

**Tompkins County IDA Special Meeting Minutes**  
**May 17, 2012**  
**Old Jail Conference Room**  
**125 E. Court Street, Ithaca, NY**

**Present:** Martha Robertson, Jeff Furman, Nathan Shinagawa, Larry Baum, Svante Myrick, Will Burbank

**Excused:** Jim Dennis

**Staff Present:** Michael Stamm, Heather Filiberto, Mariette Geldenhuys, Ina Arthur (recording)

**Guests Present:** Kevin McAuliffe (Hiscock & Barclay)

**CALL TO ORDER** The meeting was called to order at 3:45 PM

**ADDITIONS TO THE AGENDA** - None

**PRIVILEGE OF THE FLOOR** - None

**BUSINESS**

AES Cayuga Mortgage Recording Tax Abatement – Final

Ms. Geldenhuys stated that the mortgage recording tax abatement would be a full abatement with a PILOT payment of .5% to the local municipalities (Town and Village of Lansing).

Mr. Furman asked if it was known when the plant would run again? Mr. McAuliffe commented that he did not know. With the abundance of natural gas, prices of electricity will not go down soon. Ms. Robertson commented that this is an example of one natural resource replacing another economic development generator.

Mr. Furman asked if there are any other power plants in the United States doing what AES Cayuga is doing – turning on and off. He is concerned about the safety of the plant and environmental issues.

Mr. McAuliffe stated that he did not know. Mr. Stamm commented that the plant has gone dark and started up many times in the past few years.

Mr. McAuliffe stated that the \$70M that is being borrowed is for operating costs to keep the two plants running.

Mr. Myrick asked if the abatement is really necessary. Mr. McAuliffe stated the company is trying to keep the money local by paying the municipalities their portion of the mortgage recording tax instead of sending the money to the State.

Mr. Myrick stated that we rely on the State to pay for things, like roads, and it seems that an abatement would be to incentivize something. It also seems like the transaction would happen without the abatement. This is taking money from the State coffers.

Mr. McAuliffe stated that the money would be used to support local jobs. Ms. Robertson stated that the mortgage recording tax abatement is part of the IDA's standard policy.

Mr. Shinagawa stated that Mr. Myrick has brought up a good idea. He feels that supporting this would be inconsistent with what he has been saying publicly.

Ms. Robertson stated that this is the last detail before the closing. Mr. Stamm stated another issue to think about is the legal fees AES Cayuga has agreed to pay local counsel. Usually the IDA attorney does not incur expenses until final approval is given.

Mr. Shinagawa stated that by giving \$54,000 in abatements, would this amount affect the liquidity of the local company?

Mr. McAuliffe state that the Niagara County IDA will be abating the portion related to the Somerset plant. If the Tompkins County IDA does not also abate its portion of the mortgage recording tax, then when the mortgage is filed in Tompkins County, the full amount of the mortgage will be considered taxable and the company will have to pay \$700,000. Any refund from the State would take over a year and there would not be a guarantee of a refund.

Mr. Stamm stated the question is whether \$54,000 goes to the State or to a local business we are trying to help. Mr. Baum stated that eventually coal will be used again to generate power and the plants will run again.

Mr. Myrick commented that his understanding is that the IDA induces job creation with abatements.

Mr. Stamm commented that we should look at the wide spectrum of the project. Usually a project is asked if they would proceed with out the incentives from the IDA. Sometimes the answer is yes, but the project would take longer or less jobs would be created. It doesn't seem that \$54,000 is a lot of money, but in this case it is. Job retention is also an IDA goal.

Mr. Burbank stated that he is sympathetic to Mr. Myrick's position on whether there is a need and feels that this would be a good question to explore in the future. But he will support this resolution as he is concerned with the local school district in which this project resides.

Mr. Baum stated that in a bankruptcy, every dollar counts. It is all about cash flow. AES needs to be very careful. This amount will retain a job in Lansing and 10 in Somerset. Yes, the State may refund the moneys but by that time there may be no company left.

Mr. McAuliffe also stated that the message this might send to the parent company would not be good.

Mr. Shinagawa stated that in the context of working with AES for the past three years he feels that keeping the company alive and money in the community is a good thing and will support this.

Mr. Furman stated that the issue is not process based. The risk to the company if no abatement is issued is very high and he will support this.

Mr. Myrick stated that he does not feel that the \$54,000 will go to a job. But he cannot fault the company for trying.

Mr. Baum stated that sometimes in a situation you cannot control everything. For a lot of reasons this will help the plant survive.

