

**TOWN OF BROOKHAVEN**

**INDUSTRIAL DEVELOPMENT AGENCY**

**MEETING MINUTES**

**JUNE 14, 2010**

MEMBERS PRESENT: Frederick C. Braun, Chairman  
Ann-Marie Scheidt  
Ronald J. LaVita  
John Rose  
Gasper C. Celauro

EXCUSED MEMBERS: Peter G. Moloney  
Joseph Kessel

ALSO PRESENT: Lisa M. Giannusa, Chief Executive Officer  
James Ryan, Chief Financial Officer  
Annette Eaderesto, Agency Counsel  
William Weir, Nixon Peabody, LLP  
Jim Morgo, Economic Development  
Paul Pontieri, Economic Development  
Michael Reeves, Sini & Reeves, LLP  
Lori LaPonte, Sini & Reeves, LLP  
Jocelyn Brinka, Economic Development

Chairman Braun opened the meeting at 8:02 AM in the Work Session Room, on the Third Floor at Brookhaven Town Hall, One Independence Hill, Farmingville, NY.

**SINI & REEVES, LLP PRESENTATION**

Mr. Braun welcomed Michael Reeves and Lori LaPonte, our independent auditors from Sini & Reeves, LLP. Mr. Reeves informed the members that the IDA's 2009 Annual Report had been successfully completed, effective May 25, 2010. He noted there were no major issues found, and that the Agency staff had been very cooperative in providing the necessary documents. He directed the members to pages 4 and 5 of the report, the summary of the IDA's financial conditions. The balance sheet shows current assets of \$2,001,276., and liabilities of \$26,154., giving a net of unrestricted assets of \$1,975,122. The majority of this is cash or the cash equivalent with the exception of \$2,950. We did have a deficit of \$33,865 due to a decrease in revenue. This is in line with prior years, except for the last reporting year when the Caithness fee was received. The one formatting change in the financial statement presentation this year is that we are no longer showing the PILOT activity in the statement, but as a footnote. This is to clearly show that the PILOT payments are not revenue; we are merely a conduit for these funds. With the PILOT payments reflected as revenue, our assessment fee was incredibly

inflated; it should have only been roughly \$20,000, rather than nearly \$200,000. It was questioned why there is a footnote in the management letter stating that the Agency does not prepare its external financial statements. Mr. Reeves stated that it is their job to audit the statements, and if they prepare them, they are auditing themselves. We should have the ability to prepare them in-house. Ms. LaPonte pointed out that the software that the IDA uses prepares the statements so there is a lot of work done internally for the financials. The ultimate “pulling together” is done by Sini & Reeves. Mr. Reeves and Ms. LaPonte were thanked for their time and efforts.

#### MINUTES OF MAY 17<sup>th</sup> MEETING

The minutes of the May 17, 2010 meeting were reviewed, with Mr. Braun noting one small change of an attorney’s name, which had been corrected prior to the meeting.

The motion to approve these minutes was made by Mr. Rose, seconded by Ms. Scheidt and unanimously approved.

#### MINUTES OF JUNE 1<sup>ST</sup> SPECIAL MEETING

The minutes of the June 1, 2010 meeting were reviewed. A motion to approve these minutes was made by Mr. LaVita, seconded by Mr. Rose and unanimously approved.

#### CFO’S REPORT

Mr. Ryan informed the Board that his briefcase containing IDA information was stolen from his vehicle. No money has been taken from the bank accounts, but he has since changed all of our accounts. A new checking account has been opened and a new PILOT account will be opened as well. As a consequence of this, we do not have the Bank of America portion of our operating statements. He will prepare that section and e-mail a copy of this as soon as he receives duplicates from the Bank of America. He presented the operating statements for Suffolk County National Bank (the only accounts we currently have open except for T-Notes). One extraordinary expense was noted, payments #3 and #4 for the Industrial Access Program totaling \$66,560. A final payment of \$49,000 is due at the end of the year. Mr. Ryan informed the Board that “Ron Parr had made us whole in terms of those payments.” Mr. Braun asked if we were still okay with the 30-day deadline to disburse PILOT payments. Mr. Ryan said we have until the end of June to make these disbursements. Discussion followed regarding companies that are delinquent in their PILOTs: Quantronix, Insula-Dome and Hampton Air East. The rest have all been paid in full. A default letter will be sent to Insula-Dome. There is some concern that they have sublet their property without IDA approval. Hampton Air East owes under \$150 in penalties. Quantronix is up to roughly \$92,500 in arrears. It is thought that since Quantronix is going through a public offering, there is a sense that they would like to pay this debt off so that it does not show as a liability. Mr. Braun directed Mr. Ryan to alert our insurance company of the recent theft. Mr. Weir asked if there was any information on our IDA projects. Mr. Ryan answered there was, but nothing confidential.

