

NCIDA/NCDC REGULAR BOARD MEETING MINUTES

Wednesday, April 21, 2010 – 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	Present
Stephen F. Brady, 2 nd Vice Chairperson	Present
Deanna Brennen, Secretary	Excused
John J. Petrozzi, Assistant Secretary	Present
Joseph C. Frain, Member	Present
Robert Connolly, Member	Present
Patricia Dufour	Present
Mark A. Onesi, Member	Present

3.0 Chairman Sloma led the Pledge of Allegiance.

4.0 Introduction of Guests

Joyce Miles	Lockport Union Sun & Journal
Rose Mary Warren	Taxpayer
William L. Ross	Chairman, Niagara County Legislature
John Schiavone	Lumsden McCormick

Staff Present

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

Chairman Sloma introduced new Board Member, Patricia Dufour, who was appointed by the Niagara County Legislature to replace Reverend Kevin Dobbs. She is the owner and Vice President of Cornerstone Services Group in Lockport, a licensed real estate broker, and sits on the Lockport Board of Assessment. Chairman Sloma also noted that she is a former Lockport IDA board member.

5.0 Approval of NCIDA Meeting Minutes

5.1 NCIDA Regular Meeting of March 10, 2010

Chairman Sloma asked for a motion to approve the March 10, 2010 minutes.

Mayor Tucker made a motion, seconded by Mr. Connolly, to approve the meeting minutes of March 10, 2010. Motion passed.

6.0 NCIDA/NCDC Committee Reports

6.1 NCIDA Audit/Finance Committee

6.1.1 Agency Payables

6.1.2 Agency Financial Report

Mr. Frain indicated that the Audit Committee reviewed the Agency payables and financial report through March 31, 2010, found them to be in order and recommends approval.

Mr. Brady made a motion, seconded by Mr. Frain, to approve the Payables and Agency Financial Report. Motion passed.

6.1.3 NCIDA/NCDC 2009 Audit Report

John Schiavone of Lumsden McCormick stated that the draft Audit report was presented to the Committee on April 7, 2010. *[A summary of what was presented to the Audit Committee was provided and will be attached hereto and made a part hereof these minutes].* Mr. Schiavone explained that the final reports have all been issued and hard copies are available from the Agency for those who request it.

Mr. Schiavone stated that all the audits were clean audit opinions. The reports include a single audit report; the NCIDA has some old Community Development Block Grant and HUD money that is used to invest and re-invest in the community. Even though the Agency does not receive any new dollars, those reinvestments are considered federal monies and require an audit. There were no issues or findings as a result of that audit.

Tax returns that are issued are for NCDC as a not-for-profit that files a 990 due May 15, 2010; and NIIA is a partnership whose tax return is due April 15, 2010 (that has been issued). A Data Collection form must be filed with the single audit clearing house on their website only; that is in the process. It is certified by Mr. Schiavone, Mr. Kelsey and then it is released. Other reports include Communications to Those Charged with Governance and Management Letter. Management Letter issues were not significant and the points have been addressed. A summary of each entity's audit reports is included in the attached summary *[which will be attached hereto and become a part hereof these minutes].*

Mr. Schiavone stated that overall every financial entity of the Agency is in good standing; balance sheets are strong. He stated that 2009 was a "non-deal" year due to the recession and the affect it had on businesses to be interested in financing or refinancing. The majority of the IDA's income is fee-based, therefore without these transactions there is no income. However, the balance sheets of the Agency are strong – if there are deals to be made, the Agency has the funds to do it.

Chairman Sloma stated that the Audit Committee did review the Audit as presented and it is good to know that although 2009 was a relatively slow year the Agency has remained sound. He is pleased with the clean audit and congratulated the Staff for keeping these issues in order.

Mr. Frain made a motion, seconded by Mr. Onesi, to accept the 2009 NCIDA/NCDC Audit Report as presented. Motion passed.

6.0 NCIDA/NCDC Committee Reports

6.1 NCIDA Audit/Finance Committee (Continued...)

6.1.4 e-3communications Proposal

Mr. Ferraro stated that the Audit committee reviewed the proposal from e3communications; a memo was provided indicating there was a request for additional information on this Company. Further information was forwarded to Board Members and after review the Audit Committee agreed to recommend to the Board that a 6-month trial contract be authorized between e3communications and the Agency, not to exceed \$18,000. There are sufficient funds in the 2010 budget for this expense. The reason for this, is that IDA's across the State are under siege through a number of proposals from the IDA Tax to Empire Zones to Civic Facilities and it is imperative that the Agency embark on a very strong public relations campaign.

Chairman Sloma indicated that he sees this as an educational process; the community needs to understand what the Agency does and why they do it. It is important to educate the public and legislators.

Chairman Sloma asked that based on the recommendation of the Audit committee to approve this request, a motion be made. *Mr. Frain made a motion, seconded by Mr. Brady. Motion passed.*

Committee Structure

Chairman Sloma stated that the Agency has been required to restructure the Committees and there is now an Audit/Finance Committee for the NCIDA and an Audit/Finance Committee for the NCDC. The same individuals sit on each of those committees. There will also be an NCIDA Governance Committee and NCDC Governance Committee.

