

Economic Development Committee Minutes
December 9, 2020 – 3:00 p.m.

Present: Chairman Jack Lawler; Committee Members Ed Kinowski, Dan Pemrick, Jean Raymond, Tom Richardson, Jon Schopf, Kevin Tollisen; Supervisors Todd Kusnierz, John Lant, Jonathan Schopf, Mike Smith, Sandra Winney, Mo Wright, Benny Zlotnick and Chairman of the Board Preston Allen; Spencer Hellwig, Chad Cooke, County Administrator; Steve Dorsey, Hugh Burke, County Attorney; Jason Kemper, Planning; Andrew Jarosh, Treasurer; Shelby Schneider, Rocco Ferraro, Penny Hill, Justin Miller, Saratoga County Prosperity Partnership.

Chairman Lawler called the meeting to order and welcomed all in attendance.

On a motion made by Mr. Kinowski, seconded by Mr. Richardson, the minutes of the November 12, 2020 meeting were approved unanimously.

Ms. Schneider distributed a handout, the handout is attached to these minutes.

A motion was made by Mr. Richardson, seconded by Mrs. Raymond, to forgive \$225,000 overpayment made to the Saratoga County Prosperity Partnership. The motion passed. Mr. Schopf was opposed.

A motion was made by Mr. Pemrick, seconded by Mr. Richardson, to authorize Saratoga County Prosperity Partnership funding be set for 2021 in the amount of the greater of 50% of the occupancy tax or \$450K inclusive of half the occupancy tax. The motion passed. Mr. Schopf and Mr. Tollisen were opposed.

Ms. Schneider introduced the President of the SCPP Penny Hill, the Treasurer Rocco Ferraro and Legal Counsel Justin Miller. Ms. Schneider said that the reason she is here is because they recently had a board meeting. Last year the SCPP contracted with the County for approximately \$500K which was based on an estimate of \$1M of occupancy tax for 2020, which was based on the 2019 room occupancy tax collection. Ms. Schneider said that per the contract, they receive \$125K per quarter. The 4th quarter voucher in the amount of \$125K was submitted to the County. The payments are essentially due at the beginning of each quarter, primarily because it helps with payroll and other administrative expenses in the beginning of each year. The contract does not run coterminous with the way room occupancy tax is collected. Ms. Schneider said that they reached out to the County Administrator and County Attorney inquiring about the status of the 4th quarter payment, and they were told that because the County has not received adequate occupancy tax at this time, that the 4th quarter payment would not be able to be funded. Ms. Schneider said that the tax revenue collected in 2020 through November is only \$307K, which is roughly \$222K less than the \$375K allocated to the Partnership for the first three quarters of the year. Ms. Schneider said that in 2019 the Partnership received \$775K between room occupancy tax and other sources.

Ms. Schneider said that they have cut expenses significantly since she has taken over, and have sought other sources of revenues to make up the difference, and adjust to the \$400K difference in their budget. Ms. Schneider said that they have been operating on austerity and are doing everything possible to ensure that they are providing adequate services based on the agreement

with the County. Ms. Schneider said that they applied for and received a Cares Act PPP forgivable loan in the amount of \$81,803.61. They also applied for, and were awarded a \$95K grant from the USDA Rural Business Development Grant. This is helping support activities for the Next Wave Communities economic development planning initiative. The grant is very specific to certain programming, and funds must be spent first in order to be able to draw down funds.

Ms. Schneider said that based on the current revenue and expenses, the Partnership anticipates finishing the year with almost \$40K remaining to cover expenses for January. This is based on very careful spending. Ms. Schneider said that part of the discussion with the Attorney and the Administrator was a budget resolution that was passed in December 16, 2019 which limited the revenue of the Partnership to 50% of the County's occupancy tax receipts for 2020. In the past, the full amount of funding was provided up front at the beginning of the year, in 2020 funding was broken in to quarterly payments. The contract with Saratoga County does not have any provision for the recapture of funds from the Partnership. Ms. Schneider said that essentially the Partnership has a legally binding contract for \$500K, of which the County does not have the room occupancy tax revenue to cover that full amount. Final receipts for room occupancy for 2020 will not be available until March 2021, therefore that amount is still unknown. Ms. Schneider said that they are willing to not pursue their 4th quarter payment of \$125K, but are asking today for an amendment to resolution 275-2019 eliminating the restriction of funding to only 50% of the County's occupancy tax receipts for 2020. Since they have no funds left to return to Saratoga County, recapturing the difference would cut into their proposed 2021 operating budget of 2021. Ms. Schneider said that given the fact that they have this delta where their budget cycle is not coterminous with room occupancy tax collections, they are asking for assurances that in 2021, the request for \$450K is accompanied by a sixth amendment to the original economic development services and marketing agreement, which had a scheduled payment schedule that started at the beginning of each year, and is not restricted to the amount allocated by tax law § 1202-g(9), which is 50% of Saratoga County's Occupancy tax receipts for 2021. Ms. Schneider said that given the fact that we are in an economic crisis as well as a public health crisis, hopefully an end is in sight and it's critical now, as far as economic development, to make sure that we are ensuring the economic consequences are as minimal as possible, supporting the small business community and also setting the stage for lasting recovery.

