



MINUTES

January 25, 2022

STAFF

JOHN J. PISECK, JR.
Executive Director

STACEY J. HOLLERAN
Office Manager

VICTORIA L. ADAMS
Administration & Grant
Coordinator

BOARD OF DIRECTORS

VINCENT J. BONO
Chairman

DAVID M. CHLUS
Vice Chairman

JOHN SCARANO
Secretary

MICHAEL WERENCZAK
Treasurer

CORY ALBRECHT
Director

CATHERINE RICCI
Director

ANN GAWORECKI
Director

COUNSEL

ANTHONY G. HALLAK, Esq.
Felt Evans, LLP

Herkimer County Industrial Development Agency Board of Directors Meeting

The Herkimer County Industrial Development Agency held a regular meeting of the Board of Directors on Tuesday, January 25, 2022 at 8:00 AM. The meeting was held electronically via zoom conference as well as a public meeting open for the public to attend in person. Members of the public were invited to join the meeting virtually by going to www.zoom.com or by dialing (929) 205-6099 and entering meeting ID: 891 4715 6534 and passcode: 824376. Members of the public were invited to attend the meeting in person in the Herkimer County Chamber of Commerce conference room at 420 E. German Street, Herkimer, NY 13350.

After the Pledge of Allegiance, Chairman Vincent (Jim) Bono called the meeting to order at 8:00 AM.

The Nathan Galinsky Herkimer Preservation HDFC Public Hearing was opened at 8:01 AM – See separate minutes for the public hearing.

The following members were present in person and answered the roll call: Vincent (Jim) Bono, David Chlus, Cory Albrecht, Catherine (Cate) Ricci, Michael Werenczak, John Scarano. **Quorum Present**

Ann Gaworecki entered the meeting at 8:03 AM

Members Absent: None

Staff Present: John Piseck, Stacey Holleran, Victoria Adams

Also Present in Person: Herkimer County Legislators: Rodney Swartz, Bob Holum; Bill Maxim

Also Present Virtually: Herkimer County Legislators: Mark Gaworecki, John Stephens; Susan Jaquish (on behalf of Assemblyman Brian Miller); Assemblyman Robert Smullen; James Wallace; Anthony Hallak; Bernie Peplinski; Bill McDonald; Travis Phillips

Mission Statement: Mr. Piseck read the Agency's Mission Statement

Board Resolutions to be assigned numbers: In an effort to increase trackability, the Agency will begin assigning numbers to board resolutions beginning January 2022.

420 E. German Street, Box 1 Suite 101A, Herkimer, NY 13350 315-866-3000

"This institution is an equal opportunity provider, employer and lender."

Minutes: The minutes of the December 21, 2021 regular meeting were offered for review. **Ann Gaworecki moved, seconded by Cate Ricci, to approve the minutes as presented. Motion carried with 7 ayes and 0 nays.**

Financial Reports: The following financial reports were offered for review and approval: December 2021 Financial Report, Balance Sheet, Check Register, RLF/Lease Balance with payment status, SBP Mortgage, and PILOT Report. Mr. Piseck stated that all outstanding loans are being paid accordingly and the Agency is in good financial position. Grant funds flowing through the Agency will be listed differently going forward to provide a more accurate representation of actual expenses versus revenues. **John Scarano moved, seconded by David Chlus to approve all financial reports as presented. Motion carried with 7 ayes and 0 nays.**

Small Business Seward 2/2/2 Update: Victoria Adams provided an update on the Small Business Seward 2/2/2 Revolving Loan/Grant fund. She stated that there is enough funding available to support an application. Annual reporting on the program has been submitted for 2021.

Employee Vacation Benefit: Due to COVID-19 restrictions, some staff members have postponed vacations or did not use their earned vacation time in 2021. Currently, staff members are allowed to carry over 5 unused vacation days to the next year. Mr. Piseck proposed allowing staff members to carry over 12 days of unused vacation days from the 2021 year to 2022. After discussion, **David Chlus moved, seconded by Ann Gaworecki to authorize Agency staff to carry over 12 days of unused vacation time accrued in 2021 to the 2022 year instead of the usual 5 days. The topic is to be revisited annually, if needed. Motion carried with 7 ayes and 0 nays. Resolution: 012522-01**

Actuarial Valuation: As part of the Agency's Annual Financial Audit, it is necessary to conduct an analysis of estimated cost for Other Postemployment Benefits (OPEB). The Agency received a proposal from Aquarius Capital to complete the report in accordance with generally accepted actuarial principles and practices. **Cate Ricci moved, seconded by Michael Werenczak to approve the Agency to enter into an agreement with Aquarius Capital Solutions Group, LLC for the completion of the full GASB 75 valuation of the 2021 year at a cost not to exceed \$2,500. Motion carried with 7 ayes and 0 nays. Resolution: 012522-02**

