

UCIDA

Ulster County Industrial Development Agency

**Ulster County Industrial Development Agency
Minutes
March 13, 2013**

A regular monthly meeting of the Ulster County Industrial Development Agency was held at 8:00 a.m., Wednesday, March 13, 2013, Common Council Conference Room, Kingston City Hall, 420 Broadway, Kingston, NY.

The following agency members were present:

Paul Colucci	Assistant Chair/Assistant Secretary
Michael Horodyski	Assistant Chair/Assistant Secretary
John Morrow	Secretary
David O'Halloran	Chair
Steve Perfit	Treasurer

The following agency members were absent:

Robert Kinnin	Assistant Chair/Assistant Secretary
James Malcolm	Assistant Chair/Assistant Secretary

Offices of Business Services Staff:

Linda Clark
March Gallagher

UCIDA Attorney and Bond Counsel:

A. Joseph Scott Hodgson Russ LLP

Additional Attendees:

Paul Brown	New Paltz
Caylena Cahall	Times Herald Record
Jessica DiNapoli	Times Herald Record
Patricia Doxey	Kingston Freeman
Shayne Gallo	Mayor, City of Kingston
Jeff Kane	MHMG-KM Kingston LLC
James Maloney	Assessor, Town of Ulster and Chair, Ulster County Economic Development and Tourism Committee
James Quigley	Supervisor, Town of Ulster
George Sifre	New Paltz
Jack Walsh	IBW 363 Electrical Workers
Terrence Ward	Shawangunk Journal

Chair David O'Halloran called the meeting to order at 8:02 a.m.

PLEDGE OF ALLEGIANCE

The members of the Agency participated in the Pledge of Allegiance to the flag.

P.O. Box 4265, Kingston, NY 12402-4265

Chair O'Halloran thanked City of Kingston Mayor Shayne Gallo for the use of the Conference Room.

PUBLIC COMMENT

Chair O'Halloran opened the meeting for Public Comment. The following individuals requested the Privilege of the Floor:

1. Mr. Paul Brown, a resident of the Town of New Paltz, addressed the members of the Agency. He stated that he was one of many citizens of New Paltz. The Agency has got the citizen's attention now because they have a local project. He only serves as a spokesman for himself, but he could tell the members that a fairly large group of men and women are very concerned about understanding the process. He understood that that was a goal of the Agency as well. He was interested in the process. He has been on the website, and asked if there could be a simple "SEQR-Like Cookbook", so that residents could get a feel for a timeline and the appropriate method to give feedback. He asked that because he has spoke to some members of the local taxing authorities, the Town of New Paltz, the School Board and then of course, Ulster County. Citizens are not clear who those taxing authority people are that they need to learn about and learn from and, frankly, to try to influence ... all in the democratic spirit. The local taxing authorities weren't able to explain to him the methodology whereby the UCIDA polls them or samples them, perhaps you don't. Perhaps they attend the public hearing too. He would be contacting Ms. Gallagher in a few weeks to determine how they can learn more about the process.

Chair O'Halloran responded that the Agency will work towards developing a generic timeline for all projects. He will ask staff to work on that. It will take time to develop, but we will work on it. He agreed with Mr. Brown that it was a good idea.

The taxing authorities are part of the public hearing process. Once this applicant comes back before the Agency a public hearing is scheduled, notices go out to all taxing authorities. A policy has been developed, in the past, for example, we only sent the notice to the town supervisor, now we send it to all board members because we want to encourage as much public comment as possible on our projects. You will find that going forward. The public hearing process will be very open in New Paltz; once that project comes back before us, we plan on scheduling our meeting in New Paltz to make it convenient for the public in your town. We are encouraging the process. All taxing authorities will be identified; while we will undertake a generic timeline, because of the size, scope and sensitivity of this project we will also develop a unique individualized one for Park Point and we will put that up.

Chair O'Halloran closed Public Comment as no other individual requested the privilege of the floor.

MINUTES

Motion John Morrow, seconded by Michael Horodyski, moved to approve the Minutes of the November 21, 2012 meeting. A copy of said Minutes is on file.

Vote: The motion was adopted.

It was unanimously agreed that the Minutes of the February 13, 2013 meeting will be deferred for approval until the April meeting of the Agency to allow members the opportunity to review same.

FINANCIALS

Ms. March Gallagher reported that the County has not received the February bank statements. The County is not able to prepare February financials. In the future, there will not be the gap in time and they will be able to provide up-to-date transactions for the month. At next month's meeting it is anticipated that both February and March financials will be available. Additionally, Ms. Gallagher stated that in the next several weeks large checks will be issued, both Wolf-tec and Stavo will be receiving their job creation funds.

Chair O'Halloran stated \$25,000 each, which is 50% of the monies as part of the incentive for each of them for staying and retaining themselves in Ulster County.

Ms Gallagher continued that the Hudson Valley Agri-Business Development Corporation contract the Agency approved is also in process.

COMMITTEE REPORTS

Audit Committee. Mr. Steve Perfit, Chair of the Audit Committee, reported that the committee was waiting for the audited financials to be completed. It is anticipated that an Audit Committee meeting will be held in the next several weeks.

Governance Committee. Mr. John Morrow, Chair of the Governance Committee reported that the Committee had met this morning prior to the meeting of the Agency. Discussion/action included, but was not limited to:

- Contact TLB Management to advise them how to improve their reporting so that the Agency is able to report to the state. Currently, they are not providing complete information.

Mr. Paul Colucci asked who handles that actual correspondence.

Chair O'Halloran responded that right now the question is that we have received a response to our certified letter of March 7th for the reporting requirements for TLB for 2012. Unfortunately, they are not sufficient to meet the requirements. He asked that a letter be authorized from the Chair to TLB Management that they have not met the reporting requirements as per the contract and counsel will supply the legal language stating that that may place them in default.

Mr. Horodyski stressed the need to be completely clear on exactly what is needed to come into compliance so that everyone is on the same page.

