

Town of Montgomery Industrial Development Agency Special Meeting
Town of Montgomery Government Center
110 Bracken Road
Montgomery, New York 12549
<https://www.facebook.com/TownofMontgomeryOfficial/>

Thursday, June 25, 2020
4:00 PM

Present: Jeffrey D. Crist, Chairman
Matthew P. Stoddard, Treasurer and Member
John Dickson, Second Vice Chairman
Randi Greene, Member
Donald Berger, Member

Via-conference call: Edwin Williams, First Vice-Chairman
Robert Santo, Member

Also Present: Conor Eckert, Executive Director
Robert McLaughlin, Attorney for the IDA
William Ibberson – President, Acquisitions Marketing
Suzanne Hadden, Secretary

AGENDA

1. Call to Order and Declaration of Quorum
2. Consideration of an Approving Resolution – Matrix Maple, LLC
3. Other Business
 - a. Corridor Study – Discussion and Presentation from Delaware Engineering
 - b. Small Business Support - Discussion

Next meeting scheduled for July 14, 2020

Adjournment

Call to Order and Declaration of Quorum

Chairman Crist called the meeting to order. A roll call of the board members was taken, and all members were present, with two members via conference call.

Consideration of an Approving Resolution – Matrix Maple, LLC

Chairman Crist – I want to acknowledge letters received on the Matrix Maple, LLC project. John Brown’s letter received before the public hearing, Barbara Lerner, a few minutes ago, Joe Keenan, earlier today and Beverly Mertz’s letter. I do not see a date on it, it was after our public hearing. Mike Doud or Sandy Mathis, would you like to come up and bring your plan?

Michael Doud with Matrix Maple Development – This is a 4.9-megawatt community solar project. We have requested a 25-year PILOT from the Town of Montgomery IDA to help support this project and the benefits to the community. We are going to bring construction jobs and roughly 2.5 to 2.8 million dollars-worth of energy savings to the town, with jobs that go with that. He pointed out the project location a map and described where the panels would be located. We are going to maintain part of the property for agriculture and are looking at using it for grazing, to maintain the vegetation through the use of goats or other grazing animals periodically throughout the year.

Chairman Crist – Over your signature we received a letter yesterday. Some of the key points, and your main reason as you state in this letter is not to get a significant tax break, but to get reliability on what the taxes are going to be for a 25-year period.

Mr. Doud – That is correct.

Chairman Crist – As far as the community solar value, you are estimating 2-million 500,000 dollars of benefit to the community over the 25-years in utility savings, which would include a portion for business. Bob, I believe we are asking that the town and school be given first preference on that 10% savings and then the residents of the town before any business is provided opportunity, if there is any left.

Attorney McLaughlin – We did include that in the form of an approving resolution.

Chairman Crist – As you know we have a local labor policy, which would require you to go through steps to use best efforts to use local labor.

Mr. Doud – Sure, we did ask for an exemption from the local labor policy, but we are going to make good faith efforts and have begun conversations with a local electrical contractor and tried to provide preferential treatment to electricians that live in the Town of Montgomery.

Chairman Crist – In the past, incentives have included a 15-year PILOT. What has changed in solar incentives that makes it important for you to ask for the 25-years.

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Mr. Doud – There is a lot that has changed in solar. I have been working in this town for the last 3-years and the incentive program that started 3-years ago is a very different incentive program than it is today. NYSERDA incentive program has stepped down over time. They are trying to drive parity with the grid, they want the solar industry to make efficiencies. Whether it's labor or technology, they want the solar industry to be a similar cost to the growth. The technology does get better, we produce labor cost, industry is smoothing into an area where there will not be incentives anymore. The market has continued to shrink, in the last 3-years the incentive has shrunk 30% and our margins are very narrow. Because they are so narrow, we have asked for a 25-year PILOT just to provide financial assurance to the bank who is going to finance this, and it is good for the town. You are just securing, making sure this project is going to be viable for the next 25-years and residents can take advantage of the savings. It is all by the reductions of the incentives that NYSERDA and the Public Service Commission offers.

A further discussion was held on the IDA training that included climate change and the Governor's policy regarding the elimination of fossil fuels.

Exec. Director Eckert – This gives us an opportunity to pursue the green sector. The site is currently zoned industrial, and this comes with a multitude of uses not limited to but including warehouses, certain types of manufacturing and self-storage facilities. This is a unique form of development because it is quiet, it is clean.

Member Greene – You already applied for the waiver for the local labor?

Mr. Doud – We did not apply for it, we stated in our application the efforts we are going to make to use electrical contractors.

