

# New Yorkers Against Industrial Development Tax Abuse

15 Stone Castle Road, Rock Tavern, NY 12575  
tel: (845) 567-7760  
fax: (845)-567-7742

December 18, 2013

David Kidera  
State of New York Authorities Budget Office  
PO Box 2076  
Albany, NY 12220-0076  
info@abo.state.ny.us

Dear Mr. Kidera:

We request that the ABO conduct an investigation into the Town of Montgomery Industrial Development Agency's (IDA) approval of taxpayer-funded financial assistance for United Natural Foods, Inc. (UNFI).

UNFI is a wholesale distributor of natural foods. It is building a warehouse and distribution facility in the Town of Montgomery, with IDA support. On July 17, 2013, the IDA approved taxpayer support for UNFI in the amount of \$ 11,320,324.00 in exemptions on property taxes. In addition, UNFI stands to receive combined state and local sales tax savings estimated at an additional \$2,723,000, state level Excelsior Jobs tax credit worth \$3,600,000 and is seeking yet-undisclosed IDA fee exemptions that could total up to an extra \$298,000. Overall, UNFI could receive taxpayer subsidies of up to \$17.9 million.

Our concerns over the IDA's approval of financial assistance to UNFI stems from the following:

- 1) The Town of Montgomery IDA failed to provide adequate notice to the community prior to the July 17<sup>th</sup> Special Hearing, in which the IDA voted to approve the financial assistance to UNFI. The full timeline is below:
  - On May 8, 2013, the Montgomery IDA held a public hearing on the proposed UNFI project.
  - On July 8, 2013, at the Regular Meeting of the Montgomery IDA, the IDA Board was scheduled to vote to approve the UNFI project. Instead, the IDA cancelled its July 8<sup>th</sup> Regular Meeting for unknown reasons.
  - The IDA rescheduled the July 8<sup>th</sup> Regular Meeting for July 17, 2013, referring to the rescheduled meeting as a "Special Meeting."
    - Notice for the July 17<sup>th</sup> Special Meeting, as far as we can ascertain, was inadequate:

- The Town of Montgomery IDA By-laws state that a Special Meeting requires only two days advance notice.<sup>1</sup> However, the July 17<sup>th</sup> Meeting was called in place of the Regular Meeting and as such there was no “special nature” of the Special Meeting. The July 17<sup>th</sup> Meeting was simply a rescheduled Regular Meeting, and therefore is not subject to the IDA’s Special Meeting standards.
- New York Open Meetings Law governs all official convenings of public bodies. This law requires that notice be provided to the news media at least one week prior to the meeting.<sup>2</sup>
  - The Montgomery IDA apparently only provided notice of the July 17<sup>th</sup> Meeting one day prior, on the Town of Montgomery’s website.
  - The IDA did not print a notice in Montgomery’s official paper of record, the Wallkill Times, and did not provide notice of the meeting to affected tax jurisdictions.

As a matter of public policy, if this kind of behavior is tolerated, IDAs in New York state could easily circumvent Open Meetings Law requirements simply by canceling all Regular Meetings and rescheduling them as Special Meetings, with little or no notice. There must be a clear indication as to what constitutes the “special nature” of such a meeting. In the case of the Montgomery IDA, the Regular Meeting - rescheduled and renamed a Special Meeting - failed to provide any indication of its special nature. Without a clear distinction between special and regular meetings, notice requirements could become meaningless.

2) UNFI’s application for financial assistance is incomplete.

- On the Town of Montgomery IDA’s application for financial assistance, UNFI does not explain its response to the following question:<sup>3</sup>
  - Page 5 Section B. Question 2. “Is the Company or management of the Company now a plaintiff or a defendant in any civil or criminal litigation? Yes   X  ; No       ”
- UNFI fails to answer whether the real property tax exemption being sought is consistent with the Agency’s Uniform Tax Exemption Policy:
  - Page 14. Chapter VI. Section A. Question 1. “Is the applicant requesting any real property tax exemption in connection with the Project that would not be available to a project that did not involve the Agency? Yes   X  ; No       . If yes, is the real property tax exemption being sought consistent with the Agency’s Uniform Tax Exemption Policy? Yes       ; No       .”

