

Town of Montgomery Industrial Development Agency  
I.D.A. Special Meeting  
Town of Montgomery Government Center  
110 Bracken Road  
Montgomery, New York 12549

Monday, June 17, 2019  
5:30 PM

Present: Jeffrey D. Crist, Member  
Edwin Williams, First Vice-Chairman  
Stephen Rainaldi, Second Vice-Chairman  
Matthew P. Stoddard, Treasurer and Member  
John W. Dickson, Member

Absent: Joseph Joy, CEO  
Anthony Zambrotta, Assistant Secretary

Also Present: Robert Mc Laughlin, Esq. Hodgson Russ Attorneys  
Members of the Audience  
Suzanne Hadden, Recording Clerk

AGENDA

Call to order

Review of Agency's Audited Financial Statement

SEQRA Resolution - Restwell Properties INC. from Goodwill Properties, LLC  
(Holiday Inn Express & Suites)- NYS Rte. 208

Resolution Authorizing Assignment and Assumption -+  
Restwell Properties INC. from Goodwill Properties, LLC

Treasurer's Reports for April and May

Other Business

Approval of the April 30, 2019 Special Meeting Minutes

Approval of the May 13, 2019 Meeting Minutes

Adjournment

Call to Order

Chairman Crist called the meeting to order.

Review of Agency's Audited Financial Statement

Chairman Crist said the first item on the agenda is the review of the agency's audited financial statement and there was a conference call regarding this audit.

Second Vice Chairman Rainaldi said everything is cut and dry, it's a nice legible report and he doesn't see any problems with it at all.

Attorney McLaughlin said the auditors have already submitted a letter to the ABO for the CRC; which has not been active and that's the Capital Resource Corporation that the town created sometime ago. The CRC is there to issue bonds on projects if the needs arises that the IDA is no longer able to do. The town created the CRC about 10-years ago and so far, there hasn't been a project that's been done. Since it was created as an instrument for the town, the ABO requires a letter saying it is duly formed but hasn't had any activity.

Second Vice Chairman Rainaldi motioned to accept the 2018 audited financial statements, seconded by First Vice Chairman Williams. All in favor, all ayes, motion carried.

SEQRA Resolution - Restwell Properties INC. from Goodwill Properties, LLC (Holiday Inn Express & Suites)– NYS Rte. 208

Chairman Crist said the next item is the SEQRA Resolution for Restwell Properties INC. from Goodwill Properties, LLC. We did hold a public hearing at our last meeting of May 13<sup>th</sup>. The board has a SEQRA Resolution before them for the Holiday Inn Express and Suites project, which now involves the Restwell Properties application.

Attorney McLaughlin said this SEQRA Resolution is limited to a portion of the financial assistance that's being requested. If the board approves this, this would be for the SEQRA for the sales tax assistance as well as the mortgage recording tax assistance. Those are both Type II actions under SEQRA. The next Resolution does also contain a SEQRA Resolution, that's for the assignment of the existing PILOT as well as the sales tax, as well as the mortgage. That second resolution states that that assignment is also a Type II action under SEQRA. So, you can approve this resolution and it has no impact on what you do on Resolution Number 3.

SEQRA Resolution - Restwell Properties INC. from Goodwill Properties, LLC  
(Holiday Inn Express & Suites)– NYS Rte. 208

Attorney McLaughlin continued and said it is just saying the act of awarding sales tax relief as well as mortgage tax relief is a Type II action under SEQRA.

Second Vice Chairman Rainaldi said he doesn't see any problem with the extension of the PILOT agreement and he is trying to find out what that would come to over the next 6-years, that the PILOT is viable. He does have a significant problem with respect to the mortgage and sales tax. His opinion and concerns are that, that is the normal course of doing business. It's not creating any additional full-time jobs, not doing anything with respect to the labor that is going to be sustained at the facility and he can't agree with it.

Chairman Crist said this approval only involves the environmental impact; we will get to the decision in a few moments.

First Vice Chairman Williams said we extended relief on the current mortgage. He asked if we are to give relief on this mortgage, wouldn't the current mortgage owner have to reimburse us for the unused portion that we gave them? Wouldn't that be double dipping?