Member Greene – If you are going to make an honest effort, why would you put in for a waiver then?

Mr. Doud – I did not think best efforts were part of the application. I thought you either asked for an exemption or make it separate. I am mistaken then, if we are going to work with a local electrical contractor and make best effort, then I do not need the exemption.

Attorney McLaughlin – The approving resolution provides that you will comply with the local labor policy to the extent that if you need an exemption, there is a procedure in the policy that requires you to apply to the audit committee and demonstrate why you can't comply. The audit committee then makes a recommendation to the board and the board has to do a waiver at that time; to do the waiver in advance is not...

Mr. Doud – I want to withdraw that from my previous comments.

Member Berger – I am concerned about the last three labor issues that were brought up on June 9th with the PILOT deviation notice you had said there would be 54 construction jobs. Moving on to June 11th, in a letter you wrote, you changed it to 20 to 40. The most recent letter on June 24th you kind of didn't put anything.

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Member Berger - The last time you came here we brought this up and you said you did talk to a contractor and there would be no problem with that contractor who lives in the Hudson Valley. I am worried about your frame of mind, because you kind of regress in the past 3 notices severely.

Mr. Doud – The original application talked about 20 to 40 construction jobs. Your application was confusing to me, you have a lot of different blocks of where the jobs are supposed to be and how they are calculated and there was an internal conversation between Sandy and I, the 54 jobs, it takes into account pre- imposed jobs. It is not a change it is what jobs we are adding in at what timeframe. The construction jobs are always 20 to 40. I am working with the racking company to try to hire the laborers from the locality as well. Nothing has changed, it is our mistake on how we communicated internally.

Member Berger – On the June 11th letter, on the deviations in the application, past revenues, the last sentence of it says, Matrix reserves the right to cancel the PILOT for any reason.

Mr. Doud – I should put more verbiage around that. As we all sit around with microphones, 6-feet apart, have masks on our faces, the world is very different than what it was when I put in this application. COVID impacts everything from financing to construction jobs and our ability to construct the facility. Our intention is to move forward with a 25-year PILOT and a 25-year solar project. We are going to work to hire the local contractors, all of that is true and real as it pertains to this PILOT, if for some reason we have a second wave or something happens in the future relating to this pandemic that we can't see, I can't foresee paying a PILOT when we don't have a solar project. It was put in as a precaution or to facilitate a dialogue with the board so you understand there are things that none of us know that may happen in the future and as long as we are all on the same page that we address that in our documentation, that is all.

Member Berger – Bob, can that language be tightened up a bit?

Attorney McLaughlin – I have addressed that in the resolution, and we can discuss that when we get to that point. To clarify what you are saying now, if the project is constructed, whether it is on time or is delayed, once it is constructed, your intent is not to terminate the PILOT at some point during the 25-year period; that is not what your reservation is for. Your reservation was if you cannot construct it, you do not want to be liable to pay the PILOT.

Mr. Doud – That is correct.

Member Greene – In your last letter it says you are now withdrawing this request and are confident if any special circumstances arise due to an unpredictable resurgence of the virus you can adjust your PILOT terms with the board directly. Is there language still asking for a cancelling of PILOT provisions? Why is it in there if they are withdrawing their request to have it in there?

Attorney McLaughlin – When we close on the PILOT, the document gets forwarded to the tax assessor and the affected taxing jurisdictions. What Mike is discussing now and the timeframe, that PILOT is not effective until the state tax date, which is March 1st. By March 1st, the project is either a go or a no go. Is that right?

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Mr. Doud – It should be well known by that point, yes, 2021.

Attorney McLaughlin – If it is a no go by March 1st 2021 we send a letter to the affected jurisdictions and the tax assessor saying that the PILOT is withdrawn, it is not effective. In addition the closing documents will provide that if there is default in the PILOT, there is a nonpayment under the PILOT, then the recapture provisions kick in under the uniform project benefit agreement, so all of those benefits can be recaptured and the assessment that would have been otherwise put on the property will become a problem for Matrix Maple Development.

Member Greene – I do not understand why there is any reference to it in the closing documents if they are withdrawing it in this letter.

Attorney McLaughlin – They are not withdrawing anything right now; they are leaving their options open if the project cannot be constructed by the end of the year for whatever reason. They are reserving for themselves the right to say never mind.

Member Greene – This letter says they are withdrawing their request. Are they withdrawing their request to have that provision in there or are they not?

