

Onondaga County Industrial Development Agency  
Annual Meeting Minutes  
January 8, 2009

The Annual Meeting of the Onondaga County Industrial Development Agency was held on Thursday, January 8, 2009 at the Eastside Business Center, 1201 E. Fayette Street, Syracuse, New York.

Chairperson Robert Baldwin called the meeting to order at 8:16 am with the following:

PRESENT:

Robert Baldwin  
Karen Kitney  
Gregg Kidd  
Joseph Scuderi  
William Towsley  
Russell Andrews

ABSENT:

Dan Healy

ALSO PRESENT:

Mark Arbon, Agency Counsel, Gilberti Law Firm  
Mary Beth Primo, Executive Director, Agency  
Gregory Hitchin, Business Development Manager, Office of Economic Development  
Kim Hall, Management Analyst, Office of Economic Development  
Carolyn May, Sr. Economic Development Specialist, Office of Economic Development  
Cheryl Menzel, Office of Economic Development  
Karen Doster, Recording Secretary, Agency  
Shellie Ryan, Gilberti Law Firm  
Melissa Dujnic, Gilberti Law Firm  
William Meyer, County Legislature  
Casey Jordan, County Legislature  
Sue Stanczyk, County Legislature

CONTRACT BETWEEN OCIDA & ONONDAGA COUNTY–DISCUSSIONS & APPROVAL

Robert Baldwin stated that he has some long range concerns relative to the commitment on behalf of the Agency with the civic facilities bonding being taken away and the long range financial outlook continuing at the same rate of contribution that the Agency has been dealing with. He stated that he does not think that this is necessarily the time to do anything relative to the contract but the problem is that the County and the Agency are on different fiscal years and the County has already adopted budget relative to the Agency contributions.

Robert Baldwin asked about the status of the current contract. Mary Beth Primo stated that she does not have the contract in hand but it has been approved and signed by the County Executive.

Robert Baldwin stated that he is thinking that the Agency can go ahead with the contract as it is but sit down with the County and enter into some discussions as to modifications. He stated that the other option is to wait until the contract actually comes in to vote on it.

The sense of the Board is to hold off voting on the contract until the Board reviews the contract.

## ELECTION OF OFFICERS

### Nominations

Russell Andrews noted the slate of officers that are recommended.

Upon a motion by William Towsley, seconded by Joseph Scuderi, the OCIDA Board approved a resolution appointing Joseph Scuderi as Finance Committee Chair, Gregg Kidd as Audit Committee Chair, Karen Kitney as Governance Committee Chair, Mary Beth Primo as Executive Director, Carolyn May as Secretary, Mary Beth Primo as Assistant Secretary, Cheryl Menzel as Assistant Secretary, Greg Hitchin as Treasurer, Chris Cox as Assistant Treasurer, Mary Beth Primo as Freedom of Information Act Officer, Robert Baldwin as Freedom of Information Act Appeals Officer, and Mary Beth Primo as State Finance Law Contract contact person to the Onondaga County Industrial Development Agency Board with Robert Baldwin, Karen Kitney, Russell Andrews and Gregg Kidd voting yes. Motion was carried.

Robert Baldwin stated that RFP's were sent out for agency counsel, auditor and technical assistance provider. He stated that the RFPs that were submitted were emailed to the Board. He asked the sense of the Board if they want to act on them today or review them and act on them at the next meeting.

Gregg Kidd stated that he did not have a chance to review the material.

William Towsley asked why the material was not sent sooner to the Board members. Mary Beth Primo stated that the RFP's could not be opened until after 4:00 pm on Monday and they were emailed out on Wednesday.

William Towsley stated that he would like more time to review them and asked if at a special meeting or next scheduled Agency meeting they can be voted on.

Joseph Scuderi stated that he would like more time to review them as well.

Robert Baldwin stated that Agency Counsel for the Agency is the Gilberti Law Firm and they continue to serve the Agency until any change is made.

