

**Tompkins County Industrial Development Agency
Board of Directors Meeting Final Minutes
April 20, 2022 – 2:30 - 4:00 PM**

Via Zoom and LiveStream

Present: Rich John, Faith Vavra, Jeff Gorsky, Todd Bruer, Shawna Black, Mike Sigler, John Guttridge

Guests: Jason Crane, David Riedman, Kenneth Hall (City Harbor, LLC), Evan Cleveland (Insero & Co.)

Staff: Heather McDaniel, Kurt Anderson, Chuck Schwerin, Ina Arthur (IAED), Russ Gaenzle, (Harris Beach), Rick Snyder (TC Finance)

CALL TO ORDER

Rich John called meeting to order at 2:31 pm.

PRIVILEGE OF THE FLOOR

Jason Leifer, Supervisor, Town of Dryden - letter read by Rich John

Please accept this letter in support of the funding request submitted by Ithaca Area Economic Development (IAED) on behalf of its Broadband Connectivity project. If approved, the \$350,000 match will allow IAED to retain the \$400,000 Appalachian Regional Commission grant and secure another \$3.2 million from its preferred vendor, for a total investment of over \$4 million. The project will deploy 56 miles of fiber infrastructure and address the rural digital divide by connecting unserved and underserved households and servicing local municipalities. As you know, the Town of Dryden is building our own municipal broadband system called Dryden Fiber. Our intent is to make fiber to the home available to every resident and every business within the Town of Dryden and compete with existing providers. With the passage of the WIRED Act within the New York State 2023 budget, there is a clear mandate from the Legislature and the Governor to deploy municipal broadband in rural communities. We believe that the fiber deployed in the IAED project will benefit not only Lansing, but Dryden as well. We have requested that the Town of Dryden have access to the Northern Route Middle Mile and Southern Route Middle Mile and are in currently in discussions regarding this access. We believe that working with IAED to expand the reach of Dryden Fiber will allow us to expand the reach of our project more quickly. Should you have any comments or questions regarding my support for this project or IAED's request for funding, please contact my office at (607) 844-8888.

Mike Hall, PFA Consulting - letter read by Heather McDaniel

I am writing in support of the funding request submitted by Ithaca Area Economic Development (IAED) on behalf of its Broadband Connectivity project. If approved, this request will leverage a \$400,000 federal grant from the Appalachian Regional Commission and unlock a \$3.2 million commitment from an industry leading Internet Service Provider, for a community investment totaling more than \$4 million. The goal is to construct 56 miles of broadband infrastructure and deliver myriad community benefits, such as connecting 50 additional unserved households and providing competitive service and pricing to over 1,500 households, supporting local municipalities, and more.

When conceived in 2020, the goal of the project was simply to construct 17 "middle miles" of fiber broadband to facilitate the transition of the former Cayuga Operating Company coal plant. A lot has changed since then and I applaud IAED for adapting to the circumstances and for advocating on behalf of our

community. The pandemic has exposed widespread inequities in digital accessibility and affordability, both of which IAED is helping address through this project. When complete, it will enable remote work and learning environments that better position our economy for future growth and prosperity.

I have worked in concert with IAED to advocate for the repeal of Perm 75 – a state fee on broadband deployment that is especially harmful to rural areas like Tompkins County. During that ultimately successful process, I learned a lot about broadband and IAED’s leadership and commitment in delivering this vital infrastructure. I urge you to approve IAED’s request for an investment of \$350,000 needed to deliver this important project.

If you or other members of the board have any questions, or seek further information, please do not hesitate to contact me at (607) 279-2662 or mhall@pfaconsulting.com.

Todd Kurzweill - email read by Rich John

Dear TCIDA Board members

Thank you for your efforts to continue to improve your application for, approval process, oversight, accountability and communication about economic development project The Ithacan Communication and the opportunity to speak and be heard are important civic opportunities for me.

Are you aware of the October 27, 2020 City of Ithaca Resolution that brought Ithaca College formally into The Ithacan project? Is it a record of the TCIDA?

This Resolution materially changed the DDA that allowed for this project and, initially, protected the tenants of 215 East State Street from Displacement. How and when was this Resolution received by the IAED or TCIDA?

Why weren’t the tenants named in this Resolution as they were previously in the DDA?