Attorney McLaughlin – It is always in the document that if the PILOT is not followed, that the payment in lieu of taxes agreement is not followed by the company, then under the provisions of the closing documents under the uniform project benefit agreement there is a default and all of the benefits, the financial assistance provided to the company by the IDA can be recaptured; that is always present. I am not proposing to change anything different with respect to this project, whether they retain this right of withdrawal or not. My first point was the right of withdrawal kicks in prior to the time the assessor analyzes the PILOT agreement. We can provide the PILOT to the assessor in July or August, whenever we close. The assessor does not do anything with that PILOT until he has to create his assessment roll, which doesn't start until the state tax date on March 1st of 2021. To me whether it is withdrawn or not is irrelevant at this point.

A further discussion was held on the language regarding the withdrawal in the document.

Chairman Crist asked the members if they had any other questions? Hearing from no one he said I believe we are ready to consider the SEQRA Resolution.

Attorney McLaughlin explained the SEQRA Resolution for the new members.

Treasurer Stoddard motioned to adopt the SEQRA Resolution for the Matrix Maple, LLC Solar project, seconded by First Vice Chairman Dickson. A roll call of the board was taken, all were in favor, all ayes, motion carried.

Chairman Crist – Next is consideration of the approving resolution for Matrix Maple. Conor, would you update us on the school tax consideration relating to the PILOT?

Exec. Director Eckert – The school district will take a portion of any PILOT payments made over the 25-years, so the school district will benefit in the form of tax revenue from the PILOT venture.

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Chairman Crist – And if we do not approve the PILOT the school taxes would be how much?

Exec. Director Eckert – There would be no revenue.

Treasurer Stoddard – If it does get approved over the 25-years it would be 28,000 a year. Am I correct on that?

Chairman Crist – That sounds about right.

Attorney McLaughlin – We should acknowledge the remarks that were made on Monday, as well as the written statements that we received since. I do not believe we have received any comments on the notice of deviation to the town or the school district. With respect to Mr. Brown's comments, I did put his comments in a draft transcript that the Executive Director has circulated to you. One of Mr. Brown's comments was that the PILOT document on the deviation notice dated June 10th said DRAFT. That was appropriate because at that point it was a draft PILOT deviation, it was not a final determination. You were advising the affected taxing jurisdictions that you were considering a draft deviation and today you will be considering a final PILOT deviation. Mr. Brown also said that he wanted to make sure that special districts received the taxes and are not affected by the PILOT. The statute in New York State requires that special districts like a fire district are not affected by a PILOT agreement. Whatever the taxes are issued for the special districts, they always have to be paid by the project. He stated that he did not believe that the PILOT was appropriate to Valley Central because they opted out of the 487 solar programs. Now that the state has authorized, unfortunately for Valley Central that opt out came after this project was approved by the planning board and after the project sent notices to the school district asking whether they were going to be part of the PILOT or not. He also noted that the company had the right to cancel the PILOT, we talked about that already. He questioned the numbers on the reductions. We go to the approval resolution and finally Mr. Brown said he believes prior projects in the town received 15-years and it would be unfair for this project to receive 25-years. My comment on that is from my experience over past projects around the state for 15-years, recent projects and recent IDA practice has been to allow up to 25-years for a variety of reasons. Part economic and part of the fact that there is concern that you don't have 25-years, since these are all 25-year projects for the most part, the last 10-years the solar company may walk away from the project. There is an incentive, if they have a PILOT, you can recapture, if they do not pay and walk away. We should consider the other written comments. For Mr. Keenan who references as NYSERTA, not NYSEDA, NYSEDA is encouraging these projects, there is nothing from the state that I am aware of that NYSEDA went to a 15-year PILOT, I'm not aware of anything. The rest of Joseph Keenan's letter talks about the corridor study. Ms. Mertz's letter talks about other projects, but then talks about the fact that the 25-year PILOT is inconsistent with statements made by the town and by the supervisor to try and redo your existing uniform tax exempt policy to reduce it to a maximum of 10-years. I know that the executive director and the board have had discussions on that. I'm not sure the ability of whatever policy turns out; you can always deviate as you have done here if you follow the deviation rules by sending notices to the affected taxing jurisdictions. Even if you were to do a 10-year UTEP in your next go round you can still deviate from the policy as projects warrant. The other comment was addressed. From Ms. Lerner, which came in about an hour and a half before the meeting. The first point talks about the stripping of existing topsoil, that was considered by the town planning board as part of the Negative Declaration.

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Attorney McLaughlin - The determination is made that that is not environmentally significant. The use of toxic chemicals, that would not be permitted by the Department of Environmental Conservation. Any chemicals used on the property have to be consistent with NYSERDA as well as DEC. If the company uses toxic chemicals that are illegal in New York State, DEC would be the first one to pursue the company for a violation. There is no guarantee of savings, we built that into the resolution and the life span is typically 18 to 20 years and the property could be abandoned. Again, at that point the document will allow for recapture. Not dollar for dollar at that point, the last 20-years, but a percentage of what should have been paid at that point.

