

Onondaga County Industrial Development Agency
Regular Meeting Minutes
April 12, 2022

A regular meeting of the Onondaga County Industrial Development Agency was held on Tuesday, April 12, 2022 at 333 West Washington Street, Syracuse, New York in the large conference room on the first floor.

Patrick Hogan called the meeting to order at 8:14 am with the following:

PRESENT:

Patrick Hogan
Janice Herzog
Victor Ianno
Susan Stanczyk
Kevin Ryan
Fanny Villarreal

ABSENT:

Steve Morgan

ALSO PRESENT:

Robert M. Petrovich, Executive Director
Nate Stevens, Treasurer
Nancy Lowery, Secretary
Karen Doster, Recording Secretary
Jeff Davis, Barclay Damon Law Firm
Amanda Fitzgerald, Barclay Damon Law Firm
Samantha Podlas, Barclay Damon Law Firm
Carolyn Evans-Dean, Office of Economic Development
Rebecca Shiroff, Office of Economic Development
Glenn Mackay, OYA Solar
Glenn Frank, OYA SOLar
Sarah Stephens, SS Funding & Procurement Resources, LLC
Peter Blasioli, Tracey Road Equipment, Inc.
Christopher Bianchi, Syracuse City School District

APPROVAL OF REGULAR MEETING MINUTES – MARCH 8, 2022

Upon a motion by Fanny Villarreal, seconded by Janice Herzog, the OCIDA Board approved the regular meeting minutes of March 8, 2022. Motion was carried.

TREASURER'S REPORT

Nate Stevens gave a brief review of the Treasurer's Report for the month of March 2022.

Upon a motion by Victor Ianno, seconded by Janice Herzog, the OCIDA Board approved the Treasurer's Report for the month of March 2022. Motion was carried.

PAYMENT OF BILLS

Nate Stevens gave a brief review of the Payment of Bills Schedule #468

Upon a motion by Kevin Ryan, seconded by Susan Stanczyk, the OCIDA Board approved the Payment of Bills Schedule #468 for \$2,407,570. Motion was carried.

CONFLICT OF INTEREST DISCLOSURE

The Conflict of Interest was circulated and there were no conflicts reported.

TRACEY ROAD EQUIPMENT, INC./GERALD W. TRACEY PROJECT (3101-20-03B)

Sarah Stephens stated Tracey Road Equipment is under way with construction and everything is going well except for the price of materials has gone up substantially. She stated their construction project requires a lot of steel, besides the delay of getting it here, has gone up by over 30%. She stated they are self-general contracting this project and they have had to undergo some change orders. She stated they are at the tail end where they think this will be the last request for an increase to get them across the finish line to get the savings they had budgeted into their plan. She stated the project has already gone over budget. She stated Tracey Road Equipment is seeking some additional assistance.

Patrick Hogan stated the Board is very receptive and is accepting of these type of changes in agreements. Sarah Stephens stated they are appreciative of that.

Upon a motion by Janice Herzog, seconded by Susan Stanczyk, the OCIDA Board approved a resolution authorizing a public hearing for Tracey Road Equipment, Inc. /Gerald W. Tracey Project. Motion was carried.

OYA SOLAR PROJECT UPDATE (3101-20-04A, 3101-20-16C, 3101-20-17D)

Glenn Mackay stated there are three projects and the first he will discuss is Church Road. He stated they were granted authorization for PILOT and tax exemption in August of 2020 and at that time they planned to start construction for spring of 2021. He stated they did begin construction in July/August of that same year and likely communicated the same to the Agency. He stated there are two components to the project; the OYA side and the National Grid side. He stated National Grid is the utility company they connect the project to. He stated come end of summer 2021 they still had no interconnection date from the utilities so they had no idea when they were going to connect that project. He stated they took their foot off the gas as they were building 3 other projects in parallel and they had interconnection dates for those projects so they demobilized the Church Road project. He stated they focused on the 3 other sites, they are now nearly complete and remobilized the Church Road project in January of this year. He stated construction is approximately 50% complete on the Church Road project at this time. He stated there are minor changes to the project from the time of application. He stated the footprint of the project was reduced by .50 acre and due to finding higher wattage solar panels which means less space is needed. He stated that is the only true change that happened to the project.