**Svante Myrick moved to call the question. Will Burbank seconded the motion. The motion to call the question passed unanimously.**

**A vote was taken on the resolution to grant the mortgage recording tax abatement. The motion passed (Yeas – five (Robertson, Furman, Baum, Burbank, Shinagawa), Nays – one (Myrick)).**

#### Emerson Power Transmission Recapture Interest - Discussion

Mr. Stamm stated the Emerson Power Transmission received incentives in the form of property tax abatements from the TCIDA. When the company left Ithaca and New York State, the abatements were recaptured. The IDA also charged 9% interest on the abatement amount. The property taxes that were abated were returned to the local municipalities and school district and the sales taxes that were abated were returned to the County and State. The interest was not distributed as it was felt those moneys could be used to leverage other funds for redevelopment of the site. A lot of time has gone by (about a year). At this time there is a developer that has an agreement with the company. The developer needs to do studies to see if the site is developable. This will take a lot of money. The IDA should have been involved earlier as to the use of the interest money.

Ms. Robertson asked about the difference in the amounts from the February 2011 minutes to the actual. The original numbers were based on the application, while the actual amounts are based on the figures from the assessment department.

Mr. Furman feels that the original intent of the board was that all the recaptured money was to be returned to the taxing authorities.

Ms. Robertson stated that amount the taxing authorities would have earned in interest in a bank is less than the 9%.

Mr. Burbank stated that he would really like to see the site redeveloped especially as it applies to the bike trails in the area. He does favor asking the taxing authorities if they would want the money. Mr. Shinagawa also agreed with Mr. Burbank as to asking the taxing authorities.

Ms. Filiberto stated that the developer has negotiated an option with the company. Even if he is not the eventual owner, these funds could be used to benefit the community in terms of paying for consultant fees for community outreach etc.

Mr. Stamm stated that if you calculate what municipalities would have earned in a bank account with the recaptured funds versus the 9% interest, the difference would be around \$85,000. This amount could

still be used for site development. Ms. Robertson proposed keeping the \$85,000 for that purpose and giving the rest to the municipalities.

Mr. Furman stated that the developer is not asking for any money at this time. The taxing authorities should make their own decisions.

Mr. Myrick stated that he favors refunding the money to the municipalities and when the developer comes to the IDA for abatements, to give them to him at that time.

Mr. Baum stated that he likes Ms. Robertson's proposal.

Ms. Robertson asked for information on the bank interest that would have been expected for each municipality vs. the 9%.

**This issue will be voted on at the next TCIDA Board meeting.**

#### PILOT Mortgage Policy

Mr. Stamm stated that in the event of a bankruptcy, PILOT's become unsecured since it is a contract. By using a PILOT mortgage, the IDA can get a higher priority in any future bankruptcy of a project. Using this kind of document will mean working with the applicant and their bank early in the application process so all are aware and on board with this.

Ms. Geldenhuys commented that we can be proactive by reaching out to local lenders to discuss this.

Any possible recording fee associated with this type of document should be exempted. This is only a contingency "mortgage."

**Jeff Furman moved to approve adding the use of a PILOT Mortgage with future projects and to all exemption of any recording tax associated with it. Larry Baum seconded the motion. The motion passed unanimously.**

#### Black Oak Wind Farm PILOT Negotiation Team

Ms. Robertson reported that the County Legislature voted to opt out of the renewable energy exemption. This allows moving forward for the purpose of valuing the proposed Black Oak Wind Farm through a PILOT agreement. She would like to work on naming the negotiating team. Representatives should come from the County, School District and other local municipalities.

Mr. Furman commented that he supports this as long as members of the negotiating team are not investors in the actual project.

Ms. Filiberto commented that the County assessor has done some research on similar projects and there is precedent.

Ms. Robertson stated that she will reach out and contact the various taxing authorities for their representatives and then will bring this back to the IDA for a vote.

## **STAFF REPORT**

Ms. Geldenhuys reported that the Cayuga Green ROI report as outlined in the project's PILOT agreement would be due to the IDA Board on April 1, 2013. Prior to that the definition of "net rent" will be finalized.

Ms. Filiberto reported that the City of Ithaca staff has been reviewing and revising the City's CIIP policy. The current policy is seen as cumbersome, costly to developers and is not giving the City what it wants to incentivize. TCAD staff has met with the City staff working on this revision. The revised policy has gone to the City's planning committee and they will be bringing it to the June TCIDA meeting for discussion with the IDA Board.

Ms. Arthur briefly commented on the Compliance Risk Assessment that was done for the TCIDA. This was done in conjunction with the NYSEDC as a best practices project. Overall risk rating for TCIDA was low. There were some suggestions by the audit company that the IDA could make to comply more fully with the State's PAAA legislation. Some, such as developing a procurement policy, have already been done.

## **APPROVAL OF MEETING MINUTES**

**Will Burbank moved to approve the meeting minutes from the March 20, 2012 and May 3, 2012 Board of Directors meetings. Jeff Furman seconded the motion. The motion passed unanimously.**

## **ADJOURNMENT**

The meeting adjourned at 5:10 PM