Mary Beth Primo stated that one of the firms that submitted an RFP requested to make a presentation. She stated that the response to them was that they needed to submit a letter to the Agency requesting to make a presentation and the letter was attached to the RFP. She stated that if the request is honored then the invitation would have to be extended to all legal firms that submitted an RFP.

The Board members agreed that the invitation to make a presentation will be extended to the legal firms only.

Joseph Scuderi stated that he would like to allow the firm to present. The board members agreed and to extend the invitation for a presentation to the legal firms only that submitted an RFP.

Mary Beth Primo stated that the bylaws state that the Agency is to appoint the service providers at the annual meeting, so if the Board is not going to appoint today, a resolution is needed indicating that it will be done at the next meeting.

Robert Baldwin asked if the Board should adjourn the meeting. Mark Arbon stated that a resolution can be made that it will be done at the next meeting or it can be adjourned.

#### ACCOUNTS AND SIGNATURE AUTHORIZATION

Upon a motion by William Towsley, seconded by Russell Andrews, the OCIDA Board approved a resolution authorizing accounts and signatures of two of the four principal officers for any Agency account transaction with Solvay Bank and M & T Bank with Robert Baldwin, Karen Kitney, Joseph Scuderi and Gregg Kidd voting yes. Motion was carried.

Robert Baldwin suggested that the Board adjourn the meeting and reconvene the annual meeting in February.

Robert Baldwin asked if a resolution is needed to continue with the Gilberti Law Firm as Agency Counsel. Mark Arbon stated that a resolution is not needed.

Upon a motion by William Towsley, seconded by Russell Andrews, the OCIDA Board adjourned the meeting at 8:27 am with Robert Baldwin, Karen Kitney, Gregg Kidd and Joseph Scuderi voting yes. Motion was carried.

Chairperson Robert Baldwin called the continuation of the Annual meeting to order at 8:41am on February 3, 2009 at the Eastside Business Center, 1201 East Fayette Street, Syracuse, New York with the following:

#### PRESENT:

Robert Baldwin  
Karen Kitney  
Joseph Scuderi  
William Towsley  
Gregg Kidd

ABSENT:

Russell Andrews  
Dan Healy

ALSO PRESENT:

Mark Arbon, Agency Counsel, Gilberti Law Firm  
Mary Beth Primo, Executive Director, Agency  
Greg Hitchin, Business Development Manager, Office of Economic Development  
Kim Hall, Management Analyst, Office of Economic Development  
Carolyn May, Sr. Economic Development Specialist, Office of Economic Development  
Cheryl Menzel, Office of Economic Development  
Karen Doster, Recording Secretary, Agency  
Larry Bennett, Syracuse University  
Lindsay Wickham, Syracuse University  
Tim Frateschi, Harris Beach  
Shawn Griffen, Harris Beach  
George Leveille, Harris Beach  
Kathy Rapp, County Legislature  
William Meyer, County Legislature  
Sue Stanczyk, County Legislature

AUDIT SERVICE PROVIDERS

Upon a motion by Joe Scuderi, seconded by William Towsley, the OCIDA Board confirmed the appointment of the Beard Miller Group as auditors for the OCIDA Board until January 8, 2009 with Robert Baldwin, Russell Andrews and Joseph Scuderi voting yes. Motion was carried.

TECHNICAL ASSISTANCE SERVICE PROVIDERS

Robert Baldwin stated that this is new to the Agency and is going to be done for one year. He stated that the idea is to have technical assistance as a tool. He stated that there was an RFP sent out and asked if there was only one response to the Technical Assistance Service RFP. Mary Beth Primo stated that TDO was the only group that responded to the RFP.

Robert Baldwin stated that the Technical Assistance Provider would be used on an as needed basis. He stated that this does not involve the Agency expending any funds but if a proposal comes before the board, the Agency, as part of a development package, could include a Technical Assistance Provider. He stated that the Agency would then go to TDO who would be able to get a team together to provide the package. He stated that there already has been one example of a proposal where a company was considering locating in Onondaga County and we were competing heavily with another State that could do things that NYS can't or won't do. He stated that Technical Assistance Package made Onondaga County more competitive than we would otherwise be.