6.2 NCDC Audit/Finance Committee

6.2.1 T-Krow, Inc. d/b/a The Krow's Nest – RLF/MAP #365

Mr. Witul explained that the loan request is for a family entertainment facility that has coin-operated machines, batting cages and assorted entertainment for children, as well as facilities for children's parties.

The Microenterprise Loan Panel reviewed the Krow's Nest application for a \$25,000 loan which will also refinance the balance owed on his previous loan with the Microenterprise Loan Program. The company has been through the Microenterprise program. They were located in the Summit Park Mall but lost their lease when the owners of the mall got rid of all their tenants due to failure of the mall itself. He put all his equipment in storage and is now relocating to a facility on Niagara Falls Boulevard and plans to reopen in approximately two to three weeks.

6.0 NCIDA/NCDC Committee Reports

6.2 NCDC Audit/Finance Committee

6.2.1 T-Krow, Inc. d/b/a The Krow's Nest – RLF/MAP #365 (Continued...)

The owner is requesting a loan due to the moving and storage costs associated with the close of the mall. He will be increasing the games and adding food to his venue; along with a better location near traffic and hotels/motels.

Mr. Frain made a motion, seconded by Mr. Onesi, to approve the \$25,000 loan to T-Krow, Inc. Motion passed.

6.2.2 TAM Ceramics Group of NY, LLC – RLF/EDA #364

Mr. Witul explained that TAM Ceramics Group is requesting \$400,000 in financing for the acquisition of certain machinery and equipment relating to the TAM Ceramics acquisition and retention of employment. The total project cost is approximately \$5.7 million. This will retain the employment of 50 individuals and the creation of 25 additional jobs over the next three years. This project involved a lengthy discussion due to the unique characteristics of the project. The Audit Committee reviewed the request and is recommending approval of the loan to TAM Ceramics.

Mayor Tucker made a motion, seconded by Mr. Connolly, to approve the loan request for \$400,000 to TAM Ceramics Group of NY, LLC. Motion passed.

6.3 NCIDA / NCDC Governance Committee – No report.

7.0 NCIDA Unfinished Business

7.1 210 Walnut Street, LLC

Mr. Witul explained that 210 Walnut Street is the former Harrison / Commerce Square multi-tenant facility in the City of Lockport. They are requesting a standard 15-year PILOT and sales and mortgage recording tax exemptions. The required public hearing was held on April 13, 2010 with two attendees; there were no comments. Mayor Tucker and Mr. Evert were in attendance.

7.0 NCIDA Unfinished Business

7.1 210 Walnut Street, LLC (Continued...)

7.1.1 Final Resolution

Mr. Frain made a motion, seconded by Mr. Petrozzi, to approve the Final Resolution.

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) UNDERTAKE A CERTAIN PROJECT FOR THE BENEFIT OF 210 WALNUT STREET, LLC OR AN ENTITY FORMED OR TO BE FORMED (AS MORE FULLY DEFINED 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, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION FOR THE FINANCING RELATED TO THE PROJECT; AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR THE MORTGAGE RELATED TO THE PILOT AGREEMENT.

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]	[]	[]	[]
Patricia Dufour	[X]	[]	[]	[]
Deanna Brennen	[]	[]	[]	[X]
Robert Connolly	[X]	[]	[]	[]
Mark A. Onesi	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

7.0 NCIDA Unfinished Business (Continued...)

7.2 Dimax LLC

Mr. Witul explained that the Dimax LLC public hearing was held on April 13th at the Town of Pendleton Town Hall; there were several individuals in attendance. All comments were in support of the project.

7.2.1 Final Resolution

Mayor Tucker made a motion, seconded by Mr. Frain, to approve the Final Resolution.

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) UNDERTAKE A CERTAIN PROJECT FOR THE BENEFIT OF DIMAX LLC OR AN ENTITY FORMED OR TO BE FORMED (AS MORE FULLY DEFINED 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, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX (C) A MORTGAGE RECORDING TAX EXEMPTION FOR THE MORTGAGE RELATED TO THE PILOT AGREEMENT.

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]	[]	[]	[]
Patricia Dufour	[X]	[]	[]	[]
Deanna Brennen	[]	[]	[]	[X]
Robert Connolly	[X]	[]	[]	[]
Mark A. Onesi	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

7.0 NCIDA Unfinished Business (Continued...)

7.3 Courtlyn, LLC

Mr. Witul explained that Courtlyn LLC is dental office to be located on Niagara Falls Boulevard in the Town of Wheatfield; an investment of approximately \$1 million and the creation of approximately 9 full-time jobs, including dentists and lab technicians. A public hearing was held on April 12, 2010. There were no comments at the hearing, either written or oral. Chairman Sloma stated that it is a practice of his, aside from the required legal notice to the taxing jurisdiction, to send a personal letter to each CEO of that jurisdiction, explaining the project before the Agency and the benefits involved, providing them an opportunity to provide input.

