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February 15, 2015

Mayor Svante Myrick and
Common Council of the City of Ithaca
108 Green Street
Ithaca, NY 14850

Legislature of the County of Tompkins
121 E. Court Street
Ithaca, NY 14850

re: CIITAP program between the City of Ithaca
and the Tompkins County Legislature/TCAD

Ladies and Gentlemen:

The newspapers have reported that your respective bodies are considering revising the Community Investment Incentive Tax Abatement Program [CIITAP]. As I have recent personal experience with this program, I decided to write to you with my thoughts. My perspective is that of someone who has been involved in land development for over 30 years, in various parts of the state, including IDA involved projects.

The urban core tax abatement program has been in existence for many years. It is possible that some of you are not familiar with this history. I thought it might be helpful to go into that in detail. To facilitate your reading, I have added source footnotes.

CIITAP is an important tool to attract development to Ithaca's urban core.

In 2013 Mayor Myrick stated "It is in the best interest of our taxpayers, our environment, and the cultural life of the city for us to continue to encourage smart, sensible growth in the core of the city..."¹. A recent editorial on municipal goals for 2015 suggested the need to promote public/private partnerships.²

A partnership implies mutually beneficial collaboration, not a dominating interaction. Before CIITAP, there were two prior abatement programs adopted to grow the urban core - the Community Investment Incentive Act (CIIP)] and the "Downtown Incentive Program". The results of those were mixed at best.³ In the 2007 – 2012 time period that

CIIP was the law, only one project successfully completed the application.

Adoption of CIITAP

In adopting CIITAP in 2012, Common Council admitted that CIIP was an unworkable bureaucratic morass⁴. Citizen groups, public boards and committees each were attempting to inject their particular viewpoint for a “community benefit” to be provided by a developer, regardless of the cumulative effect of these individual points of view on the viability of the project.

The same day CIITAP was adopted, Common Council consolidated the Building Department and Planning Department into one agency, and adopted a significant revision to the Site Plan code.⁵ In re-writing the Site Plan law, the City put the sole decision making authority in the hands of Planning and Building⁶ and made their decision binding on all other agencies and boards in the city government.⁷ The intent⁸ and the review criteria⁹ of this law require the Planning Board to consider input from all of the various Boards and Committees that developers previously had to approach and satisfy individually.¹⁰

In this new process, “community benefits” were negotiated between the City and the developer as part of the Site Plan approval. The process was supposed to give certainty to a decision by the City, and make the Planning Board the authoritative voice for the City. If there was disagreement between one or more of the many boards, committees, and departments that make up City government, its decision was binding. The law required the Planning Board to consider input from the numerous citizen groups and individuals who actively participate in public hearings. It appears that the reason why there were just 3 criteria that the developer had to meet for a CIITAP abatement was because the impacts and benefits had already been considered and determined at the site plan stage.¹¹

The recent 130 Clinton Street CIITAP application provides an example. Site Plan review and CEQRA (environmental review) commenced in November 2012 and took until July 2013.¹² All input from public comments and other boards/departments/agencies were considered, potential impacts were determined, and “the Planning Board, acting as Lead Agency, *has required mitigation to all impacts as detailed in the FEAF, part 3.*” (italics added)¹³ Those potential impacts included environmental, aesthetics, slope failure, potential runoff, foundation failure, surface water control, and a host of others. Specific reference in the Planning Board findings was made to input from the Conservation Advisory Council, Shade Tree Advisory Committee, Transportation engineer, City engineer, County Planning Commissioner, County Environmental Management Council, and Planning Board. The developer was required to do a flora and fauna inventory study, visual impact study, slope stability assessment, archeological survey, numerous borings and storm water management plan study.

The mitigation measures required of the developer included moving the location of the building, agreeing to dedicate as forever green approximately 2/3 of the parcel, re-foresting areas with indigenous species, installation of an irrigation system and

replacement of plantings that died within 3 years. The building design was determined to be not “urban enough” in appearance with a gable roof, so the developer was required to make the roof flat even though buildings directly to the south have peaked roofs. Just these two mitigation measures (there were others) added over \$350,000 to the construction cost.

The initial projected cost in 2011 was \$2.5 Million. After Site Plan approval it was re-computed to \$3.2 Million. The bids came in at approximately \$4.3 Million. That works out to about \$248/sq ft. for a wood frame building. Contractors experienced in working in the City of Ithaca commonly factor in regulatory delay and oversight into their bid price. It is more expensive to build in the City, a fact that the City has recognized.¹⁴

In adopting CIITAP, the City and the County identified the most important things they wanted to promote with this program: growing the tax base, new residential units, higher density, and building on vacant/abandoned land in the urban core.¹⁵ These goals were given a higher priority than other single-issue items, because they have a greater beneficial impact on the community as a whole. The City CIITAP review committee found that the 130 Clinton project fit the program criteria and supported these goals.

