



TOWN OF COLONIE
INDUSTRIAL DEVELOPMENT
AGENCY

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John Kearney
Chairman

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April 23, 2015

Mr. David Kidera
Director
New York State Authorities Budget Office
PO Box 2076
Albany, New York 12220-0026

Dear Mr. Kidera:

The Town of Colonie Industrial Development Agency (the "IDA") is in receipt of the results of your review of the IDA Board's project monitoring and reporting. As you know, when the IDA became aware of this issue, the Board proactively reached out to the New York State Authorities Budget Office ("ABO") to assist us in both correcting the reports and in establishing procedures to enable the IDA to remain in compliance with these reporting and monitoring procedures. The IDA takes very seriously the findings and recommendations made by in its review. The IDA greatly appreciates the opportunity to work with the ABO on this matter and the resulting assistance that ABO staff has provided to the IDA. We believe that this cooperative process has enabled the IDA to formulate a corrective action plan that will ensure that the concerns expressed by the ABO do not reoccur. Although not required to do so, the IDA previously provided this plan to the ABO for its review and comment. The plan centers on procedures to ensure timely reporting and project monitoring. Additionally, although not legally required to do so, the IDA is in the process of reviewing "recapture" options for entities that do not meet job creation targets.

The IDA would offer the following comments regarding your review:

1. The IDA acknowledges that it had not accurately completed all parts of certain required reports, including Budget Reports and Annual Reports. Such failure to properly file reports was not an effort to be less than transparent but simply an error. As soon as the staff member responsible for the preparation of the reports was made aware of the deficiencies in the reports, the individual worked tirelessly to bring the IDA's reporting into compliance. With the assistance of the ABO, the IDA has updated the PARIS reports at issue and per the feedback that we have received from the ABO, it appears that the reports for 2013 and 2014 are complete and up to date for the seven projects at issue.

2. In addition, the members of the IDA have established a detailed action plan to ensure that the IDA satisfies the requirements of Section 2824 of the Public Authorities Law, that the IDA has proper procedures in place to monitor projects and ensure that job creation goals are met and that the IDA complies with all statutory reporting requirements. We have shared these procedures with the ABO and have incorporated ABO's recommendations.

3. We are gratified that the ABO recognized that the IDA exercises discretion in the types of financial assistance the IDA provides and is generally conservative about approving certain types of financial assistance such as property tax exemptions for projects. We note that during the past seven years, the IDA has granted only one PILOT to an entity that was establishing much needed senior housing in the Town of Colonie (the "Town"). That project was built on property that previously was not on the tax roll and the PILOT resulted in payments in lieu of taxes being made to the taxing jurisdictions.

4. The IDA believes that its administrative services agreement with the Town is in line with the Governor's initiative to encourage consolidation of municipal services and sharing of services. The IDA also believes that the administrative services agreement has resulted in significant cost savings to the IDA. The IDA believes that the cost of hiring its own staff, including salary and benefits, to perform the tasks now performed by Town employees under the administrative services agreement would greatly exceed the amount paid to the Town under such agreement.

5. The IDA disagrees with the Report's conclusion that there is a conflict of interest because a Town employee serves as the IDA's Executive Director. There is no statute, regulation or ABO guidance that prohibits an employee of a municipality from serving as staff to an industrial development agency that was created for the benefit of the Town and its inhabitants. In fact, numerous industrial development agencies contract with the applicable municipality for services.

6. Regarding the IDA's responsibility for monitoring projects, we offer the following comments:

Shelter Cove: The Report notes that Shelter Cove Living, LLC requested \$640,000 in sales tax exemptions and that the IDA approved up to \$7,757,576 in purchases to be exempt from sales taxes equating to \$620,606 in estimated sales tax exemptions for the period December 2012 through June 2014. The Report also notes that the project reported that it used \$644,000 in sales tax exemptions in 2013 and \$304,544 in sales tax exemptions in 2014, exceeding the amount approved by the IDA by \$327,938. However, Shelter Cove has informed the IDA that the ST-340 filed for 2013 inadvertently contained incorrect information and that the actual amount of sales and use tax exemption used in 2013 was only \$290,000, and not \$644,000. Accordingly, Shelter Cove has not used sales tax exemptions in excess of the amount approved by the IDA. The IDA will advise Shelter Cove to issue an amended ST-340.