Attorney McLaughlin said the original deal had a relief from the payment of the mortgage recording tax and that mortgage was approximately 8 or 9 million. The mortgage recording tax in this county is 1 ¼ %. The town receives about 10 or 50% of that amount. A mortgage recording tax on 8 million dollars would be \$90,000.00; so half of that would be 45 thousand. The town would receive 10% of that and that would be \$4,500.00. The county receives the other 50% and the other 40% gets distributed by the County Clerk to other municipalities in the county. This would be relief on approximately a 10-million-dollar mortgage that would be about \$125,000.00; plus, or minus. You would be relieved of about \$6,000.00 to the town. Is it double dipping? It is a different mortgage, it's on the same property, but it is a different commercial transaction. We did ask the attorney to explain why they couldn't take the mortgage by assignment and save some of this recording tax. He did write a letter that came in last week that said to do so the current mortgage lender wanted a \$25,000.00 fee, plus attorney's fees; which is not an unusual request from banks. It is the board's decision on whether or not to extend this benefit, once again for a new owner on the same building. What would be appropriate since you're taking up both, you can also introduce the third resolution as well which is the authorizing the assignment and assumption, so you are talking about this all at once. First, the assignment portion, then the sales tax. We already talked about the mortgage recording tax and the applicant is here.

SEQRA Resolution - Restwell Properties INC. from Goodwill Properties, LLC  
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Rakhil Patel, applicant handed the agency a copy of the request that was part of the IDA application. He said we are looking forward to moving forward at some point with this project.

Chairman Crist said what was just handed to me summarizes the application request. The assignment of the PILOT and he thinks the board understands and is comfortable with that portion. At one point there was discussion to start the PILOT over and we felt that was not something we would entertain. We just spoke about the mortgage recording tax and here it states it would be approximately \$80,000.00.

Mr. Patel said that's a plus or minus.

Attorney McLaughlin said his understanding is that it is a ten-million-dollar mortgage and then again, the mortgage recording tax in this county is a point and a quarter. My math would be \$125,000.00.

Member Dickson asked what it would cost the town?

Attorney McLaughlin said again my understanding is half of that goes right to the county, so the county would otherwise get 60-grand. The balance of the 50% gets distributed among the large municipalities, including towns, cities and villages within the county and the town would probably get approximately 10% of what's left; so that would be about \$6,000.00.

Chairman Crist said we live in the County of Orange, so, that would reduce the County's revenue by 60,000; estimated. There's two parts to the sales tax, one is the existing property.

Attorney McLaughlin said the original relief granted to the original owner, years ago in 2013 is that there was a sales tax exemption offer authorized by the board and for some reason that sales tax exemption was not utilized by the existing owner and they have submitted proof that demonstrates that they were not able to take advantage of that sales tax exemption by reason of their failure to properly and timely submit the filing for that relief. As part of this sale, under New York law, there's a bulk sales tax that's due, which is approximately \$75,000.00. The applicant has asked for a waiver of that sales tax. They are asking for that relief for that bulk sales, as part of any bulk sales transaction in the state.

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Attorney McLaughlin continued and said in addition they expect to make improvements to the hotel, some of which may be required by the brand and some of which they may encourage because they are going to make additional improvements to that hotel. They are asking for sales tax relief on those new improvements that they intend to make; if they go forward with the purchase.

Chairman Crist asked if there were any questions on the sales tax relief for the existing furniture and equipment and secondly on the new branding updates that are required? He asked Attorney McLaughlin if he had the numbers on the sales tax relief?

Attorney McLaughlin said from the application they estimate that they would spend between 7 or 8 hundred thousand on the new upgrades. It's 8% and that is somewhere between 56 and 64 thousand dollars of sales tax relief and on the bulk sales, it's saying about 75 thousand dollars in tax savings.

Chairman said we have four parts to this decision and each of those can be pro or nay individually and then we'd put those together in a final resolution. The PILOT assignment we are comfortable on, the mortgage recording tax we are not comfortable with.

Attorney McLaughlin said he would suggest, since there are four pieces, you should entertain a motion for each and then he will document the motions and and they should do the SEQRA Resolution first.

Chairman Crist said let's do SEQRA, which is what Attorney McLaughlin reviewed previously, both being Type II actions. Any further questions for the Resolution for the SEQRA? A motion to accept, which does not imply we are going to approve anything else.