Community Development “Exactions”

There are some who constantly beat the drum of requiring developers to provide subsidized housing (subsidized by the developer, not the state) as a quid pro quo for the privilege of building in Ithaca. These “subsidized units” reduce the economic income of the development, negatively impacts both the market and assessed value, which in turn impacts the ability to finance with lenders.

A lower assessed value means lower tax revenue to the municipalities. Our senior citizens on fixed incomes are being forced out of their houses by ever increasing taxes and new fees, exacerbated by the limited ability of the City to increase revenue. These senior citizens, some of who are veterans and honorably served our country, have in many cases lived and worked in Ithaca for decades. Why is it that some of you believe that these citizens are less deserving of housing that is affordable than people who may not presently be residents of the City or the County but want to move here and receive a subsidy for that privilege?

Senior citizens also live with limited incomes that often do not rise enough to offset soaring property taxes, storm water management fees, and sidewalk fees. New construction in the city lessens or negates the impact of new fees and taxes to all residents, not just a favored few as in the case of subsidized housing. Unfortunately, this “community wide benefit” of increased tax revenue has in some cases been sacrificed on the alter of single issue agendas, to the significant detriment of the entire community. “A rising tide lifts all boats.”¹⁶

The objectives of the CIITAP program, as adopted by the City, were to promote development in the city core. Committee Chair Seth Murtagh has stated: “From my perspective, and I think others share this perspective, locating development downtown in

the core of the city is a community benefit in its own right....”¹⁷

He is correct in his analysis. Let’s further examine 130 Clinton Street as an example.

The property is vacant, sloped land currently generating about \$4,000 in taxes. There presently is no slope management obligation, responsibility that the owner re-plant with indigenous species, irrigate and maintain new flora and fauna, or obligation to dedicate forever green 2/3 of the parcel as was negotiated in the Site Plan process. The development would have generated 36 new, high quality living units. 24 of those (1 and 2 bedroom) would have included a washer/dryer in the unit, a rare convenience. Compared to other rents in the urban core, the monthly rent was moderate. The occupants would be within 2 blocks of public transportation, the library, and the Commons. The need to drive was significantly reduced. Forty percent of the building was going to be built into the side of the slope (earth sheltered) and therefore be more efficient from an energy standpoint than most free-standing buildings. The roof insulation was R40, and construction would be to current NY code, as well as all the enhancements required by the City in the site plan process.

Environmental Benefits

For those who opined that this was not green enough, I would suggest that what you have left people with is far worse. The potential residents will now have to live in less energy efficient, older housing. Outward pressure in traditional neighborhoods to become rentals rather than owner occupied will continue to increase. Tenants rents will be higher because there is not more inventory available. The government will not have new revenue that would help offset higher taxes and new fees. Impacts on traffic or use of public services, such as schools was minimal or actually beneficial to the community.

Most of the housing stock in the City significantly predates current building codes, is far less energy efficient than 130 Clinton would have been, and is further away from the downtown center, requiring people to drive their cars thereby increasing their carbon footprint and traffic congestion. Comparing the environmental alternatives, on balance having the project go forward would have been less impactful than maintaining the status quo.

Abatements and Tax Revenue

IDA staff reported to their Board that over the 7 year abatement period, if the project was not built, the tax revenues from the parcel would be about \$36,000 or average \$5,142 per year. With the construction and with the abatement, in year one (90% abatement) the revenue would be about double the revenue from the presently vacant parcel. Over the 7 year period the project would generate \$307,000 in revenue received by government or about 850% more revenue than if vacant. This is even with the abatement (estimated to the developer at \$297,000) After the abatement period, the annual revenue received would exceed \$120,000 per year for as long as the building stood. The community as a whole benefits when each citizen does not have to pay as much in property taxes, senior citizens on fixed incomes in particular.

Local Labor

A number of unions spoke against the project¹⁸ saying that the general contractor should hire “local” labor. It would be interesting to find out their definition of what is “local” – is that Ithaca or Tompkins County, or the geographic jurisdiction of their “local”? The representative of the Northeast Regional Council of Carpenters has a phone in the 315 area code, and the region that the local covers is New York and New Jersey. The local headquarters is listed as Edison, New Jersey.¹⁹ Plumbers Local 267 describes on their website their geographical area as including some or all of Onondaga, Madison, Cortland, Chemung, Schuyler, Seneca, Tompkins, Steuben and Tioga counties.²⁰ IBEW Local 241 does not specifically list the counties it serves, but the list of “signatory contractors” goes north to Onondaga County (Syracuse), southeast to Broome County (Binghamton), southwest to Chemung County (Elmira), west to Erie County (Tonawanda) and includes locations in Monroe County (Rochester, Farmington)²¹

Pete Myers of the Tompkins County Worker’s Center wrote that all construction workers should be paid at least a living wage and that after construction the owner should hire people of diversity to work for him.²² The application was available either from the applicant or the IDA. In it, the names and information of people to contact if he had questions was readily available.

