

## Town of Colonie Industrial Development Agency

Board Minutes  
June 15, 2015 Meeting

Meeting called to order by Chairman Kearney at 6:30 pm.

Members in attendance:

John Kearney, Chairman

David DeLuca

Gary Rinaldi

Robert Tengeler

Eric Phillips

Benjamin Syden

Agency Counsel: M. Cornelia Cahill, from Barclay Damon, LLP

Chief Executive Officer: Joseph LaCivita

Chief Fiscal Officer: Craig Blair

Guests: Deborah Lambeck, Columbia Development  
Christopher Kelsey, Town Accounting Supervisor  
Lauren Stanforth, Times Union Reporter

### Approval of the Minutes

Mr. LaCivita indicated the draft of the March 16, 2015 minutes were in the Board packets for review.

**MOTION: To accept the March 16, 2015 minutes as provided and amended to fill in a blank space left in paragraph 6. Motion offered by Robert Tengeler, seconded by Benjamin Syden, approved by all members in attendance, other than Robert Tengeler and Gary Rinaldi who were not at the March meeting and recused themselves from the vote.**

### Committee Reports

**Governance** – Mr. Syden indicated the Governance Committee members have been discussing and this evening will be recommending a recapture policy (“Claw Back”) provision to the full board. There is no current law requiring a recapture policy but the New York State Comptroller has proposed a law which is currently before the New York State Legislature. Our policy establishes guidelines while retaining discretion to allow for economic down turns or other unfavorable market conditions. Mr. LaCivita will be responsible for monitoring Project compliance and will notify the Board of any instances of non-compliance. It will then be up to the Board to review the non-compliance and take whatever action it deems appropriate under the recapture policy.

**RESOLUTION 2015-003: Regarding adoption of recapture policy to be incorporated into uniform tax exemption policy. Resolution offered by Benjamin Syden, seconded by Eric Phillips, and approved by all members. (See attached resolution 2015-003)**

**Audit** – Mr. DeLuca indicated there was nothing to report this evening.

**Finance** – Mr. DeLuca indicated there was nothing to report this evening.

**Executive Director Report –**

Mr. LaCivita

- i) Mr. LaCivita advised that he recently received sales tax updates on the Shelter Cover Project and is in the process of reviewing the information. He hopes to update the Board at the next meeting.
- ii) Shop Rite Project – As discussed at previous meetings the Shop Rite Project has not attained the job creation as set forth in its application for financial assistance. The application indicated approximately 300 jobs would be created and it currently has created 203 full-time equivalent jobs, or about 1/3 short of the goal. The IDA Board at its March 16, 2015 meeting had decided to request project representatives to attend the meeting this evening to discuss this matter.

Mr. LaCivita introduced Deborah Lambeck, of Columbia Development, as representative of the project. Ms. Lambeck was authorized to read a letter received from Shop Rite regarding the job creation matter. Shop Rite referenced the increased and unexpected competition in the capital region market for its slower than expected sales growth and resulting in lower than expected job creation.

Mr. Syden thanked Ms. Lambeck for her presentation and requested Ms. Cahill work to get a copy of Shop Rite's response letter for the IDA's records, as Ms. Lambeck indicated she was only authorized to read the letter not provide the IDA with a copy.

Additionally, Mr. Syden indicated there was no recapture provision in the original contract with the Shop Rite Project. However, he would like to see the IDA receive more specific details on the challenges faced by Shop Rite in addition to a time line for additional job creation, if any, and a plan to meet the goal.

**MOTION: To request Agency Council to send a letter, on the IDA's behalf, to Shop Rite requesting a detailed corrective action plan and time line to meet the job creation projections included in the project financial assistance application. The letter should request a detailed response for our September 21, 2015 meeting. Motion offered by Benjamin Syden, seconded by Gary Rinaldi, and approved by all members.**

- iii) Collegiate Development Group student housing at 100 Fuller Road – This project is going forward as preliminarily presented at the March 16, 2015 meeting. No application has been received by the IDA as of yet.

Mr. Syden discussed the potential for linkage studies with this and other areas of the Town and suggested the IDA partner with the County IDA and the Capital District Transportation Committee to apply for linkage study grants.

- iv) Nigro Company senior apartment facility at 45 Forts Ferry Road – This project appears to be currently stalled pending funding.

### **Old Business**

No other old business to discuss other than what was discussed in the Executive Director's Report.

### **New Business**

Mr. LaCivita stated the IDA received a communication from the Capital District Regional Economic Development Council (CDREDC), which is a consortium of 8 Counties within the Regional Economic Benefit Council (REBC), to contribute \$100,000 to the CDREDC to assist in funding a contract with Mackenzie & Phillips to develop a regional development plan. This was the firm that developed the winning plan for the Buffalo area.

Mr. Syden gave a background on the creation and role of the REBCs throughout the state. He also noted that Center for Economic Growth (CEG) was strongly supporting the CDREDC in this initiative. Additionally he was concerned with the New York State Authority Budget Office's (ABO) opinion as to whether this \$100,000 would be considered a grant and therefore an ineligible expenditure of IDA funds.