Chair O'Halloran stated that he has asked staff to review all active applications for compliance; TLB was the only active applicant at this time that had not provided all the sufficient materials for the Agency to complete their 2012 year end.

- Amended application for Sale/Leaseback or Bond Transaction. The primary amendment to the application is in VIII.(F). which includes as follows:

F. Agency Enforcement Policy. The applicant acknowledges that it has read and understands the Agency's Enforcement of Agency Projects Policy and recognizes that in connection the assistance by the Agency in the undertaking by the applicant of the Project, the Agency will require the applicant to execute and deliver a Project Benefits Agreement (or equivalent agreement) that will provide, among other things, that upon the failure by the applicant to meet certain agreed upon job creation and retention levels and other requirements, the documents providing for assistance to the applicant, including the PILOT Agreement,

will be subject to possible termination and the applicant will be subject to possible "claw-back" provisions relating to the tax abatements provided by the Agency.

Motion: David O'Halloran, seconded by Paul Colucci, moved to approve the amended Sale/Leaseback or Bond Transaction Application as amended.

Vote: The motion was adopted.

- Discretionary Funds Policy. Mr. Morrow was seeking approval of the Discretionary Funds Policy as prepared by counsel. A copy of said Policy is on file.

Mr. Horodyski asked for confirmation that the document that was being approved was the three-page document entitled Travel & Discretionary Funds Policy prepared by Hodgson Russ.

Chair O'Halloran confirmed.

Counsel A. Joseph Scott stated that the key issue on all this should be pre-discussion before any expense is incurred.

Mr. Horodyski stated that he was perfectly fine with the policy and thought it was important that the Agency dictate it, but he thought that with regards to New York State, we have to be able to be flexible and nimble to react to the economic challenges we are all under and this policy, although will formalize all this which is great, the Agency needs to be flexible and nimble to react.

Chair O'Halloran responded that it was his opinion that this was in response to the ABO public document, the Agency was not in it as our IDA has not made what they consider inappropriate expenses. This prevents future boards from doing it.

Motion: John Morrow, seconded by Michael Horodyski, moved to approve the Travel & Discretionary Funds Policy as prepared by counsel.

Vote: The motion was adopted.

Ready2Go Committee. March Gallagher reported that there has been no activity. The Planning Department is planning a public forum for Ready2Go in April.

RESOLUTIONS

MHMG-KM Kingston LLC (a/k/a Mid Hudson Medical Group or Kirchhoff Medical Properties)

Mr. Jeff Kane, Project Manager for Kirchhoff Medical Properties, gave a brief overview of the project. Mr. Kane stated that project is located directly across from Adams Fairacre Farms on Route 9-W in the Town of Ulster. The project is 15 acres and the medical arts building is one piece of that project. It is a four story 84,000 sq. foot medical arts building that will coalesce and expand the operations of Mid Hudson Medical Group, one of the leading health care providers in the area. The project has been working very closely with taxing jurisdictions and the UCIDA to move this project forward. The project was approved by the town last April and there is a need of the assistance of the UCIDA to move the project forward. They have met with all the taxing jurisdictions and have received unanimous approvals from each of the authorities; the county, school board and the town have approved the proposed PILOT Agreement. They were appreciative of the investment. They are prepared to begin construction pending the approval of the Agency.

Chair O'Halloran stated that this was a Deviated PILOT that was requested. In accordance with the Agency's procedures and policies for Deviated PILOTs, once an application is received, a Public Hearing is scheduled. The

Notice of Public Hearing is sent to all taxing authorities before the Agency takes any action. The approvals of the Deviated PILOT have been received in writing from all the taxing jurisdictions. It is now the Agency's turn to proceed.

With reference to the report entitled Internal Report: MHMG-KM Kingston, LLC, (InformAnalytics document), a copy of which is on file, Chair O'Halloran requested that the document be reviewed further by staff and counsel to make certain that it fully accurate.

MHMG-KM Kingston LLC – Project Outline.

Counsel Scott gave an overview of the document and the resolutions before the Agency. The SEQR Resolution, which will confirm the action of the Town of Ulster Town Board, the PILOT Deviation Resolution, which approves the deviation from the Agency's UTEP and the Approving Resolution, which approves the Company's project, the proposed financial assistance and the execution and delivery of certain documents in connection therewith. A copy of said outline is on file. In addition, Counsel pointed out that in the Project Identification, Number 2(A) the Acquisition of Land and Structures, a 15 acre parcel of land is described. That is what was described in the Notice of Public Hearing; what is actually being done as part of this straight lease transaction in taking an interest in 5 acres. The amount of the PILOT benefits is accruing only to the site of the 84,000 sq. ft. building. As has been discussed at other meetings, further development is intended at that site, but this PILOT Agreement is covering only the 84,000 sq. ft. building so there should be no misunderstanding on that. Also, as part of the firms normal drafting on behalf of the UCIDA in that PILOT Agreement we have an additional facilities clause. So if two years from now they change that 84,000 sq. ft. building to a 150,000 sq. ft. building by way of addition or some sort of configuration, there is provision for additional PILOT payments made for under that agreement. So the UCIDA is protected in that situation. With respect to prior action (II) the Agency adopted a Public Hearing Resolution on December 12, 2012, Notices of Public Hearing were mailed to the affected taxing jurisdictions, it was published in the Daily Freeman and a Public Hearing was held on January 31, 2013 at the Town of Ulster Town Hall. A stenographic record was made and available for review by the members of the Agency.

Continuing, Counsel Scott stated that the company requested a deviation from the Agency's UTEP in January, 2013. Certified copies of the resolutions adopted by each of the taxing authorities approving the Deviated PILOT are on file. Counsel Scott stated, further as part of the Agency's policies and in conformance with New York law, the Agency has notified the taxing jurisdictions that the PILOT deviation structure that they approved by resolution is subject to the Agency's consideration at today's meeting and they were invited, should they have an further comments with respect to that PILOT deviation to attend this meeting and the Agency would recognize and take their comments.

