metaullics Systems)

7.2.1 Final Bond Resolution

Mr. Gabriele explained that Pyrotek has received the bond cap allocation from New York State and are asking that the Board approve the final bond resolution.

Mr. Frain made a motion, seconded by Mr. Connolly, to approve the final bond resolution for Pyrotek, Inc.

7.3 RM2 Holdings, LLC

7.3.1 Extension of Sales Tax Exemption

Mr. Gabriele explained that RM2 Holdings is requesting an extension of their sales tax exemption due to the fact that the project is ongoing and the expansion of the project continues. There are no defaults and the PILOT payments are up to date. They are requesting a 6-month extension of the Sales Tax Exemption.

Mr. Frain made a motion, seconded by Mr. Brady, to approve the extension of the sales tax exemption for RM2 Holdings. Motion passed.

7.4 Graphite Mine Holdings, Inc.

7.4.1 Modification of Lease Agreement

Graphite Mine Holdings is entering into a note modification with their lender; however, that note (although the Agency is not a party to it), is noted and it would be a requirement to seek the consent of this board for Graphite Mine Holdings to change the terms in their existing note. There is going to be a 2-year extension of the existing note by the Company.

Mr. Massaro made a motion, seconded by Mr. Connolly, to approve the modification of the lease agreement with Graphite Mine Holdings.

Niagara University

Mr. Gabriele explained that Niagara University entered into a bond deal in 2001, which this agency was involved in for the construction of the dorm rooms. As part of the NYPA agreement with Niagara University, the University has agreed to take specific land and NYPA has agreed to receive specific land from the University for purposes of building a berm. M&T Bank, the bondholder, and Niagara University are requesting the Agency consent to this transfer. Since it is part of the legal description in the bond documents, it requires consent similar to the Graphite Mine request.

Mr. Petrozzi made a motion, seconded by Mr. Connolly, to approve the modification of lease agreement.

8.0 New Business –None.

9.0 NCIDA Information Items - None

At this point the meeting was recessed until the arrival of Agency Counsel, who was coming in to address the Board in Executive Session. Mr. Petrozzi made a motion, seconded by Mr. Massaro, to recess the meeting at 9:24 a.m. Motion passed.

10.0 Agency Counsel

The Regular meeting of the NCIDA resumed at 9:57 a.m.

Executive Session

Mr. Frain made a motion, seconded by Mr. Connolly, to enter into Executive Session for the purpose of discussing contractual issues. Motion passed. Executive Session began at 9:58 a.m.

Mr. Brady made a motion, seconded by Mr. Petrozzi, to adjourn Executive Session. Motion passed. Executive Session ended at 10:45 a.m.

Chairman Sloma stated that it was discussed with the Agency's legal team, the recent decision by the Appellate Division with regard to the AES PILOT. After much discussion of the Board and the legal team, first of all we have agreed that we stand by our original decision on AES. They are also hopeful that the Community, under new leadership, would work with this Company and come up with a Host Community Agreement if possible. The implications of the decision are so very broad

Mr. Frain made a motion, seconded by Mr. Connolly, that the Agency is going to ask for permission that this matter be heard before the Court of Appeals in the State of New York Motion passed.

11.0 Any Other NCIDA Matters the Board Wishes to Discuss

14.0 Next Regular NCDC - NCIDA Board Meeting:

DATE: July 8, 2009

TIME: 9:00 a.m.

PLACE: Niagara County Center for Economic Development

15.0 Adjournment

Mr. Frain made a motion, seconded by Mr. Connolly, to adjourn the meeting. Meeting adjourned at 10:45 a.m.

Respectfully submitted,

Reviewed by,

Approved by,

Mary P. Melloni
Administrative Assistant

Samuel M. Ferraro
Executive Director

Deanna Alterio-Brennen
Secretary