



Theresa Ward
Chairperson

**ACCEPTED BY BOARD
MEMBERS ON 11/16/17**

MINUTES
SCEDC REGULAR MEETING
SEPTEMBER 28, 2017

PRESENT

Theresa Ward, Chair
Grant Hendricks, Vice Chair
Peter Zarcone, Treasurer
Anthony Giordano, Secretary
Kevin Harvey, Member
Sondra Cochran, Member

ABSENT

Gregory T. Casamento, Member

ALSO PRESENT

Louis Bekofsky, Suffolk County EDC, Executive Director/CEO
Regina Zara, Suffolk County EDC, Deputy Executive Director/CFO
Angela Glaser, Suffolk County EDC, Executive Assistant
Anthony J. Catapano, Suffolk County IDA, Executive Director
Kelly Morris, Suffolk County IDA, Deputy Executive Director
John McNally, Suffolk County IDA, Associate Director Marketing & Outreach
Daryl Leonette, Suffolk County IDA, Executive Assistant
Regina Halliday, Suffolk County IDA, Bookkeeper
William Wexler, Corporation Counsel
William Weir, Partner, Nixon Peabody
Melissa Bennett, Partner, Barclay Damon
William Dudine, Partner, Katten Muchin Rosenman LLP
Andrew Komaromi, Partner, Harris Beach PLLC
Jamie Ruiz, Attorney, Harris Beach PLLC
Karen Boorshtein, Pres. & CEO, Family Service League of Long Island
Seth Stein, Partner, Moritt Hock & Hamroff LLP
James Madore, Reporter, Newsday

David Chauvin, Vice President, Zimmerman/Edelson, Inc.
John Lombardo, Suffolk County Community College
Kelsey Ferris, Legislative Aide, Suffolk County Legislator Robert Trotta
Christina Delisi, Legislative Aide, Suffolk County Presiding Officer DuWayne Gregory
Seth Lounsbury, Legislative Aide, Suffolk County Legislator William J. Lindsay III

The Regular Meeting of the Suffolk County Economic Development Corporation held in Media Room #182, in the Lower Level of the H. Lee Dennison Building, 100 Veterans Memorial Highway, Hauppauge, NY, was called to order at 1:00 pm.

Theresa Ward called to order the September 28, 2017 meeting of the Suffolk County Department of Economic Development and Planning by asking if there was any public comment.

PUBLIC COMMENT

No comments were received for the Public Comment portion of the Suffolk County Economic Development Corporation.

NEW BUSINESS

Mr. Bekofsky stated that there was no new business, but opened the floor to Bill Wexler to talk about the letter he had received from Catholic Health Services of Long Island ("CHS").

Mr. Wexler indicated that SCEDC had issued \$39,545,000 in revenue bonds to CHS on September 24, 2014 to finance a number of projects for each of Good Samaritan Hospital Medical Center, St. Charles Hospital and Rehabilitation Center and St. Catherine of Siena Medical Center (collectively, the "Project"). CHS had expected to complete the Project on September 24, 2017, but due to unexpected delays caused by other construction work necessitated by Superstorm Sandy, CHS spent 60% of the proceeds of the bonds and was requesting an extension to December 31, 2018 to complete the Project.

After further discussion and;

Upon a motion by Grant Hendricks, seconded by Kevin Harvey, it was:

RESOLVED, to grant Catholic Health Services of Long Island an extension to December 31, 2018 in order to complete the Project.

Unanimously carried 6/0.

OLD BUSINESS

Ms. Ward asked Lou Bekofsky to update the Board on the status of the bond financing for the Family Service League (“FSL”) project. Mr. Bekofsky reminded the Board that it had approved a preliminary inducement of \$8.475M at the previous SCEDC Board Meeting held on July 27, 2017, and now they would be approving the final inducement, as SCEDC had not received any comments from the Public Hearing held on September 27, 2017. Mr. Bekofsky noted that the construction costs for the proposed facility had decreased slightly, and FSL had included other renovations for its other facilities, including one new facility in Huntington that was not part of the original application. Other than that, the project was still estimated at \$8.5M, which was under the \$10M included in the contract.

Mr. Bekofsky then introduced Karen Boorshtein, President & CEO of FSL, and Seth Stein of Moritt Hock & Hamroff, attorney for FSL, to address any questions the Board might have.

