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Board Meeting
of the
Yonkers Economic Development Corporation

November 1, 2016
9:55 a.m.
40 South Broadway
Yonkers, New York 10701

TRANSCRIPT OF PROCEEDINGS

EXECUTIVE AGENDA

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- 1. Roll Call
- 2. Resolutions for Consideration:
 - 1. Resolution for Financial Assistance with YIDA
Financial Assistance - SoYo Exalta LLC
- 3. Legal Updates
- 4. Other Business
- 5. Adjournment

Reported By:

Margaret Prendergast
902 Pleasantville Road
Briarcliff, New York 10510

2 A P P E A R A N C E S

3 BOARD MEMBERS

4 DEPUTY MAYOR SUSAN GERRY - SECRETARY

5 CECILE SINGER - BOARD MEMBER

6 PETER KISCHAK - BOARD MEMBER

7 MELISSA NACERINO - BOARD MEMBER

8

9 IDA STAFF

10 JAIME MCGILL - IDA EXECUTIVE DIRECTOR

11 MARY LYRAS - IDA CHIEF FISCAL OFFICER

12

13 OTHER

14 SHAWN GRIFFIN - HARRIS BEACH PLLC/TRANSACTION COUNSEL

15 DAVID ROTHMAN, ESQ. - HARRIS BEACH PLLC/TRANSACTION
COUNSEL

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1 Proceedings

2 MS. GERRY: So, we're calling to order
3 the Special Meeting of the Yonkers Economic
4 Development Corporation, November 1st, 2016.

5 We'll do Roll Call.

6 MS. LYRAS: Mayor Spano is excused.
7 Deputy Mayor Gerry?

8 MS. GERRY: Here.

9 MS. LYRAS: Cecile Singer?

10 MS. SINGER: Here.

11 MS. LYRAS: Pete Kischak is running
12 late.

13 And Melissa Nacerino?

14 MS. NACERINO: Here.

15 MS. LYRAS: Deputy Mayor, we have a
16 quorum.

17 MS. GERRY: Great, thank you.

18 The first item on the agenda is the
19 Resolution for Consideration of the Resolution for
20 Financial Assistance Coordinated with the IDA for
21 SoYo Exalta LLC.

22 Harris Beach, you want to speak with us?

23 MR. GRIFFIN: Sure. The background on
24 this particular project -- they've been -- RXR has
25 been trying to vote for that site for a couple of

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2 years now. They've worked with the administration
3 on all the financial assistance. A year ago or
4 last December in 2015, the IDA did the final
5 Resolution and that's reflected in the
6 (inaudible.) The final resolution kind of played a
7 mortgage tax exemption and a property tax
8 agreement consisting of UTeC and the sales tax
9 exemption build-out. All that's able to be
10 delivered up to about a month ago.

11 A month ago, it was actually John Jay
12 from Sysco from Syracuse, he was worried about the
13 transportation funding for the local
14 transportation district. He had introduced the
15 bill a few times and it just caught wind at the
16 end of the last session. And the assembly guys
17 picked up on it for MTA and passed it. It
18 surprised everybody when it went through. So,
19 what it effectively says is the IDA, of the 1.8
20 percent mortgage tax, that is in your community,
21 about .25 percent goes to MTA to fund their
22 activities. The aggregate amount for this bill is
23 a few million dollars, state-wide. So, it's a
24 little odd that they would pass this like this.
25 And it gives us pause, you know, this starts to

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2 erode the IDA's ability to do the transactions
3 that we've been accustomed to.

4 Long story short, the lease was the
5 ones, that are in final resolution like this, that
6 have already done all their performance and all
7 their activities. This is about a \$300,000 change
8 in their costs. There's a \$120,000,000 mortgage,
9 .25 percent. So, it's a little shy of \$300,000.

10 The difficulty with it is, we're seeing
11 a whole series of projects. We've got about a
12 dozen of them so far. We're getting through them.
13 Some are coming back to the IDAs and EDCs and
14 letting that go through the government's process.
15 But effectively, our Economic Development Agency,
16 which is the primary one for the IDA, offered a
17 complete mortgage tax exemption, a year ago
18 December, that it can't deliver today. It can't
19 deliver it without a sister entity. A sister
20 entity --

21 (Mr. Kischak is now present.)

22 MR. KISCHAK: Sorry I'm late. I thought
23 it was tomorrow.

24 MS. SINGER: Since he's retired, he
25 sleeps in.

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MS. GERRY: Yeah, right. What is this?

MR. KISCHAK: Can't blame a man for trying.

MS. MCGILL: Can we just make sure that the record states that Pete Kischak is here.

MS. SINGER: Yes.

MR. GRIFFIN: We're just getting started so you're perfectly on time.

Pete, background, the IDA approved the RXR project, what they call SoYo, December 2015. They negotiated a pilot, we're ready to close. That approval kind of played in full, mortgage tax exemption, property tax exemption and a sales tax exemption. The difficulty they had is, at the end of last session, a surprise bill went through. Cecile knows more than I on how that happens but at the eleventh hour one went through. And it said that the IDA can no longer exempt the mortgage tax that goes for the transportation districts. So, that's in this community. That's in Albany, Syracuse, Rochester area and Buffalo.