Patrick Hogan stated the project was started but the project has not closed with the Agency.

Glenn Mackay stated yes.

Patrick Hogan stated the other 3 projects have nothing to do with this project. Glenn Mackay agreed.

Glenn Mackay stated the glaring question is why the project was not closed and they are half way through construction and they've made most of the purchases. Patrick Hogan stated that is the primary issue but the other issue is information passed on to the Board about OYA employing people from outside the local labor area and asked if that is true. Glenn Mackay stated yes.

Patrick Hogan stated that would have required a waiver if OYA had closed on the project. Glenn Mackay agreed. He stated truthfully, and being transparent, it was dropped. He stated when OYA received the abatement and resolution it was passed to the construction group. He stated the construction contractor embedded it into the contract, emailed it, shared the requirements and it was not properly tracked. He stated they did not execute on the local labor policy and dropped

the sales tax too. He stated they were basically unaware of the process. He stated they purchased solar panels in early 2021 and bought invertors and transformers equipment out of state so you don't see any state tax or line items triggering the construction group to look for an exemption certificate. He stated the EBC contractor was also oblivious to the fact the exemption certificate was out there and there was thought there was a way to recover some of these costs.

Jeff Davis stated the purchases made out of state would be covered under the use portion of the sales and use tax exemption. He stated you have to let NYS Tax and Finance know when you put something into use and you pay the use tax then. He stated any purchases in NYS you need the exemption certificate at the time you purchase it in order for it to be exempt from sales tax.

Robert Petrovich stated the more seminal element of this is the ST-60 is not issued unless the project is closed.

Jeff Davis stated there was an approval for benefits in August of 2020 and they proceeded but those benefits do not come from the approval. He stated the benefits come from the closing. He stated even with proceeding with the project and providing things to the contractor etc. there would be no exemption certificate because the project doesn't receive it until it is closed. He stated there would have been a resolution of the Board. Glenn Mackay stated they fully understand that now. He stated they dug deep into this in the past few weeks to educate themselves but they were a bit oblivious to these tasks and he understands this does not absolve them from not following the process.

Robert Petrovich asked if they received their interconnection agreement with National Grid because he called them and asked them to facilitate a reach out to OYA to make that happen. Glenn Mackay stated they have not and he appreciates the effort. He stated they have been dragged along for a year and they still do not have a firm interconnect date. He stated the project will be complete come July, it will sit idle, it won't connect to the grid, it won't be generating power and won't be generating revenue. He stated they will be powerless.

Jeff Davis stated OYA proceeded a little bit at risk without having the interconnect in place and asked if there was a reason they decided to do that. Glenn Mackay stated they had contracted the construction group and hired most of the major equipment and thought they may as well take

their shot and get it in the ground rather than have the construction crew sit idle. He stated the thought was maybe National Grid will show up early or on time.

Sue Stanczyk stated OYA took the risk. Glenn Mackay stated yes.

Sue Stanczyk asked if the other two projects had the same issue and were out of state workers used. Glenn Mackay stated the other two projects mentioned are not in Onondaga County.

Jeff Davis stated construction on Camillus A and B have not started. Glenn Mackay agreed.

Sue Stanczyk asked why OYA used out of state labor and it is very clear what is required when making an application. Glenn Mackay stated the bottom line is it was passed through their Engineering Procurement Construction and they did not execute the 100% labor requirement. He stated they did not monitor it and again he understands that does not absolve them.

Susan Stanczyk asked if OYA is looking for the Agency to backtrack. Glenn Mackay stated they will have to submit a formal local labor waiver. He stated they have a draft report where they have met local labor requirements and where they have not because it is specialized. He stated the next step would be to see if the Board needs any additional information to accompany the formal request.