Mr. Horodyski stated that the InformAnalytics document is a "big little document".

Chair O'Halloran responded that he had requested that it be prepared.

Mr. Horodyski stated that that was what his concern was. This is kind of "driving it" and we are a week away.

Chair O'Halloran responded that the Agency provides a project benefit analysis at closing. This is a brand new program which the Agency purchased a year or so ago. It is our first "run" at it for a project. We are going to take the data from that, the data from how we typically do it and craft one for this project and then we are going to begin "tweaking" the system.

Mr. Horodyski asked what their benefit scenario was at the time of application.

Chairman O'Halloran responded that they went through the application

Ms. Gallagher stated that the information was “plugged in” from the application. Fields are filled into this InformAnalytics Program to generate this report. There are some things that we may want to re-look at including the 15 acres

Chair O’Halloran responded that it is not 100% accurate, and he did not want it to become apart of the official documents as of yet. It is close.

Ms. Gallagher stated that they are trying to create a secondary cost benefit analysis that can be included in the closing.

Chair O’Halloran stated that he found value in having a benefit analysis from a snapshot of that time. He thought it was very important as part of the closing documents, for future boards to look back on and see why we did what we did.

Mr. Colucci asked if it was clear, one thing that keeps coming up is this 5 acre versus the 15 acres. This is going to be a very clear concise statement in there. There won’t be any confusion or when the developer comes back and tries to manipulate something.

Supervisor James Quigley stated that the PILOT is strictly limited to the 5 acre portion underlying the medical office building and that the key or the attractiveness of this PILOT Agreement to the town relates to the fact that there are 10 additional acres available for development. The medical office building serves as the traffic generator for the entire complex. And reinforcing what he had just said, the applicant is currently in front of the Town Planning Board for another building on the site that is not subject to a PILOT.

Ms. Gallagher stated that the description in this document doesn’t change any of the numbers, but we would enhance the description to say a 5 acre portion of a 15 acre site.

Mr. Colucci asked if it actually specifically calls out the surveyed 5 acres.

Counsel Scott responded in the lease agreement.

Mr. Perfit asked if there was a preliminary site plan showing that proposed subdivision.

Supervisor Quigley responded that in the application to the Planning Board there is an overall conceptual site plan with typical or proposed uses filling out the entire project. The five acres were clearly defined as only being the portion of the property that the Planning Board was passing and that the Town Board eventually ratified approval for. Every other portion of that project has to come back to the town board and the town planning board for approval. The 5 acres were clearly defined.

Mr. Perfit asked if they were subdivided or just defined.

Supervisor Quigley responded it was defined because they were not clear on where the lines were going to go. Depending upon the intended use, parcel sizes shift.

Mr. Horodyski stated that the 5 acres is defined on that sub-division map.

Chair O’Halloran deferred to Mr. Kane.

Mr. Kane responded that what they presented to Hodgson Russ in preparation of closing documents is a map and metes and bounds description. They have not completed an official sub-division application for the town, but intend to. The metes and bounds that are part of the closing will be the metes and bounds

Chair O'Halloran stated than it does not exceed 5 acres and change.

Mr. Kane replied five and change; he could not remember the exact figure, but it is in that range.

Mr. Colucci asked how metes and bounds can be described without an approved sub-division.

Mr. Kane responded that a sub-division is required for the straight conveyance, but his understanding is that a metes and bounds description is what describes the land.

Counsel Scott stated this is for PILOT purposes. The issue that is being raised is something that has been addressed in other transactions. If you are taking a mortgage on a non-subdivided parcel, that is an issue. But they have done projects where you have an existing manufacturing plant and they put an addition on the back end of that manufacturing plant, we have filed PILOT Agreements and lease documents with a site diagram just showing that building and only the addition comes off the tax roles. It certainly raises an issue if there is ever enforcement on a mortgage, but it doesn't raise an issue on the PILOT. The Assessor is able to take that property off the tax roles and leave the balance of the property on the tax roles so that the PILOT applies only to the addition on the back of the manufacturing plant.

Mr. Colucci stated that from a developer's point of view, it sounds like a "win situation"; however from his "IDA hat" it sounds like it could be very problematic. He did not understand how we are getting a description on metes and bounds, we don't have an approved subdivision. He did not see how the town can go forward. All of these documents that are being authorized are based upon everything being legally executed.

Counsel Scott responded that the differentiation is between a bank foreclosing on a mortgage or plot of property as opposed to the enforcement of a PILOT Agreement because the reason we structure those transactions that way, is that we don't want to take the existing manufacturing building off the tax roles. We want that to stay subject to real property tax and we are able to do that.

Chair O'Halloran stated that this benefits the taxing authorities.

Counsel Scott stated that further, for instance and it is something that you see fairly regularly where groups that are negative to IDAs will look at a jurisdiction and say there is x amount of property off the tax roles due to the IDA's involvement. What we are trying to do is minimize the property off the tax roles and maximize the property that remains on the tax roles and subject to the tax lien and the normal tax enforcement action. He agreed with Mr. Colucci that from a developer's standpoint, certainly from a bank standpoint, we've seen banks take that risk; just take a mortgage on that non-subdivided parcel because they have a guarantee or something from the corporate entity. But that is not our issue. Our issue is the PILOT Agreement.

Mr. Horodyski asked when we lease back the parcel, we take ownership.

Counsel Scott responded we take a lease hold interest. What we are trying to do is minimize our involvement. In the old days we used to take a fee; they would deed the property to us and we would lease it back and then there would be a deed at the end. Now the owner leases to us and then we sub-lease it back to them. There are a number of reasons we do that. One of which is that we minimize our involvement in the project from an environmental standpoint. The

reason we can do that is that under the IDA statute it says that property owned or under the jurisdiction and control of the IDA is exempt from real property tax and there are opinions from the Office of Real Property Tax that says that property leased into us is under our jurisdiction and control and that takes the property off the tax roles.