If Mr. Myers had contacted the general contractor about his prevailing wage and local labor question, he would have been told: “We pay our workers a living wage per Alternatives Credit Union standards...We are a merit shop. This means that we use subcontractors who are affiliated with the union, union workers, and non-union workers working side by side on each job...Most of our own employees live in Tompkins County...We plan on using a site work contractor from Candor, we will do the concrete and carpentry with our own employees, the drywall will likely come from Syracuse, the roofer and painters are local.” Relative to the issue of the diversity of the Owner’s workforce, the application reveals that 43% of the employees are women, and 34% are minority.

But of course reading the submission and having a conversation to learn the facts might have impeded the ability to criticize the project in public and garner news coverage, so why do it? It seems these people felt it was more important to get some press, than to get people employed. Ultimately, it was a political agenda that defeated the 130 Clinton application, not the merits of the project.

Politics Retards the Program Goals

If there is a problem with the tax abatement program, it is that in every iteration it has been a political football between the City and the County, and between the government and the developers.

At the June 7, 2006 Common Council meeting. the City “RESOLVED That the Common

Council hereby requests that the projects considered for tax abatements under the Community Investment Incentive Program *be reviewed by the IDA solely on the basis of their financial need and not on their expected community benefit* which will have been established and endorsed by the Common Council.” [emphasis added]

This was a request to the County/IDA to follow the lead by the City. Minutes from the City and the County/IDA over the next 18 months reveal a very lively discourse about the roles of the City and the County/IDA in the incentive program process, with the County not agreeing to the City’s request to follow their lead.

Ultimately, in late 2007 the County and the City adopted separate applications for the CIIP program. The IDA’s application read in part:

The IDA will make an independent determination of the number of community benefits to be achieved by the project. While the City and the IDA will use the same list of potential benefits, and the IDA intends to give considerable weight to the City’s approval of the developer’s proposed listing of benefits to be achieved, the IDA will weigh the costs and benefits of any tax incentives it delivers and exercise independent judgment.

CIIP had a scoring system of itemized “community benefits”, most of which seem to parallel the 23 some odd boards and committees that make up a large part of the City government. Of course, that was just the start, because if the City found there was sufficient benefit, there was a subsequent IDA application, with a whole new application process, where the IDA was not bound by either the decisions or definition of benefits made by the City. Reviewing exactly the same criteria, the IDA could make completely different findings. It is no wonder that this program was a failure.

Five years later, the City determined that the 48 possible “community benefits” criteria/double application of CIIP were a disincentive to developers and had failed to achieve the primary program goals. This led to the current program (CIITAP). It has only 3 criteria for a developer to meet.²³ The rest of the questions of community impacts or benefits were to be addressed in the site plan process by the Planning Board. Adoption of the CIITAP program by the County/IDA in 2012 once again did not parallel the City’s version and the “odd couple” approach to development incentives continued.

The Planning Board is very effective in its review and conversation with the Developer. They understand the publicly pronounced prioritization by the City of the goals for the urban core, and that a particular project cannot be required to cure all the ills of Ithaca or satisfy all the social agendas of single issue extremism. Developers will not build if they cannot make a profit, and will stop applying if the process is too cumbersome. So the Planning Board does what the developer does - make a comparative analysis of cost and benefit to see if it can be worked out. The Site Plan approval is supposed to be final and binding on all other agencies in the City, and that includes Common Council.

The benefit of this approach is that it balances the governments' desire to extract community benefits through a professional and orderly process with the reality and expense of building in the City.

The IDA staff similarly understands this balancing act. Unfortunately some on the IDA Board do not, and have adopted a political litmus test, rather than deciding an application on its merits.

During the 9 months that it took to complete the 130 Clinton environmental review and approve the site plan, there were innumerable meetings, hearings, and comments received. Studies and follow-up studies by the developer were requested and provided. It is safe to say that hundreds, if not thousands of man-hours were devoted to this process. All environmental issues raised were addressed at length and mitigated by the Planning Board.²⁴

The developer opened bids in early summer 2014; they were significantly higher than anticipated. Inquiry was made of the City in early July about CIITAP availability, in an effort to salvage the project. On July 31, 2014, Nels Bohn (a member of the City's CIITAP review committee and Director of Community Development at Ithaca Urban Renewal League) wrote to Mayor Myrick stating that a 4th criteria should suddenly be added to CIITAP: "Municipal compliance – all property in the City of Ithaca owned by the Applicant must be in full compliance with all applicable local laws & regulations, orders of the Director of Code Enforcement and current on all local taxes, fees and penalties due." One can only wonder at the timing of this recommendation, and whether or not it was designed to target this specific applicant.