Upon a motion by Karen Kitney, seconded by Gregg Kidd, the OCIDA Board confirmed the appointment of approved a resolution accepting the CNY TDO as technical assistance provider for one year with a possible two year renewal term with Robert Baldwin, Russell Andrews, and Joseph Scuderi voting yes. Motion was carried.

#### LEGAL SERVICE PROVIDERS

Mary Beth Primo stated that the presentations for legal counsel will be just for general counsel. She stated that her understanding is that in the past whoever submitted an acceptable RFP would qualify for the position of special counsel. She stated that Bruce Smith contacted her and wanted to verify that this is the way things are still done and she responded yes. She stated that he wanted to know if a presentation was still necessary and she told him only if he is interested in being general counsel. She stated that she contacted Trespacz and Marquardt and they want to be considered for special counsel not general counsel. She stated that Joe Mancuso from

Hancock and Estabrook was suppose to be coming but he indicated the firm is only interested in acting as special counsel. She stated that there are presentations from two law firms, Gilberti, Stinziano, Heintz & Smith and Harris Beach.

Tim Frateschi stated that Harris Beach really appreciates the opportunity to come and make a presentation to the Board. He stated that he is a partner in the Syracuse office and introduced Shawn Griffen who is the Chairman of the Public Finance and Economic Development Practice Group for Harris Beach and George Leveille who has been in many economic development positions. He stated that Harris Beach appreciates the process because they just went through a similar process in Erie County where they spent three months looking for general counsel to the Erie County IDA. He stated that it was a long and thorough process. He stated that they spent over 150 hours interviewing law firms and determining what law firm would be able to provide them with the best economic development services that they can get throughout the state. He stated that ultimately they decided that Harris Beach had the depth and extent of experience in economic development to provide Erie County with services they needed. He stated that they are very proud they choose Harris Beach. He stated that they came to a conclusion that not only did Harris Beach know the technical aspects of economic development but they have reached into a lot of different areas of the State that provides different types of experiences in economic development that can be shared with Erie County. He stated that the IDA is facing a difficult situation where decisions need to be made with the Empire Zone program at the State level and other changes taking place. He stated that Empire Zones are going to change and is not going to look like it has over the past ten years. He stated that we need to decide as a community whether or not we are going to look at professionals that are going to provide the breadth and depth necessary to provide services to match the changing economic development climate. He stated that one of the things that interested Harris Beach was that the Agency RFP had general counsel and special counsel and they were not sure what it meant to be special counsel. He stated that after Mary Beth Primo's explanation, they understand it as conflict counsel. He stated that they are general counsel to about 30 IDAs throughout the State. He stated that they are also transition counsel or special counsel which is when they work with the general counsel to provide services

and bring together economic development benefits. He stated that their approach to economic development is very aggressive in terms of how they or the IDA wants to see a project accomplished and that is their goal. He stated they have been very successful in having a project come to fruition across the State. He stated that he would also like to say that he is glad that the IDA saw the need for a Technical Assistance Provider. He stated that he would like to turn over the presentation to Shawn Griffen to explain how Harris Beach will work as special counsel.

