

Onondaga County Industrial Development Agency
Special Meeting Minutes
July 6, 2015

The regular meeting of the Onondaga County Industrial Development Agency was held on Monday, July 6, 2015 at the 333 West Washington Street, Syracuse, New York in the large conference room on the first floor.

Chairperson Daniel Queri called the meeting to order at 3:08 am with the following:

PRESENT:

Daniel Queri
Victor Ianno
Patrick Hogan
Lisa Dell

ABSENT:

Jessica Crawford
Steve Morgan
Janice Herzog

ALSO PRESENT:

Julie Cerio, Executive Director
Honora Spillane, OCIDA, Secretary & Treasurer
Karen Doster, Recording Secretary
Tony Rivizzigno, Gilberti Law Firm
Kevin Roe, Gilberti Law Firm
Ryan McMahon, Onondaga County Legislature
Steve Coker, Office of Economic Development
Emily Vilardi, Office of Economic Development

CONFLICT OF INTEREST DISCLOSURE

Dan Queri stated that a conflict of interest disclosure was prepared and it will be circulated if there is something that the Board will vote on.

EMINENT DOMAIN DISCUSSION

Dan Queri stated that he believes everyone saw the letter that was distributed and we are here to discuss that in more detail to come to a decision on how to advance this.

Ryan McMahon stated that timing is important that the Board consider this. He stated that currently the Roth Steel property is in bankruptcy filing and OCIDA is a creditor. He stated that a potential

transaction fell through with a local gentleman where he was to bring Roth Steel back to full potential, redevelop it and clean it. He stated that a competitor from Canada is looking at using the site in its old purpose of a scrap yard which from a public standpoint and a public policy maker is not an acceptable alternative. He stated that considering how the IDA is a creditor he thinks the IDA has natural claim to the site. He stated that over a billion dollars has been spent cleaning up the lake. He stated that the New York State is being upgraded through the \$500,000,000 Upstate Revitalization effort and companies and other sites on the west side of the lake are looking to participate in the process. He stated that there is so much public investment already in this lake and the surroundings by it and now is a real opportunity to look at finishing up what we started. He stated that by many counts the Roth Steel site is polluted and some might say the site still pollutes into the lake and needs to be cleaned up. He stated that to connect the loop to lake trail, the Roth Steel site would be needed and necessary. He stated that when you look at where the site is strategically located besides being on the lake and being a site for public purpose, it is next to the Waste Water Treatment facility. He stated that as a community going forward when you have to grow and develop, you need sewer capacity and we don't know down the road what that means. He stated that when you look at the success that we have had and the fact that we are planning and moving forward with both west, east and city side of the lake, the investment already made, and the public purpose this large parcel could potentially play, he thinks it is appropriate that the IDA takes control of an important piece of property through eminent domain. He stated that he thinks IDA's are a very good purpose for this and there is a large public purpose on this property.

Victor Ianno asked if the sewage treatment plant had to expand would it expand there or would it be moved. Ryan McMahon stated that he would think that the acreage there. He stated that he thinks this is unique because there is a key piece of land that is 27 acres that could be used for a public partner partnership or a Center of Excellence with waste and storm water right next to WEP.

Lisa Dell asked what the process is. Tony Rivizzigno stated that there is State money for cleanup that we would do an application where the State would provide .85 cents on the dollar. Ryan McMahon stated that it is as high as .95 cents on the dollar in some cases.

Pat Hogan asked who holds title to the property now. Tony Rivizzigno stated that it is in bankruptcy court. He stated that the company that came in and bought it has already given the money for the property to the Trustee in Bankruptcy but they have not signed the deed yet. He

stated that if the deed was signed tomorrow it would be transferred to the new owner. He stated that one of the things we might look at is having a conversation with the new owner that we are looking to condemn this property and ask if they are willing to sell to us.

Victor Ianno asked if successful in claiming the property, suddenly we are entrepreneurs and in the market of real estate. Tony Rivizzigno stated that we don't necessarily take it to market but we may take it to use ourselves for our own purposes. He stated that there are several other public uses in addition to the trail but they need to be projects the Agency can undertake.

Daniel Queri asked if the procedure we are taking is property for public purpose. Kevin Roe stated that we can acquire it voluntarily through a sale. He stated that the first step of the eminent domain process is to identify the project within the scope of the IDA and what are we acquiring the property for. He stated that part of the purpose is to certainly prevent pollution. He stated that the Board may want to have a committee study that.

Lisa Dell stated that we are subject to what can be put there and depends on what it is zoned. Honora Spillane stated that the lake front has a separate zoning district.

Ryan McMahon stated that he thinks the key is to get control because we immediately stop something bad from potentially happening to something that we have already spent a billion dollars cleaning. He stated that there are plenty of different uses for 27 acres of land.

Pat Hogan asked how specific does it have to be and asked if it can be a general plan. Kevin Roe stated that if there is a specific project we can review a specific project under SEQR but if there is a general project it would be a generic review of all the potential development scenarios. He stated that as long as there is an underlying public purpose you can acquire the property and preserve it, removing blight so to speak.

