

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

MINUTES

August 13, 2020

A regular meeting of the Orange County Industrial Development Agency was convened via Zoom video conference August 13, 2020 at 2:05P.M.

Chairman Rogulski calls to order the regular meeting of the Orange County IDA, August 13, 2020 (Pledge of Allegiance is recited). Board consists of five members. There is a quorum. Upon roll call, the following were:

PRESENT: Mary Ellen Rogulski, Edward Diana, James DiSalvo, Michael Gaydos, John McCarey

ABSENT: Stephen Brescia

ALSO PRESENT: Laurie Villasuso – Chief Executive Officer
Vincent Cozzolino – Managing Director
Melanie Schouten – Chief Operating Officer
Edward Januszkiewicz – Chief Financial Officer
Kevin Dowd – IDA Attorney
Russell Gaenzle – Harris Beach
Dean Brady – Tech Management
Michael Esposito – Orange County Packaging
Thomas Gibney – St. Luke's Cornwall Hospital

Minutes

Review of the July 9, 2020 Board meeting minutes. Motion to approve the minutes is made by Mr. Diana, seconded by Mr. DiSalvo. Motion carries with all in favor.

Review of the July 9, 2020 Governance Committee meeting minutes. Motion to approve the minutes is made by Mr. Diana, seconded by Mr. DiSalvo. Motion carries with all in favor.

Financial Reports and/or Requests for Payment

Mr. Januszkiewicz reviews the summary of IDA bank accounts, certificate of deposits, and money market accounts that reflect a total of \$7,289,487 as of July 31, 2020.

Mr. Januszkiewicz reviews the income and expense summary, noting that YTD income is \$127,210 and YTD expenses are \$217,129, with expenses exceeding revenues by \$89,919.

Mr. Januszkiewicz reviews the income and expense summary for the Business Accelerator, noting that revenues YTD are \$82,509, and expenses are \$1,543,706. Expenses, as anticipated, exceed revenues by \$1,461,197. Mr. Januszkiewicz notes that cash and cash equivalencies are down. A payment was received from Merlin Entertainments.

Mr. Brescia joins the meeting at 2:10pm.

Chairman Rogulski asks for a motion to approve the vouchers and payments in the amount of \$21,564.29 for August. Motion made by Mr. DiSalvo, seconded by Mr. Gaydos, that the board accept the financial reports and authorize IDA payments and vouchers. Open for discussion. Affirmative votes of all members present results in motion carried.

Chairman's Report

Chairman Rogulski acknowledges her sadness in the passing of OCIDA Board Member Robert Schreibeis. He passed away last month unexpectedly. He was an actively engaged Board Member, whose experience and knowledge were valuable contributions to the Board. She gives her condolences to his family. This is the second family member they have lost in sixty days. He will be greatly missed.

Chief Executive Officer Report

Ms. Villasuso gives the Chief Executive Officer Report.

The OCIDA COVID-19 Safety Plan was sent out to the Board. A paper copy is available upon request.

The Executive Order to allow virtual meetings was extended through September 4th. This Executive order gets sign month-to-month, and typically on the day of expiration.

The ABO IDA New Project Analysis can be found in the Board Packet. The OCIDA has discussed potential solar development in the past. The Analysis debates whether incentivizing solar project is something IDAs should do as resulting job creation is limited, and State incentives are already provided for this type of projects. The OCIDA continues to get requests for solar projects, and the Board can reevaluate incentivizing this type of project, should they want to, in the future.

The 2018 Annual IDA performance report can be found in the Board Packet. This is an annual report produced by the Office of the State Comptroller (OSC). As previously mentioned, it is hard to get true full picture of IDA operations based on the PARIS reporting module. No matter the stage of development, all projects are treated the same on the PARIS platform. This has been brought to the attention of the OCS, but currently there is no perfect formula.

As requested by Mr. McCarey, the presentation given by the ABO Director, Jeff Pearlman, during the NYSEDC Conference was shared with the Board Members. In the future, Management would like to hold a Board training session and have Mr. Pearlman present. This will provide an opportunity for open dialogue, and have any questions directly addressed.

Due to the unfortunate passing of Mr. Schreibeis, the Board Retreat has been postponed. The goal is to reschedule once the Board has a newly appointed member.

The Monroe/NDC RFQ can be found in the Board Packet. It was reviewed and edited by Mr. Gaenzle prior to being sent out. Everything that was discussed at the July meeting is reflected in the document.

IDAs continue to get a lot of attention and, as a result, there are a few bills that have been presented that would directly affect the regulation and function of IDAs. Nothing is certain until these potentially get passed. The following are some of the pending bills:

A bill addressing compensation which would prohibit State or local elected officials or persons in leadership of a party from receiving compensation for work performed for an IDA, Economic Development Corporation, or State Local authority.