Shawn Griffen stated the IDAs are going into a new world and when the Board of Legislation came down in 1993 they started with reform efforts, cutting back on IDAs but at the same time there was some relief in getting expansion with civic facility. He stated that we got used to the world of business where we could have transactions that were basically bond deals on civic facilities and some straight lease transactions. He stated that the firm got started in economic development in the early 90's. He stated that most small IDAs they worked for originally were either under staffed or not staffed and they had to develop a practice of laying out all the options for them which spawned a different type of practice group for them. He stated that the largest IDA they work for is the City of Yonkers. He stated that they also work with a lot of the Fingerlakes IDAs and all have different ways of doing business. He stated that about half of their relationships have a local counsel that they work with on every straight lease or bond transaction. He stated that the key is to look at the transaction and see if there is some other benefit that could be coordinated and put on the table. He stated that there is a struggle with what is going to be left of the Empire Zones program and if the facility is back there may be limitations on it. He stated that they are looking at local labor content and the IDAs around that State are trying to do it a little bit differently with a little bit different theory. He stated that his office is being pushed to provide regionalism and especially for IDAs that can't staff those efforts. He stated that this IDA has had the ability to have a large staff while other communities do not have that ability. He stated that at one point they worked with Mark Arbon to send out a joint letter on the Splash Park project and it worked nicely. He stated that they have brought people in who are experts in the trade, not necessarily attorneys. He stated that they are finding that they need people that are able to put together a local revolving loan fund. He stated that there was a program under review and has now come back called the ED5 Program. He stated that the program brings investors in who get a green card if they put in \$500,000 or \$1,000,000 into that transaction as an investment for three years. He stated that the Empowerment Zone renewal legislation is set to expire in 2009. He stated that this is a big budget item but if it is extended it will lead the IDAs into a new world. He stated that it is not going to be the straight lease, mortgage and sales tax and a PILOT anymore. He stated that things are rapidly changing. He stated if Onondaga County could turn a couple big projects then there might be less of the feeling of the economic downturn. He asked if putting all cards on the table is worth it; he thinks so and that is what Harris Beach tries to offer. He stated that they gave up on the idea that you need to have a law license to work with Harris Beach on economic development because it is not something you can train overnight. He stated that they need practitioners who have experience in the past.

Tim Frateschi stated that in terms of Harris Beach's expertise in economic development and economic development programs, he does not think statewide there is anyone that can match them. He stated that knowing about economic development and putting economic development projects together is a different story but he believes they can do both.

George Leveille stated that he is a practitioner in economic development and has over 30 years of experience. He stated that he has served as both the Chairman of IDAs and Executive Director for two IDAs, President of a local development corporation, Chairman of State Development Authority and currently Chairman of a Planning Board so he understands how boards work at both staff and board levels. He stated that he is interested in using that experience to work with communities around that State to help them not only achieve their goals but to strategize how they should achieve those. He stated that as part of the Harris Beach team he will bring his years of experience working in an economic development organization with board and staff around projects and hopefully contribute to what the legal team provides. He stated that he hopes they have the opportunity to work with the Board and he appreciates the Board's time.

Shawn Griffen stated that the IDA will tell Harris Beach how they want to run economic development and they can work with Agency Counsel, Mark Arbon in particular, on the straight leases and whatever bonds are out there for even a period of time and they will either earn their way or they will be sent on their way. He stated that there is yet to be a community that they have started like this that they are not still with. He stated that that he has been practicing for 18 years and every IDA that has started with them is still with them. He stated that they work with counsel, work with the board and do the project that the IDA wants to be done. He stated that this coming year he will be in Albany once or twice a week to see if this legislation goes through. He stated that he works actively with EDC trade association and works with lobbyist groups. He stated that they try their best to see what's coming but there are about 24,000 bills that get introduced and about 2,000 of them become law. He stated that whether it's Hoyt's bill or some version of Hoyt's is where they are, that will be something that will get worked out. He stated that he is more concerned about the Empire Zone being killed and with killing the program there are companies walking out with 200 jobs and going to Pennsylvania. He stated that it has nothing to do with the labor component or civic facilities but with the pens being down on the second floor and need to get them up. He stated that there is no shot if there is not a coherent "come to our community" voice. He stated that they have made it so impossible with the Empire Zone program for companies to locate here.

Tim Frateschi stated that Harris Beach wants to offer the services they are able to offer in other communities to Onondaga County. He stated that he lives in Onondaga County and has been involved in economic development for 20 years. He stated that he wants to look at the entire approach to all the projects that come in because it is not good enough anymore to say thank you for the application and we'll get back to you. He stated that other communities use their special counsel as an advocate to the project in hopes that the project will get through to the final stages and that is what Harris Beach is offering to this IDA. He stated that hopefully they can work together so they can do more economic development projects. He stated that we all live here and want to see the community thrive.