Mr. Horodyski stated that this parcel, based upon a tax map jurisdiction, is one big parcel. The IDA is going in and carved out a piece of that.

Mr. Kane stated that it was his understanding that the town will actually create this tax map, although he was not speaking for the Assessor, and we will get a tax bill on this parcel which constitutes the

Mr. Horodyski responded prior to the final subdivision.

Mr. Kane replied basically that was his understanding.

Mr. Horodyski stated that he thought that it was the "cart before the horse".

Mr. Perfit stated that perhaps he could help out. Their position is they're trying to master plan the site with a conceptual plan. They could take the additional 10 acres and just lease it all out or they may sell off pieces of it. So if you go back to the town, and he did not know how many subdivisions the town allows, most towns have a restriction on how many subdivisions you can do on one parcel

Supervisor Quigley responded that discussions have already been held with the applicant's engineers with implementing an open development area so that we could make as many subdivisions as necessary.

Mr. Perfit stated that most towns restrict it.

Mr. Colucci stated that he was familiar with this site based upon the applicant's engineer's presentation and the site was what he called a "dirty site". There are some environmental issues there. He asked counsel with this whole leaseback idea, we in no way are ever liable for, down the road this thing turns into a real problem for them, as far as this leaseback and ownership. The Agency will not be dragged into any costs associated with that.

Counsel Scott responded that unfortunately he could not say no way. He could not give a 100%, but what we are doing is minimizing the Agency's interests in the property by using the leasehold. We have the indemnification from the company. The company indemnifies us for any of our liability with respect to the project and we also have their insurance as well.

Mr. Colucci asked what insurance?

Chair O'Halloran responded their insurance; the Agency has to be listed as an additional insured.

Mr. Colucci asked if we have reviewed their coverage is it in excess of what the anticipated clean-up costs are going to be.

Counsel Scott responded that that was a good point. He needed to follow-up on that.

Mr. Colucci stated that if you look at the application, they had in excess of a quarter of a million dollars or \$500,000 that we were looking at for clean-up costs. He indicated that he raised that question at the last meeting what was going to happen. Was there enough money in reserve that would not cause this project to go into default.

Chair O'Halloran responded that as condition of approval we will make sure that we have sufficient coverage for that in the closing documents.

Counsel Scott replied that under the federal law it was clear, but under the state law it was mixed.

Mr. Colucci stated that if the developer defaults that state is going to go after whoever name is listed on any mortgage or document around.

Counsel Scott agreed with Mr. Colucci.

Ms. Gallagher brought to the attention of the membership that Mr. Horodyski pointed out that on page 2 of the SEQR, Resolution the second WHEREAS, fifth line down ...

(A)(1) the acquisition of an interest in an approximately 15 acre parcel of land located at 1561 Ulster Avenue in the Town of Ulster, Ulster County, New York (the "Land"), ...

It could be clarified by changing it to say:

(A)(1) the acquisition of a approximately 5 acre interest in an approximately 15 acre parcel of land located at 1561 Ulster Avenue in the Town of Ulster, Ulster County, New York (the "Land), ...

Chair O'Halloran requested that members make that note on their copies.

Counsel Scott stated that he was good with that. The reason it says 15 is because that was what was in the original application and we had that in the Notices and we want to be greater rather than smaller. The documents themselves will say 5.

Ms. Gallagher responded that that change will affect the other resolutions as well.

Counsel Scott agreed to make the change.

MHMG-KM KINGSTON LLC RESOLUTIONS

RESOLUTION ACCEPTING THE DETERMINATION BY THE TOWN OF ULSTER TOWN BOARD TO ACT AS LEAD AGENCY FOR THE ENVIRONMENTAL REVIEW OF THE MHMG-KM KINGSTON, LLC PROJECT AND ACKNOWLEDGING RECEIPT OF THE NEGATIVE DECLARATION ISSUED WITH RESPECT THERETO.

It was unanimously agreed that the Resolution be amended as previously discussed by adding the following

*(A)(1) the acquisition of **a 5 acre** interest in an approximately 15 acre parcel of land located at 1561 Ulster Avenue in the Town of Ulster, Ulster County, New York (the "Land),*

Motion: John Morrow, seconded by Steve Perfit, moved to approve the resolution as amended.

Vote: The motion was adopted.

RESOLUTION AUTHORIZING A DEVIATION FROM THE AGENCY'S UNIFORM TAX EXEMPTION POLICY IN CONNECTION WITH THE PROPOSED PAYMENT IN LIEU OF TAX AGREEMENT TO BE ENTERED INTO BY THE AGENCY IN CONNECTION WITH THE PROPOSED MHMG-KM KINGSTON, LLC PROJECT

Counsel Scott stated that a Deviation Letter has been sent (attached as Exhibit B) to the affected taxing jurisdictions. In order to follow the format of the resolution itself, he double checked to see if there was anyone present from the county, town or school district who wished to make comments on this. We have not received any written comments in response to our written correspondence.

Mr. Jack Walsh, representing the IBW 363 Electrical Workers, stated that he had an issue with the PILOT Agreement as far as giving a construction company the opportunity to build in Ulster County. What he disagreed with was the labor aspect of this. Kirchoff no doubt has been using out of state contractors on a lot of electrical jobs across the river and various other places. His concern is that if he was a taxpayer living in Ulster County looking to give these folks a PILOT Agreement, do we really want to encourage a contractor to bring out of state contractors to work on a building site with our tax dollars.

Chair O'Halloran thanked Mr. Walsh for his comments. He indicated that this particular resolution had to do with the taxing authorities, when the Agency gets to the approving resolution he will bring something up regarding regional labor that he hoped would satisfy a portion of his concern. He encouraged Mr. Walsh, that in the future, he should attend the public hearings.

Chair O'Halloran asked if Supervisor Quigley, representing the Town of Ulster and March Gallagher, representing the County wished to make any comments at this time.