Mr. Lawler said that the handout provided by Ms. Schneider was emailed to all Committee members. Mr. Lawler asked Mr. Dorsey what the overriding authority is, the Board Resolution or the Contract? Mr. Dorsey said the resolution, it takes precedent over the contract. Mr. Lawler said that enforcement and compliance of the contract terms is therefore probably not an argument that is going to carry a lot of water given the advice just given by Mr. Dorsey. Having said that, Mr. Lawler said that if he understands this, the first item to a request for the \$225K overpayment, as it stands today, to be forgiven. The second item, as he understands it, is that the Partnership would like to see a change in the 2021 budget that would reflect a fixed dollar amount as opposed to 50% of the bed tax. Ms. Schneider said that prior to 2019 that stipulation was never in the agreement and resolution. Predictability of cash flow gives them the ability to leverage that cash flow. Mr. Lawler said that the bed tax in 2019 was \$1.2M which would have entitled the Partnership to \$600K using that formula. Instead, for 2021 they are requesting a fixed dollar amount of \$450K.

Mr. Lawler opened up the first item for discussion to the Board Members of the Partnership that are present in the room.

Ms. Penny Hill said that she has been a member since the inception of the Prosperity Partnership. Ms. Hill said that in her opinion in order for an organization to function, you need to know what your budget is going to be for the next year, if not longer. Ms. Hill said that if it's the intention of the County to continue with this organization, that a stable path is needed and know what their revenue is going to be.

Mr. Rocco Ferraro thanked the County for the support provided in the past, and hopes that it can continue into the future. Mr. Ferraro said that a few important things to note, the staff has faced significant reductions in terms of expenses associated with running the organization in 2020 from the previous year. That being said, the staff have done an excellent job in maintaining the services that are necessary to both the stakeholders in the County, the business community especially the small businesses. Mr. Ferraro said that part of the activities that the staff has been proactive about is through the Next Wave communities program, in terms of working with the communities to get them to be prepared to welcome businesses into the community. Mr. Ferraro said that a lot of the smaller communities don't have the resources to make this happen. Mr. Ferraro said that the Partnership is filling a significant void providing services to the more rural communities. Mr. Ferraro said that the staff has been aggressively pursuing state and federal grant support to leverage the funding received from the County. Mr. Ferraro said that his observation is that in order for the Partnership to continue their operations, financial support is needed. The budget proposed for 2021 is very streamlined and he urges the committee and Board of Supervisors to support the request.

Mr. Kusnierz said that as part of the Unity Agreement MOU adopted by the Board, there are two economic development entities in the County working that are working to further the mission. The reason for the reduction was because some of the funding was used to go towards the other economic development arm partnered with in the County. Mr. Kusnierz said that it's not like the funding for economic development was cut, it was reallocated for that mission, and Mr. Kusnierz said that he believes this is important to keep in mind. Mr. Kusnierz said that he is in support of the forgiveness of the advance \$225K and would encourage his colleagues to be supportive of that because these are unforeseen financial economic times, through no one's fault, but just the way the dice has rolled out with the pandemic. However, Mr. Kusnierz questioned what is the right amount of money to add to the Partnership, because if we look at the \$225K plus the \$81K in the payroll protection plan grant received, they actually received \$316K over the half the bed tax which is what the resolution states. Mr. Kusnierz said that he does not believe you can continue with this pace, we need to be fiscally responsive, and seriously look at the realities of what half the bed tax is, and that's how the organization was structured. Mr. Kusnierz said that the other thing he would ask his colleagues to keep in mind, we know that Congress, probably as early as next week, is going to approve approximately another \$288B to \$300B payroll protection plan, and there will be stipulations in that as far as revenue tests that are included. That will only be available to organizations that have seen over 25% reduction in revenue for their businesses, programs. Mr. Kusnierz said that he knows there is language that is involved in the provisions of that act that will preclude entities from getting any of that money, if they receive additional revenues over whatever the average is established for 2020. Mr. Kusnierz said that this is something to keep in mind and these are his thoughts on it.