Mark Arbon stated that Gilberti, Stinziano, Heintz & Smith has represented the IDA for 27 years and he personally has represented the IDA for 11 years. He stated that they represented the IDA on several cogen facilities, large deals and the Clay Business Park. He stated that they work as both day to day counsel as well as transaction counsel no matter what size the transaction is. He stated that although they do not have the depth of experience in economic development for IDAs

that the Harris Beach firm does, they are very confident in their abilities and have handled sophisticated transactions not only with the IDA but with projects like Destiny. He stated that they also represented AMD in their transaction by renegotiating the grant agreement with Empire State Development for AMD. He stated that they are very sophisticated and unlike some of the IDAs that may have local counsel with limited expertise in handling transactions, they are able to handle a lot more complicated transactions. He stated that there may come situations where the IDA may need special expertise like Harris Beach and as special counsel, the IDA would be free to hire them to do that work. He stated that as far as general counsel, bond or straight lease transactions, there is really no need to have two counsels involved causing the IDA to pay attorneys twice. He stated that he believes that the IDA staff is very competent and the County is very competent, the IDA does not need to hire other people to do their jobs. He stated that if special assistance is needed then the IDA can seek it but on a day to day basis he does not think it is necessary. He thanked the Board for allowing him to represent the IDA for the number of years he has.

William Towsley asked what the total legal cost paid to Gilberti Law Firm was for last fiscal year. Greg Hitchin stated that year to date is \$56,000 which is a lot higher than normal. Carolyn May stated that it is higher because the office did not have staff expertise. She stated that Mary Beth Primo and the office will now have the expertise. She stated that her sense is that at least \$20,000 of the \$56,000 was because there was no staff expertise and Gilberti was doing the work that Mary Beth Primo will do now.

Robert Baldwin stated that when there was an interim director there were monthly pre-meeting meetings at his office and Mark Arbon would assist. He stated that the history of the IDA is that there was general counsel and conflict counsel. He stated that Wood and Smith and Trespacz and Marquardt have performed services in times where there were conflicts. He stated that the IDA has never had transactional counsel acting as co-counsel so that is a new concept.

Gregg Kidd asked if the Board can go into executive session. Mark Arbon stated that it is not appropriate to go into executive session.

Robert Baldwin stated that looking at the scope, type of services and accessibility Gilberti Law Firm has provided along with the cost, he does not see any need to make a change at this time. He stated that the Gilberti Law Firm's hourly rate is below the norm but well below what Harris Beach is charging. He stated that it is also good to know that Harris Beach's expertise is there if we need to have them assist.

Joseph Scuderi asked if there is a value to their experience with other IDAs across the state. Robert Baldwin stated that it could be a value but it also could be a conflict. He stated that if there is a company looking to locate around various parts of the State, he would feel more comfortable having someone who is only representing Onondaga County IDA. He stated that Harris Beach may provide another resource that the Agency may consider using. He stated that add it on top of every transaction or if the Agency went with the higher rates, it may be pricing IDA out of the market.

William Towsley stated that Harris Beach was very impressive in their presentation and may add some benefit but they are about 50% higher. He stated that with money being tight, how is the Agency to pay for it.

Joseph Scuderi asked if they want to augment or replace. Robert Baldwin stated that he believes they are making a pitch that they would like to be transactional counsel on all items before the board. He stated that he believes that is unrealistic. He stated that knowing they are available and if they have something the other firms do not have, the Agency can retain them.

Karen Kitney stated that Onondaga County has more robust support in the economic development office including the Planning Agency. She stated that she is concerned about travel costs on top of higher fees. Mary Beth Primo stated that Tim Frasteschi is local.

Robert Baldwin stated that it is a new concept. He stated that his personal thought is to continue with Gilberti Law Firm as general counsel and designate the rest as special counsel keeping in mind that if something comes to the IDA we can utilize their expertise.