CDBG CARES: After staff discussions and a conversation with the New York State Office of Homes and Community Renewal, Agency staff proposes to move ahead with the application process for \$500,000 in CARES funding to assist medium sized businesses with COVID related expenses. As with other CDBG grant funding, Herkimer County will be the applicant and the Agency will be the subrecipient of funds, if awarded. **Cory Albrecht moved, seconded by John Scarano to authorize the agency to move ahead with the application process as well as be a subrecipient of grant funds, if awarded. Motion carried with 7 ayes and 0 nays. Resolution: 012522-03**

IDA Application for Financial Assistance: As a result of the Office of New York State Comptroller's audit and recently purchased project evaluation software, it is necessary to revise and update the Agency's Application for Financial Assistance to request additional project information from applicants. Board members were provided the updated application prior to the meeting. **Cate Ricci moved, seconded by Ann Gaworecki to approve the IDA Application for Financial Assistance as presented. The motion carried with 7 ayes and 0 nays. Resolution: 012522-04**

Frankfort 5S South Business Park – Pumping Station: As a result of the Halloween flood of 2019, the pumping station at Frankfort 5S South Business Park was replaced. After FEMA and insurance reimbursements, the Town of Frankfort has a remaining cost of \$6,250 which was not recovered. Mr. Piseck recommended the Agency cover the additional cost of replacing the pump. **David Chlus moved, seconded by Cate Ricci to authorize the Agency to remit payment the Town of Frankfort in the sum of \$6,250 to cover the remaining cost associated with the preplacement of the pumping station at Frankfort 5S South Business Park. Motion carried with 7 ayes and 0 naves. Resolution: 012522-05**

Schuyler Business Park – National Grid Gas Line Extension: The Agency received a cost estimate from National Grid for the installation of 2,603 feet of 4" gas main at Kenneth Dodge Drive in the Schuyler Business Park. Mr. Piseck expressed his concerns regarding the 4" main, stating that the line may need to be replaced with a larger diameter after other businesses have developed in the park. Unfortunately, National Grid will not place a larger line based on future development. After discussion, **David Chlus moved, seconded by Michael Werenczak to authorize the Agency to move ahead with the 4" gas main installation by National Grid for an estimated cost of \$162,086.54. Motion carried with 7 ayes and 0 naves. Resolution: 012522-06**

SunEast Flat Hill Solar, LLC:

Application for Financial Assistance: The Agency received an application for financial assistance from SunEast Flat Hill Solar, LLC. The company proposes the installation of a ground-mounted utility-scale solar energy generation system on leased property totaling approximately 195 acres. The project is located in the Town of Manheim. **Michael Werenczak moved, seconded by Cory Albrecht to approve the application for financial assistance for SunEast Flat Hill Solar, LLC. Motion carried with 6 ayes 0 naves and 1 abstention (Ricci). Resolution 012522-07**

Inducement Resolution: An application for financial assistance was presented and accepted by the board for SunEast Flat Hill Solar, LLC.

After further review and discussion, **David Chlus made the following motion:**

RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "AGENCY") TAKING OFFICIAL ACTION TOWARD APPOINTING SUNEAST FLAT HILL SOLAR, LLC (the "COMPANY), AND THE PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN CONNECTION WITH A SUBLEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

Seconded by John Scarano, the motion carried with 6 ayes, 0 naves, and 1 abstention (Ricci). The official resolution is attached to the original minutes. Resolution: 012522-08

Set Public Hearing: A public hearing is required for the SunEast Flat Hill Solar, LLC project. **Michael Werenczak moved seconded by Cory Albrecht to authorize the Agency to schedule a public hearing for the SunEast Flat Hill Solar, LLC project. Motion carried with 7 ayes and 0 naves. Resolution: 012522-09**

Village of Herkimer – Judgment Payment: The Agency received a judgement payment from the Village of Herkimer representing payment for a past litigation matter in the amount of \$4,213.39.

Felt Evans, LLP – Retainer Agreement: The Agency received an updated retainer agreement from Felt Evans, LLP for the continuation of legal services. The retainer agreement was provided to board members prior to the meeting. **Cate Ricci moved, seconded by Cory Albrecht to authorize the Agency to accept the agreement. Motion carried with 7 ayes and 0 nays. Resolution: 012522-10**

Mr. Bono welcomed comments from elected officials and other attendees.