Supervisor Quigley responded that the Town of Ulster has made its position well known on this project. They have determined that it is critical to the future growth of the town north of the Route 209/9-W intersection and that it opens a whole new venue for the town and the county for additional sales tax revenue.

Ms. Gallagher responded that there were no comments on behalf of the county at this time.

Legislator James Maloney, representing the county's Economic Development and Tourism Committee stated that looking at the PILOT Agreement at \$4.00/sq. ft., which is probably one of the healthier PILOTs in his 17 years. He had never seen one that increases every year over the course of it. It is the most beneficial to all three tax jurisdictions that he has ever seen.

It was unanimously agreed that the Resolution be amended as previously discussed by adding the following

*(A)(1) the acquisition of **a 5 acre** interest in an approximately 15 acre parcel of land located at 1561 Ulster Avenue in the Town of Ulster, Ulster County, New York (the "Land,*

Motion: Steve Perfit, seconded by John Morrow, moved to approve the resolution as amended.

Vote: The motion was adopted. Michael Horodyski was absent from the room for the vote.

RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR MHMG-KM KINGSTON, LCC (THE "COMPANY").

Chair O'Halloran stated that there were two things that he thought that the Agency members should discuss. (1) Before the final approving resolution, we should get some wording between counsel and Agency member Paul Colucci for a condition that satisfies our concern to protect the UCIDA from any future contamination or cost of contamination.

Counsel Scott responded that he would review this with the project's counsel internally and then he would get back to the Chair.

Chair O'Halloran asked if that was sufficient to Mr. Colucci.

Mr. Colucci responded affirmatively.

Chair O'Halloran replied that he was supporting it. He appreciated the comment. It protects all of us.

Chair O'Halloran asked Mr. Kane to discuss regional labor.

Mr. Kane responded that he would like to make one distinction – representing Kirchhoff Medical Properties. They are not Kirchhoff Construction. Joe Kirchhoff sold the construction company some three years ago. There is some differentiation there, however, Kirchhoff Consigli Construction Management will be the construction manager for this project. Kirchhoff Consigli has, and Kirchhoff Construction before that, has had a long history of using local and regional labor and that will continue on this project. He knew that they have been through the bidding process on this and there are many local firms that will be employed at this site. He could not speak to specific comments about a contractor, he just did not know. He did know the history of the firm and did know their intent which has always been to hire local.

Chair O'Halloran asked Supervisor Quigley is this had been a discussion at the Town Board level?

Supervisor Quigley responded that he had personally had some concern about where this was going to go. He did not want a repeat of some of the issues that the Town Board had experienced in previous administrations. He took the time to talk to some of the local contractors, in particular, Sandy Whitman, owner of Whitman Electric. Whitman says that he has a very strong relationship with Kirchhoff Consigli and has in fact done work on their other medical buildings. He has the blue prints for this job and he is expecting to bid very competitively.

Mr. Walsh responded that we are talking about local contractors, Kirchhoff Consigli was a contractor in Dutchess County doing the dorms. Local contractors, J&J Sass was indeed the lowest bidder on the prevailing rate job, Kirchhoff Consigli decided to give it to New York Con. That is a fact; if anyone knows Jimmy Sass in this room, speak to him about that.

Counsel Scott reviewed the resolution and stated that there was no pirating going on with respect to this project as outlined in the application.

Chair O'Halloran confirmed the benefits being offered to the project applicant as follows: a Deviated PILOT improvement exemption from real estate taxes, leaseback providing a sales tax exemption, mortgage recording tax exemption.

Counsel Scott stated that with reference to the mortgage recording tax exemption the one caveat to that is that at the bottom of Page 3 of the resolution, where mortgages are mentioned, given the pressure that the developer was feeling due to the NYS legislation, it was hoped that the project will be closed with respect to the PILOT and sales tax next week. At this time, they do not know what the bank financing will be at that time, so they will be advancing construction

costs out of equity and they will close on their bank financing shortly thereafter. This resolution authorizes the entering into that mortgage. Bonding is not expected, the project does not qualify for tax exempt bonding; from a cost standpoint it does not make any sense.

It was unanimously agreed that the Resolution be amended as previously discussed by adding the following

*(A)(1) the acquisition of **a 5 acre** interest in an approximately 15 acre parcel of land located at 1561 Ulster Avenue in the Town of Ulster, Ulster County, New York (the "Land,*

Additionally, Chair O'Halloran stated that in addition the documents will include sufficient indemnity.

Motion: Steve Perfit, seconded by John Morrow, moved to approve the resolution as amended.

Vote: The motion was adopted.

CORRESPONDENCE

Birchwood Village – Claimant's Demand for Arbitration and Arbitration Agreement

Chairman O'Halloran stated that correspondence has been received from Birchwood Village relating to the arbitration we have been discussing. He mentioned that at a previous meeting of the Agency when this arbitration was discussed we asked for two things in order to begin that process (1) was to be in good standing with the Agency, which includes the payment of legal fees and (2) provide funding to hire the arbitrator.

Counsel Scott stated that with respect to his statement of legal fees, it is still outstanding; they are not in compliance.

Mr. Colucci asked what the outstanding amount was.

Counsel Scott responded approximately \$5,700. There were two bills – one for the initial work and that has been paid and the second bill was follow-up work to that and the termination of the documents. That is what has not been paid.

Mr. Colucci asked how old that bill was.

Counsel Scott replied at least six months.

Chair O'Halloran stated they want to go to arbitration. He asked the Agency to authorize a letter under his signature giving them the steps needed to begin the arbitration which would include the payment of legal fees, an estimate will be obtained for the arbitrator, providing the funds in advance for the arbitrator and get going.

Mr. Morrow asked if they pay for the arbitrator too.

Chair O'Halloran responded yes. We have not had a good history with them; we usually have to chase the money, so he would rather have the money in advance.