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<sup>1</sup> Town of Montgomery IDA By-Laws, Article III, Section 3. SPECIAL MEETINGS. The Chairperson of the Agency may, when the Chairperson deems it desirable, and shall, upon written request of two members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each Member of the Agency or may be mailed to the business or home address of each Member of the Agency as least two days prior to the date of such special meeting and notice of such meeting also must be posted on the Town signboard and supplied to the Wallkill Valley Times or any other local newspaper of general circulation in the Town. Waivers of notice may be signed by any Members failing to receive a proper notice. At such special meeting, no business shall be considered other than as designated in the call, but if all the Members of the Agency are present at a special meeting, with or without notice thereof, any and all business may be transacted at such special meeting.

<sup>2</sup> Public Officers Law, Article 7, Open Meetings Law: §104. Public notice. 1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.

<sup>3</sup> The UNFI Application for Financial Assistance from the Town of Montgomery IDA is attached.

- UNFI fails to provide adequate information regarding additional tax exemptions it may be seeking (its answer is blank):
  - Page 15. Chapter VI. Section A. Questions 3, 4 and 5: “Are any of the tax-exemptions being sought in connection with the Project inconsistent with the Agency’s Uniform Tax-exemption Policy? Yes\_\_\_; No \_\_\_\_\_. If yes, please explain how the request of the applicant differs from the Agency’s Uniform Tax Exemption Policy:\_\_\_\_\_
  
- 3) The Town of Montgomery IDA did not answer in a timely manner Freedom of Information Law (FOIL) requests for information that is public. This impairs the public’s ability to review the proposed tax breaks and have a reasoned discussion about the criteria, the structure, the costs and benefits of awarding UNFI a tax-abatement.
  - On July 15, 2013 the attached FOIL request was sent to the IDA. It requested, among other things, the IDA’s Uniform Tax Exemption Policy (UTEP), and the contract or financial assistance agreement between the IDA and UNFI. Other FOIL requests were made (June 25, 2013, June 27, 2013, and July 17, 2013, also attached), seeking to identify the nature of the proposed tax breaks, their dollar amount and yearly breakdown and the criteria governing their allocation. It is only on September 23rd, 2013, a few days prior to the groundbreaking ceremony – that the IDA’s UTEP and the terms of the Payment in Lieu of Taxes (PILOT) agreement between UNFI and the IDA were disclosed - in response to the FOIL request made on September 10th, 2013, repeating the requests made since June, 2013. The finalized PILOT agreement is dated July 2<sup>nd</sup>, 2013 – its disclosure occurred more than 80 days after finalization.
    - The ABO has issued Policy Guidance 10-03 that directs each IDA to permanently maintain its UTEP on the IDA web site.<sup>4</sup> The UTEP is not posted on the IDA’s website.
    - The Financial Assistance Agreement between the IDA and UNFI likewise should be available to the public upon request, but the IDA has failed to provide this information within a timeframe that would be consistent with adequate public review.<sup>5</sup>
  
  - The July 15, 2013 FOIL request also queried current and past PILOT agreements between the Town of Montgomery and corporations other than UNFI, and associated monitoring, progress and final reports – which would have aided public deliberation in evaluating the tax abatements being considered for UNFI. This request was denied.
  
  - Adequate public review cannot occur without disclosure of the tax-abatement terms being considered prior to their finalization, as well as prompt public access to official documents – such as the PILOT agreement itself. The IDA’s extensive delays - and stalling on providing information that was at hand - is unacceptable, unjustified and undermines the public review process.
  
- 4) One Board Member of the Town of Montgomery IDA, Richard Lomazzo, failed to disclose a potential conflict of interest when voting to approve financial assistance for UNFI.

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<sup>4</sup> Authorities Budget Office, Policy Guidance 10-03, at <http://www.abo.ny.gov/policyguidance/10-03PostingInformationAuthorityWebSite.pdf>.