Member Dickson motioned to adopt the SEQRA Resolution for the Restwell Properties INC. from Goodwill Properties, LLC, (Holiday Inn Express & Suites), seconded by First Vice Chairman Williams. All in favor, all ayes, motion carried.

Chairman Crist asked what about the second SEQRA part related to the assignment? Should we do that separately?

Attorney McLaughlin said yes.

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Chairman Crist said is everybody clear, again that's the SEQRA Resolution recognizing a Type II action under SEQRA, which requires no further action relating to environmental issues for this pending approval. He asked for a motion to approve the SEQRA Resolution related to the assignment of the PILOT?

Member Dickson motioned to approve the SEQRA Resolution for the Restwell Properties INC. from Goodwill Properties, LLC (Holiday Inn Express & Suites) relating to the assignment of the PILOT, seconded by Member Stoddard. All in favor, all ayes, motion carried.

Resolution Authorizing Assignment and Assumption  
Restwell Properties INC. from Goodwill Properties, LLC

Chairman Crist said that brings us to the assignment of the PILOT and we are out how many years on that as of 2013?

Attorney McLaughlin said it was a 15-year PILOT and we are at 6-years now and there are 9 left. You are now where there are payments coming in because the first 5 years were at 0% and then after it starts at 50% and then increase ramps up over the last 9 years; you should be at 50 or 55%.

Chairman Crist asked are there any discussion comments on that?

Member Stoddard asked what are we motioning on?

Attorney McLaughlin said right now you have a PILOT in place.

Member Stoddard asked to keep going with the original PILOT?

Attorney Mc Laughlin said just assigning it to a potentially new owner, if their sale goes forward. At closing, if as in when they close on the property, we would submit an assignment package to them, assigned as part of that closing.

Chairman Crist said he reviewed the public hearing comments relating to this project and there was back and forth dialogue. George Cregg was here, Attorney McLaughlin wasn't, and we answered several questions during the hearing; some of those were not directly related to this project.

Resolution Authorizing Assignment and Assumption  
Restwell Properties INC. from Goodwill Properties, LLC

Chairman Crist continued and said there was concern that approval of any of these considerations would negatively impact the tax payer and he tried to explain that that wasn't the case, it's the future tax consideration. He didn't know if Attorney McLaughlin wanted to expand on that explanation?

Attorney McLaughlin said with the assignment, the board has already approved this PILOT and one could argue that it runs with the property; regardless. All you are doing now is this potential transfer of ownership from property Owner A to property Owner B, the PILOT is the PILOT for that project. You've already concluded that it was a project that was authorized to receive financial assistance under the IDA statute; it's already in place. You've already notified all the taxing authorities that it's in existence and again you are just changing from one owner to the other; the property is the property.

Chairman Crist asked if anyone would care to make a motion to approve the assignment of the existing PILOT?

Second Vice Chairman Rainaldi motioned to extend the assignment of the existing PILOT to the proposed new owner, seconded by Member Stoddard. All in favor, all ayes, motion carried.

Chairman Crist asked moving on to the mortgage recording tax, any further discussion there relating to a vote?

Member Dickson said he would agree with Member Rainaldi, that is the price of doing business.

Chairman Crist said we did provide the assistance originally on the original mortgage.

Member Stoddard asked this last thing we're going to vote on, this is to put extra on top of the IDA benefits, is that correct?

Attorney McLaughlin said think of it this way. A straight lease transaction like this can always provide three types of benefits. The first would be the consideration of a PILOT agreement and the IDA did that in 2013; that you just voted to assign to the new owner, if they close and if they don't close there is no assignment.

Resolution Authorizing Assignment and Assumption  
Restwell Properties INC. from Goodwill Properties, LLC

Attorney McLaughlin continued and said the second relief that was granted in 2012/2013 was the relief from the mortgage recording tax, which is a second fee of financial assistance that an IDA can provide to a project, that was also granted back in 2013. The third piece of relief is that you can grant sales tax relief on the equipment, the furnishings and the fixtures that are going into that building as it is being constructed and you also provided relief on that. There is indication that that was not taken advantage of for a variety of reasons for the then owner. What this applicant has asked for is a new mortgage recording tax relief on his mortgage that he will obtain from a lender, if they close on the transaction. They estimate that that mortgage will be approximately 10 million dollars. It could be less, it could be more. They are asking for relief from that mortgage recording tax.