Mr. Doud – At the planning board we agreed not to use pesticides at all in our Special Use Permit. In terms of the life span of the project, the panels warranties are for 25-years and will last between 25 or 35 years and we may replace them as well. We are not stripping the topsoil, that is not the way solar facilities are building. The land that is there today is going to be there when we are done.

Attorney McLaughlin reviewed the draft approval resolution with the members.

Member Berger – With the priority, my confusion is saying we are giving priority to the town, VC, and the residents, but on the other hand Conor has talked on a 60/40 split, I want to clarify the two.

Attorney McLaughlin – The executive director is right that the 60/40 is in the regulations so that they cannot go less than that. They can always go more on the residential side; they cannot go higher on the commercial side. We have written into the closing documents that they will give priority to the Town of Montgomery and Valley Central, we know that has to be at least 60. If they give priority that means to me, they have to do more than that. If you want to consider a minimum up higher than the 60, I am not sure that is the right approach, but I will do whatever the board determines is right. I do not know if that is a number that cannot be achieved. There are some people who will say no to solar for a variety of reasons. As a fire fighter, I do not want panels on my house.

Mr. Mathes, Matrix Maple LLC – Once you get to that point, if there is still some left for your businesses, you can also start with whether it is the number of employees or the level of usage to give your small businesses the first shot of what is left before your larger uses.

Chairman Crist – We can revise this language accordingly.

Attorney McLaughlin – I can do small businesses. I do not know what we want to consider as a small business.

Member Greene – Under 25 employees.

Member Berger – Yes, that is the standard with this COVID 19.

Attorney McLaughlin – The program that was just approved is 50 employees.

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Member Greene – I feel that 25 is appropriate given the size of most of the businesses in the town.

Chairman Crist – Let's do 25.

Attorney McLaughlin – 25 or less, I will add that to the resolution.

Chairman Crist – Any other questions on the approving resolution? I would entertain a motion for the approving resolution by the board.

Treasurer Stoddard motioned for the vote by the board to be taken for the Approving Resolution, as edited for the Matrix Maple, LLC project, seconded by Member Greene. A roll call of the board members was taken, Chairman Crist, First Vice Chairman Williams, Member Greene and Member Santo voted aye, (four ayes), Second Vice Chairman Dickson, Treasurer Stoddard and Member Berger voted nay, (3 nays), motion carried.

Corridor Study – Discussion and Presentation from Delaware Engineering

Mary Beth Bianconi, Delaware Engineering – Described the proposal for the Route 17K Corridor Study. She handed the board literature on the proposal and displayed a conceptual map from 84 in Rock Tavern to the Village of Montgomery that displayed blue boxes of property in the town that could possibly be developed, what the study would entail and the time the study would potentially take for a final report.

A discussion was held between Ms. Bianconi and the agency members regarding the proposed corridor study, how it could aid and accompany the current Town's Comprehensive Plan Committee, along with the town and planning boards on future potential development opportunities and the areas within the town that the study should pertain to.

The board decided to continue this discussion at the next regular scheduled meeting.

Small Business Support – Discussion

Exec. Director Eckert – So as you know, the Governor has signed the loans and grants bill authorizing ida to give out small loans and grants to businesses in the community and also nonprofits of less than 50 employees. We have since formed a small business committee and as of now we are working to have an application on the website as possible.

A further discussion was held on the topic about the webinar available by the New York State EDC for ida members and the work involved in providing loans.

Exec. Director Eckert – We don't have to offer loans; we can just do grants. Am I right Bob?

Small Business Support – Discussion

Attorney McLaughlin – Before the simple method, you should get a recommendation from the committee and then the board needs to make determinations on the type of programs, the requirements of the program and ideally you should have the forms approved by the board as well.

A brief discussion was held on the timeline, the allowed reimbursement allotment, what items are considered PPE refundable deductions and the rules pertaining to the legislation. The board discussed the procedure for the special committee meeting to be held by Treasurer Stoddard, Member Berger and Member Santo to work through the recommendations for the loan/grant program to the board.

Next meeting scheduled for July 14, 2020

Chairman Crist – Our next scheduled meeting is July 14th at 5:30.

A board discussed possibly changing the time the ida meets in the future.

A brief discussion was held on the executive director acquiring a credit card for a transcription web service for the meeting minutes.

Adjournment

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

Respectfully Submitted,

Suzanne Hadden, Secretary