Victor Ianno asked if SU would be interested in the environmental. Ryan McMahon stated that ESF would be an interested party. He stated that they have been a very interested party in everything that Honeywell has been doing. Honora Spillane stated that they are investing in the Inner Harbor.

Victor Ianno asked procedurally how we do this. Kevin Roe stated that as you identify the project whether it is conceptual or very specific project and then the Agency would have to start the environmental review process. He stated that there is a public hearing under the eminent domain process which is the first stage at which you have to identify the public purpose, the location of the project and the environmental review. He stated that it also serves as the environmental review hearing so at that stage you would typically have a draft EIS prepared if it requires one and that serves as the time to comment. He stated that to start that process the right to enter the property is needed to do studies needed to prepare the EIS. He stated that the process starts with the hearing and once there is a hearing within 90 days after that hearing the IDA would make a determination whether to go forward with acquiring the project by either condemnation or by voluntarily purchase. He stated that the Agency would make the findings under the environmental review and once that determination in findings is made that starts a 60 day statute of limitations for the property owner to challenge the Agency's right to take the property. He stated that once you get through that challenge the Appellate Division says you have the right to take the property and go to Supreme Court taking the property by showing what was done, the map of what we want to take and then the property is the Agency's. He stated that the evaluation is a later process and may have to fight how much to pay for it with the property owner. He stated that before going to Supreme Court negotiations with the property owner are done with appraisals and there is an obligation to offer the price of the highest appraisal. He stated that they can either accept that amount as an advance payment and reserve the right to claim additional compensation or they can just accept that.

Victor Ianno stated that this could run the price up past \$600,000. Kevin Roe stated that there is no guarantee that the \$600,000 is going to be the price that the court ultimately determines is the fair compensation for the property. He stated that the compensation is based upon the property and its highest invested use not necessarily its existing use but contamination would be taken into consideration.

Daniel Queri asked after we engage if we can get out at any time. Kevin Roe stated that until you go to Supreme Court and file the map you can get out anytime.

Daniel Queri stated that some of the liability, concern and issues of the Agency going onto a 27 acre site that has had contaminants on it for number of years there are two ways to approach it which is we don't have to worry about quite yet and will happen later on in the condemnation process or if

we want to have a better set of brains up front we can get to the first step of having the public hearing and get on site to get a better read on the environmental. He stated that he thinks the good thing about a public hearing is we are going to hear from the community and he thinks it will generate support in this process.

Honora Spillane asked who we get permission from to get on the property to start doing the environmental. Ryan McMahon stated that it is the trustee right now and that is why timing is important.

Julie Cerio asked how procedurally that happens and asked if a letter goes out to the Trustee saying we want permission to enter the property to do an evaluation. Kevin Roe agreed and said that is normally how it is done but if there is a dispute the eminent domain procedure law gives the authority the right to enter the property. He stated that if there is objection about the scope of what you are allowed to do then you go to court.

Honora Spillane stated that the Agency's authority comes from our eminent domain power not the Trustee. Kevin Roe agreed.

Lisa Dell asked if the possible owner sells do we need to have a public hearing. Tony Rivizzigno stated no. Daniel Queri stated that the public hearing is for eminent domain.

Victor Ianno asked if it is worth trying to buy it privately and why not just go to the trustee and ask. Tony Rivizzigno stated that he doesn't see why not but the problem with going to the trustee is that he has already had a sale that has been approved by the Court so for him to change it on his own he would have to go back to the court to cancel which is not likely to happen.

Ryan McMahon stated that he thinks there is probably value in letting the trustee know that the IDA is considering this path because then the trustee will let them know and changes a lot of things.

Victor Ianno asked if buying this with full knowledge we are going to be responsible for it but we are not sure there is State money available are we going to end up with this with no funds to take care of it. Daniel Queri stated that until we get to the end we don't have to buy it. He stated that we

need to get on the site in advance of the public hearing to be able to do the proper analytics on the environmental side to conduct a proper SEQR and that is something counsel would guide us on.

Tony Rivizzigno stated that one of the things we need to be aware of is if the proposed owner wants to challenge our right to take it he is going to do it on the SEQR process so we want to make sure that the SEQR process and the eminent domain process is done properly so he loses that right. He stated that he can challenge it but he is not going to win.

Pat Hogan asked who pays for that. Tony Rivizzigno stated that the Agency will.

Pat Hogan stated that we don't know how tough it will be to put a junk yard there with the city regulatory because there was a person in City hall saying we can't stop them. Tony Rivizzigno stated that it is a junk yard now and you can't say yes to one but no to someone else.

Pat Hogan asked if the potential buyer can hold us up by doubling the price of the property. Kevin Roe stated that is where eminent domain will come in.

Lisa Dell asked if he is subject to zoning. Honora Spillane stated that it is essentially grandfathered in.

Victor Ianno stated that the value could be driven up because he would show in court he was going to make it a junk yard and make hundreds of thousands of dollars and the property is worth more. Kevin Roe stated that it is market value of the property not the value of the business. Ryan McMahon stated that he is buying it for \$600,000.

Pat Hogan asked if he would have to clean the property before starting the junk yard. Tony Rivizzigno stated that he is not sure what process they are in or the stage of the DEC. Daniel Queri stated that it would depend on disruption.

