

NCIDA/NCDC REGULAR BOARD MEETING MINUTES

Wednesday, December 9, 2009 – 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	Excused
Deanna Brennen, Secretary	Present
Angelo Massaro, Assistant	Present
John J. Petrozzi, Member	Present
Joseph C. Frain, Member	Present
Robert Connolly, Member	Present
Rev. Kevin Dobbs, Member	Present

3.0 Chairman Sloma led the Pledge of Allegiance.

4.0 Introduction of Guests

Mark McNamara, Esq.	AES / Hiscock & Barclay
Nick DeCesare	AES/Hiscock & Barclay
Gordon Kemfer	BOE President, Barker Central School
Tom Prohaska	Buffalo News
Scott Hoot	Bus. Administrator – Barker Central School
William L. Ross	Chairman, Niagara County Legislature
Eric Tudor	Coldwell Banker Commercial
Roger Klatt	Superintendent – Barker Central School
Richard Meyers	Supervisor, Town of Somerset
Rose Mary Warren	Taxpayer
Kathleen Casacci	Wheatfield Family Dentistry
Samuel Cerreto	Wheatfield Family Dentistry

Staff Present

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

5.0 Approval of NCIDA Meeting Minutes

5.1 NCIDA Regular Meeting of November 18, 2009

Chairman Sloma asked for a motion to approve the minutes of November 18, 2009.

Ms. Brennen made a motion, seconded by Mr. Frain, to approve the meeting minutes of November 18, 2009. Motion passed.

6.0 NCIDA Committee Reports

6.1 Audit 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 November 30, 2009, found them to be in order and recommends approval. Mr. Frain indicated that if the projects close as indicated on the projection, the Agency will break even. If they do not close this year they will definitely be closing in early 2010.

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

6.2 NCDC Review Committee Report

Committee did not meet.

6.3 Real Property Committee Report

Committee did not meet.

6.4 Governance Committee Report

Mr. Gabriele stated that a discussion was held regarding a provision built into the closing documents and UTEP which would allow a clawback for situations wherein a project applicant, either in application or supporting documentation, made fraudulent claims with respect to their project. It allows the agency to clawback PILOT payments and sales tax and/or mortgage tax exemptions provided to the company. It is the recommendation of the Committee to present the language to the board for consideration and approval.

Mr. Frain made a motion, seconded by Mr. Connolly, to amend the UTEP to include the clawback language as presented to the Board:

“In the event that the Agency shall determine (i) that a project beneficiary has submitted an application, or documentation in support of an application, which contained a false or misleading statement as to any fact which is material to the project applicant’s application for benefits or which omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, and (ii) that such false or misleading statement or omission was made knowingly and intentionally for the purpose of obtaining financial assistance, then the project beneficiary shall forfeit any future tax exemptions or abatements and shall be required to pay to the appropriate taxing authority the amount of any real property, mortgage or sales tax abatements or exemptions received. The amount of benefits recaptured shall be: (i) for real property taxes, the difference between the amount of payment in lieu of taxes paid and the amount that would have been paid in real estate taxes if the Agency did not have an interest in the

project; (ii) for sales taxes, the value of the sales tax exemption received and (iii) for the mortgage tax, the value of any mortgage recording tax for which an exemption was granted.”

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]
Kevin Dobbs	[X]	[]	[]	[]
Deanna Brennen	[X]	[]	[]	[]
Robert Connolly	[X]	[]	[]	[]
Angelo Massaro	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

Chairman Sloma explained that there was also a discussion regarding the various changes that are taking place in IDA’s across the State; potential changes in legislation, and a proposal advanced for consideration by Mr. Massaro regarding providing additional benefits for meeting specific employment standards. The committee continues to review these and is requesting further information.

7.0 NCIDA Unfinished Business – None.

8.0 New Business

8.1 Wheatfield Family Dentistry

Mr. Witul explained that the Agency is being asked to consider a request from Wheatfield Family Dentistry for certain incentives through the Agency. The applicant is proposing to acquire an existing property. Currently, Wheatfield Family Dentistry has outgrown its leased space and seeks to purchase an existing property and construct an office building on Niagara Falls Boulevard in the Town of Wheatfield. The building will consist of 2,500 square feet of dental offices, with 1,500 square feet of class-A office space for lease to another tenant. The investment proposal is approximately \$700,000 in facilities and equipment, along with creating new jobs, continuing existing jobs and increasing payroll. A portion of the project not only includes the locations of the family dentistry, but also would provide for certain Class A office space on the premises as well, which is one item that the Town of Wheatfield Economic Development Committee and Planning Committee have identified as a need in the Town and along Niagara Falls Boulevard in particular. The project would also remove the poor facility that currently sits on the site and add a first class project along the corridor. The project is consistent with Agency policy and the goals and objectives of the Town of Wheatfield. The project will add to the tax base, even with PILOT incentives. The Agency has approved healthcare-type facilities in the past, however, this is the first dental office that has applied for benefits.