## RECOVERY ZONE BONDS

**Sayville Browning Properties:** Ms. Giannusa informed the Board that Lee Browning was withdrawing his application as he is having trouble making the numbers work. Perhaps this project can be revisited in the future. There have been some issues with finding a lender, and the Suffolk County Department of Health will not allow a subdivision on this site because of sewer hook-ups.

**Sills Road Realty:** Ms. Giannusa reported that Sills Road Realty received approval from the federal government to move forward; however, they still do not have all of their Town approvals. There have been some issues with re-zoning: they believe that the railroad/cargo handling facility is governed by the Federal Dept. of Transportation which would supersede the Town; however, the Town disagrees. Mr. Morgo noted that it is possible there will be future and further litigation.

**Yaphank Enterprise, LLC (Blumenfeld):** A letter with background information and a schedule for this project was provided. Ms. Giannusa noted that they are not looking to build a casino. Her only hesitation is that they are not that far along considering that the deadline for these funds is December 31, 2010. She spoke with Ms. Greguski in the Planning Department and she thought this timeline was aggressive, but possible. Mr. Celauro noted that banks are reluctant to loan without signed leases. Mr. Morgo informed the members that they have a major movie theater chain meeting with them now and he is sure they do not have any signed leases. They did fairly well with the Tanger Arches in Deer Park. This may be a viable project; however, monthly updates would be required with such an ambitious timeline.

**Pinnacle Hotel:** A decision was made to offer Pinnacle a preliminary allocation of \$15 million pending an assurance that funding is in place. A motion was made by John Rose and seconded by Ann-Marie Scheidt to send this in writing. All were in favor.

Annette Eaderesto arrived at 8:35.

A discussion followed regarding the possibility of the December 31<sup>st</sup> deadline being extended. Mr. Weir mentioned that some of his partners think it will be; he, however, does not. He recommends allocating the full \$28 million. Mr. Weir said that the Empire State Development Corporation will be looking for any unused allocations to be returned in the fall. Mr. Morgo stated that no one has applied to the Suffolk County IDA for its allocation of recovery zone bonds.

## RESOLUTIONS

**Caithness:** Mr. Weir presented a resolution on behalf of Caithness for a LIPA Easement and Subordination of Lease. This is the same document that has been approved in the past.

A motion to approve the execution of this document was made by Mr. LaVita, seconded by Ms. Scheidt, and all were in favor.

**McKeon Rolling Steel Door:** This company is putting a mezzanine in their building and requires a Declaration of Covenants and Restrictions to the Suffolk County Dept. of Health for the sewer connection to the mezzanine. Mr. Braun noted that Tower Fasteners put a mezzanine in their facility and there was an assessment change. Mr. Weir agreed that this will change the PILOT. Mr. Weir questioned their attorneys as to why they were not coming to the IDA for the sales tax abatement and to have this included in the PILOT. He was told that the company did not think it was a big enough project. Ms. Giannusa will follow up on this issue. Jim Ryan said it may increase the assessment, but that he did have one property where they expanded and the assessment went down. The company had filed a tax certiorari arguing the assessment was too high in the first place.

A motion to approve this resolution was made by Mr. Rose, seconded by Ms. Scheidt and unanimously approved.

**Frank Lowe Rubber & Gasket Co., Inc.:** Mr. Weir informed the members that the company is asking permission to put a \$630,000 subordinated mortgage on their facility to cover working capital. This may be additional collateral for the bank.

A motion to approve this mortgage was made by Mr. LaVita, seconded by Mr. Rose and unanimously approved.

### CEO'S REPORT

Ms. Giannusa offered the following updates:

**Advanced Pharmaceuticals:** They are working on their bond questionnaire with the assistance of Bill Weir and Lisa Giannusa. They are buying and renovating an existing building. HSBC is going to make a commitment to either purchase the bonds or give a letter of credit.

**L.I. Precast:** Attorneys for this company are working with Howard Gross to get all documents submitted.

**McKeon Rolling Steel Door:** They are purchasing a piece of land that is ¼ mile north of their property to build an additional facility to accommodate a new line they will be rolling out. She toured their facility recently and found it very impressive.

