

RENSSELAER COUNTY

INDUSTRIAL DEVELOPMENT

Minutes of the Public Meeting held on: April 11, 2019
In the Quackenbush Building, 333 Broadway, Troy

Members Attending: John Clinton, Michael Della Rocco, Cynthia Henninger, Ronald Bounds, Douglas Baldrey and James Church

Members Absent: Renee Powell

Staff & Guests Attending: Robert Pasinella, Melissa Gregware, Jack Bonesteel, Jay Sherman, Robert Hotz, Thomas Triscari, John Sweeney, Peter Kehoe, Connie Cahill, Melissa Bennett, Mary Ellen Flores, Ken Crowe (Times Union), Michael DeMasi (Albany Business Review), Charles Moore (City of Rensselaer), Paul Goldman (Attorney for City of Rensselaer), Joseph Kardash (Superintendent of Rensselaer City School District), Thomas Nardacci and Ridge Harris (Gramercy Communications), Jeremy Smith (Empire Generating Co. Counsel), Dan Hudson and Jeff Maida (Woodlands Energy Management).

The Chairman, John Clinton, called the meeting to order at 4:00 p.m.

Public Comment Period: The Chairman opened the floor for comments from the public. There were no comments.

Annual Housekeeping Resolution: J. Clinton introduced a Resolution Approving Certain Appointments and Administrative Matters of the Agency. After a brief discussion, C. Henninger made a motion to approve the resolution. R. Bounds seconded the motion, which was approved unanimously.

Minutes of the Previous Meeting (3/14/19): J. Church made a motion to accept the minutes as written. M. Della Rocco seconded the motion, which was approved unanimously.

Minutes of the Previous Audit Committee Meeting (3/28/19): R. Bounds made a motion to accept the minutes as written. D. Baldrey seconded the motion, which was approved unanimously.

Minutes of the Previous Special Meeting (3/28/19): J. Church made a motion to accept the minutes as written. M. Della Rocco seconded the motion, which was approved unanimously.

Report of Public Hearing – Empire Generating Co., LLC Project: J. Sherman submitted a report of the public hearing held on April 9, 2019 for the Empire Generating Co., LLC project. After a brief discussion, D. Baldrey made a motion to accept the report as written. J. Church seconded the motion, which was approved unanimously.

Presentation by Woodlands Energy Management: Dan Hudson and Jeff Maida gave a presentation to the board. Paul Goldman spoke on behalf of the City of Rensselaer to express opposition to the proposed financial assistance for Empire Generating Co, LLC. A copy of the letter Mr. Goldman submitted to the Board is attached.

Executive Session: C. Henninger made a motion to enter into Executive Session to discuss proposed litigation. J. Church seconded the motion, which was approved. D. Baldrey made a motion to come out of Executive Session. J. Church seconded the motion, which was approved. No motions were made or voted on during Executive Session.

Report of Public Hearing – Turnpike Redevelopment Group, LLC Project: J. Sherman submitted a report of the public hearing held on April 9, 2019 for the Turnpike Redevelopment Group, LLC project. After a brief discussion, D. Baldrey made a motion to accept the report as written. J. Church seconded the motion, which was approved unanimously.

Budget Report: The budget report for the month of March 2019 was presented by M. Flores. After a brief discussion, R. Bounds motioned to approve the budget report. D. Baldrey seconded the motion, which was approved unanimously.

Public Hearing Resolution – Goulet Trucking, Inc. Project: J. Clinton introduced a Resolution Authorizing The Executive Director Of The Rensselaer County Industrial Development Agency To Hold A Public Hearing Regarding A Proposed Project To Be Undertaken For The Benefit of Goulet Trucking, Inc. And 4143 Route 20, LLC. After a brief discussion, M. Della Rocco made a motion to approve the resolution. J. Church seconded the motion, which was approved unanimously.