Ms. Cahill indicated the ABO looks negatively on grants, but could not comment specifically on this item. The Board asked Ms. Cahill to contact the CDREDC to determine whether it requested the opinion of the ABO as to whether this contribution would be a permissible expenditure for the IDA.

**MOTION: To table the discussion and decision whether to participate in the contributing the \$100,000 to the Capital District Regional Economic Development Council until the New York State Authorities Budget Office as provided a written opinion on the eligibility of such an expenditure of IDA funds. Motion offered by Benjamin Syden, seconded by Robert Tengeler, and approved by all members.**

Meeting adjourned at 7:10 pm.

Next meeting will be September 21, 2015 at 6:30 pm at 347 Old Niskayuna Road, Latham, NY 12110.

**RESOLUTION 2015-003**

**REGARDING ADOPTION OF RECAPTURE POLICY TO BE INCORPORATED INTO UNIFORM TAX EXEMPTION POLICY.**

WHEREAS, the Town of Colonie Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 594 of the Laws of 1980 of New York, as amended, constituting Section 911-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Act requires that the Agency have a uniform tax exemption policy (a "UTEP"); and

WHEREAS, the Governance Committee has reviewed (a) the Agency's current UTEP, and (b) various options for recapture policies, and has recommended adoption by the Agency of the recapture policy attached hereto as Exhibit A (the "Recapture Policy"); and

WHEREAS, the members of the Agency desire to amend the UTEP to include the Recapture Policy; and

WHEREAS, Section 874(4)(a) of the Act requires that the Agency's UTEP be established with input from the affected taxing jurisdictions;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby adopts the Recapture Policy and directs the Executive Director to solicit comments from the affected taxing jurisdictions.

Section 2. This Resolution shall take effect immediately.

**Exhibit A**

**TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY**

**RECAPTURE OF BENEFITS POLICY**

**A. RECAPTURE OF THE NEW YORK STATE PORTION OF SALES AND USE TAX**

It is the policy of the Town of Colonie Industrial Development Agency (the "IDA") to recapture New York State sales and use tax benefits, in accordance with the provisions of the General Municipal Law, from projects that utilized sales and use tax exemptions:

- In excess of the amounts authorized by the IDA;
- For property or services not authorized by the IDA; and/or
- For a project that has failed to comply with a material term or condition to use the property or services in the manner required by any of the project documents (the "Project Documents") between the applicant and the IDA.

All approving resolutions and Project Documents shall include the terms and conditions of the foregoing recapture provision. Within thirty (30) day of the recapture, the recapture amount shall be remitted to the New York State Department of Tax and Finance. Such remittances shall include any penalties and interest imposed by the IDA.

In order to effectuate this recapture policy the IDA shall:

- Keep records of the New York State and local sales tax exemptions provided to each project, with such records available to the New York State Tax Commissioner upon request.
- Report within thirty days of providing any financial assistance in the form of a sales and use tax exemption, the project, the estimated amount of the exemption and other information as may be required by the New York State Tax Commissioner.
- The IDA shall file an annual report with the New York State Tax Commissioner detailing its terms and conditions and its activities in recapturing any unauthorized New York State sales and use tax exemptions.

## **B. RECAPTURE OF OTHER FORMS OF FINANCIAL ASSISTANCE**

With respect to any financial assistance provided by the IDA other than the State portion of sales and use tax exemptions, the IDA shall include in Project Documents a requirement that the applicant repay all or a portion of the financial assistance granted by the IDA to the applicant to the extent that the applicant, upon completion of the project, fails to reach and maintain at least 90 percent of its employment requirements or there otherwise occurs any event of defaults under any Project Document (collectively, an “Event of Default”).

At the time of any Event of Default, the IDA shall determine whether to exercise its right to recapture all or any portion of the financial assistance, and shall consider the following criteria in determining whether to proceed in the recapture of financial assistance:

- Whether the applicant has proceeded in good faith.
- Whether the project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the applicant.
- Whether the enforcement by the IDA of its recapture rights would create a more adverse situation for the applicant, such as the applicant going out of business or declaring bankruptcy, which would not occur if the IDA’s recapture rights were not exercised.
- Whether the enforcement by the IDA of its recapture rights would create an adverse situation for the residents of the Town of Colonie.
- Such other criteria as the IDA shall recognize as a relevant factor in connection with any decision regarding the exercise of its right to recapture financial assistance.

## **C. RECAPTURE PERIOD**

Except as otherwise provided by the General Municipal Law, the recapture period will be (1) the term of the payment in lieu of taxes agreement for projects that receive financial assistance in the form of real property tax exemptions, and (2) five years for all other projects.

## **D. TERMINATION OF FINANCIAL ASSISTANCE**

Nothing herein shall affect the rights of the IDA under any Project Document to exercise, upon the occurrence of an event of default, any and all remedies under any Project Document, including, but not limited to the right to terminate any on-going financial assistance.