Susan Stanczyk asked what happens if the Agency withdraws and says we are not going to do this. She stated they took a risk and lost so what do they do. Glenn Mackay stated they live with the financial consequences.

Robert Petrovich stated the more fundamental problem is that the project started.

Patrick Hogan stated this is unique and he cannot remember a time this happened. He stated this Board is adamant about the local labor issue. He stated the Board grants exemptions because the Onondaga County tax payers give the ability to do that with the implicit understanding that local labor is used and buy materials locally. He stated the request can be submitted but he would not vote for this because they already started the project. He stated his opinion is to withdraw the financial benefits from the project.

Robert Petrovich stated he agrees with Chairman Hogan. He stated staff has been trying to get this project closed. He stated his team has done outreach and haven't been able to move the needle on this. He stated then we find out that there is an issue with the local access policy. He stated it is not just Onondaga County; it is a 10 county reach that they can get the labor from. He stated he does not see how the Agency can support the benefit package put forward.

Glenn Mackay asked if OYA may submit the formal report because it is not as if they used zero local labor. He stated there is only a few tasks that are out of state. He stated they only would look for what is fair.

Kevin Ryan stated OYA has not answered the question of what they are asking from the Agency today. He stated as far he is concerned they have not given an explanation as to why they violated the local labor requirement which is a 10 county region. He stated he understands it was passed along to the contractor and they didn't monitor it but that seems to be a "you" problem not a "we" problem. He stated OYA has an obligation to do this and this is very important to this Board and it is very important to the administration. He stated it is something the Agency is always very clear on that if we are going to give these benefits we have to hire local labor and there is a 10 county region to select from. He stated there is no explanation as to why that was not provided. He stated he thinks the entire package should be pulled until we hear the explanations being asked today.

Jeff Davis stated what he is hearing from the applicant is that they would like an opportunity to at least submit a formal waiver which they could and the Board could pick up at the next meeting if they wanted to. He stated the decision is how to proceed; either terminate the benefits or review the local labor submission. He stated he does not want to overlook the request from the applicant to submit the local labor submission. He stated there is no resolution prepared by counsel in advance of this meeting so if there was a motion today for termination it would be very similar to the motion that is listed for 3A where the Agency is dealing with two other project terminations. He stated in essence the Board would be terminating the benefits for Church Road A for whatever reason the Board wants to articulate either not complying with the local access policy or commencement of construction prior to closing. He stated there is a but-for analysis that is done on IDAs with regard to benefits and whether the project can proceed without benefits. He stated the question of will the project proceed without these particular benefits is typically asked of the applicants.

Robert Petrovich asked if there is an executed Preliminary Agreement. Amanda Fitzgerald stated yes. Jeff Davis stated typically after every approval a project/preliminary agreement is sent out and that would have been signed in 2020 which lays out the requirements and the benefits. Robert Petrovich stated it also includes the applicant responsibilities.

Jeff Davis stated there is nothing prepared today. Patrick Hogan asked if that would prevent the Board from taking any action. Jeff Davis stated no and a resolution can be developed after the fact in terms of what this Board discusses. He stated it is not how this Board has acted in the past but if there is a motion the Board wants it can be papered after the fact based upon the minutes. He stated that would then be circulated for signature.

Patrick Hogan stated it is important the Board make their feelings known and take a stand on this issue that we won't tolerate a situation when a project won't close and is in violation of the local labor/access policy.

Robert Petrovich stated staff has been trying to close the project for 20 months with no success. He stated clearing and grubbing a site is one thing but pouring concrete footers, putting up mechanicals and steel is a different conversation. He stated the project is 50% complete.

Fanny Villarreal stated unfortunately for OYA the Board has to make a decision and this is not passing.