Although not passed into law by the Common Council prior to the filing of the 130 Clinton application, this 4th criteria was applied to that application. Perhaps to the surprise of some, this did not impede or delay the application, and the CIITAP committee voted that the application met the program requirements. No prior application has been subjected to the 4th criteria. It is not clear if it was applied to the Cary Building application.

In September 2014, County Legislator Shinagawa (a member of the IDA Board that votes on CIITAP applications) stated to the Ithaca Voice "We're often playing a game of chicken because developers will say that they have to have the incentive and we have to figure out whether or not that's the case."²⁵

At the November 2014 IDA meeting, Legislator Shinagawa's comments in the minutes were recorded "that the project will increase housing downtown and the project does meet the CIITAP criteria" and that "he [Mr. Shinagawa] feels the project meets the goals of the incentive program." Mayor Myrick was not present.

When the Public Hearing was held in early December, JoAnn Cornish spoke on behalf of the City as Director of Planning, and talked about the mitigation measures that were required as part of the site plan approval process. She stated that these measures addressed matters of environmental concern including slope runoff and stability,

aesthetics, foundation stability, flora and fauna, and energy efficiency. She advised that the Developer had also agreed to the City's mitigation requirements, including dedicating 2/3 of the land to be forever green and stated that this would be an aesthetic benefit to the community. Mayor Myrick was not present.

When the IDA voted on the application later in December 2014, it appeared from the comments that some of the board members and most of the speakers at privilege of the floor may not have reviewed the 27 page CEQRA report that was part of the application package and covered this, or did not understand its contents.

The Mayor was bound by the findings and approvals of the Planning Department and the City CIITAP review committee that the application met all guidelines. He was not present at the December meeting and did not vote. There has been no explanation for the failure of the city's leader to be at these meetings and support a project that met all the goals of this program and that his staff spent so much time and energy on.

The minutes reflect that Mr. Shinagawa commented in December: "He is not inclined to support this project, as it seems to only meet the minimum standards. There is no plan for mixed use in the building, it is not a good use of resources and no jobs are created."²⁶

So if it met the "minimum standards", that means it met "the standards." If the application met the standards, it should have been approved. Mr. Shinagawa then compared the plan to the Cary Building application.²⁷ The applications had different criteria (130 Clinton was a "standard" 7 year application, the Cary building was an enhanced "10-year" that required a showing of need.) The Cary Building was an existing mixed-use building. There is no requirement in either the City or the IDA's adoption of CIITAP that the project be mixed use.²⁸ The Cary Building is zoned differently than 130 Clinton St.

The 130 Clinton application reflected that ½ to 1 new jobs would be created. The Cary Building application stated it was creating no new jobs. If a lack of jobs was a basis for denial, then why was it applied to the 130 Clinton application but not to the Carey application? Why was there no discussion of this by the IDA board when reviewing the Cary Building application? What was the factual evidence supporting the statement that the project "was not a good use of resources", when it was creating 36 new units on otherwise unusable land, adding millions of dollars in new taxable value and creating new construction jobs? Nothing is recorded in the minutes that explains this.

Mr. Shinagawa also stated in his public comments at the IDA vote in December, 2014 that he and the Mayor had spoken prior to the meeting that the criteria of the program needed to be re-evaluated. It is not clear if these new standards that they had talked about before the meeting were being applied to the 130 Clinton application, but it seems so. If true, why was that not also done to the Carey application?

I am a great believer in public participation in the governmental process. A number of people have remarked about the unusually large number of speakers who attended the IDA meeting on December 11, 2014. In exercising privilege of the floor, many spoke

vehemently against the project. It has also been suggested that the large number of people present was due to active solicitation by one or more of the voting board members of the IDA for opponents to come to the meeting and speak in opposition. If true, then the role as impartial tribunal was compromised because the judge became an advocate. This is the danger of allowing politics to become part of the IDA process.

Surprisingly, the County/IDA Code of Ethics fails to address this type of conduct.

A Call for Change

In the 2015 State of City address, the Mayor called for a re-evaluation of CIITAP, stating: "It's time to explore reforming the program and adopting an abatement policy that incentivizes growth, benefits all segments of our community, and is consistent with every community in the county...."²⁹

The Mayor states the CIITAP program should now be changed to be "consistent with every community in the County." The history of this program involves development of the urban core, not agricultural residential lands in the rural townships. There are no other similar programs between the IDA and other towns or villages in Tompkins County "to be consistent with", because the issue is unique to Ithaca.

