

To: Town Supervisor Patrick Tyksinski, via email
Deputy Town Supervisor Matt Bohn, via email
Councilwoman Christine Krupa, via email
Councilman Rich Woodland, via email
Councilman David Reynolds, via email
Councilman Don Backman, via email
Town Attorney Herb Cully, via email

Cc: Town Clerk Gail Wolanin Young, via email and in person

Date: July 18, 2011

Re: Bid Resolution of Wednesday, July 13, 2011 for New Hartford Business Park

I was rather surprised to hear Supervisor Tyksinski ask the board at this past Wednesday's board meeting to adopt a resolution to go out to bid for the 840 Break-In-Access particularly given the conditions set forth in the Agreement Allocating PILOT Payments signed between the Town of New Hartford, County of Oneida, New Hartford Central School and Oneida County Industrial Development in late 2008.

In particular, page 5 of the Agreement **[ATCH A]**:

“Public Improvements BAN” means the bond anticipation note or notes (or tranches thereof) to be issued by the Town to pay for and/or finance some portion of all the Costs of the Public Improvements. Notwithstanding anything to the contrary contained in this Agreement the aggregate principal amount of the Public Improvements BAN shall not exceed the sum of \$2,300,000.00.

That also ties back to an October 31, 2008 letter sent to Mark Nordland, Vice President of Development at Ryan Companies by then Town Supervisor Earle C. Reed **[ATCH B]** where Mr. Reed states:

“As you will note, the Allocation Agreement provides funding for only the construction of Roads C and D in the Business Park and improvements to the Route 5 intersection at Woods Highway. For this purpose, the town intends to borrow \$2.3 million.”

Clearly, the currently signed Agreement Allocating PILOT Payments only applies to the \$2.3 million that has already been borrowed for the roads within the business park and the intersection at Route 5 and Woods Highway.

Mr. Reed's letter to Mr. Nordland also states that it is the town's intentions that *“taxes will not be raised or public fund balances depleted to cover the increased costs” [of the 840 access]. “As a result, a lesser agreement affordable to the developer was struck whereby improvements to Woods Highway and access to Route 840 were deferred to some future date.”*

Reed's letter ends by assuring Mr. Nordland that while the town intends to further investigate some kind of access to Route 840, they plan to do so only upon the terms and conditions set forth in the signed Agreement Allocating PILOT Payments [approved by the town board on October 7, 2008] and found on page 8 & 9 of that Agreement, Item #11 [ATCH C].

Item 11. Additional Means of Access:

"Each of the Affected Tax Jurisdictions fully intends to pursue and support a Break-In-Access to NYS Route 840 provided such Break-In-Access:

(a) has all needed permits, authorizations, and approvals from all municipalities, regulatory agencies and/or other government authorities with jurisdiction thereof;

(b) is fully funded by and is to be paid for entirely with (i) monies generated by additional payment-in-lieu-of-tax agreements relating to properties situate within the New Hartford Business Park, (ii) monies provided by the Developer, and/or (iii) monies from State grant and/or other sources of State funding, or some combination thereof; and

(c) is deemed prudent, practical and most viable by each of the Affected Tax Jurisdictions acting in its sole discretion."

Quite frankly, according to item 11 (b) of the agreement, one would have to believe that it might not have been the intention of those signing the referenced Agreement to continue to allocate Fees In Lieu of Mitigation money for the Route 840 access since Item 11 of the agreement did not mention FILM as a source of possible funding nor was there any mention of the use of FILM money in Mr. Reed's letter to Mark Nordland.

At the July 13, 2011 town board meeting, Supervisor Tyksinski referred to an agreement that has been reached with Mr. Adler regarding the funding of the project; however, to date, it would appear that no agreement has been presented to the town board for approval.

According to the minutes of the April 15, 2011 meeting of the Oneida County Industrial Development Agency [ATCH D], Mr. Adler asked the Agency for an initial authorizing resolution for a 100% PILOT for the New Hartford Office Group, LLC. The resolution was approved "*subject to (a) a PILOT Allocation agreement agreeable to all parties and (b) receipt by the Agency of an updated application for a PILOT, mortgage and potential sales tax exemptions was made.*" The subsequent May 2011 and June 2011 OCIDA meeting minutes make no further mention of the status of Mr. Adler's request for a PILOT.

To the best of my knowledge there is no PILOT Allocation that has been adopted and signed by the town board, the school board and/or the county board of legislators. There is no indication of how quickly the three (3) taxing entities and OCIDA will agree on the terms of any potential PILOT Allocation Agreement or whether a DRAFT agreement even exists at this point. Therefore, it would seem that the conditions set forth in Item 11 of the previously signed Agreement Allocating PILOT Payments have not been met.