Gregg Kidd asked what an example would be where the IDA would utilize Harris Beach. Robert Baldwin stated that maybe with the Clay Business Park where chip fab was looking for a location or a project coming in using an unusual type of financing. He stated that it was a refreshing presentation but Gilberti Law Firm has given the Agency everything we have needed in the past and would certainly want to continue with them.

Mary Beth Primo stated that she has a good relationship with Mark Arbon and recently met Tim Frasteschi and Shawn Griffen in Albany. She stated that the presentation was impressive and the Board should keep them in mind for special projects. She stated that Shawn Griffen seems to have a direct route to Albany. She stated that the Board should consider keeping Harris Beach in the forefront if the Agency decides to keep the Mark Arbon and his law firm who has done a good job for the Agency over the years. She asked when there is a conflict, how is special counsel chosen. Robert Baldwin stated that generally there is discussion and the Board chooses the law firm who they think would be right for the job.

Gregg Kidd asked if Harris Beach does something that our current counsel does not do and are they that much better. Robert Baldwin stated that he does not think they are better but they have a larger scope.

Joseph Scuderi asked if Harris Beach is doing things that staff is not. Robert Baldwin stated that staff is covered. He stated that Harris Beach is pushing in PIFs and TIFs where typically this Agency has not done. He stated that PIFs and TIFs have zero financing so when entering into a PILOT agreement all the PILOT proceeds go the cost of debt service with nothing going to the taxing agencies. He stated that it is always refreshing to listen to somebody but we have the capability with counsel and staff to be able to handle everything.

Gregg Kidd asked if the Agency is allowed to hire a general counsel and designate a firm as lead special counsel. Mary Beth Primo stated that she is not sure the Agency can do that today because she told the law firms interested in special counsel it was not necessary for them to make

a presentation as the presentation would be for general counsel only. Robert Baldwin stated that he feels it would be inappropriate to have general counsel and to have transactional counsel added on to every item before the Board. He stated that it is economically not a good idea. He stated that he would prefer to have Gilberti Law Firm continue to act as general counsel and designate the rest as special counsel. He stated that if there is something that stands out that might necessitate conflict counsel or doing something differently then we can discuss it.

William Towsley stated that their presentation led him to believe that they have some type of secret to success and asked if there is confidence that what we do in house and with existing counsel is enough to do what we need to do. Robert Baldwin stated yes there is confidence. He stated that there is no secret but just different ways of doing things.

Joseph Scuderi asked if an application came in and we thought Harris Beach's expertise would be of use, the Agency would give it a try and see if they did bring anything different to the Board. Robert Baldwin stated yes. He stated that we are fighting the fight not only against other States but also other IDAs. He stated that to the extent that the Agency feels we need to do something to get a competitive advantage there is nothing wrong with getting their expertise.

Upon a motion by William Towsley, seconded by Karen Kitney, the OCIDA Board approved a resolution confirming the appointment of the law firm of Gilberti, Stinziano, Heintz & Smith as Agency Counsel until January 14, 2010 with Robert Baldwin, Joseph Scuderi and Gregg Kidd voting yes. Motion was carried.

#### CONFIRMATION OF AGENCY SPECIAL COUNSEL

Upon a motion by Joseph Scuderi, seconded by William Towsley, the OCIDA Board confirmed the appointment of the law firms Harris Beach, Bond Schoeneck & King, Hancock & Estabrook, Hiscock & Barclay, Wood & Smith and Trespasz and Marquardt to be special agency counsel until January 14, 2010 with the most appropriate law firm to be used for individual projects with Robert Baldwin, Gregg Kidd and Russell Andrews voting yes. Motion was carried.

Upon a motion by Gregg Kidd, seconded by Joseph Scuderi, the OCIDA Board adjourned the meeting at 9:25: am with Robert Baldwin, William Towsley and Russell Andrews voting yes. Motion was carried.

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Mary Beth Primo, Executive Director