In exploring modifications to the program, the Mayor has stated he will seek to "have representatives of groups including local contractors and labor, living-wage advocates, and people concerned with sprawl and related environmental concerns."³⁰ This sounds like the same people who have spoken against abatements in the past. Noticeably absent are the land-owners, developers, businessmen, and Downtown Ithaca Alliance, who apparently will not have a place at the Mayor's table. This despite the fact that the program was designed to attract these entities to invest and support development, and that they are the ones to whom the City looks to for solutions and increased municipal revenue.

What the Mayor seems to be saying is that the incentive program is about to be returned to the dis-function experienced under CIIP, rather than using existing tools to correct perceived program deficiencies.

A Better Solution

The recent OpEd in the Ithaca Times³¹ rightly said that:

IDA member and County Legislator Will Burbank stated that getting a tax abatement is a privilege. No, it isn't. Having a driver's license is a privilege; if you break the law, they take it away. They don't take your driver's license away because your car gets really bad mileage and burns a lot of oil. Tax abatements are a strategy that municipalities use to get developers to build where it is expensive to do so, but good for the health of the community. We need housing downtown...

As developers and land owners do not seem to have been invited to the conversation about CIITAP changes, I am writing to make sure that this point of view is considered.

1. Priorities Must be Clear

There must be agreement and clear prioritization by both city and the county regarding the goals of incentivizing developers to build in the urban core. All other social “benefits” are secondary.

This is not too difficult to achieve, because it is in the language already adopted in the City’s program and in the County’s comprehensive plan³². In the past, this language was not adopted by the County Legislature when it approved the CIITAP program, nor applied by the IDA. It should be.

2. One Application and One Review

There should be one application and one review. The political tug of war over turf between the County and City is an embarrassment to the governments and wasteful of their limited resources. It is also time consuming and expensive to developers. This program is about specific goals for a specific purpose in a designated area – housing and mixed use development in the City’s urban core. The city should lead, and as much as it may grieve the County Legislature, the County should follow and defer to the expertise, time and money dedicated to these projects by City Planning staff. CIITAP affects a small area of the county; why is it so hard for the County and the IDA to let the City take the lead? The County had no objection to the City being lead agency on the environmental review, why is this different?

The City devotes significant resources over months of time in meeting after meeting to develop a full and complete understanding of a project. They consider a legion of diverse views and negotiate with developers to mitigate concerns raised by those views. The IDA devotes limited time and resources to review, but completely controls the outcome.

The vote should be at a joint meeting of the CIITAP review committee and the IDA. This should be done immediately after site plan approval. By doing this before construction drawings are drafted and bids are let, the bidders will be able to determine if price reductions are available due to the approval of incentives. This way projects should move faster and it should result in lower bids, which in turn increases the likelihood the project will actually be built.

3. Combine the Site Plan and CIITAP Process

CIITAP consideration should be made part of the Site Plan review process at the very beginning.³³ The City should inform applicants that CIITAP is available if a preliminary view of the project indicates the 3 criteria are met. With this knowledge, the Developer should be required to opt in or out of combined CIITAP/site plan review at the beginning.

If they opt out, the IDA knows they are not involved in the project. If the Developer opts in, of course the IDA will want to have input. The time to do that is not at the end, but at the beginning. If there are matters that the IDA wants considered, put them forth when everyone else has to do it – at the time when site plan review is taking place. The IDA should not be taking a second or third bite of the apple, months or years after City Planning staff has considered all those environmental, social or labor issues and has negotiated an exactions package with the developer. Having had input, the County should be bound by the determination of the Planning Department as lead agency and not have the authority to independently overrule that decision.

4. Require Cost/Benefit Analysis for Exactions

As the developer is required to provide an environmental impact form or statement, conduct studies and take mitigation measures regarding identified issues raised by the land, so should the government when it comes to promoting their social goals.

If a group, committee, board or agency has a “community benefit” they feel should be part of a project, they should be required to prepare and document an “economic impact statement” that addresses the financial burdens of that program on the project, make a comparative cost benefit analysis to see if it is worthy of consideration, and provide mitigating relief to the developer for that cost if included.

An expanding body of law has developed regarding scrutiny of governmental “exactions” and the right to compensation when these exactions rise to the level of an unconstitutional taking.³⁴

The right to just compensation for seizures of private property by the government is enshrined in the Constitution. Requiring a developer to provide units of “affordable” (privately subsidized) housing amounts to a form of taking by the government. It reduces the project income stream by a predictable amount. In exchange for promoting the social agenda of the legislators, the developer should be compensated for the economic impact to their project. This can be accomplished directly by payment or reducing fees charged, or in an indirect fashion by lowering the taxable value for the dedicated units, granting an abatement equal to the cost for so long as the unit remains encumbered, or provide an off-setting benefit such as increased building height or greater area usage so that the developer can maximize efficiencies and economies of scale during the building process.