At the July 13, 2011 town board meeting, Supervisor Tyksinski stated that Mr. Larry Adler had provided the town with an \$80,000 FILM check over and above the FILM provided by The Hartford. It is my belief that no FILM agreement between Mr. Adler and the town has been presented at any town board meeting asking the town board to authorize signature by the town supervisor which would lead me to wonder just who signed the agreement that authorized the collection of \$80,000 FILM from Mr. Adler and what are the terms of that agreement?

Further, I call your attention to an article that was posted on the Observer Dispatch website on December 4, 2010 and published in the December 5, 2010 edition of that newspaper. **[ATCH E]**.

In that article, State Department of Transportation spokesman Anthony Ilacqua was quoted as saying:

"We've told the town that before they can build the access route to 840, that the Clinton Street extension has to be under way."

The article went on to say:

"Tyksinski said he would like the town to enter into a payment-in-lieu-of-taxes agreement with the developer to help fund the roads' construction."

Once the access projects are given the go-ahead, the town would bond for the cost of the roadway projects. PILOT payments made by Adler then would be used to pay off the debt service on the bond, the supervisor said."

Tyksinski said he expects payments from the hotel development will pay for the cost of the road work.

"There are a lot of things that need to fall in place for this thing to go," he said.

I have to ask...What, if anything, has happened in the last six (6) months to change the DOT's criteria for work to begin as set forth in the December 2010 article?

There is no guarantee that the town will be able to satisfy the requirement of the state regarding the Clinton Street Extension or any firm date when they might be able to satisfy the requirement as the Public Hearings for the eminent domain proceedings for the taking of the Yager property have yet to be held. Until such a time as the eminent proceedings have been finalized, the property that the road will be built on is private property.

According to documents obtained from the NYS DOT, the Clinton Street Extension, when finished is to be a town road. Emails of Roger Cleveland that I have in my possession stress the fact that Article VIII, § 1 of the NYS Constitution regarding Gifts and Loans would prevent

the town from funding the building of a road where they do not own the land. Roger's emails express his concern that the work on Roads C and D in the New Hartford Business Park had already begun in August 2008 and was slated to be paid by the town issuing Bond Anticipation Notes yet those roads still belonged to the developer until the December 10, 2008 town board meeting when they were accepted by the town. Roger was obviously nervous about the situation and felt it might cause the town some grief.

In fact, the resolution adopted by the town board at the town board meeting of October 7, 2008 [ATCH F] regarding the bonding of the \$2.3 million in BANs specifically addresses that issue when it says:

- *"Bid Contract #1 "as is" without change or deletion. (Roads C and D – Approximate price \$1.4 million with paving and work extras). The Town shall remain free of liability and obligation on the subject contract until (a) all of the land upon which Roads C and D are to be constructed are legally transferred to the Town with good and proper title (this includes the land at or near the Cell Tower and National Grid parcel); (b) the 3 taxing authorities have fully executed the corresponding Allocation Agreement; (c) the Developers have provided the Town with a Letter of Credit satisfactory to the Town as to form, duration and amount; and (d) the Developers have duly executed with the Town a separate Agreement and Individual Guaranty. Bid Contract #1 has been attached to the Allocation Agreement as Exhibit A. Any work performed under Bid Contract #1 before these prerequisites are met is at the Developers' risk and assumption of liability "*

In December 2008, after the roads were accepted, the town sold a BAN for \$1.4 million merely to cover the costs of Roads C & D.

How many bids can the town expect to receive if the bidding is done prematurely with the caveat that the work performed is done at the developer's [and thus the contractor's] own risk until such a time as the town has possession of the roads? Is this the reason that the town only received one bid for Bid #1? That bid was from Burrows, a signatory on Mr. Adler's Letter of Credit, who also started work on the project months before the bidding specs were even available?

Construction work that is currently being done in the business park is being done by Roberts Construction, a relative of one of the town council members. While at this point the work is being done on privately owned property and there is no bidding requirement, there needs to be some sort of agreement as to just what the town is funding; that signed agreement should make it clear that the work done by Mr. Roberts' construction company to date without benefit of the bidding process will not be funded by town monies, either borrowed or budgeted, or FILM money collected from other developers.

Another concern is that almost 3 years has lapsed since the first BAN was issued for this project on December 11, 2008. According to Supervisor Tyksinski, it is quite possible that the additional \$600,000 may not be converted to a serial bond for another year. It is my understanding that the maximum maturity date of any future borrowing for the same project is set with the initial borrowing for the project because the Period of Probable Usefulness is

based on the date of the initial borrowing. Therefore, since the first BAN for this project was sold in December 2008, if the same bonding resolution is used, the \$600,000 is merely a bonding for the same capital project. That could make the maximum maturity of this additional bonding as low as 10 or 11 years; not 15 years as originally planned in Town Board Resolution 106 of 2008. This would increase the principal payment that is owed each year for the \$600,000 bond and may affect any agreement(s) necessary to insure that the debt is covered by some combination of PILOT payments and/or contributions by the developer.

