

SARATOGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY MEETING

**September 9, 2019 – 8:00 a.m.
50 West High Street, Ballston Spa**

PRESENT: Members: Chairman Rod Sutton, Michael Mooney, Tom Lewis, Walter Wintsch, Art Johnson.

STAFF & GUESTS: Scott Duffy, CEO; Jeff Many, CFO; Michael J. Toohey, Counsel to the Agency; James Carminucci, Bond Counsel; Michael Valentine, Administrator; Tori Riley, SEDC; Marty Vanags, Saratoga Prosperity Partnership; and Lori Eddy.

ABSENT: Patrick Greene, Andrea DiDomenico.

Chairman Sutton called the meeting to order at 8:00 a.m.

Approval of Meeting Minutes: August 12, 2019:

Chairman Sutton stated the first agenda item is the approval of the meeting minutes of August 12, 2019. Chairman Sutton asked if there were any additions or changes to the meeting minutes. There were no changes or additions to the meeting minutes. Chairman Sutton asked for a motion to approve the minutes. A motion to approve the minutes of August 12, 2019 was made by Mr. Mooney. The motion was seconded by Mr. Wintsch. As there was no further discussion, all were in favor and the minutes were approved.

Discussion: Luther Forest:

Chairman Sutton stated the next agenda item is discussion on Luther Forest and the status of the land purchase. We had a meeting about a week ago with the Subcommittee with Mr. Johnson, Mr. Toohey and Mr. Duffy. We met with Bob Manz and Mike Relyea. They gave us an update as to where we stood with the purchase of the property. Over the past month or so, SEDC had a meeting with Insight who was the developer of that property. They have been touting property of 150 some odd acres for a major client that would be in the warehousing business. The site was selected as one of about four sites being selected by Insight into this large company as we know it has been publicly identified as Lowes. They have been looking at properties in Boston, Connecticut, the Town of Florida and the Luther Forest project. It was a daylong seminar. We had the opportunity to present the IDA. We talked to them and told them about the process they would have to go through in order to obtain a PILOT. Kevin Tollisen was there as the Chairman of the Board of Supervisors. Phil Barrett was there as the Economic Development Chairman of the County and myself and a few other people. During the course of their discussions, they brought a big team of people in. They had probably 8 or 9 people from Insight. They put on a pretty good show. You thought this was going to be a preferred site for them. Unfortunately, they came back and put everything on hold again. He thinks they are getting their direction from the warehousing and Lowes people. So, it put the Luther Forest property back in play for us. Not that it was ever taken off the table for us. But we wanted to push this forward. Are we going to buy this property, or aren't we? So, we did have the Subcommittee meeting last week and MRFA is still very much interested in developing the property from the infrastructure in and along with Luther Forest, we think that right now they are going forward with the project as we had talked about for the past four years. They plan on putting the infrastructure in and the