The difficulty is, the Governor is going to veto it. He actually announced he was going to veto this bill. And then he worked with the

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2 Legislature and they promised they would do a
3 Chapter Amendment. Now, that's all well and good.
4 The newspaper wrote it up with the Governor
5 successfully defending this thing and vetoed it.
6 Or he didn't veto it. He said, "I'll sign it but
7 you have to do a Chapter Amendment." Now, you
8 have to be in session to do a Chapter Amendment.
9 By the time they handed the bill to the Governor,
10 it was well past that. And so, there will be no
11 Chapter Amendment, at least, you now, he signed it
12 about a month ago. So, there's a lot of confusion
13 in the community up there.

14 RXR is not -- was not prepared for a
15 \$300,000 surprise. The .25 percent mortgage tax
16 at a \$120,000,000 mortgage that they're closing,
17 was almost \$300,000 in savings. Very, very
18 significant to them. So, giving that we approved
19 it by the IDA, now the IDA can't deliver it. The
20 company -- the discussions never went this far
21 because we checked with the administration and set
22 this up to come and talk to you, but, the IDA is
23 also getting a significant fee. None of the --
24 the two other deals we have, the developer
25 immediately goes to that fee and says, "I'm not

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2 paying a full fee if you're not giving the full
3 benefits you were suppose to provide." That's not
4 really the reason to do it. It's more background.

5 Why does YEDC step up and offer the
6 benefits? Over time, these Local Development
7 Corporations and IDAs, and I knew a lot of Local
8 Development Corporations, so let me just use the
9 term YEDC, but it's formed under that statute, can
10 become kind of the sister entity for economic
11 development. So, when IDAs, after 2008, couldn't
12 do bonding, YEDC does the bonding. There's some
13 bonding. The primary bonding that we do, when we
14 first came and talked to you, it was for housing.
15 Low-income housing tax credits deals. The one
16 from that went out the window actually was the
17 first one. Those deals are for-profit actually.
18 They're also formed to do not-for-profit tax
19 exempt bonds. We generally don't see those that
20 often unless you have a hospital or college like
21 Sarah Lawrence College, something like that. So,
22 in other communities they are being done for, and
23 I think Sue you mentioned this, the IDA and --
24 from '93 until 2008, or from '86 to 2008, could
25 assist not-for-profits, owned or not-for-profits,

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2 is called Symmetry Facilities. That definition
3 came and went, came and went. It finally went
4 away completely in 2008. That's when --

5 MS. SINGER: Because the job -- because,
6 you know, there was another factor.

7 MR. GRIFFIN: Another factor, I think,
8 quite frankly, if you look at what's happening
9 since then, Yasmine is taking over most of the
10 not-for-profit bonding. And out there in the
11 community since 1954, there's an IRS ruling that
12 says you can use this type of entity if the mayor
13 of the city controls it for bonding. Well, since
14 the sixties, there was also the opinion -- these
15 Local Development Corps were formed under the
16 Membership Corporation Law. And then they were
17 consolidated into the not-for-profit Corporation
18 Laws in the seventies under 1411. So you hear
19 those different terms.

20 These Local Development Corporations
21 pre-date the 1969 IDA Act. But the 1969 IDA Act
22 focused on bonding until '86. You know, bonding
23 was the biggest thing to talk about. So over
24 time, IDAs became a bigger front for economic
25 development in a lot of areas. These Development

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2 Corps, we kind of stopped using because we didn't
3 need them because the IDAs could do all four
4 things. When they start to peel them back what
5 IDAs can do, we start revisiting these sister
6 entities. So, first we did bonding, after 2008.
7 And now, it's a mortgage tax. The mortgage tax,
8 this is commonly done for SBA 504 loans, it's kind
9 of really done for the old JBA programs. That's
10 when these types of LDC were very, very active
11 back in the sixties and seventies. So it's not
12 unique. There's a bunch of cases on it that you
13 can. They send these mortgagor or mortgagee to
14 provide the exemption. What we're proposing here,
15 if the board approves it, is deliver a full
16 mortgage tax exemption by this entity. RXR owns
17 the land. Just like the IDA, there's a lease to
18 the IDA and a leaseback. So they have a property
19 interest. They can then grant a mortgage against
20 that property interest and the key thing is the
21 IDA tells the clerk, "I'm responsible for
22 recording it. I'm the exempt entity. Here's an
23 affidavit from our counsel. Please record it."
24 Well now that affidavit has to have an exception
25 that says except for the transportation tax.