A bill addressing gender balance on IDA Boards and the equity balance for the makeup of Boards, assuring that Boards fairly reflect the communities they represent. This bill proposes the Boards be made up of half women and half men on Boards.

A bill addressing increasing the powers of the ABO. These increased oversight power would require authorities to publish responses to recommendations, and failure to comply would make authorities delinquent. Knowingly submitting false documents would be considered perjury in the third degree. This would allow the ABO to remove Boards. It gives the ABO the power to dissolve an authority should it be acting beyond its capacity.

A bill addressing additional reporting requirements. It proposes Boards should have a local labor representative. It requires that affected jurisdictions, Assembly Representatives, and Senators get notice of potential projects and that agendas be published three days in advance of meetings. The OCIDA posts agendas approximately a week in advance and all information is posted online for the general public. Should this bill pass, the OCIDA would have to increase some level of notification to Representatives. This bill also requires annual reports be submitted to school

districts that have projects in their jurisdictions. PILOTs and notices are already provided to school districts by the OCIDA.

A bill allowing for the examination of IDAs by County Comptrollers. This examination would be in addition to the ABO, OSC, and public authority transparency standards.

There are a lot of oversight measures being introduced. For example, a bill prohibiting elected officials serving on a County, Town, City, or Village capacity from serving on an IDA Board. This was introduced by the package submitted by Senator Skoufis. That package also included bills banning the assistance to projects already in development that have a secret occupant.

The prevailing wage bill passed. This bill will go into effect 2022. This bill requires that any project in excess of five million dollars in which 30% of the total construction costs are public funds, IDA, ESD grants etc., would be required to abide by prevailing wage law. The Governor will appoint a labor committee to oversee and guide this legislation. There are many questions on how this legislation will affect IDAs. For example, the project operator is responsible for calculating the value of public funds in their project. It would really require agencies to work together and make sure that the calculation is an accurate aggregated amount. Loewke Brill is informed on this legislation, is staying educated on any changes, and understands implementation concerns regarding this bill. Next year, Loewke Brill will give the Board an overview of what is to be expected from this legislation.

Mr. Brescia states that it amazes him that Albany has the time to implement additional regulations as opposed to helping business development in a time like this. More efforts should be put forth to turn the economy around, not try to make things more burdensome.

Chairman Rogulski states that the incentives provided by the OCIDA would not reach 30% of the total project cost.

Ms. Villasuso agrees that is true but combined with other public funds that could be provided by additional state agencies, that percentage could be met.

Chairman Rogulski states with the burden of proof being on the applicant that leaves any agencies involved exposed to scrutiny, should the application be untruthful.

Ms. Villasuso states that there is some concern regarding the agency liability at the state level. She had questioned who was liable for calculating the 30%. The OCIDA application does ask if the project is receiving other incentives, but if the project went elsewhere and got benefits after receiving IDA approvals, the IDA may not know of that action. A response was received stating the determination of the threshold is made by the owner or developer of the project, and the amount is cumulative. There will need for checks and balances, and this will need to be reported on.

Chairman Rogulski states that in the bill providing additional powers to the ABO, it mentions 3rd degree perjury. She asks Counsel what that means in terms of a criminal charge.

Mr. Dowd states he will look it up.

Mr. DiSalvo states he finds it remarkable that it doesn't matter if a Board Member is a good fit, or knowledgeable candidate, it seems that the State, or people that oversee this region, are looking to remove IDA Board Members they don't like on a personal level. He feels some of the proposed bills are unnecessary.

Accelerator Report

Mr. Diana informs the Board that Michael Esposito attended the meeting and explained how the Accelerator assisted his business, Orange County Packaging, through these challenging times.

Mr. Cozzolino states for the last two meetings Management has had AWOW clients attend and explain the benefits they have received from the program. Last month the company visited just the Accelerator Committee, but it was felt the whole Board should hear what was shared directly from the company. As a result, this month's company, Orange County Packaging, attended both the Accelerator Committee and IDA Board meeting.

Mr. Esposito informs the Board on the assistance provided to his company through the AWOW program.

Orange County Packaging has been operating for 70 years. It is a multi-generational family run company. The relationship started awhile back when the company was looking for grants to help fund the consolidation of the

company into one building. Guidance was given through the application process. An engineer came onsite to evaluate efficiency. He helped develop a robotic arm the helped inflate balls and increase productivity. This device eliminated a lot of hand labor and helped keep the account. This kind of assistance has really helped the company to hire additional staff, grow, and diversify.