ADDITIONS TO THE AGENDA – None

BUSINESS

2021 Audit Presentation

Rich John reported that the IDA Audit Committee has reviewed the audit documents and approved them based on the authorization given to the committee by the full board at the March 9, 2022, board meeting.

Evan Cleveland of Insero & Co. gave an overview of the 2021 TCIDA/TCDC Audit. He thanked all involved for their help with the audit process. The audit was given an unmodified opinion which indicates a clean audit with all information being fairly stated. There were no issues with the internal controls in place and no difficulties with completing the audit.

Rich John commented that the TCIDA has a large number of projects and show how hard we all are working.

Jeff Gorsky made a motion to accept the 2021 TCIDA/TCDC Audit. John Guttridge seconded the motion. The motion was approved 7-0.

BVSHF III (McKinley) - Project Community Housing Development Fund (CHDF) Payment

John Guttridge commented that the board already acted on this topic at the March 9th board meeting. He asked if there was a new proposal before the board. Rich John stated that there was some interest in a motion to renew.

Heather McDaniel stated that Mike Sigler had interest to bring the topic back at this meeting as he was not at the March 9, 2022, board meeting.

John Guttridge asked if this would be without any substantive changes?

Mike Sigler stated that neither he nor Rich John were at the last board meeting and felt that there was several people missing from the last vote.

There was quorum at the last meeting. Rich John stated that a motion to renew would be allowed and Mike Sigler would be the one to do that.

Mike Sigler made a motion to renew the BVSHF III Project CHDF Payment motion that was considered at the March 9, 2022, TCIDA Board meeting. Jeff Gorsky seconded the motion.

Heather offered to read the motion. Shawna stated point of order. This has already been considered twice and she felt that it should not be brought up again just to get the vote that is desired.

Rich John asked for clarification from counsel. He felt that a motion to renew is allowed.

Russ Gaenzle stated that it is at the Board's discretion if they want to reopen something and recast the vote. This is a policy issue versus a legal issue.

John Guttridge asked if we observe Robert's Rules of Order? He stated that RRO do not allow such a reconsideration.

Rich John commented that a motion to renew is allowed under RRO. A motion to reconsider means to bring it up again as a new matter. A motion to renew is the same motion. It is to address the situation such as this when not all were present to consider it.

John Guttridge stated that a two thirds majority vote would be needed to bring it back to the floor or if there had been prior notice.

Russ Gaenzle stated that RRO are not required to be used for a quasi-public body such as the TCIDA unless it is in the by-laws. So, it is still at the board's discretion if they would like to renew the motion.

Rich John asked with the vote at the March 9, 2022, board meeting if there was an issue with the project getting financing and if we could consider this at the next board meeting so that counsel could present a more definitive legal opinion so there is more comfort among the board members.

Todd Bruer asked what would stop someone from bringing up a motion again and again. Russ Gaenzle stated it is still at the board's discretion.

Heather McDaniel stated that it is at the pleasure of the board to renew the motion. The way for the board to stop it from being brought up again would be to vote no to the motion to renew. However, she stated that the matter could be tabled for a month to be considered at the Board at the May meeting.

Russ again pointed out that this is a policy matter versus a legal matter and is at the board's discretion. John Guttridge asked if the municipalities need to be notified if the board is deviating from its policy. In this case, there is no need. Notification is needed if the IDA is going to deviate from the standard PILOT schedule.

Rich John stated that Mike Sigler made the motion, and he would like to let all the board vote on this. He would also like all to be comfortable with the information. He asked if Mike would table the motion for a month. The topic will be put on the May agenda, and all will know that we will consider this in one month.

Mike Sigler stated that he is okay with tabling the motion for a month. John Guttridge asked that what exactly will be voted on is included in the agenda packet. He asked that documentation for all agenda items be included in future board agenda packets.

City Harbor, LLC - Amendment

Heather McDaniel introduced the agenda item. This project was originally approved in June 2020 as phase one of the project. The project agreement was executed in August 2021. This is an amendment request to the original project agreement. The developer has decided to move forward with phase 2 concurrently. The environmental review for both phases was done by the City of Ithaca in 2020. A request for amendment memo is in the agenda packet. There are several increased community benefits outlined as well.