Lastly, Local Finance Law Section 41.00 deals with the repeal of unexpended authorizations:

"§41.00 Repeal of unexpended authorizations

a. The finance board of:

1. Any municipality may at any time, by resolution, repeal or revoke in whole or in part (a) any resolution heretofore or hereafter adopted authorizing the issuance of obligations, and (b) any certificate of a chief fiscal officer authorizing the issuance of obligations, dated on or after the effective date of this chapter . . . except to the extent that any indebtedness shall already have been contracted or encumbrances made thereunder for the object or purpose for which such resolution or certificate authorizes the issuance of obligations

After reviewing the videotape of the meeting, it was apparent that Supervisor Tyksinski presented the issue as if the board had no choice but to approve bonding for the remaining \$600,000 merely because it was authorized with a board resolution in 2008.

That is totally not true; the board has the discretion to repeal or revoke the additional spending because to date no further indebtedness above \$2.3 million has been contracted or encumbered. I think it is only fair that all the facts are presented so that the board can make an informed decision rather than a hasty decision based on information presented to them minutes before they have to vote whether or not to further indebt the town by funding a private developer.

Given the above referenced documentation and concerns, I question whether it is prudent for the town to even consider letting out bids at this early date merely based on what appears to be behind the scenes discussions with Larry Adler.

Respectfully submitted,

Catherine Lawrence

ATCH A – Page 5 of the 2008 Agreement Allocating PILOT Payments

ATCH B – Oct. 31, 2008 letter sent to Mark Nordland, VP, Ryan Companies from Earle C. Reed

ATCH C – Page 8 & 9 of the 2008 Agreement Allocating PILOT Payments

ATCH D – Minutes of the April 15, 2011 meeting of the Oneida County Industrial Development Agency

ATCH E – Copy of a December 4, 2010 web article by Reporter Robert Brauchle of the Observer Dispatch

ATCH F – Copy of New Hartford Town Board Resolution 251 of 2008

“New Hartford Business Park” means that certain 126.5± acre parcel of real property situate on the northeasterly corner of the NYS Route 5 (Seneca Turnpike)/Woods Highway intersection in the Town of New Hartford, County of Oneida, State of New York, which said parcel of real property is currently being developed as a business/office park by and/or under the auspices of the Developer. The approximate location of the New Hartford Business Park is depicted on the map annexed hereto and made a part hereof as Exhibit E.

“New Hartford Business Park PILOT Payments Fund” means that certain interest-bearing account to be established and maintained by the Agency at an FDIC-insured banking organization with an office located in Oneida County, New York (a) into which all of the PILOT Payments actually received by the Agency pursuant to the PILOT Agreement during each Exemption Year are to be deposited and (b) from which it is to pay out (to the extent that there are sufficient funds therein to do so) the monies due to the Town and to each of the Affected Tax Jurisdictions pursuant to this Agreement, if any.

“NYS Route 5(Seneca Turnpike)/Woods Highway Intersection Improvements” means those certain roadway, realignment, signalization and related improvements to be constructed by or for the Town at or within the vicinity of the NYS Route 5 (Seneca Turnpike)/Woods Highway intersection as set forth in Bid Contract #2 in the approximate location depicted in blue on the map attached hereto and made a part hereof as Exhibit F.

“PILOT Payments” means the amount annually to be paid by either The Hartford, the Ryan Companies, and/or their respective successors and assigns to the Agency in lieu of Exempt Taxes pursuant to the PILOT Agreement.

“Project” shall have the meaning ascribed to such term in the Act.

“Public Improvements” means those certain public improvements to be made by or for the Town at and within the vicinity of the New Hartford Business Park pursuant to Bid Contract #1 and Bid Contract #2 which are necessary or desirable, in the Town’s sole judgment to improve existing conditions to accommodate the increase in traffic which is expected to result from the development of the New Hartford Business Park, facilitate the flow of such traffic, and reduce any congestion caused by such traffic including, without limitation, (a) the Road C/Road D Improvements, and (b) the NYS Route 5 (Seneca Turnpike)/Woods Highway Intersection Improvements. The approximate locations where the Public Improvements are to be made are depicted in yellow and blue, respectively, on the map attached hereto and made a part hereof as Exhibit F.

“Public Improvements BAN” means the bond anticipation note or notes (or tranches thereof) to be issued by the Town to pay for and/or finance some portion or all of the Costs of the Public Improvements. Notwithstanding anything to the contrary contained in this Agreement, the aggregate principal amount of the Public Improvements BAN shall not exceed the sum of \$ 2,300,000.00.

“Public Improvements BAN Issuance Date” means the date on which the Town issues the Public Improvements BAN.

“Public Improvements Bond” means the general obligation bond or bonds (or tranches thereof) to be issued by the Town to pay off the Public Improvement BAN. Notwithstanding anything to the contrary contained in this Agreement, the aggregate principal amount of the Public Improvements Bond shall not exceed the sum of \$2,300,000.00.