Chairman Crist said the only impact to tax payers on that is not having it come into the town or the county.

Attorney McLaughlin said which would be approximately \$6,000.00 plus or minus for the town and the rest of the county would share in the rest of the recording tax.

Chairman Crist said he would entertain a motion either for or against.

Attorney McLaughlin said they should have a motion made, seconded and then voted on.

Chairman Crist asked if no one wants to make that motion, what do we do?

Attorney McLaughlin said then it's tabled.

Chairman Crist asked if anyone is willing to make a motion for the mortgage recording tax relief? Hearing no motion, that would be considered tabled. On the sales tax relief, that's two separate decisions. There're two separate requests. On the existing equipment and furnishings, where the board originally provided the relief, but for whatever reason the applicant was not able to take advantage of it. His personnel opinion would be that they should provide that ability to take it, since the previous board did.

Member Dickson and Second Vice Chairman said but it was not used for whatever reason.



Resolution Authorizing Assignment and Assumption  
Restwell Properties INC. from Goodwill Properties, LLC

Chairman Crist said he saw electronic images of that sales tax being repaid and that in a lot of way it parallels the original that got the hotel there and all the reasons under the UTEP's evaluation, which got a score of 14 for the project; that was redone and still holds a very positive score at 14 out of 15 on our scoring chart. However, he is only one member of the board and would entertain some further discussion.

Member Stoddard asked if that applied to the original IDA and it wasn't used for whatever, not filing on time?

Attorney McLaughlin said this board did approve it back six years ago, it was not utilized.

Member Stoddard asked it was part of the original?

Attorney McLaughlin said yes.

Member Stoddard said for whatever reason it didn't get applied.

Member Dickson asked if they weren't approved in filing their paperwork, is that what the problem was?

Attorney McLaughlin said what was submitted to us was a reimbursement to the state because they did not file the application properly.

Chairman Crist said his understanding was that it was an accounting error and by the time it was discovered, it evidently was too late to correct. He is not aware that reports were not filed with us, as we have with some cases now.

Member Stoddard said since it was part of the original, he will make a motion.

Member Stoddard motioned to approve the sales tax relief on the original PILOT agreement, seconded by First Vice Chairman Williams. All in favor, all ayes, Second Vice Chairman Rainaldi voted nay, motion carried.

Chairman Crist said the final item is the sales tax relief for the rebranding and the updating of the furnishings at the hotel, which is a new request.

Resolution Authorizing Assignment and Assumption  
Restwell Properties INC. from Goodwill Properties, LLC

Chairman Crist continued and said in this case you could make some argument that it's the price of business going ahead. It's certainly an acceptable use to request relief, but it would be this board's determination if it's something we feel meets our threshold to provide in the interest of the town.

Member Dickson said he doesn't see the benefit. How's that helping the town with them refurbishing their hotel? He doesn't see how that benefits anybody.

First Vice Chairman Williams asked what would be the benefit to the town?

Chairman Crist said he guessed there's a benefit to have the hotel refreshed and be up to speed, but he's not sure that it's the IDA's responsibility to help do that. The hotels built, are they going away? His vote would be not to approve it.

Attorney McLaughlin asked if anyone was going to make a motion?

Chairman Crist said no one cares to make a motion to approve the second sales tax relief; it is tabled. He asked if there was anything else that needed to be addressed on Restwell.

Attorney McLaughlin said no, he thinks they covered it.

Gentleman with Mr. Patel said the two things that we put on the table, specifically the improvement, which we are talking about. If we don't improve, we don't get the franchise, it's a franchise requirement. The current owner doesn't have to do anything. So, to get the Holiday Express, they have to improve and the other thing the mortgage recording tax, he can correct the amount, they are borrowing 800,000 dollars.

Treasurer's Reports - April and May 2019

Member Stoddard reviewed the balances of the April and May 2019 Treasurer's Reports.

Member Dickson motioned to accept the April and May 2019 Treasurer's Reports as presented, seconded by Second Vice-Chairman Rainaldi. All in favor, all ayes, motion carried.