Jason Crane, Jodi Edger, Jessica Edger of Edger Enterprises and David Riedman of Riedman Companies presented the City Harbor project's request for an amendment to their project agreement dated August 31, 2021. In addition to constructing in one phase, the project plans have been fine tuned to include a greater portion of public access space, additional pocket parks and a change in apartment unit mix that will allow access to more residents of Ithaca and the surrounding area by offering studio units with rents starting at \$1,950 per month.

The original issue with adding a second means of egress to the project has been resolved. Also, the affluent wastewater system has been completed as well as fixes to the docks have been done.

Heather McDaniel stated that the amendment request increases the financial incentives original approved. Therefore, the amendment request needs to go to a public hearing.

John Guttridge made a motion to send the City Harbor, LLC amendment request to a public hearing. Jeff Gorsky seconded the motion. The motion was approved 7-0.

John Guttridge asked about changes being made to the Newman Center. The project does not have site control of that parcel. They would like to work with the City to facilitate this. However, the timing may not be concurrent with this project.

Todd Bruer asked if the project would consider following the updated IDA local labor policy requirements of 75% local labor? David Riedman stated that they will strive to achieve as high a local percentage of local labor as possible. It is in the projects best interests to procure as much local supply and labor as possible but for some items or trades this may not be possible.

Todd asked what the average rent would be. There has been a lot of planning regarding this. Studio apartments have been added to the unit mix. The rents will start around \$1,500/month for the smaller studio apartments.

It was confirmed that the waterfront sidewalk will be open to the public and that there will be boat slips for rent. The trail will also be handicap accessible.

Broadband Support Request

Kurt Anderson and Chuck Schwerin of IAED presented a request of \$350,000 from the TCIDA as an investment to support the match requirement of an ARC Grant for broadband expansion in Tompkins County.

Ithaca Area Economic Development (IAED) seeks to leverage a \$400,000 Appalachian Regional Commission (ARC) grant to extend broadband access into Lansing. The grant requires 1-to-1 match. IAED has secured a \$50,000 commitment from the Tompkins County Development Corporation and is requesting from the Tompkins County Industrial Development Agency (TCIDA) the remaining \$350,000 to proceed.

In 2020, IAED was awarded the ARC grant to install a 17-mile 100GB fiber broadband trunk to enhance economic growth in a coal-impacted community and address the rural digital divide exposed by the pandemic. As part of its approach, IAED proposed to facilitate transition of the recently retired Cayuga Coal Plant into a high-speed, air-cooled data technology center (Cayuga Data Juice; CDJ). The entire CDJ project represents a \$100 million investment—one of the largest in Tompkins County history—and retains one of its most significant taxpayers.

IAED is currently negotiating a term sheet with its preferred vendor. Concurrently, IAED is seeking replacement for the initial CDJ match commitment (\$350,000) due to the company's Bitcoin mining operations at its three other facilities and unwillingness to remove it from the list of alternative uses for the site. After a thorough evaluation of all available information, IAED leadership has determined that the only viable option—to retain the ARC funding and deliver the comprehensive community benefits outlined above—is to disassociate entirely from CDJ. Per the terms of the grant, the fiber routes will converge near CDJ, but the site will not be served as part of the project.

Todd Bruer made a motion to approve the request from Ithaca Area Economic Development of \$350,000 to support its broadband infrastructure project. Jeff Gorsky seconded the motion.

Shawna Black and John Guttridge stated that they are also concerned about the possibility of Cayuga Data Juice datamining for cryptocurrency and would like to include restrictions on bitcoin data mining on the internet provider the line is leased to.

Chuck Schwerin stated that IAED would only control 50% of the access. The other 50% would be controlled by the Internet Service Provider. He stated that anyone can tap into the internet lines and currently datamining is still legal.

It was pointed out that IAED is not a regulatory body. New York State or Tompkins County would be the entities that could set up regulation regarding bitcoin mining restrictions.

Shawna Black sees this as a pathway to cryptocurrency mining and cannot support this. She will be voting no.

John Guttridge specifically would like to restrict commercial bitcoin mining via language in the lease. He also wondered if the IDA is the correct source of funding support. Does this request to support residential broadband versus commercial job creating fit into the IDA's mission. He will be voting no.