Glenn Mackay stated the closing time was tied closer to the interconnection of the project because that is when the legal description of the project footprint is 100% accurate. Robert Petrovich stated that is not how this Agency functions. Glenn Mackay stated he understands and they were not aware of that.

Glenn Mackay asked about an agreement signed by OYA. Nancy Lowery stated it was the preliminary agreement. Jeff Davis stated after the August meeting an agreement was sent out for execution, laying out the next steps and locks them into explaining the local labor policy etc.

Glenn Mackay asked if that document was sent back by OYA. Amanda Fitzgerald stated she would have to pull it but the conversations have been ongoing what constitutes what will be

needed for closing. She stated the conversation was not held with OYA as to when the description would be ready. She stated it is hard to make a way toward closing if the information is not received from the start.

Jeff Davis asked if follow up emails were sent regarding status of closing. Amanda Fitzgerald stated she tries to do follow up emails once every month if not more. She stated she was doing that for the balance of 2020 after OYA was approved and throughout 2021. She stated she just engaged in some meaningful conversations with OYA over the last month.

Robert Petrovich stated he thinks the Barclay Damon team will attest to the fact that in the fourth quarter of 2021 we were very focused on tying up any loose ends and closing projects that had been hanging out there. He stated he knows the Barclay Damon team was making efforts to get this closed and just didn't make any progress.

Robert Petrovich stated applicants at the outset layout their case for why an exemption from the policy is necessary and the Board will entertain that. He stated in some instances because of specialized equipment and voiding of warranties they need to have the right team installing it who may be out of state. He stated the Board certainly understands and can support that. He stated others communicate along the project continuum from closing to being underway. He stated when the applicant is having trouble getting electricians, steel workers or whatever, our response is document it, create a file and it will be looked at it in the end for consideration. He stated we are not here to be punitive but at the same time we have a responsibility and generally speaking we adhere to these policies and procedures because we are audited by both the ABO and New York State Comptroller. He stated we need to be a fiduciary to the community to make sure we are complying with our requirements for oversight.

Glenn Frank stated he is new counsel to OYA and has recently become aware of the situation. He stated he has had conversations on a couple of occasions with Amanda Fitzgerald about this. He stated he and Glenn have tried to put themselves in a spot where they can address some of the issues. He stated he will say without hesitations that this was not handled properly and his job now is to handle some of these issues with regard to PILOTs and IDAs. He stated he is going to better manage this project process going forward and that one of his core missions. He stated he would ask the Board to table this to give them a chance to provide all the information that Glenn Mackay has put together with regard to what they have done in terms of local labor. He stated he

thinks there is a quite a bit of local labor used here and would love the opportunity to present that to the Board before the benefits are pulled. He stated pulling the benefits on this project makes the economics very difficult and he can tell the Board from his perspective, that going forward this is going to be handled significantly different because it is now going to be his responsibility to follow through on what the requirements are. He stated it is his mission to make sure they adhere to all these terms and requirements on the resolutions, closing time frames and everything going forward. He stated he does not know if the Board would indulge in this and they would love the opportunity to provide the waiver information with the pledge that they are going to handle this significantly different in the future. He stated it would fall on his shoulder to manage this process and he apologized for not becoming involved earlier although he just arrived. He stated he has had a good working relationship with Barclay Damon in the past and he is hopeful the Board will give OYA a little bit of leeway on this to see if they can address some of the Board's issues to keep this project at least economically viable.

Robert Petrovich stated he appreciates Mr. Frank's comments and understands them but he is not sure the Board's appetite relative to Church Road. He stated there may be an opportunity to up their game on Camillus A and B depending on where we are with updates on that. Glenn Frank stated they will definitely do that.

Patrick Hogan stated he is going to entertain a motion to withdraw consideration of the OYA Church Road project benefits for failure to close and failure to ask for an exemption from the labor provision. Jeff Davis stated after failure to close also add the verbiage that construction has commenced. Robert Petrovich stated the project is 50% complete.