Mr. Zlotnick said that he would like to add that what he has seen over the past year is a very hardworking group. The work that this Partnership has done for his Town and Village that is part of his town has been nothing short of amazing. The opportunities they have presented to our business owners, and sole proprietors to stay open, under very difficult circumstances, and the

work that they have done with the Village to put the plan together, from which they have already had opportunities come from that, Mr. Zlotnick said he thinks they are doing a wonderful job. Mr. Zlotnick said that the middle of their name says it all, Prosperity. Mr. Zlotnick said that he would also be in favor of forgiving the overpayment, but would also recommend their budget request.

Mr. Lawler clarified with Ms. Schneider that her request for 2021 funding is \$450K. Mr. Lawler asked Ms. Schneider if her Board had approved this funding request. Ms. Schneider said yes. Mr. Lawler asked Mr. Kusnierz and Mr. Zlotnick if as board members of the Partnership, if they were comfortable with this budget request? Mr. Zlotnick said that he voted for that request. Mr. Kusnierz said that he voted for that because it was an ask, in that the Board is willing to move forward with, the ask, he would not stand in the way of that. But he would like to state on the record that the way this organization was established, and he knows Supervisor Lawler was a key architect of that, was predicated on the fact that the revenue stream would come from the bed tax, and as we all are facing in our communities, we have had to make tough decisions, we have had to make reductions in spending predicated on, for instance sales tax. Mr. Kusnierz said it's no different for this organization, it's just that the revenue stream is different, so we have to show some fiscal responsibility and he believes that we do, if we stick to what the organization was formed under for the funding stream, which is half the bed tax.

Mr. Lawler said that as a point of clarification, up until last year the Partnership have received 50% of the bed tax, plus some other amount of money. Last year was the first year that the Partnership received only 50% of the bed tax. Mr. Lawler said that he understands the rationale for that with the second organization, but wanted to make it clear that traditionally, the Partnership financially has relied on both sources of revenue. Mr. Lawler thanked Mr. Kusnierz and Mr. Zlotnick for their comments, as members of their Board.

Mr. Lawler opened up the floor to the rest of the committee members for questions or comments. Mrs. Raymond said that she has a clarification, she said that we have a law that states that 50% of the bed tax goes to the Partnership. Mrs. Raymond said that Ms. Schneider is asking for a fixed amount, but if the fixed amount is received and for example the bed tax is \$1M, does she then get the lesser amount, and do we need to undo that Law so that they get only a fixed amount? Mr. Lawler told Mrs. Raymond that she kind of jumped ahead to something he was going to suggest after everyone had commented. Mr. Lawler said that his thought would be, the request was \$450K, the board approved \$450K, he thought what might make some sense would be \$450K maximum regardless of the bed tax. Mr. Lawler said that bed tax at one point was \$1.1M, which would have given the Partnership \$550K and we would have seen an escalation of payments to the Partnership based strictly off the increases of the bed tax, which is not necessarily good stewardship. Mr. Lawler said that he believes everyone can agree that the bed tax will go back up, having a set number for future years gives the Partnership enough to operate upon next year, it positions the County going forward to look more objectively at the Partnership budget. While this year, the bed tax worked to the Partnership's detriment, going forward that number is only going to get bigger. Mr. Kinowski said that Mr. Kusnierz had asked about other sources of funding, grants or otherwise, and asked Mr. Kusnierz if he was suggesting in his comment that they would deduct any earnings or revenue streams by that amount? Mr. Kusnierz said absolutely not and that his comments, if he was unclear, was to ask his colleague to keep in mind that any monies that should become available to the Payroll Protection Plan, will be predicated on the fact of how much there's been a reduction in funding for either the business or the entity, and if additional monies in this fiscal year are provided to the business or entity, that may jeopardize their ability to get those federal dollars.

Mr. Pemrick agreed with Mr. Zlotnick in terms of the value of the Prosperity Partnership throughout the County and the programs that they support. Mr. Pemrick said that he likes the idea of a fixed rate annually, and come back each year through the budget process.

Mr. Lawler said that it can be phrased in a way that the funding would be \$450K, which would be composed of 50% of the bed tax, with any shortfall to be made up by general funds.