5. Remove the Politics

It is time to remove politics and personal prejudice from this process. Each application is about a project, and no more. It should be judged on its merits under rules as written and published, not new unlegislated criteria discussed after the process has commenced, or the personal plans of elected officials not yet even formulated.

A number of people spoke in December about Mr. Fane and their view of him as a reason to reject the application. They alleged that he is an absentee landlord who fails to keep up buildings, exacts “onerous lease terms”, and intentionally keeps storefronts empty to

hurt the community.³⁵ Not surprisingly, they offered no evidence beyond their opinion to substantiate this. None stated that they had personal experience doing business with him, had ever had a conversation with him, or offered up a copy of a written lease signed between them. No violations from the city were presented. Public records will reveal he is a resident of Ithaca with his principal place of business being Ithaca. He is a self-made man and did not come from wealth (both his parents were school teachers). No comparison of his lease versus another similarly situated landlord in the city was offered. No evidence presented, just gossipy hearsay full of personal prejudice. In our nation of laws, hearsay is recognized both in statute and personal experience as inherently unreliable.

There are many bona fide reasons why a storefront might be empty, such as waiting five years for the City to complete revisions to the Collegetown zoning so that a replacement building might be built. If the land is subject to a long-term lease, then re-development is not easily achieved absent a very expensive buyout from the current tenant, or waiting 10 or 20 years for the lease to expire. The City says they want development in Collegetown, but people then criticize the owner for leaving the property in a position to be developed. Perhaps it is a large building that is empty; one that has received an unsolicited historical designation that conflicts with requirements of current building codes or disability laws, severely limiting the options available to the owner. An owner who makes his living by renting real estate does not intentionally leave space empty without good reason, or he will soon be out of business. To suggest otherwise is laughable.

The issue for consideration, however, is not this specific developer; it is about the questionable insertion of political agendas into this program – picking winners and losers based on those agendas instead of the merits of a project that meets the defined criteria. This is the primary reason why, over the years, this particular program has for the most part failed.

The issue is about governmental double dipping with two levels of government demanding exactions, extending processes that increase costs, and attempting to saddle developers with the expense of social agendas championed by single issue extremism that are the responsibility of the government, not a project. It is about not seeing the forest for the trees – sticking to the already adopted prioritization of what will benefit the whole community the most, with the limited tools available today.

Are your respective bodies truly interested in development? Or are these programs passed just to create a “program” for a bully pulpit to talk about single issues that are politically popular in the press at the expense of people who are bringing the community results, not just rhetoric?

6. Update Ethics Requirements and the Code of Ethics

In its 2012 and 2013 Annual Reports, the IDA has acknowledged that it is not in compliance with the “independence of the majority of the Board Members” requirement of the Public Authorities Law [PAL] §2825(2).³⁶ The PAL requires the majority of Board Members to be independent and to exercise independent judgment.³⁷ It is not a

recommended practice for an elected official to be a Board Member of a public authority.³⁸ Questions of appearances of impropriety and conflicts of interest by these elected officials arise when advocating social positions of their constituents.

The currently adopted code of ethics does not presently prohibit board members from actively promoting or opposing projects during the pendency of an application that they will judge. It is time for the County to review and change these policies. It is time for the County to change the configuration of the IDA board from one of a politically controlled entity that they acknowledge does not comply with state law to an agency that will keep politics out of the picture.

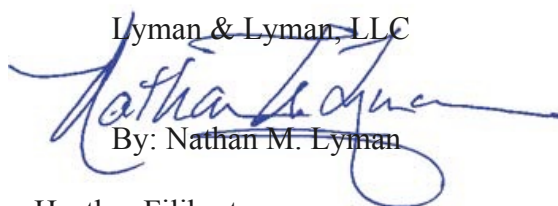
Conclusion

It is tragic for the City and the County that the 130 Clinton project will not go forward. The people who will pay the price for the IDA's failure, however, will not be the Developer. Other more profitable projects in other cities are already underway. The price will be paid by the tenants whose options will continue to be limited, forcing them to live in less desirable locations and pay higher rent due to the laws of supply and demand; the taxpayers, in particular senior citizens on fixed incomes, who will have to make up for the loss of tax income guaranteed with a new building, by reaching into their own pocket; the construction workers who will not have jobs on this project when they could have been working at good paying jobs in the coming year; and the community as a whole, which would have received a commitment in perpetuity for a section of the city to be forever green.