Patrick Hogan stated withdrawing consideration of the benefits due to construction already started on the project, failure to close on the project with OCIDA and failure to ask for a labor exemption provision. Jeff Davis stated that is sufficient and he understands the motion. The Board stated they understand the motion.

Glenn Mackay asked if the waiver request may be made after closing. Patrick Hogan stated the problem is the project never made it to closing.

Jeff Davis stated Mr. Mackay mentioned OYA has something prepared in terms of numbers and what they used for local labor and didn't. He asked what the percentage is. Glenn Mackay

stated he does not know the percentage but of 15 tasks, 5 comply and the remaining 10 are either nearby towns due to lack of availability or specialty tasks such as installing foundations that can only happen from the supplier. He stated he was hoping to at least share a draft for the Board today and formalize so when he does make a submission everything is contained in this.

Susan Stanczyk asked if the nearby counties are included in the 10 county regain. Glenn Mackay stated they are in St. Lawrence County.

Upon a motion by Patrick Hogan, seconded by Kevin Ryan, the OCIDA Board approved a resolution to withdraw the Agency benefits due to construction already starting on the project, failure to close on the project with OCIDA and failure to ask for a labor exemption provision. Motion was carried.

OYA CAMILLUS A and B

Glenn Mackay stated they have given notice to proceed to their construction contractor and what that means is to do detailed final design. He stated that will occur in the next 6 to 8 weeks. He stated they plan on mobilizing the site in July. He stated the site division was ready for final approval last year. He stated they did not apply for final subdivision approval from the Town of Camillus because plans had changed and they shifted the lot line. He stated the Town told them to come back when they are ready and they will give them final approval. He stated they went back last month and requested approval but since it's been so long they want to satisfy all conditions of approval which means it's still 6 to 8 weeks for approval and filing of subdivision.

Nancy Lowery asked if closing can't occur until the subdivision is finalized. Jeff Davis stated a final closing can't be done until there is a legal description otherwise we have to go back and amend it, record things etc. He stated the Agency can do a partial closing for the sales tax exemption so that is in place. He stated OYA may want that in place if they provided their EPC contractors a notice to proceed. He stated in essence the Agency would ask OYA to pay the closing fees, the IDA fees etc. then they would receive the sales tax exemption. He stated once the subdivision is done then the Agency would do the formal closing on the PILOT and lock everything up in the lease/leaseback agreement. He stated it is a financial obligation on OYA committing to the Agency and paying all the fees as if the closing is happening. He stated the closing will be pulled apart into Part A and Part B. He stated in part A OYA will get the sales

tax exemption so there is no questions and they can move forward. He stated give the tax exemption certificate to their EPC and make sure they are using it. He stated OYA can give the PILOT will not happen until the lease/leaseback closing is done.

Robert Petrovich stated the ST-60 will have a sunset and will not be out there forever. He stated OYA will still have to close. Jeff Davis stated the ST-60 will be limited to 3 months or less. He stated it expires unless they close on the PILOT. He stated he recommends OYA doing this so we don't run into this issue again. He stated he would like to do a motion of the Board approving a temporary sales tax exemption so if they come in it is ready and the Agency can move forward without coming back for that purpose.

Jeff Davis stated if they are going to proceed in closing the way that we just said then we want to make sure the Board is approving that temporary sales tax exemption closing for a limited time period.

Robert Petrovich stated they are going to pay their fee, then they are going to have 60 days to use the ST-60 otherwise it becomes void and they need to close.

Patrick Hogan asked if they have to buy everything local and will not get the exemption unless they do. Robert Petrovich stated all of the Agency requirements are in place. Jeff Davis stated the exemption doesn't require them to buy locally but the labor is local. He stated the purchases done in New York they have the exemption in place.

Glenn Frank asked if they will be able to use the exemption for 60 days and if they close within that 60 day period they will get the full time period to use the exemption. Jeff Davis stated yes.