“Public Improvements Debt” means all indebtedness incurred by the Town to pay for, finance and/or refinance some portion or all of the Costs of the Public Improvements including, without limitation, (a) the Public Improvements BAN and (b) the Public Improvements Bond. Notwithstanding anything to the contrary contained in this Agreement, the aggregate principal amount of the Public Improvements Debt shall not exceed the sum of \$2,300,000.00, and the aggregate term of the Public Improvements Debt shall not exceed fifteen (15) years.

Town of New Hartford

EARLE C. REED
SUPERVISOR



BUTLER MEMORIAL HALL
NEW HARTFORD, NY 13413

Phone: (315) 733-7500, Ext. 2331

OFFICE OF THE SUPERVISOR

October 31, 2008

PRSN	PROPERTY	AUTOMATION	NOV 03 2008
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Mr. Mark Nordland
Vice-President of Development
Ryan Companies US, Inc.
50 South Tenth Street
Minneapolis, MN 55403-2012

Dear Mark,

As an update and response to your letters dated July 21, 2008 and September 16, 2008, please let this letter clarify the Town's position with regard to a proposed traffic light at the intersection of the Woods Highway extension and Route 840.

As you are aware, the Town agreed to join in the collective efforts of the developer, the County, the School District and the OCIDA/EDGE to bring a business park to the Town of New Hartford.

To that end, among other things, the Town made application to the NYSDOT for a break-in-access to Route 840 more fully described as an intersection with a traffic signal. Since that process began, the Town has explored access to Route 840 in the description of (1) an interchange (bridge); (2) an intersection with a traffic light; and (3) right-in/right-out lanes only. Each option, discussed here in no particular order, has presented issues.

To begin, our elected officials at the State level offered encouragement with funding for the interchange only to later report that such funding, in whole or part, was not available and would not be forthcoming now or in the immediate future. The right-in/right-out was visited on numerous occasions, but met with obstacle when the complimentary access through a neighboring property could not be achieved by arm's length transaction. New York State approval for an intersection with a traffic light was being pursued when NYSDOT informed the taxing authorities the cost to construct such an access had doubled.

The developer's inability or unwillingness to overcome these cost increases for the intersection gave the Town cause for concern as funding for all of the desired public improvements, including access to Route 840, always was, and still is, going to be achieved by and through identified PILOT Agreements and debt service security from the developer. This partnership with the School and County with regard to present and future PILOT agreements is

critical as the Town cannot fund these improvements alone and has made it clear from the outset that taxes will not be raised or public fund balances depleted to cover these costs. As a result, a lesser agreement affordable to the developer was struck whereby improvements to Woods Highway and access to Route 840 were deferred to some future date.

To that end, on October 7, 2008, the Town Board and the School Board approved an 'Agreement Allocating PILOT Payments' ("Allocation Agreement") with specified conditions. On October 15, 2008, the Oneida County Board of Legislators approved the same Agreement. I am enclosing a copy of the still unsigned Agreement for your information and records. As you will note, the Allocation Agreement provides funding for only the construction of Roads C and D in the Business Park and improvements to the Route 5 intersection at Woods Highway. For this purpose, the Town intends to borrow \$2.3 million. The debt service for this \$2.3 million will be paid by and through monies generated by the PILOT Agreement The Hartford and Ryan Companies currently have in place with the Oneida County Industrial Development Agency and security received from Mr. Adler, his partners and companies (the "developer"). To ensure the quality and condition of the public improvements being made to Roads C and D and the Route 5 intersection and to ensure the costs for such remain with the developer, the developer is also agreeing to be contractually bound and obligated to pay for any and all incidental costs, escalation costs, inspection fees, engineering costs, paving costs, any additional work, change orders, cost overruns and other costs incident or related to Bid Contract #1 (Roads C & D) and Bid Contract #2 (Route 5 Intersection with signal) not covered by said \$2.3 million. A copy of that Agreement is enclosed herewith as well.

As previously represented to you and others, the Town intends to pursue approval for a full break-in-access to Route 840; investigate land acquisitions and condemnation proceedings as relate to the neighboring property; and explore funding options and alternatives for a bridge over Route 840. As the Allocation Agreement expressly provides, the 3 taxing authorities continue their commitment to a future break-in-access to Route 840 upon the following terms and conditions:

- a. The break-in-access has all needed permits, authorizations and approvals from all governmental and regulatory agencies and municipalities; and
- b. The break-in-access is funded by, and paid for with, monies received by the OCIDA/EDGE from future PILOT Agreements within the Business Park and/or monies provided directly by the Developer; and
- c. The selected break-in-access is deemed prudent, practical and most viable by each of the 3 taxing authorities.

Mark Nordland, Ryan Companies
October 31, 2008
Page 3

The Town, along with the School District and County, remains encouraged and committed to bringing new economic development to New Hartford.