Those who advocated against, and voted "no" on this application no doubt felt personal triumph in "playing chicken." This was not a game, and the community is poorer for them having thought it was.

Very truly yours,

Lyman & Lyman, LLC



By: Nathan M. Lyman

NML/bhs

cc: Joanne Cornish, Phyllisa DeSarno, Heather Filiberto,
Gary Ferguson, Ithaca Journal, Ithaca Times

¹ http://www.ithaca.com/opinion/state-of-the-city/article_6dc25d94-5a13-11e2-8527-0019bb2963f4.html

² Ithaca Journal, January 10, 2015

³ “The first density-incentive program began in 2001 and covered the downtown business district, the West State/Martin Luther King Jr. corridor, the West End and Inlet Island. According to an inventory compiled by the city planning department, that program resulted in five major projects, more than \$2 million in city taxes paid, and was tied to 645 jobs.

Under the revised plan, which began in 2006 with more defined benefits, only one project was built, generating about \$5,100 in city taxes and 18 jobs. The program was revised again in 2012, largely undoing the 2006 changes....”

<http://www.ithacajournal.com/story/news/local/2015/01/20/ithaca-abatements-discussion/22061233/>

⁴ Resolution of the Ithaca Common Council 10.3 adopted on November 7, 2012 reads in part: “WHEREAS the original intent of the CIIP was to encourage developers to invest in the community; however, the program, as it was established, has actually been found to work as a disincentive for developers, because the process is too cumbersome, time consuming, and expensive....”

⁵ Minutes of Common Council 11/7/2012

⁶ City of Ithaca Code §276.5. This Chapter was amended in 2013 from the original text adopted November 7, 2012. References to the City of Ithaca Code, unless otherwise stated, are to the current code as adopted and posted by the City of Ithaca.

⁷ “(a)n approved site plan shall be binding on all further permits and approvals needed for the project.” City of Ithaca Code §276-4

⁸ City of Ithaca Code §276-1 reads:

The intent of this chapter is to provide for the review of site plans for certain land uses in the City of Ithaca for the purpose of:

- A. Preserving and enhancing neighborhood character.
- B. Achieving compatibility with adjacent development and uses.
- C. Mitigating potentially negative impacts on traffic, parking, drainage, the landscape and similar environmental concerns.
- D. Improving the design, function, aesthetics and safety of development projects and the overall visual and aesthetic quality of the City.
- E. Promoting environmental sustainability in new development, redevelopment and long term planning.

⁹ City of Ithaca Code §276-7. The Criteria require the Planning and Development Board to generally consider avoidance/mitigation of environmental concerns A(1), compliance with other city laws and regulations A(2), aesthetic concerns A(3), wastewater and sewage A(4), fire and emergency matters A(5), vehicular access and parking A(6), handicapped issues A(7), pedestrian and bicycle concerns A(8), open space and recreation A(9) energy efficiency and renewable energy A(10), conformance to adopted urban designs or comprehensive plans A(11), trash disposal on multiple dwellings/mixed use new construction A(12), noise concerns A(13), architectural integration of a buildings mechanical components A (14), impact on surrounding development A (15), Plants and landscaping (B), Automobile Parking (C), and Bicycle Parking (D)

¹⁰ A review of the City of Ithaca website, various Tompkins County and state websites reveal presently at least 29 boards and/or agencies that have input and/or oversight authority into a building project (not including innumerable local citizen groups of various names.) 26 of these are under the City of Ithaca jurisdiction: Planning & Economic Development Committee, Housing Board of Review, Ithaca Housing Authority, The Board of Public Works, The Bicycle / Pedestrian Advisory Council, The Board of Fire Commissioners, The Board of Zoning Appeals, The Conservation Advisory Council, The Disability Advisory Council, The Ithaca Landmarks Preservation Commission, Ithaca Urban Renewal Agency, Natural Areas Commission, Parks Commission, Planning & Development Board, Rental Housing Commission, Shade Tree Advisory Committee, City Forester, Common Council, Building Department, Board of Appeals on Building

Code, Examining Board of Electricians, Examining Board of Plumbers, Stormwater Management Officer, Engineering Office, Fire Department, Department of Public Works. Others include the County Planning Department, Tompkins County Environmental Management Council, and DEC.

¹¹ The program required the applicant to meet 3 criteria: 1. Assessed value would be increased by more than \$500,000, 2. the improvements involved were 3 or more stories in height and 3. the project was in the defined urban core.

¹² Adopted CEQRA resolution and Site Plan, dated July 23, 2013.

¹³ id.