Mr. Tollisen said that he was getting a little confused, are we giving just \$450K, and that's the end of it? But if there is more funding via bed tax they get more? Mr. Tollisen asked Ms. Schneider if her request is for a straight \$450K, regardless of what the occupancy tax is, that she just wants to know that all she is getting is \$450K. Ms. Schneider said yes.

Mrs. Raymond reiterated that we have a law that states they are entitled to 50% of the bed tax, and in order to guarantee or budget the \$450K, the law would need to be revoked. Mr. Lawler said that what he is suggested is that an overall guarantee of \$450K is provided, if there is a shortfall in the bed tax, that the County would make up the shortfall to a maximum of \$450K.

Mrs. Raymond said that if there in an overage in bed tax, there is a law that states they have to get that money, and suggested that the law would need to be amended.

Mr. Tollisen said that he is trying to figure out what the ask is, it sounds like they are just asking for \$450K, but the interpretation is also that they are asking for \$450K or half the occupancy tax, whichever is higher. Mr. Tollisen said that he believes they need to be consistent so that we know what we are dealing with.

Mr. Miller said that he is pleased that based on the conversation that the measure of forgiveness seems to be the direction that the committee is going with respect to the delta this year. Mr. Miller said that without that, it's an existential threat for the Partnership that relies on the County's appropriated funds or the bed tax. Going forward looking at next year the predictability is a priority. Mr. Miller said that if the amount payable under the 50% of bed tax is over \$450K, the contract could include a waiver to reconcile this.

Mr. Jarosh said that occupancy tax is collected on an awkward quarterly calendar because they allow three weeks for the remittance and filings of occupancy tax, they calculate them and then it's another couple of weeks before payments are submitted to the various entities that are paid out of occupancy tax including the County, City of Saratoga Springs, Convention and Tourism Bureau and the City Center. Every quarter an amount is calculated and checks are cut to these various entities. Mr. Jarosh said that he does not believe that the Law funding the Prosperity Partnership is set up as a diversion. He is not calculating a different check amount every quarter on a percentage of actual receipts received. This would make the Partnerships job even more difficult as the amounts would vary greatly since Summer is the big quarter. Mr. Jarosh just wanted to make everyone aware that it is not set up as a diversion, and would also recommend against it.

Mr. Dorsey suggested that the motion be read either the greater of 50% of the occupancy tax or \$450K inclusive of the 50% occupancy tax. Mr. Tollisen said that he has an issue with this, the request is for \$450K and if this is the request, there should be an avenue or a way to change the occupancy tax law with this. If there is not, he understands that, but we are taking some liberties here with ensuring that they get a certain amount of funding, and now we are going to increase it if it's higher? Mr. Lawler asked if Mr. Tollisen had suggestions on how it could be better phrased. Mr. Tollisen said that to him the request was \$450K, and if that is the ask, it's a reasonable ask. But the \$450K minimum or occupancy tax, whichever is higher, seems to be a bit overboard to him. Mr. Lawler said that he understands the concern. There are two issues that are problematic, one is we have a law that requires the Partnership get 50%, and the second issue is if we limit their revenue to just straight up 50% we run the risk of another \$250K payment to the Partnership for

2021 which is going to put them out of business. Mr. Lawler said that he believes we need to be realistic, do we want to put a County entity out of business because of the anomaly of the bed tax due to the Covid pandemic? Mr. Tollisen said that his answer to that is no. He is not looking to put them out of business whatsoever. But he believes if they are looking for \$450K, in this budget time that is a lot but ok, but looking for that or higher, one needs to be picked in his opinion.

Mr. Lawler said that an amendment to this law requires an act of the State Legislature, and asked Mr. Kusnierz when they come back. Mr. Kusnierz said the first Wednesday after the first Monday. Mr. Lawler said that typically these laws are dealt with on the last day of the session, so we typically would be around the end of March the beginning of April before we could even get something on the Legislature's desk to consider changes to the law. Mr. Lawler said that he understands what Mr. Tollisen is saying, and he agrees with him. Mr. Lawler said that he believes the risk they run is if there is a miraculous recovery of the bed tax, and the bed tax is more than \$900K, that's a windfall for the Partnership. Mrs. Raymond pointed out that all the conversation in the world is not going to change this law today. The law is the law. However, the \$450K guarantee is only for 2021. We cannot bind the Board that's going to be in 2022. If suddenly the Partnership comes into this giant windfall because 50% is higher, first of all we have time to get the law changed, and secondly we have the ability to not give them the guarantee of \$450K the following year, or to cut them entirely and tell them to go live on what they get. Mrs. Raymond said that she believes it is not something that will be binding for years to come, and we don't have the ability to change the law today anyway. Mr. Lawler asked Mr. Dorsey if the Partnership share of the bed tax is more than \$450K, could any overage be applied toward the \$225K overpayment in 2020? Mr. Dorsey said that he does not believe it would be covered by either State or Local Law. It's their money by law and you can only amend that statute with home rule legislation which would take probably a year to get passed. Mr. Dorsey said that any change to the State tax law probably would not take effect until 2022's contract.