possibility that much of this would be done by year-end. That puts us into a fast forward position to do our due diligence to see where we stand with MRFA, with Luther Forest, to go forward with the Agreement that we have with them at this point in time. We were pretty confident coming out of that meeting that this is the direction they want to go in. We have not changed our position unless the Board has a different opinion now. But we haven't changed our position and we wanted to go forward with the project as we have agreed upon over the past couple of years. Mike Toohey has suggested that we start the process. Chairman Sutton asked Mr. Toohey to discuss the need for the survey and the authorizations that we are going to need in order to bring this project forward. Mr. Toohey stated there is a couple of things that are going on assuming that we are going to close this thing in the last quarter of this year. They thought they would have their infrastructure completed toward the end of the third quarter. That gives us three months to get this thing closed. So, there are things that have to be done. One of the things that we have to do is get a title insurance report with regard to the 20 acres of land that we have and a specific survey of the property so that we have within our records for the future. That is things that you would normally do on a \$1,000,000 commercial transaction. He believes that we do not have to go out to bid for the title or for the survey. He thinks that is a function that we have and he doesn't think that we need to do that. One of the benefits that we have is that the title work has already been done by one of the reputable title companies in town because they did it for Insight. All we have to do is make a phone call and they can just reissue that for us. If we want to do it relatively cheaply and more importantly quickly, we've got an avenue to do that. There are surveys of the property. CT Male were the original surveyors. They've got that. We've got everything in place, we just need something to say go ahead and do that. The next part of this is two things. First, Insight was so sure that they were going to be doing this, they submitted applications to amend the Planned Development District to the Town of Malta. They've got the full thing going. What they wanted to do was to contract some of the negative restrictions that exist with regard to certain of the pods within the campus and to expand the other ones and all of the information that we have is the Town was receptive to that. So, he would like permission to have us be included in that. They did not include our pod because we weren't part of the deal. MRFA is going to move forward with this. Luther Forest is going to move forward with this. They would like us to join in with that application so as to allow an expansion of the use and utilization of the acres. There is no downside risk to us doing that and there is potential upside because at some point this Board is going to want to sell that land as the property becomes more and more developed over the course, of we hope, a short period of time, but maybe a long period of time. That is number one. The next one is, as you know, we have an Agreement with Luther Forest Technology in which we allowed them to borrow money in roughly 2010. We are now on the seventh extension of that loan agreement. They pay the interest all the time. We allow them to not have to pay principal. The one that we have just gone through had them paying us money in July and then paying us money next year. This is a situation in which if we buy this land, some significant portion of the money goes to Luther Forest Technology. It's at \$700,000. They have an obligation in their underlying agreement to give, he believes, 2/3 of that money back to the State of New York. \$700,000 and 2/3 of it, you can do the math. They are going to get some money. The Agency has to make a determination as to whether or not, in this new Amendment, we want to require that some portion of that money come to pay us down so that we can, in fact, show that we are, as opposed to just independently extending and extending. We are really trying to collect some of this money. They still believe that they are going to have another deal in 2020 to allow them to pay this off. It is a determination for the Board to make. So, three questions for the Board. One, authorize him to do a survey and the title. Two, authorize the Agency to become co-applicants to the Town of Malta with regard to amendment of a Planned Development District. Three, how do you want him to draft this Amendment with regard to whether or not we collect some undetermined amount of money when this deal goes through with Luther Forest. Chairman Sutton stated in regard to the monies, Theresa Skayne

had sent us an overview of what they think the numbers might look like. Like Mr. Toohey said, we are looking to get some form of payment albeit probably much smaller than we anticipated. But he did have a discussion with Tom Roohan on Friday. They have their meetings Friday morning and they didn't have their numbers available to them after meeting. Theresa was going back and was going to work the financing out if in fact the closing takes place the way we anticipate it and the amounts of money that we have obligated ourselves to, the purchase price. So, she is trying those numbers. He did state to Tom that our concern is that we have extended this loan for a number of years, probably almost ten years now, and so we are looking for a good faith effort to make some principal payment on this. They didn't have those numbers available to them for our meeting today. As soon as we get that we will share those numbers with everyone and it will probably be a discussion for our next meeting. Mr. Mooney questioned if there were goals and dates in the Agreement that we have right now with Luther Forest? The answer was yes. Mr. Mooney asked when is the drop-dead date that we have to buy it? Mr. Toohey questioned the Luther Forest one? Mr. Mooney stated yes. Mr. Toohey stated there are not drop-dead dates. He thought you were talking about the repayment. We have to buy once the infrastructure is put in. We have no obligation to buy until all of that infrastructure is done. That was the key to us at all times. We are not out a lot of money until that point. They also recognize, and the benefit was, they recognize that by introducing that infrastructure, they make that entire park much more marketable. So, it serves the IDA purpose that we want this land to be marketable. It serves them that somebody is paying for and we get a chunk of land, that if this property park really moves forward. He thinks, if you want to call it an investment, it was a wise utilization of our money. There is a lot of positive things, but that has always been the key. Mr. Lewis stated the first and the second sound like a no brainer to him in moving on. The third one, it makes a lot of sense having them make some good faith payment, but he prefers it is less than more because as he has said before it is in our interest that LFTC is successful if you look at the overall picture. Chairman Sutton stated yes, and he didn't think they imagined that they would be holding on to this property as long as they have. But again, that is why we stepped up to the plate to try to get the infrastructure going. Mr. Lewis stated we don't have any cash flow problem; you can say they do. Chairman Sutton stated no, we don't. It is just to show good faith. He thinks it is something we have to at least look at and see if rather than just keep on deferring the principal payments, if they make some form of a payment. Because we are making a good faith agreement by purchasing the property. This is something that we decided to do with different Boards. Our Board has changed since we started this process. This Board currently has inherited what we decided to do four years ago. Again, it is open for discussion for this particular Board to talk about. He thinks, to the point, they need help and we are here to help mold that Park and the potential job growth that they have there. This is how we get there. Chairman Sutton asked if there was any additional thought on this? Mr. Mooney questioned if anyone had in mind a percentage basis? Chairman Sutton stated that was what Theresa was going to do, go back and turn those numbers to see what their obligation might be to the State. We know it is 2/3 of something. We don't know exactly what those numbers are. Mr. Lewis stated he thought it was 2/3 of whatever money they get. Chairman Sutton stated it is fair to us to at least let them know we are concerned about having an obligation as well, that we have to maintain our integrity with the ABO. Mr. Johnson stated the first two items he would agree with. Mr. Valentine questioned if there were any costs involved in the acquisition of the Title Insurance and the survey. Mr. Toohey stated yes.