Tony Giordano asked Ms. Boorshtein and Mr. Stein to expand on an issue that had been addressed at the previous SCEDC’s Board Meeting in July regarding the Board’s concern with, from an appearance standpoint, FSL’s decision to have one of its Board members do the construction work.

Ms. Boorshtein explained that FSL had a conflict of interest policy for all Board members, and when it came to bidding on this particular project, Mr. Petrocelli recused himself. She indicated that FSL had solicited bids from three different contractors and upon review of the three bids, Petrocelli Construction was significantly lower than the others by over \$500,000. Thus, the Board members agreed, with Mr. Petrocelli being recused, to award the contract to Petrocelli Construction.

Kevin Harvey reiterated that although as a Board member Mr. Petrocelli recused himself from the process, he did not recuse himself from his company being able to bid for the job.

Ms. Boorshtein explained that the matter had been reviewed by FSL’s Board attorney, found to be permissible under the Not-for-Profit Revitalization Act, and Petrocelli Construction was allowed to bid as long as FSL followed all the guidelines, which she indicated it had done.

Mr. Harvey asked if FSL’s Board members had considered the optics regarding the situation.

Mr. Stein interjected by talking about the law. He indicated that there is a statute on point, Section 715 of the New York Not-for-Profit Corporation Law and Related Party Transactions, which spells out specific procedures that have to be followed. He indicated that the statute does not prohibit related party transactions; but rather sets

forth procedures that have to be followed when there is a related party. He went on to say that there are two elements involved: the recusal element which is that the conflicting Board member in this case cannot take part in deliberations or vote on the conflicted or related party transaction, but can answer questions; and the other is that (1) the corporation considers non-conflicted alternatives to the transaction, and (2) the conflicted or related party was in the corporation's best interest to pursue. He said FSL considered other non-conflicted alternatives and found that it was in its best interest to pursue the conflicted one because that bid was over 10% lower than the others. He said, thus, FSL had fully complied with the statutory requirements.

Kevin Harvey stated that while the Board supported the project, it still expressed concern about the potential conflict of interest.

Ms. Boorshtein assured the Board that full disclosure had been followed, and that there was full transparency according to the statute.

Tony Giordano asked if Mr. Petrocelli would recuse himself and stay off the Board until construction was completed. He also asked about what would happen if there was a problem with construction and how it would be handled.

Mr. Stein indicated that if there was a problem, Mr. Petrocelli would be in an awkward position; and if a dispute arose, he would have to leave the Board. But Mr. Stein was hopeful that this would not happen. Mr. Stein also went on to say that FSL had 39 Board members should Mr. Petrocelli have to step down.

Peter Zarcone asked when Mr. Petrocelli came on the Board.

Ms. Boorshtein indicated that Mr. Petrocelli was on the Board for four years.

Mr. Zarcone then asked if it would make sense to have Mr. Petrocelli resign from the Board at this point, and then appoint him back once the project was completed.

Ms. Boorshtein said it could certainly be considered if that was a condition necessary for final approval.

Ms. Ward asked if there was a legal opinion in place, and if everything had been followed on both sides.

Andrew Komaromi, bond counsel for SCEDC, stated that bond counsel rendered its opinion to SCEDC based on the opinion from FSL's counsel that covers the legality of most of the debt transaction.

Ms. Sondra Cochran stated that, while she understood the Board's concerns, she felt that legally FSL had met its burden.

Mr. Giordano asked if FSL had ever given any thought, from an appearance standpoint, to this being a problem since it had not brought it up initially, and it could be a problem down the road.

Ms. Boorshtein asked how they could deal with this and make it work.

Mr. Zarcone suggested that the matter be tabled for another month giving Ms. Boorshtein a chance to go back and speak with Mr. Petrocelli.

Ms. Ward stated that she didn't understand why the Board would want to do that when everything had been done according to the rules.

Mr. Wexler, corporation counsel for SCEDC, stated that the SCEDC Board had done everything that a Board of a public agency was supposed to do, which is to ask questions in order for a Board to feel comfortable with a transaction.

Mr. Giordano stated that although he understood the fact that everything had been done legally and that it was a good project, he wanted it to be on the record that he was concerned about the fact that there could be a conflict down the road and hoped that it didn't become a problem. He indicated that he thought that perhaps Mr. Petrocelli would have been present at the meeting to address the Board's concerns.

Mr. Zarcone asked about the term of the project. Ms. Boorshtein indicated it would take about 15-18 months. Mr. Zarcone then asked if FSL could do without Mr. Petrocelli as a Board member for those 15-18 months.