Mr. Colucci asked to go back over the history, because this has been dragging on well over a year. The PILOT has been terminated. Have they actually caught up on their taxes.

Mayor Shayne Gallo replied no.

Chair O'Halloran stated only the \$72,000 that we had collected during the process of negotiation to get them in good standing and in the end they walked away from the balance.

Mr. Colucci asked how many years are they behind now.

Mayor Gallo responded that he believed it was two years. Continuing, Mayor Gallo stated that Birchwood filed a motion in Supreme Court after the Appellate Court ruled that it should go back to the Supreme Court for review of the issue of arbitration. What happened then, Judge Work sat on it for about six months to give a one paragraph decision that Birchwood did in fact have the right to arbitrate the claim. He now has two options (1) we could have arbitrated pursuant to the process that the Agency is now reviewing and discussing or (2) we elected/offered to have him agree to select a neutral arbiter. Initially they thought about Judge Rosenblatt, retired from Court of Appeals counsel. The Judge felt that not only did he not have the time, but he also thought he did not have the expertise to rule on the matter. Suffice to say, we then agreed that we would have Justice Marlowe from the first department; an Appellate Court Judge presides over the matter. He was ready, willing and able and we were going to do it sometime this month, when we will have our first meeting where we will exchange the documents, which will be like an informal discovery and the set the parameters for what the arbitrator would in fact review. They got as far as the Mayor's outside counsel, Kyle Barnett, along with in-house counsel Andrew Zweben, negotiating with Birchwood's counsel Mr. Lunefsky and Patrick Seeley from the Hacker Law Firm and we thought we were going in that direction. That is why when he saw it on the Agenda he was somewhat surprised because what he had Mr. Zweben do was to make inquiry with AAA who would be the ones responsible for providing the arbiter. From what he understood, it is very costly. Not only that, it will put this matter even out further in terms of having a disposition of resolution. It not only affects your attorney fees, but it will also affect whether or not the City is going to get its' "dough". Birchwood is basically trying to "bootstrap" 581(a) and that is what it wants to be able to resolve the issues. Clearly we do not agree with this in terms of what he is claiming as exemptions from his gross which, as of the time of the PILOT Agreement, about \$1million. He has it down to \$400,000, with one line item \$170,000 for professional services which is primarily his attorney fees. In a nutshell, the City is not willing ready and able to accept the number at some mid-point that could possibly, in his opinion would have an adverse affect on this taxing authority. Where he is right now is that he is looking forward to hearing the discussion because Mr. Aaron is apparently proceeding with Option A, which is to avail himself of the right to proceed under the process that the PILOT has outlined to resolve this dispute.

Chair O'Halloran asked if your goal for us is to attempt for us to expedite this to the best of our abilities.

Mayor Gallo responded yes, please.

Mr. Colucci asked there is obviously a number that he doesn't agree with and there is a number that he is trying to get to. Somewhere in between is where this will hopefully settle out. The attorney fees must be exhausting at this point for the City. Has there been discussion on how this thing should really go?

Mayor Gallo responded actually yes, but fortunately he is not getting "killed" with Kyle Barnett and with Andrew Zweben in-house counsel as well, it is a nice match. At the end of the day, it really doesn't make much sense, and he agreed with Mr. Colucci, we could arrive at a mid-point but we are not there yet.

Chair O'Halloran stated that Mr. Colucci brought up the point of exactly why we still need to go back and review, in the future, providing an adopted PILOT for housing projects so that it gets away from the exemption and more towards a fixed dollar amount where there wouldn't be any certiorari arguments in the future. We will take that as a separate matter. Chair O'Halloran asked counsel what could be done to expedite this matter.

Counsel Scott stated that he could get a letter to the Chair later today or tomorrow.

Mr. Horodyski asked if it was the IDA's fight at this point.

Chair O'Halloran responded that Judge Work has placed it in the Agency's lap.

Counsel Scott replied that it our fight only in the sense that under the PILOT Agreement it is a three arbitrator process; one for them, one for the City and one for us. They need us to play along and it is a reasonable position for the Agency, as a condition to say, you need to be in conformance of the documents before moving forward.

Mr. Horodyski responded then we just sit a "loggerheads" – then what happens?

Counsel Scott replied also the upfront money for the arbitrator, the Agency does not want to go "out of pocket" for the arbitrator and then have to chase the project applicant.

Mr. Horodyski responded that he "got all that", from a standpoint of expediting it ...whatever that arbitrator

Chair O'Halloran asked Mayor Gallo what the number was that we are thinking about.

Mayor Gallo responded that he was thinking that it was anywhere between \$300 to \$700 an hour. The Agency is probably looking at \$30,000-\$40,000.

Mr. Horodyski stated that this route is not going to get us anywhere. He is going to say no.

Chair O'Halloran asked counsel if there was any way that the Agency could advance the money from the UCIDA and get a lien to do that. If we can do that, we can front the money and get the arbitrator in and then we can present that to the Agency. We could advance the money, the UCIDA, as long as we can get some type of lien, for the arbitrator. We could go "on the hook" for that.

Mr. Perfit responded that rather than lien, he was very fearful of that; he didn't want to own Birchwood Village, why don't we just say you need to put some money in escrow.

Chair O'Halloran replied that is what we are asking; but the Mayor's concern is that the project applicant will drag his feet and not do that; just to continue to slow things down.

Mr. Horodyski stated that we have no negotiating standpoint. We terminated the PILOT and the judge threw it back in our lap and said "so arbitrate it".

Chair O'Halloran stated that he needs counsel to figure out what the Agency can do.

Mr. Horodyski and Mr. Colucci both agreed that the Agency was in a bad position.

Counsel Scott stated that to be clear the Agency is in a bad position because the project applicant is in default. The PILOT Agreement says if there is a challenge on assessed value, which is what has been going on for years, the project applicant is suppose to continue to make the payments and gets "trued up" on the back end. He can't not pay; he's not supposed to not pay during the term of all this discussion. The fact that the Agency is in a bad position in because the project applicant is in default under the PILOT.