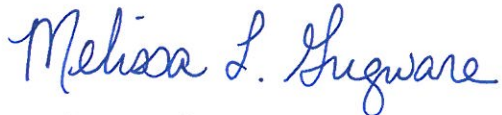
Resolution Approving Additional Financing Assistance – Turnpike Redevelopment Group, Inc. Project: J. Clinton introduced a Resolution Approving Additional Financial Assistance For The Turnpike Redevelopment Group, LLC Project. After a brief discussion, D. Baldrey made a motion to approve the resolution. J. Church seconded the motion, which was approved unanimously.

Resolution Authorizing Grant of New License – Bleeding Disorders Association of NENY: J. Clinton introduced a Resolution Granting New License To Bleeding Disorders Association Of Northeastern New York To Occupy And Use Certain Space In The Quackenbush Building. After a brief discussion, C. Henninger made a motion to approve the resolution. J. Church seconded the motion, which was approved unanimously.

Other Business: None

Adjournment: R. Bounds made a motion to adjourn the meeting. It was seconded by D. Baldrey and approved unanimously. The meeting adjourned at 5:19 p.m.

Respectfully submitted,



Melissa L. Gregware, Staff

GOLDMAN ATTORNEYS PLLC

Attorneys and Counselors at Law

255 WASHINGTON AVENUE EXTENSION, SUITE 108
ALBANY, NEW YORK 12205

TELEPHONE: (518) 431-0941
FAX: (518) 694-4821

Paul J. Goldman
pgoldman@goldmanpllc.com

April 10, 2019

Robert L. Pasinella, Jr., Executive Director
Rensselaer County Industrial Development Agency
c/o Rensselaer County Economic Department and Planning
County Office Building, 1600 Seventh Avenue
Troy, New York 12180

Re: Proposed Deviation from Uniform Tax Exemption Policy
Empire Generating Co, LLC Project

Dear Mr. Pasinella:

Please be advised that the undersigned represents the City of Rensselaer, County of Rensselaer, New York (the "City"). I write on behalf of the City to express the opposition to the proposed financial assistance for the Empire Generating Co., LLC Project (the "Project"). Please note that the Honorable Richard Mooney, Mr. Dominic Tagliento, Commissioner of Public Works and Mr. Charles Moore attended the public hearing on behalf of the City held by the Rensselaer County Industrial Development Agency (the "Agency") at the City of Rensselaer City Hall on April 9, 2019 (the "Public Hearing").

Public Hearing Process. At the Public Hearing, **NO** representative of Empire Generating Co. LLC (the "Company") made a presentation justifying the basis for the requested reduction in the PILOT Agreement. Here, the requested reductions in the PILOT payments are significant as follows:

Year 1	\$1,750,000 to \$1,000,000 or 42.8%
Year 2 through 6	\$2,000,000 to \$1,100,000 or 45%
Year 7 through 10	\$2,250,000 to \$1,300,000 or 42.2%

The City and the Rensselaer City School District (the "District") and all of the residents of the City are being asked to bear a disproportionate share of the \$9,050,000 subsidy to the Company without any dollars and cents proof having been provided by the Company to the City and the School District. Importantly, no one has presented any real justification for the financial assistance other than unverified statements alleging a bankruptcy filing. At the public hearing, the Agency expects public comment without any public filing any supportive documents on its website. The lack of dollars and cents proof demeans the public hearing process mandated by Section 859 of the General Municipal Law such that it reverts to a popularity contest. I believe that we all deserve better from the process in that we should have an opportunity to review the financials and have a

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rational dialogue about the problem. It is especially important to City and its residents since a reduction in the PILOT payment represents a direct financial loss to the City and the School District that has a direct adverse impact on the tax rates for the residents of the City who are forced to make up for the proposed subsidy.

Term of Subsidy. Nothing was presented at the Public Hearing as to the justification a ten year grant of additional financial assistance. If the Company truly needs the \$9,050,000 of additional financial assistance then it begs the question as to whether the problems are even in the realm of being resolveable short of a bankruptcy. Again, there is no justification for a ten year reduction below the already below market PILOT payments that are paid by the Company.