Mr. Stein interjected that if the Board was saying that it was a condition of its approval, he assumed FSL would do it since being on a Board was a privilege and not a right. Mr. Stein went on to say that speaking from a legal point of view, and that's all he could speak to he said, he felt that if there was a problem, having Mr. Petrocelli leave the Board now would not solve the problem because the contract had been signed and could not be undone. Mr. Stein stated that one could argue that keeping Mr. Petrocelli on the Board would actually be better, as FSL would have a lot more leverage having him present if there was an issue.

Mr. Wexler made it clear that no one on the SCEDC Board was making it a condition for approval, but rather it was a suggestion to potentially avoid appearances down the road.

Ms. Boorshtein stated that Mr. Petrocelli would not want anything to hurt SCEDC's reputation, and indicated that she would have a conversation with him regarding the suggestion. She said that, although Mr. Petrocelli would not like to step off the Board since he was very committed to the organization and the mission, she felt he would not want anything to hurt the organization, and hoped that it would satisfy the Board.

After further discussion, a motion was made by Sondra Cochran to approve final inducement. Ms. Ward seconded the motion and Mr. Hendricks was in favor. Messrs. Giordano, Harvey and Zarcone opposed the motion. The voting stood at 3 in favor, 3 opposed.

Mr. Wexler suggested tabling the project for a week or two asking FSL to then report back to the Board with what it felt was appropriate since the Board appeared to be deadlocked.

Ms. Boorshtein reiterated that she would speak with Mr. Petrocelli and ask him, with FSL Board approval, to step off the Board for the project. She said that Mr. Petrocelli would step aside, and would hope that it satisfied the SCEDC Board.

Mr. Zarcone made a motion to table approval of the final inducement until the next SCEDC meeting. The motion was seconded by Kevin Harvey. Ms. Ward, Ms. Cochran and Mr. Hendricks did not vote in favor of tabling approval until the next meeting.

Sondra Cochran then asked if anyone had any suggestions or alternatives that would ease the Board's concerns about backlash.

Mr. Zarcone reiterated that he was in favor of putting forth a motion to table the matter and take it up at the next SCEDC meeting, giving Ms. Boorshtein an opportunity to go back and speak with Mr. Petrocelli and the FSL Board.

Grant Hendricks asked counsel to address whether taking Mr. Petrocelli off the FSL Board at this time might be worse. Mr. Komaromi indicated that the action had already been taken when Mr. Petrocelli was on the Board, and Borrower's counsel informed the Board that all legalities had been followed. He went on to say that by removing that Board member would not do anything to change the past, but it might help with potential conflicts in the future.

Grant Hendricks indicated that he felt that made a big difference. He said he and his fellow Board members cared primarily about the law, and to a certain extent how certain transactions are envisioned by others. The Board's concern was that it could defend itself by law. He asked if FSL had followed the law, what difference would it make if Mr. Petrocelli stayed on the Board.

Mr. Giordano said that he was in favor of the project, but thought that it needed to be cleaned up a bit.

Mr. Wexler conveyed to FSL that some Board members were expressing concern in that what transpired to date was good in that the law had been followed, but the future was uncertain, and questioned what would happen if there was finger pointing, concluding that perhaps it would not be a bad idea if Mr. Petrocelli stepped down in order to avoid any future conflict.

Ms. Ward said that all the steps that needed to be taken were abided by, and now FSL was before the Board to obtain financing of the project.

Mr. Zarcone interjected that the Board's concern arose after it realized that Mr. Petrocelli was not only the building contractor on the project but also a Board member, which, he stated, was never disclosed prior to the application.

Mr. Zarcone then reiterated that he had previously made a motion to table voting on final inducement of the project until the next meeting, which he indicated Mr. Harvey had seconded.

However, before the motion was put to a vote, Mr. Hendricks stated that he wanted his comment on the record that he would be opposed to Mr. Petrocelli at this point resigning from the Board because he felt that if it ended up being a likely condition, it would be a mistake. He indicated that, in his opinion, it would look worse. He also added that he appreciated the time the Board had taken to give its opinion, but his own personal thoughts were that Mr. Petrocelli should not resign from the FSL Board.

Mr. Zarcone indicated that he also wanted to put on the record that the Board was not making a condition and that it was not part of the motion.