Mr. Horodyski stated that the Agency terminated the PILOT; so now it is back on the tax roles going forward. So there is no in rem solution for another 3 years until he doesn't pay 3 years going forward.

Counsel Scott responded that this is what is recommended on larger projects where there are huge amounts of money at stake, and we have talked a little bit about this, is having a PILOT mortgage.

Chair O'Halloran replied that he needed counsel to research every way possible that the Agency can advance the money with the hopes of getting it back.

Counsel Scott stated that he could tell the members right now, under the documents any costs that the Agency incurred are his obligation. So, if the Agency advances the money, we have a contract. We can sue ...

Chair O'Halloran asked when we sue do we get our legal costs for the law suit back as well?

Counsel Scott replied probably not.

Mr. Horodyski stated that he would tend to go ...

Chair O'Halloran stated that the Agency is going to ask for the escrow, but we don't think that it will happen, so while we are asking for the escrow, and that will go out this week ...

Mr. Horodyski asked if the Agency had a leg to stand on basically appealing Judge Work's decision – saying that it needs to go to arbitration even though our documents clearly say you can't arbitrate with us unless you are in good standing.

Mayor Gallo responded that the issue of arbitration has already been ruled upon as part of the Appellate, Third Department, which subsequently referred back to Judge Work who had the authority jurisdiction wise to determine whether the claim was arbitral. It is done.

Mr. Horodyski stated so we are "married" to that decision.

Mayor Gallo replied that right now the Agency is subject to the PILOT's process.

Mr. Horodyski stated that the only way you can force his hand is to put the money up ... that's \$45,000

Chair O'Halloran stated let's first send a letter asking, and while we do that he asked counsel for some solutions.

Mr. Perfit asked counsel if we say OK we will arbitrate, but would Judge Work kindly, being that they are in default, ask the claimant to put some money in escrow to cover us.

Mr. Horodyski replied that he didn't think that Judge Work cared about the Agency's standing.

Mr. Perfit stated that Judge Work is enforcing the arbitration issue.

Mayor Gallo responded that Judge Work would not have jurisdiction now to accept any kind escrow recommendation. Judge Work is done.

Chair O'Halloran asked the Mayor, in addition to the letter that we are going to be doing, the Chair would contact Mr. Aaron. He would also contact the Mayor and Mr. Zweben to figure out if there was any possible solution. I realize that this is a path that is likely to get no results, but on behalf of the Agency we will make efforts.

Mayor Gallo responded that if the Chair could impress upon Mr. Aaron that the financials and the information he has given us is not satisfactory and that he is going to have to "tighten it up" dramatically and then perhaps we can use same as a frame work to resolve the issue. Because right now, what the City has in house is not going to do it.

Chair O'Halloran stated that he would initiate conversation and will keep the Mayor and the members of the Agency advised.

PROJECT MONITORING AND ENFORCEMENT

Hudson Valley Domicile (Hudson Valley Sportsdome)

Michael Horodyski asked that it be placed on the record that he recuses himself from all discussion and/or votes regarding Hudson Valley Domicile (Hudson Valley Sportsdome).

Chair O'Halloran stated that at the last meeting of the Agency, he was instructed to provide a modified volunteer agreement to Hudson Valley Domicile. He has requested some extra time to work with them to get an agreement in place. He did have two conversations with the proprietor. He asked if anyone in the room was representing the Hudson Valley Domicile. The attorneys were on the telephone yesterday. The Chair asked Ms. Gallagher is a signed agreement had been received.

Ms. Gallagher responded no.

Chair O'Halloran stated that we have not received a signed agreement. He was very specific, because when he spoke to Mr. Pizza, the proprietor, he explained to him that the Agency had been working on this. The Agency did a modification. He believed that as an individual member, he believed that his end was March 13th and it needed to be resolved by that time otherwise he would be looking towards terminating the project. That was the message that the Chairman delivered after conversations explaining the first time they talked he discussed with him the modification, the 1/3 reduction in basically the claw back that was being provided by this board, the fact that he went from 22 jobs to 2. He went through all the process that the Agency had and he thought that the Agency would see a signed contract today.

Mr. Colucci asked if there was a reason why we don't have it.

Chair O'Halloran no; other than he is not signing.

Counsel Scott stated that as the Chair indicated, he received a call from Mr. Pizza's counsel yesterday; his counsel asked some questions. Counsel Scott stated that he would get some materials to him; he wanted information about the original job numbers that Mr. Pizza related. He did tell Mr. Pizza's counsel that it was on the Agenda today. Both attorneys, the attorney's for Mr. Pizza and the attorney's for TLB indicated that their hope was to resolve this in advance of the next meeting.

Ms. Gallagher stated that it should be noted that they had reached out to Mr. Pizza both by email and telephone and were told by staff that he was out of town on a family emergency.

Chair O'Halloran did want to state that there has been no confusion about the March 13th deadline with this project and the need to have this completed by this time. Chair O'Halloran asked what the total number of jobs; was it 22? It was noted that on page 2 of the application it stated that they expected to create 9 full-time jobs and at least 15 part-time jobs. Currently, in 2011, it was reported as 2.

Mr. Perfit stated that it was his opinion to give 7 days notice that we are terminating the PILOT 7 days from now because if it is a real family emergency, it automatically just terminates 7 days from now. Email/Certified Mail; he appreciated family emergencies.

Chair O'Halloran stated that the motion is if they fail to sign the voluntary modified agreement within the next 7 days we will terminate the PILOT on March 21, 2013.

Motion: Steve Perfit, seconded by Paul Colucci, moved that if Hudson Valley Domicile fails to sign the Voluntary Modified Agreement within the next seven (7) days, the PILOT will be terminated on March 21, 2013.

Chair O'Halloran remarked that he could not have been more straight forward; he was positive Mr. Pizza was going to sign.

Vote: The motion was adopted. Michael Horodyski abstained from the vote.