Kevin Roe stated that the Agency can start the process without committing to the process. He stated that you are not committed until you go into Supreme Court filing the map.

Julie Cerio asked what the cost is for the environmental and the legal fees. Tony Rivizzigno stated that they are going to be fairly substantial and would do a separate retainer agreement. He stated that SEQR is not a normal SEQR done for a project because this is bigger. He stated that the legal fees beyond that depend on what happens but SEQR will be around \$10,000.

Victor Ianno asked about the engineering and asked if any of the local engineers can do it. Kevin Roe stated that it depends on what the project is and the local companies can do it.

Daniel Queri stated that if we go through with this and obtain it, we don't necessarily have to be the ones to clean it. He stated that he understands the extension of the walk and he believes there are going to be dollars to match to clean it up. He stated that he we want to be indemnified from Honeywell for any exposure moving forward.

Victor Ianno asked if Honeywell can have us pay them. Ryan McMahon stated not if the Agency is indemnified through the Brownfield program given through the State.

Daniel Queri stated that he thinks it is important to get the community feedback. He stated that we can't get the community feedback without engaging and doing the proper steps. He stated that we need to get a better exposure on what fees for both legal and SEQR. Tony Rivizzigno stated that he can get the fees for the Board or next meeting.

Julie Cerio asked Ryan McMahon how he is going to make the public aware. Ryan McMahon stated that he has no problem talking to the public about the request to the IDA.

Ryan McMahon stated that this action would potentially scare them off from taking title. He stated that if the State of New York understands that this body is serious about taking the property and the trustee understands that, the State of New York is the only one that can grant them indemnification and why would they do that if they are going to own it for 2 to 3 weeks.

Pat Hogan asked if this would be the first time that OCIDA has used eminent domain. Tony Rivizzigno stated to his knowledge yes.

Julie Cerio stated that she doesn't think there is going to be a big issue in public opinion for putting in a steel scrapyards there but it will be the tax consequence will be.

Honora Spillane stated that as a friendly public minded owner we could also say we don't care about the special permit anymore and get it off the chain of title. She stated that there are a lot of things we can do as a friendly entity that are useful for everyone involved.

Tony Rivizzigno stated that we need to get the process started with SEQR but we are nowhere near ready to call a public hearing. He stated that for the July 14 meeting a detailed estimate will be provided to the Board of what the SEQR is going to cost and maybe adopt a resolution at that time.

Honora Spillane stated that under the procurement policy given the time constraints we don't have to RFP but it wouldn't hurt to go out to 2 or 3 people to get a scope on that.

Tony Rivizzigno stated that first thing he would do is call the trustee and let him know what the Agency is doing. Ryan McMahon stated that he thinks the trustee is key and if the trustee knows he is going to tell them.

Daniel Queri asked if we should authorize our counsel to contact the trustee to inform them of the Agency's intent. Ryan McMahon stated that it would make sense. Tony Rivizzigno stated that he has already talked to the trustee and he is aware of it but he hasn't told him that we are doing it.

Julie Cerio asked if we need something more formal. Tony Rivizzigno suggested a resolution authorizing him to send a letter to notify the trustee in bankruptcy that we are considering taking this parcel by eminent domain.

Upon a motion by Lisa Dell, seconded by Victor Ianno, the OCIDA Board approved a resolution authorizing Agency Counsel to send a letter notifying the Trustee in bankruptcy that OCIDA is considering taking this parcel by Eminent Domain. Motion was carried.

Kevin Roe asked if the Board wants to authorize an RFP but the RFP is going to require thinking about what kind of projects and some brainstorming will be needed. Ryan McMahon stated that we want to be most general as possible.

Honora Spillane stated that we have RFPs from White Pine that we can piggy back off of but someone else should look at it besides her. Kevin Roe stated that he can look at it.

Honora Spillane asked how much time realistically should we be thinking about in terms of RFPing and when we need to hold a public hearing. Kevin Roe stated that he doesn't see a rush other than to get the message out to the possible owner.

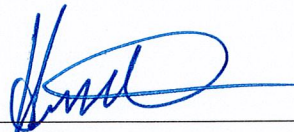
Ryan McMahon stated that he believes there is an opportunity cost with the fact that if you know if this process were to happen this year and knowing what you could do getting the Brownfield tax credit potentially utilizing REDC processes and other funding. He stated that there is an absolute opportunity cost in his opinion.

Daniel Queri stated that this Board doesn't need to approve developing an RFP; we just need to approve the RFP that we develop. Tony Rivizzigno stated yes.

Julie Cerio asked if we need to set it in motion. Tony Rivizzigno stated that an RFP needs to be authorized to be issued.

Tony Rivizzigno stated that he spoke to him a week or so ago about the status of the closing and he asked why. He stated that he answered that the Agency may be interested in doing something. He stated that they hadn't signed the deed and were in the process of completing the Brownfield application which is not contingent for the closing.

Upon a motion by Victor Ianno, seconded by Pat Hogan, the OCIDA Board adjourned the meeting at 3:55 pm. Motion was carried.



Honora Spillane, Secretary