Very Truly Yours,



Earle C. Reed
New Hartford Town Supervisor

cc: Town Board
Anthony J. Picente, Jr., Oneida County Executive
Robert Nole, New Hartford School Superintendent
Steven DiMeo, OCIDA
Michael Shamma, NYSDOT

7. Allocation and Distribution of Excess Amount PILOT Payments to Affected Tax Jurisdictions. If the amount of the PILOT Payments actually received by the Agency pursuant to the PILOT Agreement in any given calendar year during the term of this Agreement exceeds the amount of the Town's Actual Annual Debt Service for such calendar year, then, and in such event, the Agency shall distribute and pay over to each Affected Tax Jurisdiction such Affected Tax Jurisdiction's Regular Percentage Share of such excess amount (but only after the Agency has first distributed and paid over to the Town an amount equal to the Town's Actual Annual Debt Service for such calendar year). If the Town has no actual debt service due with respect to the Public Improvements, and if the amount of the PILOT Payments actually received by the Agency in any given calendar year during the term of this Agreement exceeds the amount of the Town's Estimated Annual Debt Service for such calendar year, then, and in such event, the Agency shall distribute and pay over to each Affected Tax Jurisdiction such Affected Tax Jurisdiction's Regular Percentage Share of such excess amount (but only after the Agency has first distributed and paid over to the Town an amount equal to the Town's Estimated Annual Debt Service for each calendar year).

8. Shortfalls in PILOT Payments. The Town acknowledges that in any one or more given calendar years during the term of this Agreement, there may be a Shortfall in PILOT Payments. The parties hereto acknowledge and agree that neither the County nor the School District nor the Agency shall be obligated to make up any such Shortfall in PILOT Payments. Nothing contained in this Section 8 shall relieve the Agency of its obligation under this Agreement to remit to the Town all or some portion of the PILOT Payments actually received by it in any given calendar year, all as is more particularly set forth herein.

9. Letter of Credit. Any and all Shortfalls in PILOT Payments the Town may realize or incur during the term of this Agreement shall be paid in full by and with monies provided by, and pursuant to, the Letter of Credit from the Developer herein, a copy of which shall be attached hereto and made a part hereof as **Exhibit J**. Any such Shortfalls in PILOT Payments which the Town may reasonably expect to realize or incur have been calculated and determined in accordance with representations made and information provided in **Exhibit G** and Smith Affidavit attached hereto and made a part hereof as **Exhibit K**.

10. Continuation of PILOT Agreement after Fifteenth (15th) Exemption Year. If the PILOT Agreement continues in effect after the fifteenth (15th) Exemption Year thereof, then, and in such event, the Agency promptly shall, during each such subsequent Exemption Year, allocate and pay over to the Town any monies due to the Town between March 1, 2023 and December 31, 2023, inclusive, pursuant to Section 6 above and thereafter allocate and pay over to each of the Affected Tax Jurisdictions such Affected Tax Jurisdiction's Regular Percentage Share of the PILOT Payments received by the Agency during the Exemption Year.

11. Additional Means of Access. Each of the Affected Tax Jurisdictions acknowledges that the overall viability of the New Hartford Business Park, and prospects for the future development thereof, would be significantly enhanced if there were a means of access thereto from NYS Route 840 in addition to the NYS Route 5 (Seneca Turnpike)/Woods Highway intersection. To that end, the Town is currently (a) pursuing the approvals necessary for a break-in-access to NYS Route 840 from Road D, as extended, in the New Hartford Business Park through a signalized intersection, (b) investigating the possibility of land acquisitions and/or condemnation proceedings with respect to certain land located to the east of the Facility so as to provide access to the New Hartford Business Park via Middlesettlement Road and, (c) exploring funding options and alternatives for a bridge over NYS Route 840 (with cloverleaf or other ramps) to connect to Road D, as extended. Each of the Affected Tax Jurisdictions fully intends to pursue and support a Break-In-Access to NYS Route 840 provided such Break-In-Access:

(a) has all needed permits, authorizations, and approvals from all municipalities, regulatory agencies and/or other governmental authorities with jurisdiction thereof;

(b) is fully funded by and is to be paid for entirely with (i) monies generated by additional payment-in-lieu-of-tax agreements relating to properties situate within the New Hartford Business Park, (ii) monies provided directly by the Developer, and/or (iii) monies from State grants and/or other sources of State funding , or some combination thereof; and

(c) is deemed prudent, practical and most viable by each of the Affected Tax Jurisdictions, acting in its sole discretion.

12. Special Assessments and Other Charges. Nothing contained herein shall be deemed to abridge, limit or restrict the ability of an Affected Tax Jurisdiction, if any, (a) to impose or levy and to collect utility and/or service charges (in accordance with its standard rates for such utility and/or service charges in effect from time to time) for furnishing a municipal or private utility service including, without limitation, charges for water service, sanitary sewer service, solid waste collection, etc. to the users within the New Hartford Business Park or (b) to create special assessment districts within the boundaries of the New Hartford Business Park and/or to add, levy and collect special assessments for improvements made within the boundaries of the New Hartford Business Park.

13. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Oneida County Industrial Development Agency
153 Brooks Road
Rome, New York 13441-4105
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC
501 Main Street
Utica, New York 13501
Attn.: Linda E. Romano, Esq.

To the Town: Town of New Hartford
Butler Hall, 48 Genesee Street
New Hartford, New York 13413
Attn.: Town Supervisor

With a Copy To: Gerald J. Green, Esq.
Paravati, Karl, Green & DeBella
12 Steuben Park
Utica, New York 13501

To the County: County of Oneida
County Office Building
800 Park Avenue
Utica, New York 13501
Attn: Commissioner of Finance

With a Copy To: Linda M.H. Dillon, Esq.
County Attorney
Oneida County Office Building
800 Park Avenue
Utica, New York 13501

**Minutes of the Meeting of the
Oneida County Industrial Development Agency
Held on April 15, 2011 at Mohawk Valley EDGE
584 Phoenix Drive, Rome NY**

Members Present: E. Quadraro, D. Grow, M. Fitzgerald, F. Betrus

Absent: N. Brown, M. Valentine, S. Zogby

EDGE Staff Present: S. DiMeo, S. Papale, J. Cardone, J. Waters, P. Zawko

Others Present: L. Ruberto, C. Levitt, J. Saunders, N. Matt, L. Adler

Press: none

Mr. Grow called the meeting to order at 8:05 AM.

A motion to enter Executive Session for the purpose of discussing potential contracts was made by Mr. Fitzgerald seconded by Mr. Betrus. Consensus to exit was achieved at 8:53 AM.

March 18, 2011 minutes were approved with changes on a *motion made by F. Betrus seconded by M. Fitzgerald.*

Members accepted the financials as presented

In other Agency business:

- Representative N. Matt met with the agency to discuss a request by Matt Brewing Company to grant additional financial assistance in connection with a new project. Matt Brewery Co. will be constructing/installing an anaerobic digester which will treat their waste water (making it easier for the sewer system to handle) and generate methane gas which they will use to generate 30-40 percent of their electrical requirements. *A motion to approve initial authorizing resolution to amend the existing PILOT (taxes to stay at amount prior to fire and equipment will be 100% exempt), sales and mortgage tax exemptions for the construction/installation of an anaerobic digester as a pollution control and power generation project by Matt Brewery Co all subject to the completion of a SEQR review was made by F. Betrus, seconded by E. Quadraro. F. Betrus disclosed that his brother owns RL Stone who has a contract with Matt Brewing Co.; F. Betrus states that he has no stake in the company or financial gain.*
- Representative L. Adler met with the agency to discuss a request for an initial authorizing resolution for a 100% PILOT for New Hartford Office Group, LLC.. *A motion to approve an initial authorizing resolution subject to(a) a PILOT allocation agreement agreeable to all parties and (b) receipt by the Agency of an updated application for a PILOT, mortgage and potential sales tax exemptions was made by E. Quadraro, seconded by M. Fitzgerald.*

Members accepted the financials as presented

In other Agency business:

- A request to consider an initial authorizing resolution granting financial assistance in connection with the Bonide Products, Inc facility for a 50,000 SF building addition project. Bonide will be constructing a warehouse and installing racking and adding forklifts. They have run out of space to store their various finished goods. *A motion to approve the initial authorizing resolution granting a 10 year industrial PILOT for real property tax abatement, mortgage recording tax exemption and sales tax exemption was made by F. Betrus, seconded by D. Grow with M. Fitzgerald abstaining.* The agency discussed the updated agency fee structure and how it may

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compare to other counties. The agency stressed the importance of making the fee structure known to every company who applies for benefits.

- A request to consider an initial authorizing resolution to grant financial assistance relating to the HP Hood LLC project for a 23,000 SF building addition and cooler installation. This project will include the construction of a new refrigerated warehouse for the final cooling, storage and distribution of packaged dairy goods. *A motion to approve the initial authorizing resolution granting a 10 year Industrial PILOT for real property tax abatement, mortgage recording tax exemption and sales tax exemption was made by F. Betrus, seconded by E. Quadraro.*
- A request to consider a final authorizing resolution approving benefits and the form and execution of related documents for Fish Creek Cabin Resort, LLC and the execution of related documents. *A motion to approve the final authorizing resolution approving benefits was made by D. Grow and seconded by E. Quadraro.*
- A request to consider a final authorizing resolution approving the benefits and the form and execution of related documents for Griffiss Local Development Corporation for building 770/774 at 428 Phoenix Drive, Griffiss Business and Technology Park, Rome, NY, which benefits are a deviation from the Agency's Uniform Tax Exemption Policy. *A motion to approve the final authorizing resolution for GLDC was made by F. Betrus, seconded by E. Quadraro.*
- A request by Canal Village, LLC to finance the facility with New York State Housing Development Fund Corporation and authorize the execution of related documents. This is their final financing piece and was contemplated under the original agreement with OCIDA.
- A request to consider granting an easement to Time Warner Cable as it relates to the Cardinal Griffiss Project on Brooks Road, Rome, NY. Time Warner needs the ability to string fiber optic cable lines from a conduit into the newly constructed building. *A motion to approve the easement was made by M. Fitzgerald, seconded by D. Grow.*

Old Business:

- Burrstone Energy is working through their tax issue and keeping the OCIDA staff updated on their progress.