Chair O'Halloran stated that counsel under the Chair's signature, will notify the Hudson Valley Domicile that failure to sign the Voluntary Modified Agreement by March 21, 2013 will result in termination of all benefits, including their current PILOT benefit as of March 21, 2013.

TLB MANAGEMENT

Chair O'Halloran said that he has had similar conversations with Mr. Bernardo, as late as yesterday. Mr. Bernardo does appreciate the efforts of this board to modify, but at the same time, he has been sticking with his contention that his original contract did not include job requirements. Chair O'Halloran continued by saying that he has included the application for all members of the Agency to see that the applications states (Pages 12 and 17) that the applicant would create 26 new jobs. This application was the fundamental document in which the benefits were provided by the Agency just as we did based upon an application that was before the Agency today. It was 44% underperformance. He would recommend the same motion for this project. Chair O'Halloran indicated that TLB's attorney requested an extension of time. During the whole process he has tried to be as consistent as possible.

Motion: Steve Perfit, seconded by Paul Colucci, moved that if TLB Management fails to sign the Voluntary Modified Agreement within the next seven (7) days, the PILOT will be terminated on March 21, 2013.

No action was taken on this motion.

EXECUTIVE SESSION

Chair O'Halloran requested a motion to adjourn into Executive Session to discuss a legal matter regarding TLB Management.

Motion: Paul Colucci, seconded by Steve Perfit, moved to adjourn into Executive Session to discuss a legal matter regarding TLB Management.

Vote: The motion was adopted

The meeting adjourned into Executive Session at 9:29 a.m.

Motion: Paul Colucci, seconded by Steve Perfit, moved to adjourn out of Executive Session.

Vote: The motion was adopted.

The meeting adjourned out of Executive Session at 9:38 p.m.

No action was taken in Executive Session

Mr. Perfit stated that the motion should be amended that TLB Management was in violation of their contract to provide data in a timely basis for the annual review.

Motion: Steve Perfit, seconded by Paul Colucci, moved that if TLB Management fails to sign the Voluntary Modified Agreement within the next seven (7) days, the PILOT will be terminated on March 21, 2013 and that TLB Management was in violation of their contract to provide data in a timely basis for the annual review.

Vote: The motion was adopted.

Fort Shandaken (a/k/a The Emerson)

Ms. Gallagher stated that a communication had been received from the Authorities Budget Office allowing the Agency to close out the first Fort Shandaken project which would result in a FTE job number for the project in total of 86 FTE. The company provided their NY-45 and they are well in excess of that number. Of course, those don't give hours, but they do give total wages and we were able to back out from that they are well in excess of their FTEs.

Chair O'Halloran asked how many jobs they are stating in 2011.

Ms. Gallagher responded they are stating, it depends on the quarter, but the quarters differ, the average for each quarter, 106, 110, 104 and 98 and if you take a minimum wage assumption and you apply that times a 35 hour week, you are well in excess.

Chair O'Halloran requested a motion to remove Fort Shandaken from the Under Performing list for 2011.

Motion: Steve Perfit, seconded by Paul Colucci, moved to remove Fort Shandaken from the 2011 Under Performing list.

Vote: The motion was adopted.

Chair O'Halloran requested that Fort Shandaken be informed that they are not underperforming for 2011. Ms. Gallagher was directed to call them and advise of same. A follow-up letter was also requested.

PARIS UPDATE

Ms. Gallagher reported that staff was in the middle of collecting data and entering data into PARIS. They have worked out a PARIS process with the Chair whereby staff will enter all the data for PARIS and work with the Chair and he will

give the final certification on that PARIS Report. We have worked out some dates that we will sit down and go through everything together and she felt that they would be well within the timeframe required by the ABO.

OLD BUSINESS

Lloyd Park II

Counsel Scott reported that he had to get one document signed by the Chair today and then he would work with staff to notify the affected taxing jurisdictions that they need to modify their PILOT by a small amount this year, so they are going to get a little bit of money because Lloyd Park has signed their First Amended PILOT Agreement.

Lloyd Park I

Ms. Gallagher reported that there is an outstanding tax bill due and they have had communication with Lloyd Park yesterday. They had always said that the bill would be paid by the 15th of March. They were advised that the Agency was meeting today, we would prefer to have them make that payment prior to this meeting, but they are still sticking with that original date.

NEW BUSINESS

Chair O'Halloran reported that he had procured D/L Insurance, really an office policy, for the Ulster County Industrial Development Agency and one for the Ulster County Capital Resource Corporation. That allows us to hold meetings at other locations and to provide Certificates of Insurance as required. The County also requires D/L Insurance as well. In addition, he will initiate discussions with the insurance company on whether we need additional G/L policies. Counsel and he are talking about a way to protect us, just as Mr. Colucci brought up with concern about other issues. There are also construction issues for projects in which we are a leaseholder position. There is an indemnification that is built into the Agency's closing documents, but continued review with insurance brokers will be held to ensure that that is sufficient.

Mr. Colucci asked how insurance quotes were obtained.

Ms. Gallagher responded that the current policy is with Valley Group. What occurred was that two quotes were received, one from Valley Group that came back with two quotes and one from Guerin which included multiple quotes with was in alignment with the Agency's Procurement Policy.

Mr. Horodyski asked what the actual policy was.

Chair O'Halloran responded an office policy which is very limited, but that might not be all the insurance that is needed. He was going to look into it.

Mr. Horodyski asked if there was any retention deductible.

Chair O'Halloran responded that that policy may or may not be exactly what the Agency needs, but we needed something to hold the meeting here at City Hall today.

Ms. Gallagher was asked to forward a copy of the D&O Insurance to all members.

ADJOURNMENT

Motion: Paul Colucci, seconded by John Morrow, moved to adjourn the meeting

Vote: The motion was adopted.

The meeting was adjourned at 9:50 a.m..

Respectfully submitted,

John Morrow

Secretary