8.0 New Business

8.1 Wheatfield Family Dentistry (Continued...)

Dr. Kathleen Casacci stated that she has been practicing in the Town of Wheatfield for the past 15 years, and is a native of the town. She is currently renting space and has been there since 1994. There are currently 5 employees (3 f/t, 2 p/t). The current facility is 3,200 s.f. but there is a lot of wasted space. Major road construction three times since she has been at this location causes the increase/decrease in her business. The facility currently is outdated and new equipment cannot be integrated into the current space. She would also like to have the additional rental space to help support the cost of the project and bring additional business into the area/facility. Ms. Casacci explained the facility and indicated that she plans on using all Western New York contractors. She explained that there are four buildings on the property at this time that are in very poor condition. They will tear down those buildings and build up the lot to the level of the road. This work would begin in the Spring so she can occupy the facility by February of 2011.

Mr. Connolly asked about the fact that she is downsizing the office. Dr. Casacci stated that the space she is in now is not an efficient layout for her business. The new space will have storage space in the basement which will give her more office space than she is able to use currently. Mr. Connolly pointed out that there is another dentist office being built on Niagara Falls Boulevard, not far from her location. A discussion followed, with Mr. Massaro expressing concern over the competitiveness of this dental office and others in the same vicinity. He stated he is interested in the public reaction to this project before he makes a final decision.

Chairman Sloma encouraged the applicant, who is asking the taxpayers of the County for consideration of this project, that she considers purchasing and hiring in Niagara County.

8.1.1 Preliminary Resolution

Mr. Petrozzi made the motion, seconded by Mr. Frain, to approve the Preliminary resolution for Wheatfield Family Dentistry.

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]
Kevin Dobbs	[X]	[]	[]	[]
Deanna Brennen	[X]	[]	[]	[]
Robert Connolly	[]	[X]	[]	[]
Angelo Massaro	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

8.0 New Business

8.1 Wheatfield Family Dentistry (Continued...)

8.1.2 Public Hearing Date

Chairman Sloma announced that a public hearing has been set for Tuesday, January 5, 2010 at 4:00 p.m. at the Agency Office.

8.2 AES Somerset LLC

Mr. Gabriele explained that AES Eastern Energy LP has an application before the Board today. He stated that AES currently has a PILOT on this project that is in the process of being litigated and is now before the Court of Appeals. There have been extensive negotiations going on between the Company and the affected taxing jurisdictions, including the County of Niagara, Town of Somerset, and the Barker School District with respect to coming to a settlement agreement as it relates to the Article 7 Certiorari proceeding which is presently before the Supreme Court in Niagara County. Mr. Gabriele stated that a settlement has been agreed to between the parties and as part of that settlement agreement they are requesting that the NCIDA be involved in what amounts to modifying (entering into a new PILOT) upon the terms and conditions that were agreed to by the affected taxing jurisdictions and the Company for a period of five (5) years, at an annual payment amount of \$15,800,000 per year. That amount will include the Special Districts and will be broken down according to a formula agreed to between the parties. It is important to note that because the payment breakdown between taxing jurisdictions are not based on rate, the taxing jurisdictions must consent to the change and new rates that are being proposed. Their consent is anticipated.

The new President/Plant Manager for AES Somerset, Peter Bajiak was introduced. A representative for AES stated that prior to the Court of Appeals even taking the case, the parties were already in negotiations led by Town of Somerset Supervisor Meyers. This culminated an agreement early in the Fall that required some further negotiations between the taxing jurisdictions with respect to the allocation of the payments. This resulted, on December 1, 2009, with the agreed taxing jurisdictions passing resolutions approving the settlement which wraps up all six years of the pending Article 7 litigation, property tax litigation, as well as the eventual withdrawal of the appeal from the Court of Appeals.

Supervisor Meyers and Superintendent Klatt made some brief remarks also, followed by comments from Chairman Ross.

Chairman Sloma stated that the Company was a party in the appeal process, as was the Agency, and as part of this action the parties will discontinue that action.