Other Business

Chairman Crist said in talking with counsel on how we evaluate the economic benefits of these different projects, and we have a couple of big ones coming up. He provided me with a contact of a company that has an electronic program called Inform Analytics and it's a cost benefit analysis tool designed for economic development professionals to quickly and reliably assess the direct and spillover economic benefits of a proposed project. It calculates the cost, the benefits and efficiently they claim gives whoever's using it some guide as to where the outcome is, which he thinks is important for the agency to have. There's 36 IDAs around the state.

Attorney McLaughlin said this company worked with the State Authority Budget Office and the State Comptroller to come up with a program that would be a tool to IDAs to be able to justify the benefits that would be provided. What the program does is considers what benefits are being requested and considered by the IDA and then how many jobs would be created, not only during construction, but also post jobs. It's a benefit to say that from a third-party source, other than what an applicant is providing to you of what they believe the cost benefit is, is what this independent program is saying what the cost benefit could be. It's not the end all tool, but it's a useful tool to demonstrate to you what exactly the benefits can be, because it's difficult sometimes to figure out what those benefits are. The other way that some IDAs do it is on a case by case basis depending on the project, is to hire a third-party consultant, passing that cost onto the applicant to come up with what is the benefit to the community.

A further discussion was held on the terms of the cost and contract for the program.

Attorney McLaughlin handed out a few cases from the Authorities Budget Office analyzing operations of other IDAs to the members.

Other Business

Member Stoddard motioned to move forward with the CRG Inform Analytics commitment, seconded by Second Vice Chairman Rainaldi. All in favor, all ayes, motion carried.

Member Stoddard handed out literature from Loewke Brill Consulting Group, INC and said they are the consulting firm that works with the Orange County IDA. They check and make sure that the jobs are following all the labor policies. If you look into the Labor Policy, we need to as a board get some body and he is not saying this is the group they should get. He believes an RFP should be put out and have a couple other firms give presentations to see what fits this board the best. They can go on a job to job basis, it's not a contract. We can use them for one or two jobs as we're finding the one that we want. He has no alliance to this firm, they came in to see him, gave him the literature and he said he would give it to the board.

Attorney McLaughlin suggested the IDA consider doing an RFP for consulting services for this purpose. Do the interview, get them to do presentations to the board and then you may want to consider engaging the entire panel on a rotating basis, because there may be sometimes where if you choose one, they may have a conflict and then you are stuck. You should have a panel of at least two and if you have a panel of three, you can do it on a rotating basis.

Member Stoddard said inside is the cost analysis for this, but none of the cost falls back onto the Montgomery IDA.

First Vice Chairman Williams asked what was that last statement, none of costs were what?

Member Stoddard said none of the cost will affect the Montgomery IDA, all goes to the applicant.

Chairman Crist said that's in our Labor Policy, but we control, and we have to have complete communication with the company.

Attorney McLaughlin said if you want to move the process along, you could have a motion tonight to approve the issuance of an RFP, that would be approved by the Chair. It would be published and posted on the website.

Member Stoddard motioned for the issuance of an RFP and for the Chair's approval to publish, seconded by First Vice Chairman Williams. All in favor, all ayes, motion carried.

Attorney McLaughlin said the board should consider approval of the minutes from April and May.

Approval of the April 30, 2019 Special Meeting Minutes

Second Vice Chairman Rainaldi motioned to accept the April 30, 2019 special meeting minutes as presented, seconded by Member Stoddard. All in favor, all ayes, motion carried.

Approval of the May 13, 2019 Meeting Minutes

Second Vice Chairman Rainaldi motioned to accept the May 13, 2019 meeting minutes as presented, seconded by First Vice Chairman Williams. All in favor, all ayes, Member Dickson abstained, motion carried.

First Vice Chairman Williams motioned for the IDA board members to hold an Executive Session with their Counsel to discuss personnel matters, seconded by Member Stoddard.

Member Stoddard motioned to end the Executive Session, no action was taken, seconded by Member Dickson. All ayes, all in favor, motion carried.

Member Dickson motioned for the Chairman to sign and forward a letter in response to the Senate letter received on May 20, 2019, seconded by Second Vice Chairman Rainaldi. All in favor, all ayes, motion carried.

Member Dickson motioned to adjourn the meeting, seconded by Second Vice Chairman Rainaldi. All in favor, all ayes, motion carried.