New Businesses

- Rome Community Brownfield Restoration Corporation was a loan with OCIDA and has no repayment method. Staff is working to restructure the Owl Wire lease to cover remaining debt.

There being no further business, the meeting was adjourned at 10:20 AM upon a *motion made by F. Betrus, seconded by D. Grow.*

Respectfully submitted,

Jennifer Waters

New Hartford awaits state input regarding road projects

• By **ROBERT BRAUCHLE**

Observer-Dispatch

Posted Dec 04, 2010 @ 03:46 PM

NEW HARTFORD —

The town's synchronized plan to fund a pair of road projects that would provide access to the New Hartford Business Park will need to fall precisely in place for taxpayers not to feel the cost of those projects.

The town is proposing a two-pronged project to extend thoroughfares to the business park:

* Extending Clinton Street about 1,300 feet to meet an existing road in the park.

* Constructing ramps that would allow motorists to travel between the eastbound lanes of state Route 840 and the business park.

"With the 840 access, it's not just a project that would benefit the developer," town Supervisor Patrick Tyksinski said. "It would open that whole area for development. There's more up there than the business park in terms of tracts of land that can be developed."

But before the town receives approvals to construct the Route 840 access ramp, it must first finalize plans to extend Clinton Street to the New Hartford Business Park.

"We've told the town that before they can build the access route to 840, that the Clinton Street extension has to be under way," state Department of Transportation spokesman Anthony Ilacqua said.

The town submitted its final environmental impact statement for the Route 840 and Clinton Street projects to the DOT in November and is now waiting for comments from the state concerning the project.

"Once the DOT comes back with its comments, then things should start rolling quickly," Tyksinski said.

Board reaction differs

This past week, town officials said they had mixed reactions to the two projects.

Town Board member David Reynolds said both access to Route 840 and the Clinton Street extension are needed for the business park to succeed. But, he said, developer Larry Adler should be the one to "bare the brunt" of the costs for those projects.

"I support development of the business park," Reynolds said. "It's an important project and important development for the town in the future. The Clinton Street extension is a must, and that has to happen as well as the access to the business park from 840."

Board member Donald Backman said he has “serious reservations” about the projects.

“I’m not anti-business, but I do ask that businesses pay their fair share,” Backman said. “Those projects, I’m not sure they are both needed. The state has welded them together, and I’m not really pleased with that thinking.”

Adler, Tyksinski and Backman said they were told by the DOT that the state is mandating that both projects be completed for future development at the park to take place.

Ilacqua did not say whether that is correct, but he did say that the Clinton Street extension is to be a priority over the Route 840 access ramp.

Board members Rich Woodland Jr. and Christine Krupa did not return messages seeking comment.

Project could start in spring

Building roads and acquiring land will not come cheap. The Route 840 ramp is expected to cost about \$800,000, and the Clinton Street project another \$200,000 to \$300,000, the town supervisor said.

In September, the town Planning Board approved a Hampton Inn & Suites hotel – being developed by Adler – to be built at the park.

Tyksinski said he would like the town to enter into a payment-in-lieu-of-taxes agreement with the developer to help fund the roads’ construction.

Once the access projects are given the go-ahead, the town would bond for the cost of the roadway projects. PILOT payments made by Adler then would be used to pay off the debt service on the bond, the supervisor said.

Mitigation fees collected from developers to offset the cost of upgrading infrastructure because of their projects also could be used, Tyksinski said.

On Wednesday, Adler said workers are waiting for the winter to break before construction on the hotel begins.

“We’re hoping that everything is finalized and in place, and then construction can begin in the spring,” he said. “We’ve been kind of at a stand-still while the town goes through its process.”

Town Board members who spoke with the Observer-Dispatch said the developer should pay for building the roads.

“Another PILOT program is not what New Hartford needs right now,” Backman said. “For that work, the town will have to take out a bond and in essence, the town taxpayers are loaning that project money.”

Tyksinski said he expects payments from the hotel development will pay for the cost of the road work.

“There are a lot of things that need to fall in place for this thing to go,” he said.

Councilwoman Krupa expressed concern that the New Hartford Central School District and Oneida County had not made a resolution to sign the PILOT Agreement at the time the Town Board would be voting.