8.0 New Business

8.2 AES Somerset LLC (Continued...)

8.2.1 Preliminary Resolution

8.2.2 Authorize Public Hearing - Monday, January 11th at 4:00 p.m. at Town of Somerset Town Hall

Mr. Massaro made a motion, seconded by Mr. Connolly, to approve the Preliminary Resolution and authorize a public hearing. 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]
Kevin Dobbs	[X]	[]	[]	[]
Deanna Brennen	[X]	[]	[]	[]
Robert Connolly	[X]	[]	[]	[]
Angelo Massaro	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted.

8.2.3 PILOT Deviation Letter

Mr. Frain made a motion, seconded by Reverend Dobbs, to authorize the Agency to send a PILOT Deviation letter to the affected taxing jurisdictions. Motion passed.

9.0 NCIDA Information Items

9.1 Center for Economic Development Outreach Efforts

Chairman Sloma explained that the Agency has been identified as an Agency that has been inclusive in trying to bring all of the parties involved in Economic Development, taxing jurisdictions, etc. to the table and include them in what the Agency does. The Agency wants to insure everyone understands and participates. Mr. Ferraro reviewed the outreach efforts which are outlined in a memorandum which is attached hereto and made a part hereof these minutes.

Chairman Sloma stated that the key to success in all of these outreach areas is that people need to participate in the processes that are available and that has not happened reliably through the years. To build greater understanding and cooperation within the economic development arena, the taxing jurisdictions need to participate in these outreach programs.

9.0 NCIDA Information Items

9.2 Center for Economic Development Outreach Efforts (Continued...)

Chairman Sloma stated that he made a presentation last month regarding why he believes the NCIDA should be helping the City of Niagara Falls in their development. There was some discussion that he was only focusing on the City of Niagara Falls. He explained that the reason he raised the issue about the City of Niagara Falls is that the City was taking exception to some of the Agency’s process. The other two cities had not expressed any objections. In the interest of fairness, however, the Agency put together another presentation that shows the similar demographics of the other two cities. This was provided to the board and will be attached hereto and made a part hereof these minutes.

10.0 Agency Counsel

10.1 Ulrich City Centre

10.1.1 Modification of Mortgage

Mr. Gabriele explained that this is an ongoing project in the City of Lockport. There will be a modification of that existing mortgage and it is a requirement of the Agency documents that the Agency consent to said modification.

Mayor Tucker made a motion, seconded by Reverend Dobbs, to approve the modification of mortgage for Ulrich City Centre.

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]
Kevin Dobbs	[X]	[]	[]	[]
Deanna Brennen	[X]	[]	[]	[]
Robert Connolly	[X]	[]	[]	[]
Angelo Massaro	[X]	[]	[]	[]
Joseph C. Frain	[X]	[]	[]	[]

The resolution was thereupon duly adopted

10.0 Agency Counsel

10.2 CO7 Holdings, LLC

10.2.1 Extension of Sales Tax Extension

Mr. Gabriele explained that this is a request for extension of sales tax exemption and is not for any additional benefits. The Company is in full compliance.

Mr. Petrozzi made a motion, seconded by Mr. Frain, to approve the Extension of Sales Tax Exemptions for CO7 Holdings LLC. Motion passed.

Health Care Issue

Mr. Gabriele stated that the Agency staff was requested by Chairman Sloma to review the health insurance rates the Agency was paying. An analysis was done of the existing health care provider and plan benefits and other available plans. The result is a fairly significant savings for the Agency. Mr. Ferraro stated that he is recommending that the Agency keep their current provider (Univera Solutions) for the month of January 2010 at our current rate; then on February 1st enter into a new policy from Independent Health for a 12-month period at a rate that is approximately 25% lower than the Univera policy.

Mr. Massaro made a motion, seconded by Reverend Dobbs, to approve the change in Health Care plans for the Agency. Motion passed.

Hickory Sticks Golf Course

Mr. Gabriele received a response from the Bureau of Indian Affairs regarding the preferential hiring at the golf course by the Seneca Nation. He stated that the letter does not indicate that there is any violation regarding the hiring being done by the Nation. In addition, the letter that the Agency sent served to at least put them on notice of the situation so that they can take the proper action if the Seneca's do not follow the proper procedures.

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

Meeting with City of Niagara Falls – 10:00 a.m.