Assemblyman Robert Smullen: Assemblyman Smullen stated that the NYS budget for 2022 is the largest in history. Mr. Piseck offered to have further discussions with the Assemblyman offline.

Bill McDonald, Herkimer County Community College: Bill announced that Herkimer County Community College received grant funds to implement a Supply Chain Management course, which will be of no cost to participants. He will provide additional information on the program as it becomes available.

Project Updates/Other Business:

NYS Economic Development Council Annual Meeting: The New York State Economic Development Council is hosting their annual meeting on February 28 – March 1, 2022 in Albany. Mr. Piseck will be attending.

Eastern Mohawk Valley Water Transmission Line: The Agency recently held a meeting to discuss the Eastern Mohawk Valley Water Transmission Line. The design phase is moving ahead and the Agency is seeking additional grant funding to assist with the purchase of materials.

Herkimer County Food Processing Study: The Herkimer County Food Processing Study is moving ahead.

Village of Dolgeville BOA: The Village of Dolgeville Brownfield Opportunity Area (BOA) Nomination Study is progressing on schedule. A public engagement session is scheduled for Thursday, February 17, 2022 at 6 PM in the Dolgeville Central School Auditorium.

Office of New York State Comptroller Audit: The Office of New York State Comptroller audit is completed. The Agency has not yet received the final report. Additional information will be provided as it is received.

ABO Training: ABO training is due for a couple of board members. Victoria Adams will follow up with those members to inform them of available dates.

New Employee: The Agency has hired a new employee. Ryan Palmiotto has accepted the Marketing & Communications Specialist position and will start work on February 7.

NYS Department of Transportation – Colucci Trucking: The Agency received a letter from the New York State Department of Transportation requesting a traffic study at the entryway to Schuyler Business Park. A traffic study was previously completed. Mr. Piseck will continue to work through the process and advise of any additional requirements.

Mr. Piseck closed the Nathan Galinsky Herkimer Preservation HDPC Public Hearing at 9:01 AM.

John Scarano moved, seconded by Cate Ricci to enter into executive session at 9:02 AM to discuss developments of a potential project and the potential purchase of property. Motion carried with 7 ayes and 0 nays. All board members; Herkimer County Legislators: Swartz and Hollum; John Piseck, Stacey Holleran, and Victoria Adams were invited to stay.

Herkimer County Legislators Swartz and Hollum exited the meeting at 9:37 PM.

John Scarano moved, seconded by Cate Ricci to end executive session at 9:55 AM. Motion carried with 7 ayes and 0 nays.

Being no other business, John Scarano moved, seconded by Michael Werenczak to adjourn at 9:56 AM. Motion carried with 7 ayes and 0 nays.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Victoria Adams", with a stylized flourish at the end.

Victoria Adams
Administration & Grant Coordinator

INDUCEMENT RESOLUTION

No. 012522-08

At a regular meeting of the Herkimer County Industrial Development Agency held at 420 E. German Street, Herkimer, New York, on January 25, 2022 at 8:00 A.M.

The meeting was called to order by the Chairman, and, upon the roll being called, the following were

PRESENT: Vincent J. Bono, David Chlus, Catherine Ricci, John Scarano,
Michael Werenczak, Cory Albrecht, Ann Gaworecki

ABSENT: None

ALSO PRESENT: John Piseck, Stacey Holleran, Anthony Hallak, Victoria Adams

The following resolution was offered and seconded with the members voting:

AYE

NAY

All

None

RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “AGENCY”) TAKING OFFICIAL ACTION TOWARD APPOINTING SUNEAST FLAT HILL SOLAR, LLC (the “COMPANY), AND THE PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN CONNECTION WITH A SUBLEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, the Herkimer County Industrial Development Agency (the "Agency") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York Chapter 410 of the Laws of 1970 and Chapter 158 of the Laws of 1981 of the State (collectively, the "Act") to promote, develop, encourage and assist in the constructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, pollution control, commercial, research, renewable energy and recreation facilities for the purpose promoting, attracting developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New (the "State"); to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to provide assistance in the construction and equipping of one or more "Projects" (as defined in the Act); and

WHEREAS, the Company has presented an application (the "Application") to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking; (i) to provide assistance through sales tax and mortgage tax incentives for the constructing, equipping, and financing of the above described project Facility and real property tax relief in the form of a Payment in Lieu of Tax Agreement (the "Assistance"), (ii) to acquire, construct, equip, and finance the Facility or to cause the Facility to be constructed, equipped, and financed; and (iii) to lease and/or sublease (with an obligation to leaseback) or sell the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Facility will consist of the acquisition, construction, and equipping of a ground-mounted utility scale solar energy generation system on leased property totaling 195 acres located near the intersection of Bidlemam Road and Dockey Road in the Town of Manheim with an estimated capacity of 20 MVac $\pm$ kilowatts. The Project has an estimated cost of Twenty Two Million One Hundred Thirty Nine Thousand Nine Hundred Ninety One and 00/100 Dollars (\$22,139,991.00) (the "Project Costs"); and