Mike Sigler stated that the old power plant is just a building. It is no longer a power plant. If the current owner wants to bitcoin mine, they would be buying market rate electricity. There are other sites with cheaper electric rates that would be better suited for bitcoin mining (Groton NY, Watkins Glen NY). Broadband is the important thing in this proposal.

Todd Bruer stated that broadband would help those working remotely and will help bring more businesses into the County. Can we legally restrict how the broadband would be used?

Russ Gaenzle commented that restrictions can be put into the legal documents, but the question would be how the IDA would enforce those restrictions. This would not be a project that would be subject to the IDA's recapture policy.

Chuck Schwerin stated that if the state creates a law prohibiting bitcoin mining then it could be enforced by the state.

Jeff Gorsky stated that he feels the broadband benefits outweigh any other concerns. He will be voting yes. He asked about the amount of power generation/MW needed to bitcoin mine. Kurt Anderson stated that at its other sites, Cayuga Data Juice has a 350 MW allocation. Currently the old power plant site has the power allocation of 50 MW, which is not enough power to facilitate datamining. It is not the volume of space used on the internet fiber that is of interest to bitcoin miners, it is the power that allows it.

John Guttridge feels that since this site was a power generating site with the correct lines hooked up there may be a time in the future where they could get a larger allocation of power. This could lead to future environmental damage. It shouldn't be hard to differentiate between commercial and residential usage. He feels that putting the restrictions into the lease documents would be an easy concession. If done, he would support the request for funding.

Faith Vavra stated that she knows now how hard it is to obtain an ARC grant and she would not want to forfeit the opportunity.

Rich John stated that he is no fan of bitcoin mining due to environmental damage and also due to the opportunity for illegal activities brought about by this. However, this is something the State will need to regulate. He feels the huge benefit of bringing broadband to those currently underserved outweighs any risks.

John Guttridge moved to amend the original motion to add language that the lease on the fiber facility would contain a provision that would place any operator in default of their lease with substantial financial consequences if they connect to an industrial scale cryptocurrency operation. Shawna Black seconded the amendment to the motion.

Shawna Black asked if the attorney feels this is doable.

Russ Gaenzle commented language can be put into legal documents restricting leasing for bitcoin purposes. However, he is unsure if they would be enforceable.

Rich John asked if the IDA did this would we be subject to litigation for singling out one user over another? The answer is yes.

Todd Bruer stated he feels the amendment is friendly.

Russ Gaenzle will do research as to language to use and report back. It is unclear who the defendants would be in a future lawsuit.

A vote was taken on the amendment to the motion. **The motion passed 4-3 (Gorsky, Sigler, John No)**

A vote was taken on the original motion as amended.

Heather asked for clarification. The IDA is being asked to provide funding to the IAED Foundation who will be entering into a lease with an Internet Fiber provider. So the IDA wants this as a condition of the that lease. Yes, that is correct. She wants to be clear of the definition of industrial cryptocurrency mining. There is no actual definition currently. She asked the attorney to provide a definition. John Guttridge stated that any facility that draws more than 200 amps of power.

Jeff Gorsky commented that with the amendment it will bring it back to the IAED Foundation to consider and they would be concerned if there would be a possibility of litigation.

The motion passed 7-0.

Directors and Officers insurance - Budget Adjustment

Heather McDaniel presented a request to adjust the TCIDA 2022 budget to allow for the purchase of Directors and Officers Insurance for the board. A quote has been obtained for \$2,149.00. This will cover both the TCIDA and TCDC Boards.

John Guttridge made a motion to amend the 2022 TCIDA Budget to allow for the purchase of Directors and Officers Insurance for both the TCIDA and TCDC Boards. Todd Bruer seconded the motion. The motion was approved 6 - 0 (Mike Sigler absent).

PARIS Reports

Heather McDaniel stated that the PARIS reports have been provided as informational.

CHAIRS REPORT - None

STAFF REPORT - None

MINUTES

John Guttridge asked that his specific exchange with Russ Gaenzle on the BVSHF III item be included in the minutes.

John Guttridge made a motion to approve the March 9, 2022, board minutes with edits. Jeff Gorsky seconded the motion. The motion was approved. 7-0.

The meeting was adjourned at 4:10 pm.

Minutes were approved at the 5/11/22 board meeting.