When COVID-19 hit, everything felt unpredictable and potentially the end of the company. The company applied for PPE assistance brought to their attention by Accelerator staff. Assistance was available 24/7. He referred other companies to the AWOW program so that they too could navigate through the COVID crisis. The assistance was received and that helped pay payroll and get the company back on track. Prior to all of this as a business they have never reached out for any assistance from any sources. The educational COVID webinars have been a great resource. The speakers were informed and very helpful. The Accelerator connected them with other companies that needed help sourcing materials for PPE. Three million face shields have been produced to date. A new order recently came in for four million face shields. They have been able to pivot and adapt in these challenging times to supply large quantities of PPE. This has allowed growth already with the potential for more should they receive bids for surgical gowns. All 74 staff members have been kept since the start of COVID. Staff has increases to 131 staff members to meet the PPE demand. Any core business that disappeared in March has returned. The Accelerator has helped them sustain and thrive, and to also help other local businesses.

Chairman Rogulski thanks Mr. Esposito for sharing his story and wishes him continued success.

Mr. Brescia states that this story should be featured on the website to show how Accelerator assistance supports local businesses. The community needs to understand the type of support that is available. This is positive story about The Accelerator and OCIDA. He thanks Management for their efforts and Mr. Esposito for sharing his story.

Ms. Villasuso states that it has been a pleasure to work with Orange County Packaging. To watch the relationships and connections unfold has been exciting. The comradery between local companies providing resources and support so that all could succeed during this time. It is a testament to the support an accelerator can provide to a community. She thanks him for his cooperation, support, and selfless acts in the recent months.

Mr. Dowd informs the Chairman that perjury in the third degree is an A misdemeanor with a penalty of a thousand dollars, a year in jail, and/or both.

Audit Committee Report

Mr. DiSalvo states that the Committee received a labor policy update and the prevailing wage bill.

Ms. Villasuso states that Kevin Loewke provided an overview of the prevailing wage bill. There are currently three active projects. One project is at 96% compliance, one is at 100% compliance, and the third, which is Legoland, is currently below the 85%. As a reminder, construction compliance is measured over the course of the entire job. Loewke Brill is confident that they will raise their 79% local labor compliance number up to 85%. One waiver for GAM Property Corp for a blasting company was presented. The company worked with Mr. Gaydos and Loewke Brill to try and find a local company, but the search was unsuccessful. The audit committee approved the waiver.

Governance Committee Report

Mr. Diana reminded the Board that the Committee discussed potential IDA Agent Hudson Valley Agribusiness Development Corp. (HVADC). The Committee has been evaluating what this Agent does to work with the IDA, assist Orange County based businesses, and their funding sources. Currently, the HVADC receives \$25K from five regional Counties: Columbia, Dutchess, Orange, Sullivan, and Ulster. HVADC is an organization that helps agriculture-based businesses throughout the region and in Orange County. He feels that it is worthwhile to continue supporting this Agency for their efforts. The organization provided a revised proposal for the 2021 year reflecting their workforce development efforts in Orange County.

Ms. Villasuso states that in advance of the 2021 budget review, Management wanted to have an in-depth review of the current OCIDA Agents. The Committee did not want to continue the support of this organization, Management could have conversations with them ahead of budget approval and revise the use of funds for the full Board budget approval.

Resolutions

St. Luke's Cornwall Hospital

Ms. Villasuso reminds the Board that just prior to COVID-19 hitting, the Board acted to terminate the agreement with St. Luke's as per their request. St. Luke's anticipated refinancing and paying off their bonds. The refinancing was not pursued. Instead they will be receiving a grant from the State, and in order to use those funds, the Board must grant approval.

Mr. Gibney speaks on behalf of the project, stating St. Luke's had secured financing to pay off all of the debt in March. Once COVID-19 hit, Montefiore was uncomfortable backing the guarantee. Since that financing was off the table, the project has come before the Board to request consent to use grant funding received from the State to update the Cornwall facility.

Mr. Gaenzle states as mentioned by Mr. Gibney, the financing fell through and the project needs approval for use of a grant. Granting approval will not affect the OCIDA in any way.

Mr. Dowd reads aloud the St. Luke's Cornwall Hospital Resolution. Resolution (i) terminating the approvals of the issuer under its resolution dated April 9, 2020; (ii) authorizing consent with respect to the additions, modifications, or improvements of certain existing project facilities; and (iii) authorizing and delegating authority to Chairman, Vice Chairman and the Chief Executive Officer to execute and deliver such consents and any related documents. Motion is made by Mr. Brescia, seconded by Mr. Diana. Roll call is taken. All vote in favor.

Ms. Villasuso states that the resolution terminates the action taken by the Board in April.

Kraftify

Ms. Villasuso states that Mr. Gaenzle was contacted by Kraftify, LLC, a brewery in Warwick, requesting OCIDA subordination for an SBA loan. It was requested that the project pay owed Labor Audit and penalty fees prior to receiving any Board approval. As a result, the project wants to terminate its agreements with the OCIDA.

