



**Tuesday, February 2, 2016**  
**Governance & Nominating Committee Meeting – GCEDC**  
**Andrews Conference Room**  
**12:00 pm**  
**MINUTES**

**ATTENDANCE**

Committee Members: J. Rizzo, C. Yunker, P. Battaglia, M. Wiater  
Staff: S. Hyde, L. Farrell, M. Masse, E. Richardson, C. Suozzi, R. Tabelski  
Guests: R. Gaenzle (Harris Beach)  
Absent:

**CALL TO ORDER / ENTER PUBLIC SESSION**

J. Rizzo called the meeting to order at 12:04 p.m. in the GCEDC Andrews Conference Room.

**CHAIRMAN’S REPORT & ACTIVITIES**

**2a. Agenda Additions / Other Business** – No additions to the agenda were made.

**2b. Minutes: October 29, 2015**

**C. Yunker made a motion to approve the October 29, 2015 Minutes; the motion was seconded by M. Wiater. Roll call resulted as follows:**

M. Wiater -	Yes
J. Rizzo -	Yes
C. Yunker -	Yes
P. Battaglia -	Yes

**The item was approved as presented.**

**DISCUSSIONS / OFFICIAL RECOMMENDATIONS TO THE BOARD**

J. Rizzo wanted to discuss the items in a different order than on the agenda.

**3c. Revised Application for Financial Assistance** – M. Masse shared that the GCEDC staff has reorganized and streamlined the “Application for Financial Assistance”. We have also incorporated all recommended changes that have been included in the most recently signed New York State legislation, and have had our general counsel, Harris Beach, review to ensure completeness.

J. Rizzo questioned whether or not the application needs to be more precise in indicating to the applicant when the recapture provisions are going to come into play. Or include more general language outlining what our procedures

will be in the recapture of benefits. He asked if the staff feels that the application clearly informs the applicant that if they don't meet specific requirements, that certain benefits can be recaptured.

M. Masse shares that the sales tax recapture language is well identified in the application. He also noted the application references the Agency's Uniform Tax Exemption Policy (UTEP) where the recapture language is provided.

R. Gaenzle added that once the recapture language is finalized, it will be included in the contract and agreements that the applicant signs. If it is not already included in the application, he can provide language that the applicant has received and reviewed the Agency's UTEP and agrees that they will be bound by it.

**C. Yunker made a motion to approve the Revised Application for Financial Assistance with the addition of acknowledgement by the applicant of review of the UTEP; the motion was seconded by M. Wiater. Roll call resulted as follows:**

M. Wiater -	Yes
J. Rizzo -	Yes
C. Yunker -	Yes
P. Battaglia -	Yes

**The item was approved as presented.**

**3d. Extension of Purchase and Sale Agreement – Gateway I** – M. Masse shared that the GCEDC has been presented with a proposed Purchase and Sale Agreement (PSA) for approximately 3.1 acres located in the Gateway I Corporate Park at the May 7, 2015 meeting. The Board approved this PSA that included a nine month contingency period from the date of the acceptance of the seller. The expiration date is February 7, 2016. The purchaser is looking for a 90 day extension of this PSA. He shared that the purchaser is actively working through some zoning issues with the Town of Batavia.

M. Wiater asked if it makes sense to start including a "Time of the Essence" with these agreements, meaning that they have 90 days to get the deal closed, and we will not be extending the agreement any further.

M. Masse thought that maybe that is something to consider on a case by case basis. With this specific project, the purchaser has been actively working on closing of the deal. This might be more applicable to a purchaser who is non responsive or unclear in their intentions as far as closing.

**P. Battaglia made a motion to approve the Extension of Purchase and Sale Agreement for 90 days; the motion was seconded by M. Wiater. Roll call resulted as follows:**

M. Wiater -	Yes
J. Rizzo -	Yes
C. Yunker -	Yes
P. Battaglia -	Yes

**The item was approved as presented.**

**3e. Policy for Recapture of Incentives Provision** – M. Masse shared that in accordance with the recently revised and approved Uniform Tax Exemption Policy (UTEP), the GCEDC will be incorporating the following paragraph into all of its legal documents with companies that are receiving financial incentives:

- a. "The company represents and warrants that it has reviewed the Agency's Uniform Tax Exemption Policy and further understands and agrees that upon the occurrence of certain events as set forth in such policy,

the Agency may recapture all or a portion of the Financial Assistance provided by the Agency to the Company.”

Staff and Counsel believe this is the best way to incorporate our Recapture Provision from the UTEP into any and all legal documents with companies that are receiving financial incentives to enable the Agency to have recourse and claw back abilities on the incentives for any potential underperforming projects.

J. Rizzo shared that he has no problem with the general language, however the language makes the Agency more susceptible to litigation. He questioned if the UTEP is not uniformly enforced to similar projects will the Agency be subject to litigation as opposed to an objective standard.

R. Gaenzle shared that he has seen IDA’s do a few different things. He has seen those that reference the UTEP in their documents and others that include a paragraph within the documents that specifically reference the items that would trigger the potential recapture of benefits.