Restaurant Depot Project: The Report also references the Restaurant Depot project noting that the IDA approved up to \$600,000 in tax-exempt purchases for Restaurant Depot equating to \$48,000 in estimated sales tax exemptions for the period October 2012 through June 2013 and that the project reported that it claimed \$95,000 in sales tax exemptions in 2012. The IDA requested that Restaurant Depot provide an explanation for the discrepancy. Restaurant Depot explained to the IDA that equipment costs were higher than originally estimated and

provided the IDA with a detailed listing of all equipment purchased using the IDA's sales tax exemption. At the time that the IDA approved the Restaurant Depot project and at the time that the IDA and Restaurant Depot closed on the straight-lease transaction, there was no statutory requirement that any sales tax exemption benefit in excess of the amount originally approved be recaptured. We also note that the ST-60 filed with the New York State at the time of closing requests only an estimate of the cost of a project (as the project was just commenced).. The IDA has requested that Restaurant Depot file the appropriate current forms with the State Department of Taxation with a copy to the IDA.

Shop Rite: The Report concludes that the IDA has not established an appropriate procedure to ensure that projects meet the agreed to job creation goals and cites the Shop Rite Supermarkets project as an example of a project that has not created the number of jobs that it had estimated would be created in its application to the IDA. The Report is accurate when it states that Shop Rite Supermarkets has not created the number of jobs originally estimated to be created. At the IDA meeting on March 16, 2015, the Executive Director of the IDA notified the members of the IDA of the short-fall in the number of jobs created by the Shop Rite Supermarkets project and asked for direction. The members of the IDA directed the Executive Director to contact Shop Rite representatives and request that they appear at the next IDA meeting in order to explain why the project has not created the number of jobs originally estimated. At that time the IDA members will determine what steps, if any, it will take.

7. The IDA respectfully but *strongly* disagrees with the Report's conclusion that the IDA's relationship with the Town has resulted in the IDA subsidizing the capital project costs of the Town and that the IDA funded projects undertaken by the Town that are not germane to the IDA's public purpose.

In 2013 the IDA undertook the following four *capital* projects that were intended to further the IDA's purposes.

- Park Project: The IDA undertook a project (the "**River Road Park Project**") consisting of obtaining an interest in the water treatment plant located at 4071 River Road in the Town, which is owned by the Town but no longer in use, the demolition of the existing structures on the site and the redevelopment of such site as a passive recreational space, which includes access to the Mohawk-Hudson Bikeway.

- Winding Creek Project: The IDA undertook a project consisting of building a bridge in the Winding Creek subdivision to connect to the Mohawk-Hudson Bikeway (the "**Winding Creek Project**") in order to improve the recreation opportunities available to the residents of the Town.

- Pool Project: The IDA undertook a project consisting of the acquisition and installation of one lift and one set of ADA-compliant stairs for each of the pools located at the Town Park with the objective of making the pools accessible to all people and compliant with the Americans with Disabilities Act.

- Sidewalk Project: The New York State Department of Transportation ("**NYSDOT**") constructed a sidewalk (the "**Sidewalk Project**") along Route 9 from Siena College ("**Siena**") to Newton Plaza (the "**Plaza**"). In order to satisfy NYSDOT's condition precedent to the construction of the Sidewalk Project, the IDA made a grant to the Town which

the Town used to deposit \$491,000.00 (the “*Deposit*”) with New York State Comptroller. After the completion of the Sidewalk Project, the IDA was reimbursed \$400,000, resulting in a total net cost to the IDA for the Sidewalk Project of only \$91,000. The IDA undertook the Sidewalk Project to encourage the students, faculty and staff of Siena to patronize the merchants and restaurants located in and near the Plaza, increase the recreational opportunities available within the Town by providing additional opportunities for walking and bicycling, and protect the health and safety of pedestrians and bicyclists along Route 9.