Ms. Cochran said that either way there was potential for someone to come up with something, and the Board should be prepared, follow the law, and know that the Board did nothing wrong.

Mr. Harvey added that perhaps FSL could take it up with its Board that the SCEDC brought up a concern that having a business relationship with a Board member could create a very uncomfortable situation if there were cost overruns, since almost every construction project had change orders and cost overruns.

Mr. Stein stated that what concerned him was what would happen if they were in the same position in a month from now. He asked for more clarity as to what the Board wanted FSL to do because he felt they might be in the same position next month.

Mr. Wexler indicated to Mr. Stein that the SCEDC Board could not guarantee an outcome, but that it had expressed concerns that FSL should take back to its Board for further consideration.

Mr. Hendricks said that the Suffolk County IDA had received a very favorable rating in the State, and they wanted to keep it that way.

Mr. Stein reiterated that the only refuge they had was that they had followed the law, and again asked the Board what it wanted them to do.

Mr. Hendricks requested that another vote be taken to move the project along, because not doing so would cause people who desperately needed the services FSL provided to not receive them.

Ms. Cochran asked Ms. Boorshtein to reiterate what the project was for. Ms. Boorshtein reaffirmed that the importance of the project was to continue to reduce emergency room visits, in-patient hospitalizations, Medicaid reliance for people with severe mental illness and those with substance abuse problems, and having the new facility would give greater access to those in need whereas they could not be accommodated today.

Mr. Wexler asked what assurances FSL could give in terms of the construction being conflict free, understanding the potential of how it would appear if Mr. Petrocelli remained on the Board.

Mr. Stein indicated that the project was being supported by public funds in that New York State awarded the project \$1.5M, which FSL could not obtain until the project was completed and operational. Mr. Stein went on to say that if a construction conflict arose, the Board would deal with it in the same manner whether or not Mr. Petrocelli was on the Board. In fact, with Mr. Petrocelli being on the Board would prove to be beneficial because he would be under a microscope, and the Board would expect him to do the right thing under those circumstances.

Ms. Boorshtein vouched for Mr. Petrocelli saying she knew Jim for several years since he built the first two portions of FSL's Bay Shore building, and then the preschool building in 2004-2005. She said that he was a standup guy, that his whole family was extraordinary, and that if there was any issue, she could assure the Board that he would not come back to cause any problems for FSL, and that he would do the right thing. She said that was what Petrocelli Construction stood for, that she had seen it demonstrated year after year, and that she had every confidence that he would not want to do anything that would cause harm to FSL.

Ms. Ward stated that she had heard that Petrocelli Construction had managed the conflicts all the way through, that they had done everything right, and she felt that if the Board delayed, it would be putting a condition on the financing approval of the project. She went on to say that it was a publicly funded project, publicly vetted, and that there was no reason to delay approval of the project for another month.

Bill Wexler reminded the Board that the motion currently before it was to table the matter. Ms. Ward, Mr. Hendricks and Ms. Cochran stated that they were opposed to tabling the matter. Mr. Wexler then stated that the vote stood at 3:3, and that it was a nullity. He said the matter could be put to a revote, or the Board could continue to complete the meeting's agenda and adjourn.

Ms. Cochran stated that she felt that the Board could handle whatever the outcome because the project was a positive one that was much needed in Suffolk County, and

the Board had done nothing wrong. She went on to say that Mr. Petrocelli had already been awarded the project, and any potential backlash could result either way.

Ms. Cochran then made a motion to move forward with the project. Mr. Hendricks seconded the motion. Ms. Ward was in favor.

Messrs. Zarcone, Harvey and Giordano opposed the motion.

The Board had reached an impasse. As a result, final inducement of the FSL project would be placed on the SCEDC agenda for next month.

MINUTES

Ms. Ward then asked for a motion to approve the Minutes of the July 27, 2017 Meeting.

Upon a motion by Grant Hendricks, seconded by Theresa Ward, it was:

RESOLVED, to approve the Minutes of the July 27, 2017 Meeting.

Unanimously carried 6/0.

There being no further business, and

Upon a motion by Theresa Ward, seconded by Grant Hendricks, it was:

RESOLVED, to adjourn the Regular Meeting of the Suffolk County Economic Development Corporation.

Unanimously carried 6/0.

The Meeting adjourned at 2:02 p.m.

The next Meeting of the Suffolk County Economic Development Corporation is tentatively scheduled for October 26, 2017.