Chairman Sutton asked for a motion to allow Mr. Toohey to perform the actions needed as stated to order title insurance report update with regard to the 20 acres of land in Luther Forest Technology Park and a specific survey of the property and to join in the application to amend the Planned Development District to the Town of Malta and to request a discussion of principal payment reduction be included upon closing

of the purchase. Mr. Lewis moved to act upon the motion as presented. Mr. Johnson seconded the motion.

RESOLUTION #1439

RESOLVED, THAT the Saratoga County IDA accept the motion to allow Mr. Toohey to perform the actions needed as stated to order title insurance report update with regard to the 20 acres of land in Luther Forest Technology Park and a specific survey of the property and to join in the application to amend the Planned Development District to the Town of Malta and to request a discussion of principal payment reduction be included upon closing of the purchase be acted upon as presented. The results of the roll call vote were as follows:

The results of the roll call vote were as follows:

AYES: Mr. Johnson, Mr. Lewis, Mr. Wintsch, Mr. Mooney, and Chairman Sutton.

NOES: 0

ADOPTED: 5-0.

Financial Report (Statements as of 8/31/19):

Chairman Sutton asked Mr. Many to discuss the financial reports. Mr. Many stated starting with the basic financial statements, our Ballston Spa National Bank CD is in place. Our Saratoga National Bank CD for \$500,000 is actually maturing. It will be one year October 17th so we are going to be looking at putting that out to bid for renewal with a list of banks that we are willing to do business with. Mr. Valentine and he will be involved with that bidding process and requests for quotes on interest rates. Our two other Saratoga National Bank accounts are fully reconciled. The accounts payable, there is a list. We paid our officers and directors to go out today. An additional payable that is not reflected in the report is for the tree removal in the Town of Moreau. He has that check with him to go out to pay for that. That was part of maintaining our property there. Year-to-date through August we are essentially literally at breakeven, \$145.00 to the good. Everything else is pretty straight forward. There is nothing unusual in terms of bills or anything like that. There are some additional items on his agenda. We did pay the insurance for officers and directors. Our Chamber of Commerce dues, he doesn't know that we need to have an approval, but he did want to run it by the Board. It is the same dues we had last year. He just wanted to make the Board aware of it. Finally, the other issue we have is with the SEDC overpayment from 2017. The amount is approximately \$20,000. His hope is that it is just paid off by the end of the year. He knows Mr. Brobston was at the meeting last month, he said he could write a check. Chairman Sutton stated he put a call in to Mr. Brobston last week to talk to him about that payment and he was on vacation. In any event we will have a better report next month on that. Mr. Mooney questioned if that was the plan, are they just going to pay the \$20,000? Mr. Many stated he was pretty sure that was what they were planning on doing. Mr. Brobston mentioned it at the last meeting. Mr. Valentine stated he had said that was the easiest thing to do. Chairman Sutton stated we will have a report on that at the next meeting, but he is aware of it. Mr. Many asked if there were any other questions. Mr. Valentine stated under Other Business we would talk about an amendment to that Services Agreement regarding those costs.