M. Masse added that when a company doesn’t meet its requirements, it triggers a review of their project. The company will be asked to come before the Board and share why they are not meeting those requirements. The reason behind two companies not meeting their job creation requirements may be very different and the recapture of those benefits is up to the discretion of the Board.

R. Gaenzle shared that he can provide some more specific language for the Committee to review if they desire.

J. Rizzo thought that maybe we could stay with the more general language if we incorporate a firm review policy in a more timely fashion than is currently in place. He understands the rationale behind requesting project information prior to March 31<sup>st</sup> for PARIS reporting reasons. He believes the information should be reviewed prior to March 1<sup>st</sup> for taxable status reasons.

R. Gaenzle shared that if the Agency requests that companies report on the status of their employment on or before February 1<sup>st</sup> so that the Board has a month to take action, his suggestion would be to abandon the cross reference to the UTEP and come up with language requiring that they provide certain information by February 1<sup>st</sup> certifying that they are in compliance with the Agency’s recapture policy.

M. Masse shared that this may be hard to gather the information and have it in an acceptable format for the Committee to review by the beginning of February. Some of the documents required in our year end reporting, such as NYS-45’s, are not due to the State until January 31<sup>st</sup>.

L. Farrell shared that the Committee would want the staff to go through the information first and compile the information prior to a review by the Committee and this would take additional time as well.

M. Masse suggested reviewing the information with the Committee in April or May and keeping a closer eye on some of the projects that are not in compliance and put them on notice. If they are not in compliance by the following year, take action before the March 1<sup>st</sup> deadline.

P. Battaglia shared that for the sake of meeting the March 1<sup>st</sup> deadline we are not going to get this right. He would rather wait and have the right information than try and rush things.

J. Rizzo suggested M. Masse have a conversation with the Deputy County Treasurer about what the process would be if we terminate PILOTs after the March 1<sup>st</sup> deadline. We will continue this discussion at the next Governance Committee Meeting.

**3f. PILOT Termination** – M. Masse shared that the GCEDC was contacted by County Real Property services inquiring if we intend to cancel a PILOT on an existing building for a business that has been closed for a few years. The building is for sale, and the GCEDC has been trying to assist the owners in selling the building. County Real Property is not asking the GCEDC to cancel, just that if a decision is made they are requesting that it be made prior to the March 1<sup>st</sup> taxable status date. The project is called The Market and is located in Corfu.

J. Rizzo asked if the project was approved prior to the retail restrictions were in place.

M. Masse shared that the project was approved prior to the retail restrictions that are now in place and that any new applicants would be subject to those restrictions.

J. Rizzo shared now that recapture language is mandated, the Agency will be scrutinized more carefully about when we do and do not recapture benefits.

M. Masse recommended asking the company to come in to present their side as to why they closed and what they are trying to do with the building.

R. Gaenzle asked if the company was still operating at that facility.

M. Masse shared that the company has closed its operations a few years ago. The PILOT has remained in place and they have made their PILOT payments on time.

C. Yunker asked what the downside would be to cancelling the PILOT.

M. Masse shared that if a new applicant were to apply for benefits, the Agency would not be able to issue a new PILOT unless they were to do improvements to the facility. And the new PILOT would only be on the incremental increase in assessed value.

M. Wiater shared that she struggles with a company having a PILOT, when nothing is being generated out of the facility, and allowing the company to continue to receive a benefit.

P. Battaglia shared that the optics of the situation looks less than favorable. It looks like the Agency is giving benefits to someone who has closed up two years ago.

M. Masse shared that if the Committee were to cancel the PILOT without having a procedure in place for the recapture of benefits it would make it more difficult in the future when deciding which projects to recapture benefits and which not to. He struggles with making the decision to cancel the PILOT just because someone notified us of their current situation.

J. Rizzo thinks this is just the beginning of these types of situations. If the County brought this forward to us then people in the community are already talking about it. Maybe this is a good project to start with.

C. Yunker shared that it seems pretty clear to him. The company has closed their operations. They didn't just miss a job or two.

J. Rizzo also shared that having a 60% PILOT two years ago did not affect the marketability of the property and having a 40% PILOT now most likely will not affect the marketability of the property.

C. Yunker added that this is exactly why we will be reviewing projects on an annual basis. We haven't started that process yet this year but this one came up and it seems fairly straight forward.

**C. Yunker made a motion to approve the PILOT Termination for The Market; the motion was seconded by M. Wiater. Roll call resulted as follows:**

M. Wiater - Yes  
J. Rizzo - Yes  
C. Yunker - Yes  
P. Battaglia - Yes

**The item was approved as presented.**

**3b. Board Self-Evaluation Questionnaire** – L. Farrell shared that the 2009 Public Authorities Reform Act requires that the board of every state and local public authority conduct an annual evaluation of its performance. Please see the attached Policy Guidance from the Authorities Budget Office (ABO). In the past, we have used the model evaluation tool provided by the ABO as included in the guidance. Evaluation forms need to be distributed, collected and the summary results will need to be submitted to the ABO by March 31<sup>st</sup>.