Mr. Gaenzle states he was contacted by a partner in the Albany office regarding the subordination request. He told his partner to relay the message on fee repayment. The project said dealing with the OCIDA was too expensive and compliance reporting was cumbersome. Kraftify wants to terminate all agreements. The resolution being presented to the Board today would authorize the termination of the lease, leaseback, PILOT documents, and put the property back on the tax rolls.

Chairman Rogulski asks if the Board has the right to recoup any of the incentive issued to the project.

Mr. Gaenzle states he does not believe so. A company has the right to terminate. If they used too much Sales Tax, relocated, or were in default regarding employment documents that would be another case. He can take a closer look at what is permitted.

Ms. Villasuso states it might be worth looking into as the Board considered authorizing incentives based on a package that included workforce development. If termination is authorized, the Board would not be able to evaluate if the initial promise of local job creation is upheld. If the Board would like to pursue some form of recapture, Mr. Gaenzle can investigate the matter further and it can be addressed at the September meeting. The Board has a responsibility to the taxpayers to ensure that the incentives being authorized are done so for the right reasons.

Mr. Gaenzle asks if the Board would like him to inquire if the project has thought through the financial ramifications of terminating the agreements.

Chairman Rogulski states no. This project has been uncooperative from the beginning. There have been construction labor audit issues, amongst other issues. The project is not making good decisions. The benefits would far outweigh the costs. She asks if the Board has the ability to recoup the owed Labor Audit fees.

Mr. Gaenzle states that authorized termination documents would not be presented to the project until all fees are received.

Mr. Gaydos says the project will have to pay the fees or else they will not get the termination as needed for the SBA bank documents.

Mr. Diana states that his concern is the value of the incentives already gained by the project. Those are taxpayer dollars they were cheated out of. The business may remain open, but no one knows if they will create the initial promised amount of jobs. The Board should consider recouping that money.

Mr. Gaydos agrees.

Mr. Gaenzle states he will look at recapture provisions. He asks the Board if they would like to adopt the resolution, subject to recapture, or table it.

Mr. DiSalvo states that he would like the owed fees to be paid first, and then the Board should consider taking any action. This cannot be the normal way of conducting business. A project should not use the IDA benefits and then just terminate because they feel reporting standards are too hard.

Chairman Rogulski states that in relation to the Sales and Use Tax Exemption, perhaps the Board can acquire information on the status of the business and potential job creation. It would be helpful to use this leverage to gain as much information as possible.

Mr. DiSalvo states that he feels the situation will get combative once the project hears the Board's decision.

Chairman Rogulski states that this project has been difficult from the start.

Mr. Gaenzle states that the project squabbling over a \$2,500 bill is very telling.

Ms. Villasuso asks if it would be within the right of the Board to request job figures for a couple years, should there be no way to recapture the already used incentivized funds.

Mr. Gaenzle states that that can be a survival provision of the termination. The project would then be transactionally obligated to provide the Board with whatever was requested.

Chairman Rogulski states that if they are required to provide information and fail to do so, the absence of reporting would permit recapture by the Board. It should be made clear to the project that the Board is more than willing to recapture the used incentives.

The resolution is tabled.

Executive Session

Chairman Rogulski entertains a motion that the board enter into executive session pursuant to section 105(1)(f) of the open meetings law to discuss the credit, financial, and employment, history of a client of the IDA. Motion made by Mr. DiSalvo to enter executive session issued. Motion seconded by Mr. Brescia. All in favor.

Mr. Brescia and Mr. McCarey immediately recuse themselves and leave executive session. Mr. Brescia has departed and will not be returning to the meeting.

Enter Executive Session

The members discuss the credit, financial, and employment, history of a client of the IDA.

End Executive Session

Other Board Business

Ms. Villasuso states that the Board will review an ad for the Wall Street Journal (WSJ). The OCIDA will be partnering with the County to assist with the promotion of Camp LaGuardia. The OCIDA was contacted by the County Executive office regarding this request. A proposal was submitted for a \$74,000 WSJ ad. The Board would need to authorize a resolution for a certain amount should they like to contribute. The County stated that any contribution amount would be welcome.

Motion is made by Mr. DiSalvo, seconded by Mr. Gaydos. Authorizing a contribution of \$25,000 to assist with the marketing of Orange County. Mr. McCarey abstains. Roll call is taken. Resolution passes with four votes.

Mr. Gaydos states that the receipt of funds should be contingent the fact that OCIDA funds are last in.

Adjournment

Meeting called for adjournment, motion made by Mr. DiSalvo, seconded by Mr. McCarey, the time being 3:54p.m.