<sup>5</sup> Public Officers Law, Freedom of Information Law, Article 6, Sections 84-90.

- Richard Lomazzo is a board member of the IDA, as well as Cardinal Health's Director of Operations in the North East Region. Cardinal Health has a major distribution center in the Town of Montgomery, New York. The distribution center is located at 500 Neelytown Road, Montgomery, NY 12549.
  - A conflict of interest between Mr. Lomazzo's duties as Cardinal Health manager and his duties as an IDA Board Member appear to be present because the proposed UNFI project on Neelytown Road and Beaverdam Brook Road is across the street from the Cardinal Health Distribution Center. The proposed UNFI project will likely positively impact real estate values for all neighbors, including to the Cardinal Health Distribution Center, and bring other such benefits to neighboring properties (such as extension of water and sewage utilities).
  - Mr. Lomazzo did not disclose this potential conflict of interest prior to voting to approve the financial assistance, nor did he provide any methods for insulating himself and the IDA from such a conflict.<sup>6</sup>

Based on the observations listed above, we request that the ABO:

1. Investigate the process by which the Town of Montgomery IDA granted financial assistance to UNFI, focusing on the Special Meeting at which the project was approved.
2. Investigate whether or not UNFI's application for financial assistance was incomplete.
3. Investigate the IDA's response to requests for public information and whether the IDA has complied with Public Officers Law, as well as ABO policy guidance.
4. Investigate Mr. Lomazzo's potential conflict of interest.

We also request that the ABO explore potential remedies for any potential violations, including but not limited to:

1. Censuring the Town of Montgomery IDA;
2. Terminating the IDA tax exemptions to UNFI;
3. Requiring another vote by the IDA that complies with applicable open meetings and public officers laws;
4. Requiring the IDA to provide full public access to all relevant documentation; and
5. Requesting a full legal investigation by the State Attorney General or other relevant entity.

Thank you for your time and attention to this matter.

Signed,


New Yorkers Against Industrial Development Tax Abuse



George Miranda, President of Teamsters Joint Council 16

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<sup>6</sup> Public Officers Law § 74. Code of ethics.



Paul F. Ellis-Graham, E.D. of NYSUT



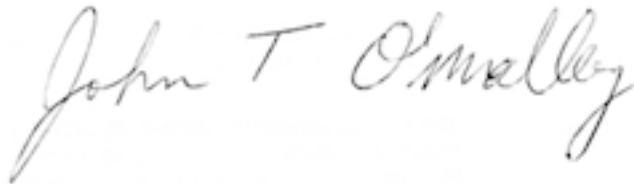
Adrian Huff, Principle Officer, IBT Local 445



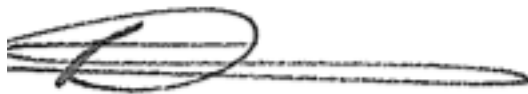
Elizabeth Soto, Executive Director, Hudson Valley Area Labor Federation, AFL-CIO



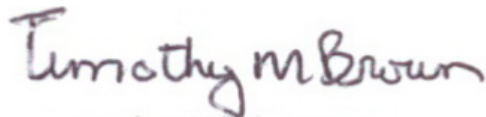
Sparrow Tobin, President, Hudson Catskill Central Labor Council



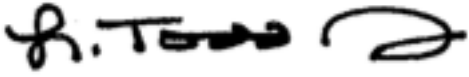
John T. O'Malley, Political Director, CWA Local 1120



Rae Leiner, Organizer, Community Voices Heard



Tim Brown, President, Valley Central Teachers Association, NYSUT

A handwritten signature in black ink, appearing to read "L. Todd Diorio". The signature is stylized and cursive.

L. Todd Diorio, President, Hudson Valley Building & Trades Council

A handwritten signature in black ink, appearing to read "Matt Ryan". The signature is stylized and cursive.

Matt Ryan, Executive Director, ALIGN

CC: Eric T. Schneiderman, Attorney General of New York