SMP Group:

Chairman Sutton asked Mr. Valentine to discuss the next agenda item for SMP Group. Mr. Valentine stated more or less on that one that is just a note that that has gone out. Last week, as far as coming from the last meeting we had, with the filing of the State, their ST60's, the sales tax exemption certificate was sent out. Again, it has a pretty quick end date on it of December 31st and he just has a feeling that in three months' time, he is not sure how much of that reconstruction of the facility and the construction of the addition on the outside will be fully completed. He is assuming that we will see them come back for an extension on that sales tax exemption. Mr. Carminucci stated he spoke to their attorney and he believes they will be able to have a final resolution prepared for the October meeting. He thinks they are doing an SBA loan or something. Next month, they will be back. Chairman Sutton asked if there were any questions.

Status of Projects – Assignments, Terminations, Upcoming Closings, Reconveyances:

Chairman Sutton asked for a discussion on the next agenda item of Status of Projects. Mr. Valentine stated some of this is Mr. Carminucci, some of it is Mr. Toohey and some of it is his. The first one, Finch Waste/USA Waste Management, he put down because he talked with a fellow at the Northumberland site and he alluded to what Mr. Carminucci had said that Finch Waste Company are in effect talking about wanting to return to the IDA for something and what it is he is not really sure. Mr. Carminucci stated essentially their attorney said that they were considering doing something. They had talked to the Town. That has happened and it didn't look like the timing was right for anything, they would just terminate everything by the end of the year and so we should have an update soon. Mr. Valentine questioned so terminate the lease. Mr. Carminucci stated yes. They didn't want to do if they thought there was a chance, they might come in for something. He doesn't know. Mr. Valentine stated that is the main thing that is sort of outstanding on his end is we have gotten past the abatement period, that has ended for the PILOT Agreement, we had a five year on that. And then, we go forward past that period which we can and bill them at full value and they know that too. He has talked to them about that. But, as Mr. Carminucci said, if they aren't going to go forward on it, maybe we could just end that Agreement and then put that back on the roll in March and then if they come back to us, we start with a new application and a new project.

The next one, Fortress, is one that Mr. Toohey has worked on with counsel for Bob Marini. Mr. Toohey stated he thinks they are pretty much done with that. Mr. Valentine stated he just hasn't seen the paperwork on this. Mr. Toohey stated he would get that to Mr. Valentine. There again, the President of the Company and their counsel has acknowledged the fact that we would be sending them a bill in September, we will be sending them a bill in January at full value and they agreed that they would be making that payment. He talked to the Halfmoon Assessor about it and she is ok with it. That is it for that one.

Regarding PeroxyChem, he put that on the agenda because we have had it outstanding before. Mr. Toohey stated he has reminded him on that and he has called the Peroxy representative twice last week and has not gotten a return phone call. He will continue to call. Mr. Valentine stated just to remind people on that one, that was the one that had confusing correspondence on that. Mr. Duffy stated the parent company wants to take title of this property and they wanted us to sign documents. Mr. Toohey

stated it wasn't a deed, it was merely a document that says we are transferring the interest over to a different name. Chairman Sutton asked if there were any questions for Mr. Valentine.