Chairman Sloma introduced Mayor Dyster and Mr. Kay of the City of Niagara Falls. Mr. Sloma indicated that the meeting is in regards to the dialogue occurring about the procedures and processes used by the Agency, and the Agency's motivation in granting incentives. He stated that it is hoped the Agency and the City can come to an understanding of what the Agency does and why.

Mr. Dyster stated that they received a copy of the power point presentation and they have a few questions. One area where there is a disconnect is what is the appropriate procedure for PILOTs located in the City of Niagara Falls. A lengthy discussion was held between the parties.

Meeting with City of Niagara Falls – 10:00 a.m. (Continued...)

Chairman Sloma stated that the Agency understands the taxing status of the City and the conclusion is wherever there is an opportunity it should be explored to increase the tax base. He stated that the Agency looks at things county-wide and if there is a county tax and everyone has a proportional share based on assessment; therefore, if the assessment value drops the other taxing jurisdictions pick up that difference. Chairman Sloma stated that why the County's IDA is interested specifically in the City of Niagara Falls is because the Agency is trying to help the City re-establish their tax base.

Chairman Sloma stated that there is a question "would they come anyway?" that speaks to the future revenue deficit that it appears the Agency is pre-empting. History will show that "they" haven't come and the only way that people invest in Niagara Falls and New York State is because they receive incentives, i.e. Globe Metallurgical. The company may not need the incentives, but by providing the incentives they chose to locate.

Mayor Dyster stated that the City's programs related to the Casino revenue are just being started and they will be able to offer incentives. Mr. Kay discussed the two Merani hotel projects he felt would have gone forward without as much help as they originally requested. Chairman Sloma indicated that the two sites were deteriorating and the Agency looked upon this as an opportunity to improve the properties and increase tax revenue for the City in the long term. Additional incentives on focused areas will help attract other development in an otherwise deteriorating area.

Mr. Ferraro explained that the Agency has numerous programs and workshops where all the economic development partners are invited to attend. He stated that Niagara County does inform the municipality of projects that are located or going to be located in that municipality and that this process also has to work in reverse – if a lead comes to a municipality that municipality should in turn be offering the NCIDA package to them letting them know what the County has to offer. Mr. Ferraro indicated that no incentives have been offered to companies that have gone to the City first and the Company finds out after the fact. They are unhappy that they had an opportunity to take advantage of an incentive by another level of government that was not offered at the time the deal was signed. This does not bode well for future referrals.

Mr. Massaro stated that he feels the problem the City has with the Agency is communicating with them when a project is first received by the Agency.

Mr. Gabriele stated that as part of the procedure the Agency, in most cases, within 24 to 48 hours upon receiving an application, a public hearing is set up and the notice documents are forwarded to all the affected taxing jurisdictions in the County. Mr. Ferraro explained that there are a few instances where the Agency may have to sign a confidentiality agreement which does not allow the Agency to talk to anyone outside of the Agency for a period of time.

Chairman Sloma stated that there may never be an agreement on the issue of "need." However, businesses are coming to the Agency for assistance and more than likely if the Agency does not help them they will not proceed here – they will go somewhere else.

Meeting with City of Niagara Falls – 10:00 a.m. (Continued...)

Mr. Sloma stated that he will be developing a letter from him personally, telling the Chief Executive Officer of the municipality what the Agency has before them. The notice will include an executive summary of the project.

A question was raised as to whether the fees derived from the projects plays any part in securing that project. Chairman Sloma stated that this is an independent Agency and it does not derive a single dollar from the taxpayers of the County. He also stated that the Agency is not fortunate enough to have casino revenue available. The fees are proportional to the operation of the Agency and it is very customary and ordinary for IDA's in the State. No external monies are received. The Agency is not encouraged to approve projects as evidenced by the many projects that have been denied benefits and applications that were never accepted.

Chairman Sloma asked that the City consider meeting with the Agency staff to establish some understanding and create open communication. He stated that the Agency staff is prepared to assist the City in any way possible, and it is hopeful the Mayor will advise his staff of the same.

12.0 Regular NCDC - NCIDA Board Meeting:

DATE: December 9, 2009
TIME: 9:00 a.m.
PLACE: Niagara County Center for Economic Development

13.0 Adjournment

*Mr. Massaro made a motion, seconded by Mr. Frain, to adjourn the meeting at 11:20 a.m.
Motion passed.*

Respectfully submitted,

Reviewed by,

Approved by,

Mary P. Melloni
Administrative Assistant

Samuel M. Ferraro
Executive Director

Deanna Alterio-Brennen
Secretary