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2 So we want to do the same thing. We now
3 have the, for a short period of time, through
4 December 31st, YEDC would be in a lease/leaseback
5 structure. We would simply need a writer that
6 says for purposes of definition of agency in a
7 lease/leaseback, it includes the IDA, the YEDC.
8 But YEDC is only in title through December 31st.
9 That way, you're only going to have to report this
10 for the YEDC project one year. And so, they only
11 have to be in there the day they record the
12 mortgage. And then both parties will commit to
13 record the mortgage. The IDA is typical of the
14 IDAs that typically -- the YEDC could do it on
15 their own. We're going to say both in case there
16 is any challenges to that. So, at this point, the
17 proposal is, the YEDC as the sister Economic
18 Development Agency would enter, through a writer,
19 one or two page document, that says, "I'm in it
20 too with the IDA to get a lease/leaseback from
21 RXR. You're not providing a sales tax exemption.
22 You're not providing a property tax exemption.
23 It's all done by the IDA. Only an IDA can do a
24 pilot.

25 MS. SINGER: All right. So, my question

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is, will you give us a legal opinion? Okay.

MR. GRIFFIN: Yes.

MS. SINGER: Okay. So, a legal opinion will be attached to this bill?

MR. GRIFFIN: Sure. Yes.

MS. SINGER: Okay. So, you will have a written legal opinion describing what you just said. And that we are entitled to do this, the EDC.

MR. GRIFFIN: Yes. It will be unqualified and we'll attach it to your form and you'll approve it at your next meeting.

MR. KISCHAK: Is this the first time anything has been done like this?

MR. GRIFFIN: We've done about a dozen of them since this happened about a month ago. When the Governor announced he was vetoing it, we thought we were all set, when it was the press cycle. It was literally about a month ago. And the problem is, this Chapter Amendment --

MS. SINGER: It's unique.

MR. KISCHAK: I remember you talking about that at the last meeting.

MR. GRIFFIN: I probably mentioned it,

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yes.

MR. KISCHAK: Yes. So, has there been any challenges?

MR. GRIFFIN: No. I don't think there can be because the right to do it goes back to the sixties. And you'll be screwing up all these --

MS. SINGER: We're technically not a Local Development Corporation. We're an EDC.

MR. GRIFFIN: No, you're a --

MS. SINGER: We can be under, you know, we can be in that category. But we still are a separate entity.

MR. GRIFFIN: Correct. I think the terminology, I just want to mention is -- you're right. We use the term Economic Development Corporation but we're forming under 1411 Not-for-Profit Corporation Law. And that's the one that says exempt from taxes. You have to be that kind of not-for-profit.

MS. SINGER: So, you have to be able to trace it back.

MR. GRIFFIN: Right.

MS. SINGER: It's a complex area as you say and you know.

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MR. GRIFFIN: It's actually going back to old school to tell you the truth. We were doing this -- I wasn't doing this. They were doing this in the sixties.

Questions? Concerns?

MS. GERRY: There's no cost whatsoever to the EDC since they're not extending any debt, they're not extending --

MR. GRIFFIN: Correct. And again -- Jaime and you guys can talk about this but the large fee that goes to the IDA, it can all go to the IDA. You can put a little bit in the EDC, whatever you want to do.

MS. GERRY: How much is the fee?

MR. GRIFFIN: 911? 912?

MS. MCGILL: Yes.

MR. GRIFFIN: \$912,000.

MS. GERRY: I'm sorry?

MR. GRIFFIN: \$912,000.

MS. MCGILL: 907.

MR. GRIFFIN: Plus your two grand for the EDC.

MS. MCGILL: And then we can charge them our annual fee for the Three Triple A recording

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under YEDC.

MR. GRIFFIN: Yes. And the nice thing is without further paperwork, it's, by it's own documentation, in the County Clerk's office is going to say the YEDC is not in this after December 31st.

MS. SINGER: That's the most important part.

MS. GERRY: Great. Does anyone have any more questions?

Does anyone have a motion to approve the resolution?

MS. NACERINO: Motion.

MR. KISCHAK: (Hand Raised.)

MS. GERRY: Melissa. Seconded by Pete.

All in favor?

(Chorus of Ayes.)

MR. GRIFFIN: Thank you for your time.

MS. GERRY: Thank you.

Are there any Legal Updates?

MS. MCGILL: None.

MS. GERRY: Other Business?

MS. MCGILL: None.

MS. GERRY: Can I have a motion to

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adjourn?

MR. KISCHAK: (Hand Raised.)

MS. GERRY: Pete.

Again, sorry I'm late.

MS. GERRY: All in favor of adjournment?

(Chorus of Ayes.)

MS. GERRY: Thank you everyone.

(Whereupon, the Board Meeting

concludes at 10:07 a.m.)

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C E R T I F I C A T I O N

STATE OF NEW YORK)
) Ss.
COUNTY OF WESTCHESTER)

I, MARGARET PRENDERGAST, Court Reporter and Notary Public within and for the County of Westchester, State of New York, do hereby certify:

That I reported the proceedings that are hereinbefore set forth, and that such transcript is a true and accurate record of said proceedings.

AND, I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of. _____, 2016.

MARGARET PRENDERGAST