New State Legislation on IDA's:

Chairman Sutton stated since our last meeting, the Governor did sign the legislation that they want to record our public meetings. There is a chain a emails over the past month. Chairman Sutton asked Mr. Duffy to discuss this item. Mr. Duffy stated he talked to Marty Vanags and Shelby Schneider about it too. It could be as easy as Apple stream. Mr. Vanags stated it is as simple as a facebook live stream on the tripod. Mr. Duffy stated Mr. Vanags is buying their own equipment for other reasons. We may be able to dovetail on what they are doing. If not, there are simple solutions that we would be to do that will be cost effective. We will have to keep these things on record for five years he thinks. Mr. Carminucci stated yes, five years. Mr. Duffy stated we will have to live stream the meetings. Mr. Wintsch stated it was uncertain as to the threshold of how big of an IDA would have to do this. Mr. Carminucci stated he is just reading the Agency shall to the extent practical stream all open meetings and public hearings on its website in real time. The opening is to the extent practical. Mr. Many questioned what would you have to do if you went to another Town? Mr. Carminucci stated that is the problem, your public hearings are on the road, so that becomes a little more cumbersome. Mr. Lewis stated that is where it comes in where practical. Mr. Duffy stated there is something called Apple View and it is just a tripod in the corner. What he doesn't know how to do yet is how to put it on our website. We have to figure out how to do that. He is sure there is a simple answer, he is not an IT guy but we will get the answer. We have some time. This has to happen January 1, 2020. Mr. Carminucci stated then you are supposed to post video recordings of all of the meetings and public hearings within five business days of the meeting. Mr. Duffy stated when he saw that, that doesn't mean it's live. Mr. Carminucci stated it is two things, so you are supposed to stream live and then post. There are two different things that you are supposed to do. Mr. Duffy stated he is sure it will be downloaded right after the meeting; however, we end up doing this. Put it into an archive folder. Chairman Sutton asked Mr. Duffy to keep us posted on this.

Project Updates (SCPP & SEDC): Activity, Applications, Pending Projects:

Chairman Sutton stated the next agenda item is project updates. Chairman Sutton asked Tori Riley of the SEDC if she had anything to discuss. Ms. Riley stated obviously the project for LFTC right now is stalled for the distribution center. Pilot Fusion Reactor decided to stay in Massachusetts at this time. Both Saratoga and Schenectady were the New York sites being considered. Also, Quad. We continue to work with the State Representatives to find some retention programs that would work for them and so that we can position this hopeful with new expansion and investment to come here. So, we continue to look at that coming back to you as soon as we have all of those ducks in a row. Chairman Sutton thanked Ms. Riley. Chairman Sutton asked Mr. Vanags if he had any updates. Mr. Vanags stated he thinks next month we are going to have Victory here for their proposal and presentation. The only problem is if the meeting is on the second Monday of the month, that is going to be an issue for them. That is like the only Monday they can't do it. Frankly, he won't be in Town either. He doesn't know how amenable the Board would be to shifting the meeting. The 14th is Columbus Day. The week before or the week after would be better. Chairman Sutton stated we could move the meeting to the 21st at 8:00. Chairman Sutton thanked Mr. Vanags.

Other Business:

1) **Whistleblower Policy:** Chairman Sutton stated we have a letter that Mr. Valentine has sent concerning the Whistleblower Policy and that we have a program in place. Mr. Valentine stated sort of out of the blue this letter just came to us and he thinks it was a general letter to everyone. That was more or less a response letter back to them that we have it in place since 2007. Mr. Duffy stated it was in our manual, but the problem was where it was on the website. They had to be told how to get there.

2) **Amended Services Agreement: Administration Fee at closing and Fee-Split Policy:** Chairman Sutton stated we there were copies sent to us. On the last page, section 5C there is a clarification of what the fee split would be if in fact we got to the threshold of \$20,000,000. Does anyone have any questions about the split that we have? It is identical to what we have always had, it is just redefined. Mr. Valentine stated we just added that one paragraph because as he said before there was a gap. We break our fee up into the first \$10,000,000 and then the next \$10,000,000 up to \$20,000,000. Then when we carry them, we have a section for us to receive something after \$20,000,000. But, in writing the fee split that was written up for SEDC and Partnership, both of those did not have anything in there that says what if you go over \$20,000,000. There was a cap of \$75,000 but there was nothing to say what if they were to get \$67,000, we didn't have a way to get there. This paragraph just adds in based upon the percentages that we have in the preceding two paragraphs to bring it down to the proposed 12 ½%. Chairman Sutton questioned if we have to have signatures on a new Agreement and have it signed? Mr. Duffy stated we would have to have this written up as a new Agreement and submit it. Mr. Toohey stated you have to have it as a Policy and you need to have a vote to extend that and then you would add it as an Agreement from us to the two entities.