Patrick Hogan asked if the panels are produced overseas and is there a local retailer here. Jeff Davis stated he is sure most panels are produced overseas because there is a limited amount of manufacturing here right now. He stated there may be a local NYS retailer but he is not sure.

Patrick Hogan asked if they will need a waiver. Jeff Davis stated that is not a labor issue. He stated the labor is the installation.

Patrick Hogan asked about sales tax. Jeff Davis stated the sales and use tax exemption applies for any products purchased in NY or products outside of NY. He stated it does not have a requirement that you have to purchase the things with the 10 county region. He stated it is just a broad NYS sales tax exemption for the 4% exemption that Onondaga County charges. He stated they are already exempt statewide for the 4% the state charges. He stated the same would apply for the use tax exemption because they are already exempt by state law for the state portion.

Susan Stanczyk asked what happens if they do not purchase anything within 60 days or do not pay the fees within 60 days to the Agency. Robert Petrovich stated they need to pay the fee in order to get a 60 day window.

Susan Stanczyk asked if it is 60 days from today or 60 days from when they pay the fee. Jeff Davis stated 60 days from when they pay the fee. He stated if they take 2 weeks to close or get to the sales tax closing, the 60 days will start at that point. He stated they will have 60 days to use that sales tax exemption to purchase what they need to purchase. He stated it also shows that there was a closing so if the project starts construction there are no questions. He stated when the subdivision is complete they now have the legal description that the Town has approved to say "here is the lot". He stated without the legal description we cannot close on the lease/leaseback when doing a subdivision. Robert Petrovich stated if they don't close they will be subject to a clawback.

Upon a motion by Janice Herzog, seconded by Fanny Villarreal, the OCIDA Board approved a resolution granting a temporary 60 day use tax exemption upon initial closing for both Camillus A and Camillus B. Motion was carried.

PROJECT TERMINATION – TAFT SOLAR, LLC AND NYCANNA, LLC

Robert Petrovich stated both Taft Solar, LLC and NYCANNA, LLC have decided not to pursue IDA benefits after being induced. He stated this is a cleanup of those two projects and getting them effectively off our books.

Susan Stanczyk asked why they are not seeking IDA benefits. Robert Petrovich stated they decided it was not worth it. Jeff Davis stated NYCANNA needed to move forward with construction quickly and they couldn't close with the IDA because there were NYS Health

Department questions regarding the arrangement given their business. Robert Petrovich stated it was a sales tax deal. Jeff Davis stated they couldn't use the sales tax exemption any more.

Nancy Lowery stated when Taft Road Solar looked at the change in NYS law in how the assessment came out with a rate for different solar projects they found it more financially beneficial to pull the PILOT and go with the new rate.

Jeff Davis stated NYS passed a modification to their tax laws creating a statewide formula for renewable energy/solar/ wind projects of a certain size. He stated it is all calculated on a cash flow model. He stated the state has tried to standardize it for assessors across the state for projects without PILOTs. He stated if they have a PILOT there are special district assessments that are outside the PILOT governed on the assessment of the project. He stated the state came up with a model and assessors were directed to use it as of April 1. He stated Taft Road looked at that model and what it was predicting for their tax basis then they looked at what their PILOT was going to be and decided to proceed with the model instead of the PILOT.

Nancy Lowery stated it was a smaller facility with 3.25 megawatts. Jeff Davis stated they decided to not pay the OCIDA fee and go under the model.

Upon a motion by Susan Stanczyk, seconded by Janice Herzog, the OCIDA board approved a resolution acknowledging the withdrawal of the application submitted by Taft Solar, LLC (3101-21-09B) and NYCANNA, LLC (3101-21-14A) and revoking any and all financial assistance granted to each company in connection with the projects associated with each project number. Motion was carried.

ADJOURN

Upon a motion by Susan Stanczyk, seconded by Janice Herzog, the OCIDA Board adjourned the meeting at 8:49 am. Motion was carried.



Nancy Lowery, Secretary