L. Farrell added that the last time the Committee spoke about this they suggested that the results be collected and tallied by the Board Chair. The evaluation forms are not set in stone and can be changed or added to at any time. The results will be reviewed by the Committee at the next meeting and then submitted to the ABO.

P. Battaglia suggested adding comments if someone were to choose “somewhat disagree” or “disagree”.

L. Farrell shared that staff will make that change and email the evaluations out the Board.

**3a. Code of Ethics Policy** – L. Farrell shared with the Committee a sample Code of Ethics Policy prepared by Harris Beach.

J. Rizzo shared that the Committee has reviewed the standard Code of Ethics Policy that has been devised for other Industrial Development Agencies (IDA). There is some feeling that this policy is too stringent. We have recognized that with a volunteer board and with a community of our size there are certain conflicts or potential conflicts that are inevitable. We’ve discussed briefly trying to craft a policy that reflects those facts and is a bit more realistic than what was presented. Since then we have focused a bit more and found that the code of ethics provisions under the General Municipal Law (GML) are applicable to us and we are not in a position to bury any of those definitions or to craft a policy which differs greatly from those definitions. With that background we are here to discuss how we resolve the problem.

C. Yunker shared that he received an opinion by the State Ethics Commission on a similar issue. He was serving on a statewide board that reviewed grants and issued state funds. He was a partner in a consulting firm that benefited from those funds. He requested an opinion on whether or not he had an unresolvable conflict. One of the things that the Commission said that may apply to this situation, was that the Commission recognized that in some circumstances of broad prophylactic rule that would disqualify a director from participating in any aspect of the funding process if he or she were eligible to receive an award, clearly frustrates the legislative intent. We would impose a limitation on membership that we would be at odds with the legislative purpose of enacting the law. Nonetheless, this would be a substantial conflict of interest and clear appearance of impropriety. In fact, members deliberated and voted on the matter in which he might personally benefit. The commission therefore held that under public officer’s law a member is required to recuse himself from such vote.

He shared that his understanding of that opinion is that there is an appearance of a conflict, but the legislative intent is to have members of the community on a board that are familiar with the actions of the board and a complete prophylactic prohibition of any conflict or appearance of a conflict frustrates the legislative intent. He think it speaks to what J. Rizzo mentioned, with having a small community and looking for business leaders to be involved, there are going to be conflicts. He suggested that the idea that a small level of involvement, whether it is a partner whose firm is

doing work for the Agency or a lease between a board member and the Agency, of less than \$5,000 seems reasonable. He is unsure of how much flexibly the Agency has.

**P. Zeliff joined the meeting at 12:52pm.**

J. Rizzo shared that he is sympathetic for those situations, however the difference here is that we have a statute that defines “Municipality” and it specifically includes IDAs. The statute then goes on to prohibit those types of contracts. There is a significant difference in the situation that C. Yunker was in.

R. Gaenzle added that there are two potential conflicts that would be prohibited by this sample policy. We can request an opinion from the State Ethics Commission on those two specific issues. Or Harris Beach can look into it further, issue their opinion and the Board can make their decision based on that.

J. Rizzo shared that obtaining an opinion from either Harris Beach or the State Ethics Committee would be acceptable, however, is the Committee prepared to go forward with adopting the model that reflects the statute.

C. Yunker expressed that the land that he leases from the Agency is not vital to the operations of his company and is less than \$5,000 annually. He has a hard time seeing that as a conflict. And if the statute wants to disallow him as a member then he will not sit on the Board any longer.

P. Battaglia shared that another partner of his firm, consults with the Agency and has for many years prior to himself sitting on this Board. She is the only one with this expertise in the County and to get those same services the Agency will need to go outside of the County and they will pay more. It’s approx. \$1,600 per year that the Agency pays for these services. He agrees with C. Yunker that he has a hard time seeing this as a conflict. It’s a ridiculous argument that the members have to make. How strongly principled is the Committee over the issues or can we just accept them for what they are and move forward.

L. Farrell added that if there is absolutely no room for a \$1,600 exception or a small piece of property, then what else are we missing. What other issues might arise in the future.

C. Yunker added that he understands that there is an appearance of a conflict however he does not see that there is a material conflict.

J. Rizzo shared that unfortunately the statute doesn’t draw such distinction between the two.

**C. Yunker made a motion to authorize Harris Beach to obtain an opinion from the NYS Ethics Commission regarding these potential conflicts of interest; the motion was seconded by M. Wiater. Roll call resulted as follows:**

M. Wiater -	Yes
J. Rizzo -	Yes
C. Yunker -	Yes
P. Battaglia -	Yes

**The item was approved as presented.**

**ADJOURNMENT**

As there was no further business, C. Yunker made a motion to adjourn at 1:08 p.m., seconded by M. Wiater, and passed unanimously.