7.3.1 Final Resolution

Mr. Petrozzi made a motion, seconded by Mr. Frain, to approve the Final Resolution.

RESOLUTION OF THE NIAGARA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (i) UNDERTAKE A CERTAIN PROJECT FOR THE BENEFIT OF COURTLYN LLC OR AN ENTITY FORMED OR TO BE FORMED (AS MORE FULLY DEFINED 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, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A MORTGAGE RECORDING TAX EXEMPTION FOR THE FINANCING RELATED TO THE PROJECT; AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR THE MORTGAGE RELATED TO THE PILOT AGREEMENT.

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]	[]	[]	[]
Patricia Dufour	[X]	[]	[]	[]
Deanna Brennen	[]	[]	[]	[X]
Robert Connolly	[X]	[]	[]	[]
Mark A. Onesi	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted

7.4 DKW Properties, LLC

7.4.1 Consent to Refinance Mortgage

Mr. Gabriele stated that this project dates back approximately 12 years; the Company is requesting of the Agency to consent to a refinancing of the mortgage of the property. No additional benefits are being provided; however, because of the language in project documents this requires approval by the NCIDA Board. They are current with all PILOT payments.

Mr. Brady made a motion, seconded by Mayor Tucker, to approve the refinancing of the mortgage for DKW Properties, LLC.

A roll call vote was taken.

	<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]	[]	[]	[]
Patricia Dufour	[X]	[]	[]	[]
Deanna Brennen	[]	[]	[]	[X]
Robert Connolly	[X]	[]	[]	[]
Mark A. Onesi	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

8.0 New Business – None.

9.0 NCIDA Information Items - None.

9.0 Agency Counsel

9.1 The Niagara at Barton Hill

9.1.1 Termination of PILOT

Mr. Gabriele explained that the Niagara at Barton Hill is a project that was induced by the Agency in 2005-2006, prior to instituting the PILOT mortgage program. The Niagara at Barton Hill is behind on PILOT payments and a number of notices have been sent. Mr. Gabriele stated that he has been in contact with Counsel for the Lewiston-Porter School District regarding this issue and they have, as a Board, agreed to allow Barton Hill to refinance and make their payments full by April 30, 2010 and have requested the Agency hold off on the termination of PILOT until after that date. As of this date there is no proof that this payment has been made, therefore Mr. Gabriele asked the Board to consider taking action to terminate the PILOT, the Lease/Leaseback pending a non-payment by the Company, unless payment is made by 5:00 p.m. on April 30, 2010. This also applies to the County PILOT.

10.0 Agency Counsel

10.1 The Niagara at Barton Hill (Continued...)

10.1.1 Termination of PILOT

Chairman Sloma stated that it is Board policy to hold Companies to the representation they make when they are provided considerations by the Agency. If they cannot pay their PILOT, the interests of the taxing jurisdictions need to be protected by putting them back on the tax roll where the taxing jurisdictions have a clearer route for recovery. Chairman Sloma explained that the later PILOTS have a PILOT Mortgage attached to them which allows the taxing jurisdictions recovery. This termination will become effective May 1, 2010 if the payments are not made.

Mr. Brady made a motion, seconded by Mr. Connolly, to approve the termination of the lease agreement with The Niagara at Barton Hill in the event the PILOT payments are not made by April 30, 2010.

A roll call vote was taken.

	<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]	[]	[]	[]
Patricia Dufour	[X]	[]	[]	[]
Deanna Brennen	[]	[]	[]	[X]
Robert Connolly	[X]	[]	[]	[]
Mark A. Onesi	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

10.2 First Niagara

10.2.1 Consent to Parking Lot Expansion & Easement

Mr. Gabriele stated that this is an agency project located on Transit Road, the headquarters of First Niagara Bank. They are in need of additional parking space and wish to expand their current lot onto a lot adjacent to their building. The reason the Agency's consent is necessary is in order for the Town of Pendleton to allow the expansion from one lot to another, is that a lot easement agreement needs to be entered into because the Agency has a leasehold interest in the first lot which is part and portion of the first project.

Mr. Petrozzi made a motion, seconded by Mr. Frain, to approve the lot easement agreement for First Niagara. Motion passed.

11.0 Any Other NCIDA Matters the Board Wishes to Discuss – None.

12.0 Regular NCDC - NCIDA Board Meeting:

DATE: May 12, 2010

TIME: 9:00 a.m.

PLACE: Niagara County Center for Economic Development

13.0 Adjournment

*Mr. Brady made a motion, seconded by Mr. Frain, to adjourn the meeting at 9:33 a.m.
Motion passed.*

Respectfully submitted,

Reviewed by,

Approved by,

Mary P. Melloni
Administrative Assistant

Samuel M. Ferraro
Executive Director

Deanna Alterio-Brennen
Secretary