**Website:** Things are moving forward with this endeavor. A list of suggested additions was included in the members' packets. Ms. Scheidt volunteered to help Ms. Giannusa in this effort. It was questioned if there should be a separate website for the LDC. Mr. Weir said there should be a site for each, with a link to the other. Mr. Braun asked that something be posted on the IDA website stating that it is under development and is

expected to be back up by 9/1/10. Resolutions will need to be posted on the site as well as the meeting minutes and public hearing minutes.

Retail Policy: The prohibition on retail projects expired on 1/31/08, so there is currently no policy prohibiting providing assistance to these projects. This will most likely be reinstated in the Hoyt Bill, and actually toughened up. As of right now, there are no restrictions which is why we can entertain projects like Blumenfeld and hotels. In the past hotel projects had to prove they were providing retail services that were not otherwise available. It would be more difficult to do today. Pinnacle would be unique because of the conference center portion. Mr. Morgo asked Mr. Weir to clarify that under the Recovery Zone Bonds, the retail prohibition is not an issue. Mr. Weir explained that the IDA is prohibited under State law, and that under the Recovery Zone Bonds retail facilities are eligible for federal tax and financing. There is some concern about the retail prohibition due to the Blight to Light initiative. Ms. Giannusa has been approached on this issue a few times: by a funeral home, Breslin Realty regarding the old K-Mart property in Middle Island and a supermarket in North Bellport. Mr. Weir said the Board has not approved retail before. Just because it's legal, do we want to change policy? Mr. Braun responded that each project is considered on its own merits, its contribution to the economy and the jobs involved. Mr. Morgo questioned that if the Hoyt Bill passes, will there be anything retroactive? Mr. Weir explained that it would take effect immediately. If you closed on a retail project today and the Hoyt Bill passed next week, it would be fine. If it was only induced, it would not move forward. Mr. Celauro feels it would be an unfair disadvantage to businesses that are struggling to introduce new retail at a significant advantage by reducing or eliminating taxes, and that other businesses would fold. He would not be in favor unless it was a special circumstance, and feels it would create more problems than benefits. Mr. Weir said the area where it made sense is downtown revitalization, where you need a mix of office, retail and housing. Mr. LaVita cited the Swezey project as a good example of this. It was decided that retail projects would be considered on a case by case basis.

MBE/WBE response letter: Ms. Giannusa received a letter apologizing for any confusion and to please disregard the prior letter.

Press Releases: The Brookhaven IDA recently won an award for the Blight to Light film. There was also a release about the IDA tax being repealed.

Minimum fee amount: The IDA application fee was raised; will the minimum transaction fee be raised as well? The county's fee is 75 basis points for the first \$10 million, 25 basis points for the next \$10 million and 10 basis points for over \$20 million. For document processing we were charging \$750. Mr. Weir explained that most IDAs have a range of \$750 to \$2500, and that the fee is based on the complexity of the issue. Agency staff will determine the amount charged based on complexity.

A verbal resolution was made authorizing staff to update the IDA fee charges for administrative and document preparation.

Ms. Eaderesto informed the Board that the Town will be requesting that the IDA entertain a resolution on expediting any Blight to Light projects once the code revisions are complete.

LIBDC Dinner: This dinner meeting is being sponsored by the Brookhaven IDA on July 19<sup>th</sup>. Supervisor Lesko and Paul Pontieri will be speaking at this event at Lombardi's on the Bay.

At this point, the Chairman brought a few items to the Board's attention: First, the issue of the pending Hoyt Bill and concerns about the future of IDAs if it passes. This Bill would require prevailing wage on all projects, resulting in zero job growth. Regarding the recent resolution for Collaborative Economics, Mr. Braun informed the members that he will be attending a dinner this week and will get updates from Doug Henton at that time. The next item was a Board Self-Assessment that is required by the PAAA. Mr. Braun has asked Ms. Brinka to work on a draft of this assessment to be ready for the next IDA meeting, if possible. Lastly, there was a detailed discussion on our PILOT Agreements and what steps are available to us in the event a project does not pay or does not supply us with the required employment information. Mr. Ryan noted that he put a statement in the annual report warning of possible default if this requirement is not met. Mr. Weir detailed the options we have besides defaulting. We can increase the PILOT payment, default, terminate and recapture any benefits that had been given to the project company.

The motion to adjourn was made at 9:24 AM by Mr. LaVita, seconded by Mr. Rose and was unanimously approved.

The next meeting is scheduled for July 19, 2010.