WHEREAS, the project proposes to generate electricity that will allow residential and commercial subscribers to benefit from renewable energy that will offset traditional power sources; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto the Department of Environmental Conservation of the State Department of Environmental Conservation of the State (collectively "SEQR"), the Agency constitutes a State Agency; and

WHEREAS, the Town of Manheim Planning Board evaluated the project and on November 9, 2021 and issued a Negative Declaration (the "SEQR Determination") under SEQR with respect to the Project. A copy of Negative Declaration is attached hereto as Exhibit A; and

WHEREAS, the Agency has considered its environmental assessment form and related forms (the questionnaire submitted by the Company) the requisite criterion to determine whether the proposed action or the Project will have a significant effect on the environment; and

WHEREAS, if required by the Act, a public hearing will be duly noticed and had with respect to the Facility and the Assistance.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

1. Based upon the application and other representations made by the Company to the Agency and the Agency's due deliberation, the Agency hereby makes the following findings and determinations:

A. The Facility constitutes a "Project" within the meaning of the Act.

B. The Assistance will induce the Company to locate the Facility in the County, thereby maintaining and increasing employment opportunities within the State of New York and otherwise furthering the purposes of the Agency as set forth in the Act.

C. Except as is permitted by law, the Facility will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located in the State.

2. The form and substance of the proposed agreement in substantially the draft form presented to this meeting between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to providing of the Assistance (the "Agreement") are hereby approved. The Chairman, Vice Chairman and Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agreement in substantially the form presented to this meeting, with such changes in terms and form as the Chairman, Vice Chairman or the Executive Director shall approve. The execution thereof by the Chairman, Vice Chairman or Executive Director shall constitute conclusive evidence of such approval.

3. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company is hereby authorized to proceed with the acquisition, construction, equipping, and financing of the Facility and to advance such funds as may be necessary to accomplish such purposes.

4. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company in accordance with the Agreement and where applicable its tenant or tenants, are appointed the true and lawful agents of the Agency (i) to acquire, construct, equip, and finance the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as the Agency could do if acting in its own behalf.

5. This Project shall not proceed until it has conformed with all requirements of SEQR, conditions (if any) imposed by the Town of Manheim Planning Board, this Agency has adopted the Negative Declaration of the Town of Manheim or County of Herkimer as Lead Agency in the SEQR process, the Company has provided adequate proof that the Project permits are duly transferable and the leases and/or subleases are approved by the Agency, and the Company has provided sufficient proof of its ability to finance the Project.

6. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases or otherwise benefit from the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project if determined that: (i) the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

7. The Chairperson, Vice Chairperson, and/or Administrative Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (a) the Lease Agreement whereby the Company conveys a leasehold interest in the Project to the Agency, (b) the related Leaseback Agreement leasing the Project back to the Company, (c) the Project Benefits and Recapture Agreement, and (d) the PILOT Agreement; provided (1) the rental payments under the Leaseback Agreement include payment of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

A copy of this resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours and notices of this negative declaration shall be filed, posted and published as shall be necessary to conform with the requirements of SEQR.

8. This Resolution shall take effect immediately.

STATE OF NEW YORK)
) ss.:
COUNTY OF HERKIMER)

I, the undersigned Assistant Secretary of the Herkimer County Industrial Development Agency, do hereby certify that I have compared the foregoing extract of the minutes of the Herkimer County Industrial Development Agency (the "Agency") held on January 25, 2022 with the original thereof of file in my office, and that the same is a true and correct copy of the original and of the whole of the original insofar as the same relates to the subject matters therein referred to.

I, FURTHER CERTIFY that (i) all members of the Agency had due notice of the meeting, (ii) the meeting was in all respects duly held, (iii) pursuant to Section 99 of the Public Officers Law (Open Meetings Law), the meeting was open to the general public, and public notice of the time and place of the meeting was duly given to the public and news media in accordance with Section 99 and (iv) there was a quorum of the members of the Agency present throughout the meeting.

I, FURTHER CERTIFY that, as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed and rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 25th day of January, 2022.

**HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Stacey Holleran
Stacey Holleran, Assistant Secretary

Exhibit A

(NEED COPY OF NEGATIVE DECLARATION)