Mr. Lawler said that the question is if the Committee supports a \$450K guaranteed contract for 2021. Mr. Lawler said that he does not believe there is any way to cut it up any differently. Mr. Lawler asked Mr. Dorsey to re-state the suggested motion. Mr. Dorsey said that it was the greater of half the occupancy tax or \$450K inclusive of half the occupancy tax. Mr. Lawler said that this will guarantee the Partnership gets \$450K, because if it's more than \$450K they have to get that by law, and if it's less than \$450K, all we are saying is that we will make it good up to \$450K. For example if the bed tax distribution was \$300K, the County would be guaranteeing \$150K. After that, if it's more than \$450K, congratulations. Mr. Lawler asked Mr. Tollisen if that makes sense to him. Mr. Tollisen said that it does, but it doesn't make him happy. He understands Mrs. Raymond's point that the law is the law, and believes we should not ignore the law, but believes we should try to pursue that. Mr. Tollisen said that Ms. Schneider's request was for \$450K, and they would get that amount going forward. Mr. Tollisen said that he knows they cannot bind future Boards but if he is still there, he would expect that the request in 2021 would be \$450K. Mrs. Raymond said that this is not a Local Law that we can just change, but a Legislation out of the State Legislature, and is the law until changed. Mr. Dorsey confirmed that it is Tax Law Section 1202-g(9) which is embodied in State Law and it authorizes the County to pass a Local Law. Mr. Pemrick said that he believes the only way forward is to follow Mr. Dorsey's suggested motion, and then pursue changing the law.

Ms. Schneider said that she is not suggesting changing the local law. Ms. Schneider said that having the occupancy tax committed to supporting economic development in Saratoga County is very important. Having that commitment now and in future years offers great stability and

underwrites economic development. Mrs. Raymond said that on a practical level, and it cannot be solved today, the contract with the Partnership could be changed to require that the Partnership do certain things with the funding, maybe fund SEDC further, maybe do something else entirely. Mrs. Raymond said that we need to do some serious looking at, over the next year, what our options are. Mrs. Raymond said that she would support guaranteeing them the \$450K so that they can get on with their business, and support next year's Chairman of the Board and Economic Development Committee seriously taking a hard look at what our options are. Mr. Schopf said that he doesn't believe the Partnership should have it both ways. The original legislation provided for half of the occupancy tax, that's what they get. There are contractual obligations to repay the \$225K. Mr. Schopf said that it was mentioned that the pandemic is going to cause the closure of the Partnership if we don't advance this funding today, and with all due respect this is entirely tone deaf. The pandemic has also forced the closure of small businesses across this county and state. The small business can't just go and modify a contract with its mortgage company or landlord and forgive \$225K, they would go bankrupt. They have to pay their debts and operate under the funding they are receiving through their business. There is no one they can look to, to guarantee their funding. Mr. Schopf said that State taxes are going up and no one is going to guarantee the County's funding, who do we look to when our sales tax and our revenues streams shortfall? Mr. Schopf said that the Partnership is no different and he cannot support this, and if it passes, he cannot support a budget that funds this. Mr. Lawler asked Mr. Dorsey to re-read the motion as earlier suggested. Mr. Dorsey said that funding would be set for 2021 in the amount of the greater of 50% of the occupancy tax or \$450K inclusive of half the occupancy tax. Mr. Connolly said that he completely supports this and believes it is the wise thing to do to ensure they have the funds to operate.

A motion was made by Mr. Richardson, seconded by Mr. Kinowski, to authorize Authorizing a logging revenue agreement with Prentiss and Carlisle Management Company for a timber harvest of County-owned parcels in the Town of Northumberland. Unanimous.

Mr. Kemper previously distributed a handout previously via email. Three bids were received. The work will commence in Spring of 2021.

A motion was made by Mr. Richardson, seconded by Mr. Pemrick, the meeting was adjourned unanimously.

Respectfully submitted,

Therese Connolly
Deputy Clerk of the Board