Chairman Sutton asked for a motion to approve the amended Agreement to the Administrative Fee at closing and Fee-Split Policy as discussed. Mr. Lewis moved to act upon the motion as presented. Mr. Mooney seconded the motion.

RESOLUTION #1440

RESOLVED, THAT the Saratoga County IDA accept the motion to approve the amended Agreement to the Administrative Fee at closing and Fee-Split Policy as presented. The results of the roll call vote were as follows:

The results of the roll call vote were as follows:

AYES: Mr. Johnson, Mr. Lewis, Mr. Wintsch, Mr. Mooney, and Chairman Sutton.

NOES: 0

ADOPTED: 5-0.

3) **Tree Removal on Agency property (rail) behind 33 Chestnut Street, SGF.** Chairman Sutton asked Mr. Valentine to discuss the tree removal on IDA property in the Town of Moreau. Mr. Valentine stated he doesn't really have very much to discuss on this. The trees have been removed. It was at the price that was agreed to.

Chairman Sutton questioned if there was any further business to come before the Board? Chairman Sutton stated there has been talk since last Spring about changing the time and/or place of the meetings. He does not know if we have a place that is adequate for us to meet. The time 8:00 works well for him because of his business, but he does not know what everyone else's thoughts are. Mr. Lewis stated 8:00 works well for him but at the same time he would go with the group. Mr. Lewis questioned Mr. Valentine on what was the difficulty with the room across the hall. Mr. Valentine stated it is leased from the County by Cornell Cooperative Extension. They schedule all of their stuff priority and they could have something pop in any minute that will change. Mr. Lewis questioned what is we have it there unless we can't have it there because they have something scheduled. Last month or the month before there was nobody there. We walked in. Mr. Johnson stated you have to notify the public where it is going to be. Mr. Valentine stated well it is 50 West High Street in the notice. Mr. Lewis stated it may mean they only need it once out of the 12 months or 6 months. Mr. Valentine stated we are not here probably 3 months out of that time because we are at public hearing locations. That narrows it down. Mr. Mooney stated it may be a problem that you don't have wi-fi here either. Mr. Lewis stated no, definitely not. Mr. Mooney stated that might be a problem with the streaming. Mr. Valentine stated Cornell does. Mr. Duffy stated he could turn on his hot-spot also. Mr. Lewis stated what if we go to 8:15 as a compromise? Chairman Sutton stated a lot of times Ms. DiDomenico has court at 9:00. 8:30 wouldn't seem to work for her. Mr. Lewis stated 8:15 is better, 8:00 is better for him but he would go with the majority. Mr. Duffy stated Tuesday was the day that worked best for them. If we were going to have any opportunity to do what we are saying now and he thinks that may actually be a good solution, it would be Tuesday. Mr. Lewis questioned then how about moving it to Tuesday? Chairman Sutton stated then we will investigate Tuesday for meetings and utilize that room when available. Mr. Wintsch stated that makes sense. Chairman Sutton stated he thinks we should remain at 8:00 for the meeting times. Chairman Sutton stated we will keep the meeting for October 21st and investigate the meetings for November for the Tuesday meeting days.

Chairman Sutton asked if there was any further business to discuss. As there was no further business, Chairman Sutton asked for a motion to adjourn the meeting. The meeting was adjourned on a motion made by Mr. Johnson, seconded by Mr. Wintsch, with all voting in favor.

Respectfully submitted,

Lori A. Eddy