Reduction in PILOT Agreement Not Justified. Importantly, the Project was proposed with the newsprint recycling facility as a means to make up for the loss of the One Million Dollars (\$1,000,000) that BASF Corporation was paying on the Riverside Avenue plant prior to its closure. This was how the project was sold to the City. Each of the two business was to pay the City, the School District and the County, the sum of One Million Dollars. The newsprint recycling facility did not come so that the taxing jurisdictions and the residents of the City lost the disproportionate share of the Five Hundred Thousand Dollars from that facility. Then when the Agency negotiated the PILOT Agreement for the Project, a portion of the payments were shifted to East Greenbush, North Greenbush and the East Greenbush CSD since the interconnection and transmission lines are in those jurisdictions which diminished the share of the project that the City was to have received. Now the Company is complaining about the amount of the PILOT payments even though it is paying the lowest per MW charge.

To assist the Agency, I prepared an analysis of the most recent applicable PILOT Agreements in New York State based on the per megawatt (MW). The per MW standard brings all of the plants to a common standard for comparison. The requested relief places the Project as paying the absolute lowest per MW payment in New York State. The closest local competitors to the Project are paying significantly more for the same year in the PILOT Agreement as follows:

<u>Competitor</u>	<u>Empire</u>	<u>Current</u>	<u>Empire Request</u>
Athens Generating	\$4,375/MW	\$3,431/MW	\$1,961
Bethlehem Station	\$4,907/MW	\$3,431/MW	\$1,961

In fact, I recently negotiated the PILOT Agreement with Cricket Valley power facility in the Town of Dover, Dutchess County and for the applicable PILOT Year they will pay \$4,208/MW which is more than double what the Project is seeking. The fact that Empire was only obligated to pay \$3,431/MW prior to this request highlights that it was already below market and now they are seeking a massive reduction which is not warranted all on the back of the City and its residents. See the attached schedule

Financial Security. The PILOT Agreement has no collateral security which imposes tremendous financial risk to the City and School District. PILOT payments are contract payment which are not entitled to ad valorem tax status. Upon any non-payment, the School District and the City enjoy the status of unsecured creditors hung out to fight it out with the other creditors.

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The fact that Agency failed to obtain collateral security for the PILOT payments is one of the reasons that the Company is emboldened to now seek the financial assistance since they have no risk in asking. Considering where we are in the life of this plant, the Agency would be mistaken in not obtaining financial guarantees for the PILOT payments. The Agency needs to obtain financial guarantees or we will revisit this issue again.

Bankruptcy Contentions. It is my understanding that the Company has alleged that they will have to file a bankruptcy proceeding as a threat for the proposed financial assistance. While this is important, it is not necessarily fatal since The Athen Generating project had several bankruptcy filings which I witnessed and worked through. All of the filings were "prepackage bankruptcies where the result of each bankruptcy proceeding was that the company did not want to lose the benefit of the PILOT Agreement and risk having to pay ad valorem property taxes. In addition, a bankruptcy proceeding is not the worst thing since the debt of the facility is right sized which will make the facility more operationally efficient.


Upside for the Community. The proposed financial assistance presents no upside to the community which has struggled through the closure of BASF facility. There has to be an upside for the City and the School District. At a minimum, the City and the School District should receive a percentage payment based on a percentage of gross revenues from the current. The PILOT should be structure to provide the greater of: (a) the PILOT payments per the schedule; or (b) an agreed upon percentage of all revenue including the ICAP payments.

Agency Fee. We are unaware of the fee to the Agency for this restructure of the PILOT Agreement but we believe that since the City and its tax payers are bearing the burden of the requested financial assistance, a portion of the administrative fee to the Agency should be shared with the City in any event. Please advise me on behalf of the City of your position in this regard.

Summary. On the record presented to the Agency, there is simply no rational basis for the grant of \$9,050,000 reduction in the PILOT payments from the already substantially below market payments being made by the Company.

Very truly yours

GOLDMAN ATTORNEYS PLLC


Paul J. Goldman

cc. Hon. Richard J. Mooney, Mayor (w/enc.)
Hon. Dominic Tagliento (w/enc.)
Mr. Charles E. Moore (w/enc.)
Mr. Jay Sherman (w/enc.)