All of these projects fall squarely within the purposes of an industrial development agency as set forth in Section 858 of the General Municipal Law (“GML”). Section 858 of the GML specifically provides that the purposes of an industrial development agency are to “promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities . . . and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living.” This statute is the authority for IDA projects.

In addition, the Office of the Comptroller of the State has indicated that **whether a project constitutes economic development is to be determined by local officials based upon all relevant facts. Opinion 85-51** (emphasis added).

Each project was undertaken with the goal of increasing economic development within the Town. The Park Project, Winding Creek Project and Pool Project were all geared to increasing recreational opportunities within the Town, not only for residents of the Town but also for visitors. River Road Park is adjacent to the Mohawk-Hudson Bikeway, which is a Bike-Hike Trail connecting Albany and Schenectady Counties and is part of the state-wide Canalway Trail that follows the Erie Canal from Buffalo to Albany. River Road Park draws Town residents and visitors to the portions of the Mohawk-Hudson Bikeway that lie within the Town. The Winding Creek Project provides additional access to the Mohawk-Hudson Bikeway. Tens of thousands of people use the Mohawk-Hudson Bikeway annually. The IDA believed that visitors were going to Niskayuna, instead of the Town due to a lack of public restrooms. As such, the IDA believed that they were promoting economic development, retaining the tourism opportunities, and capturing the visitors in the Town by providing the public benefit along a major tourism venue. Drawing more people to the portion of the Mohawk-Hudson Bikeway that lies within the Town increases economic development in the Town as visitors frequent restaurants, gas stations and retail stores during their visit to the Mohawk-Hudson Bikeway. Finally, the Pool Project extends use of the Town’s pool to those needing special assistance to utilize one the Town’s premiere recreational facilities.

The Sidewalk Project also has important economic development benefits and is consistent with the Town’s “smart growth” development policy. Smart growth means building urban, suburban and rural communities with housing and transportation choices near jobs, shops and schools. This approach supports local economies and protects the environment. The Sidewalk Project helps connect the over 3,500 students, faculty and staff who are part of the Siena community with the more than 100 shops and services along the Route 9 corridor north of Siena and encourages the Siena community, as well as other local residents, to walk and bike to such establishments.

As detailed above, each of these projects provided the ability for increased economic development. The report is inaccurate when it stated that IDA members believe that it is questionable whether these projects are appropriate. The IDA believed that the legal basis for the conclusion by the ABO was in fact questionable. We note that the opinion of the Attorney General cited in the report as a basis for its conclusion was issued in 2014 and thus **after** the IDA approved these projects. Additionally it should be noted that the ABO requested this opinion from the Attorney General. Requests for such opinions are generally issued for matters that require clarification by the chief legal officer of this State. We question the citing of a legal opinion issued **after** the IDA acted on each of these projects and which was presumably issued to clarify an otherwise unclear and technical area of the General Municipal Law. Given this recent guidance from the Attorney General and the ABO, the IDA will no longer make grants out of its own funds to any public or private interests.

Again, the IDA is deeply appreciative of your working with us to correct the reporting and monitoring issues raised in your report. Your report noted that the IDA “was actively involved in reviewing projects for financial assistance.” We believe that the corrective action which the IDA has undertaken will ensure that the “backend” of this process, the monitoring and reporting of projects, will meet the requirements in these areas.

We respectfully request that this response be attached to The Report.

Thank you again for your assistance.

Very truly yours,



John Kearney
Chairman

cc: IDA Board members
Joseph LaCivita, Executive Director