¹⁴ http://www.ithaca.com/news/abatement-debate-revising-tax-incentives-again/article_6bf20ac8-a188-11e4-9df9-7fda7dab7eb5.html Alderperson Graham Kerslick (D-4th) “The cost of doing business in the city is much more costly than other areas.”

¹⁵ These are specifically recited in the city’s CIITAP legislation and application form.

¹⁶ President John F. Kennedy, October 3, 1963

¹⁷ <http://www.ithacajournal.com/story/news/local/2015/01/20/ithaca-abatements-discussion/22061233/>

¹⁸ <http://ithacavoices.com/2014/12/letters-officials-local-union-workers-center-opposed-jason-fane-abatement/>

¹⁹ <http://www.northeastcarpenters.org>

²⁰ <http://www.ualocal267.org/territorial.aspx#mid>

²¹ <http://www.ibewlocal241.com/contractors.html>

²² <http://ithacavoices.com/2014/12/letters-officials-local-union-workers-center-opposed-jason-fane-abatement/>

²³ See, footnote 13, above

²⁴ Adopted resolution of the Planning Board dated July 23, 2013 on the 130 Clinton Street project.

²⁵ <http://ithacavoices.com/2014/09/officials-respond-jason-fanes-ultimatum/>

²⁶ Minutes of TCIDA 12/11/15, page 4.

²⁷ The 12/11/14 IDA meeting minutes reveal that the Carey Building application was approved immediately after rejecting the 130 Clinton application, without discussion. That application was for an enhanced 10 year abatement. 130 Clinton’s application was a “standard” application for a 7 year period, did not require a showing of need, and was less impactful on the tax revenue stream, because it was for a shorter period of time.

²⁸ “On July 5, 2000, the Common Council unanimously requested that the Tompkins County Industrial Development Agency (“IDA”) undertake a program to provide financial incentives for development of multi-story buildings within a density target area encompassing the downtown Central Business District, the West State Street corridor, the West End, and Inlet Island....[In] 2006, the City endorsed the continuation of an IDA program of local tax abatements, as a tool for encouraging appropriate real estate and business investment in the urban core of the city... the original intent of the CIIP was to encourage developers to invest in the community; however, the program, as it was established, has actually been found to work as a disincentive for developers, because the process is too cumbersome, time consuming, and expensive...now, therefore, be it RESOLVED, That the City of Ithaca Common Council finds that the IDA density incentive program **is a vital tool to (1) strengthen and enhance the downtown with new housing and other mixed-use developments....**” Excerpt from Common Council Resolution 10.3 adopted 11/7/12, in the minutes of the Common Council, same date. (emphasis added)

²⁹ <http://www.ithacajournal.com/story/news/local/2015/01/08/myrick-wants-abatements-policy-reformed/21427697/>

³⁰ <http://www.ithacajournal.com/story/news/local/2015/01/20/ithaca-abatements-discussion/22061233/>

³¹ http://www.ithaca.com/opinion/editorial-it-was-a-mistake-to-turn-down-fane-s/article_72133754-86f0-11e4-86a2-6f8109e3b9f6.html

³² “In conjunction with the goals of the Tompkins County Comprehensive Plan, the objective of CIITAP is to encourage development in the City that would increase jobs, increase the tax base, promote density in the city core, encourage rehabilitation and redevelopment of underutilized sites, and help create a vibrant downtown center.” City CIITAP application, page 1

³³ The City has other incentive programs. This approach should be used in any project where an incentive program is available.

³⁴ “Exactions Creep” by Lee Anne Fennell and Eduardo M. Penalver, Coase-Sandor Institute for Law and Economics Working Paper No. 665 (2d Series, December 2013). Mr. Penalver is the incoming Dean of the Cornell Law School.

³⁵ It should not be too difficult to understand that empty storefronts do not generate revenue. At the same time people were criticizing that some stores were being intentionally left empty, they were also saying that Mr. Fane was a successful businessman and that this also was a reason to deny the application. There seems to be a disconnect in the logic of this thought process.

³⁶

<http://www.abo.ny.gov/annualreports/PARISAnnualReports/FYE2013/IDA/ARTompkinsCountyIDA2013.pdf>

In the governance Information responses by TCIDA for 2012 and 2013, page 2, question 5, the question is “Does the majority of the Board meet the independence requirements of Section 2825(2) of PAL [Public Authorities Law]” and the response is “No.”

³⁷ **§ 2824 Pub. Auth. Role and responsibilities of board members.**

Board members of state and local authorities shall...

(g) perform each of their duties as board members, including but not limited to those imposed by this section, in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances,... and ultimately apply independent judgment in the best interest of the authority, its mission and the public... [emphasis added]

³⁸ <http://www.abo.ny.gov/frequentquestions/faq.html>