APPROVAL – NEW HARTFORD BUSINESS PARK AGREEMENT ALLOCATING P.I.L.O.T. PAYMENTS

Councilman Reynolds then introduced the following Resolution for adoption; seconded by Councilman Payne:

(RESOLUTION NO. 251 OF 2008)

RESOLVED that the New Hartford Town Board does hereby adopt and approve for authorized signature the Agreement Allocating PILOT Payments (“Allocation Agreement”) being entered into by and between the *New Hartford School District*, the *County of Oneida*, the *Town of New Hartford* and the *OCIDA*. The sum and substance of the Allocation Agreement is as follows:

1. The Town will incur debt in the amount of \$2.3 million by and through the issuance of Bond Anticipation Notes. Tentative issuance date is November 2008.
2. The debt service on the \$2.3 million BAN has been calculated and determined for the Town by John Shehadi of *Fiscal Advisors and Marketing, Inc.* John’s amortization schedule has been attached to the Allocation Agreement as Exhibit G.
3. The Town’s annual debt service will be paid first with monies received by the Town from the *OCIDA* from monies collected by the *OCIDA* from and pursuant to its PILOT Agreement with The Hartford and Ryan (1 agreement)
4. When the property owned by Ryan and occupied by The Hartford is fully assessed for real property tax purposes, the amount of PILOT revenue the Town can reasonably expect from the PILOT Agreement has been calculated and determined by the Town’s Assessor Paul Smith. Paul’s affidavit has been attached to the Allocation Agreement as Exhibit K.
5. Any shortfall in, or difference between, the Town’s annual debt service on the subject \$2.3 million and the PILOT monies received by the Town from the *OCIDA* pursuant to its PILOT Agreement with The Hartford and Ryan or other later PILOT agreements approved by the *OCIDA* and Affected Tax Jurisdictions as referenced in the sixth WHEREAS clause of the Allocation Agreement shall be paid by the developer, its members, successors and assigns, by, through and with a Letter of Credit. Said Letter of Credit has been calculated and determined for the Town by Bond Counsel, *Orrick, Herrington & Sutcliffe, LLP* out of Manhattan, Thomas Myers, Esq., of counsel. The attorney approved Letter of Credit has been/or will be attached to the Allocation Agreement as Exhibit J.
6. With said \$2.3 million, the Town will perform work and make public improvements in accordance with:

- • Bid Contract #1 “as is” without change or deletion. (Roads C and D – Approximate price \$1.4 million with paving and work extras). The Town shall remain free of liability and obligation on the subject contract until (a) all of the land upon which Roads C and D are to be constructed are legally transferred to the Town with good and proper title (this includes the land at or near the Cell Tower and National Grid parcel); (b) the 3 taxing authorities have fully executed the corresponding Allocation Agreement; (c) the Developers have provided the Town with a Letter of Credit satisfactory to the Town as to form, duration and amount; and (d) the Developers have duly executed with the Town a separate Agreement and Individual Guaranty. Bid Contract #1 has been attached to the Allocation Agreement as Exhibit A. Any work performed under Bid Contract #1 before these prerequisites are met is at the Developers’ risk and assumption of liability; and
- • Bid Contract #2 “as is” without change or deletion (Route 5 Int. – Approximate price \$.9 mil.) The Town shall remain free of liability and obligation to commence work until (a) said contract has been legally and properly awarded; (b) the 3 taxing authorities have fully executed the corresponding Allocation Agreement; (c) the Developers have provided the Town with a Letter of Credit satisfactory to the Town as to form, duration and amount; and (d) the Developers have duly executed with the Town a separate Agreement and Individual Guaranty. Bid Contract #2 has been attached to the Allocation Agreement as Exhibit B. Any work performed under Bid Contract #2 before these prerequisites are met is at the Developers’ risk and assumption of liability.

7. In connection with Bid Contract #1 and Bid Contract #2, the developer and its principals, members, successors and assigns, by and through a separate ‘Agreement and Individual Guaranty’ with the Town also agrees to be responsible for and pay any incidental costs related to Bid Contracts #1 and #2 that may arise from or in connection with the performance of those contracts, but which may not be expressly stated or contained therein. Such incidental costs would include, but not necessarily be limited to, escalation costs, inspection fees, engineering costs and paving costs. Said Agreement and Individual Guaranty has been/will be attached to the Allocation Agreement as Exhibit I.
8. That the other 2 taxing authorities will also approve and sign said Allocation Agreement in the same form as presented to you tonight without change or modification;
9. The Developers provide the Town with a satisfactory letter of credit as determined by Bond Counsel Tom Myers;
10. The Developers execute the above-referenced Agreement Individual Guaranty; and
11. Town Attorney is given opportunity for final review and approval.

The foregoing Resolution was duly put to a vote upon roll call, resulting as follows:

Councilwoman Krupa	-	Nay
Councilman Reynolds	-	Aye
Councilman Woodland	-	Nay
Councilman Payne	-	Aye
Supervisor Reed	-	Aye.

Thereafter, the Resolution was declared carried and duly **ADOPTED**.