



**MEETING MINUTES  
NOVEMBER 3, 2016  
DEANE C. DAVIS BUILDING  
1 NATIONAL LIFE DRIVE, MONTPELIER  
CALVIN COOLIDGE CONFERENCE ROOM, 6<sup>TH</sup> FLOOR  
9:30 A.M.**

**Members Present:** Michael Keane; Betsy Gentile; Warren Kitzmiller, Patricia Horn, Stephan Morse, Rachel Smith, Thad Richardson, Emma Marvin, Kevin Mullin, and John Davis, Tim Briglin

**Members Present by Phone:** Tim Briglin until 10:00 a.m. when he joined the meeting.

**Members Absent:** None

**Staff Present:** Fred Kenney, and Kimberly Baker

**Others Present:** Peter Murray, Vermont Environmental Consortium; Tom Rugg, Hickok Boardman HR Intel; Tom Moody, Downs Rachlin Martin; Kristie Farnham, Vt Department of Economic Development; Tim Smith, Executive Director, Franklin County Industrial Development Corp; Ken Jones, Policy Analyst, Vermont Agency of Commerce and Community Development; Albin Voegelé, Regional Designee, Franklin County; Curt Carter, Greater Burlington Industrial Corporation. Monica Greene, CEO, and Tyler Greene Project Manager, Vermont Precision Tools.

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9:30 a.m. Roll Call and Agenda Review

Chair Stephan Morse called the meeting to order.

Chair Stephan Morse requested a roll call. Members present are noted above.

Chair Stephan Morse introduced the new Board members: Patricia Horn and Thad Richardson.

Chair Stephan Morse inquired as to any additions or deletions to the agenda, hearing none, moved to the next Agenda item.

9:31 a.m. **Minutes – September 22, 2016**

Chair Stephan Morse inquired as to any corrections or changes to the draft meeting minutes for September 22, 2016. Chair Stephan Morse requested a motion.

- ❖ At 9:32 am Emma Marvin moved to accept the September 22, 2016, meeting minutes with the corrections. Betsy Gentile seconded the motion. Michael Keane requested that Page 7 have Stephan Morse's name corrected and that the State name be corrected

to Georgia. Chair Stephan Morse requested a roll call for the vote for the meeting minutes as corrected, all voted in favor and the motion passed. 11-0-0.

- ♦ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, Kevin Mullin, and Tim Briglin
- ♦ Nay: None
- ♦ Abstain: None

9:32 a.m. Elect Vice Chair

Chair Stephan Morse inquired as to nominations for the position of Vice Chair. Chair Stephan Morse requested a motion.

- ❖ At 9:34 a.m. Rachel Smith moved to nominate John Davis to the position of Vice Chair. Betsy Gentile seconded the motion. Chair Stephan Morse requested a roll call for the vote, all voted in favor and the motion passed. 11-0-0.
  - ♦ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, Kevin Mullin, and Tim Briglin
  - ♦ Nay: None
  - ♦ Abstain: None

9:35 a.m. Public Comment

Chair Stephan Morse inquired as to any members of the public present to provide public comment or announcements.

Fred Kenney recognized Chair Stephan Morse who received Brattleboro Development Credit Corporation's Distinguished Citizen of the Year Award at the award on October 27, 2016.

**9:37 a.m. Vermont Employment Growth Incentive (VEGI) Applications**

**Vermont Precision Tools, Inc. (Initial)**

**BHS Composites Corp (Final)**

**GS Precision, Inc./GSP Coatings/BDCC Real Estate Holdings (Final)**

**Imerys Talc of Vermont, Inc. (Final)**

**LTK Consulting Services, Inc. (Final)**

- ❖ At 9:34 a.m. Michael Keane moved to enter into Executive Session to discuss VEGI applications, citing 1 VSA, §313(a)(6). Emma Marvin seconded the motion. Chair Stephan Morse requested a roll call for the vote, all voted in favor and the motion passed. 11-0-0.
  - ♦ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, Kevin Mullin, and Tim Briglin
  - ♦ Nay: None

- ◆ Abstain: None

Tim Briglin departed the conference call and joined the meeting at 10:00 a.m.

- ❖ At 10:30 a.m. the Council exited from the Executive Session.
- ❖ At 10:31 a.m. Rachel Smith moved to approve the Initial application from **Vermont Precision Tools, Inc.** of Swanton, giving initial authorization of VEGI incentives of up to \$304,997 with an estimated incentive of \$273,381, based on application data, for activity to commence January 1, 2017, citing that the Board has determined that the applicant met the But For, met or exceeded program guidelines, and that according to the cost-benefit analysis of the Initial Application the project will generate a minimum net revenue benefit of \$259,498, subject to submittal and consideration of a Final VEGI Application before the end of calendar year 2017. Michael Keane seconded the motion. Chair Stephan Morse requested a roll call for the vote, all voted in favor and the motion passed. 11-0-0.
  - ◆ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, Kevin Mullin, and Tim Briglin
  - ◆ Nay: None
  - ◆ Abstain: None
- ❖ At 10:32 a.m. Betsy Gentile moved to enter into Executive Session to discuss VEGI applications, citing 1 VSA, §313(a)(6). John Davis seconded the motion. Chair Stephan Morse requested a roll call for the vote, all voted in favor and the motion passed. 11-0-0.
  - ◆ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, Kevin Mullin, and Tim Briglin
  - ◆ Nay: None
  - ◆ Abstain: None
- ❖ At 10:30 a.m. the Council exited from the Executive Session.
- ❖ At 10:53 a.m. Betsy Gentile moved to approve the Final application from **BHS Composites Corp** of St. Johnsbury, giving final authorization of VEGI incentives of up to \$512,144 with an estimated incentive of \$442,224, based on application data, for activity to commence in calendar year 2016 and including the LMA Enhancement at 100% as approved by the Board in October 2015, when the Board determined that the applicant met the But For and met or exceeded program guidelines. Michael Keane seconded the motion. Chair Stephan Morse requested a vote, all voted in favor and the motion passed. 11-0-0.

- ◆ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, Kevin Mullin, and Tim Briglin
  - ◆ Nay: None
  - ◆ Abstain: None
- ❖ At 10:53 a.m. Emma Marvin moved to approve the Final application from **G.S. Precision, Inc./GSP Coatings/BDCC Real Estate Holdings** of Brattleboro, giving final authorization of VEGI incentives of up to \$1,154,702 with an estimated incentive of \$1,079,257, based on application data, for activity commencing in calendar year 2016, and including the LMA Enhancement at 100% as approved by the Board in June 2015, when the Board Determined that the applicant met the But For and met or exceeded program guidelines. Betsy Gentile seconded the motion. Chair Stephan Morse requested a vote, all voted in favor and the motion passed. 11-0-0.
- ◆ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, Kevin Mullin, and Tim Briglin
  - ◆ Nay: None
  - ◆ Abstain: None
- ❖ At 10:54 a.m. Warren Kitzmiller moved to approve the Final application from **Imerys Talc of Vermont, Inc.** of Ludlow, giving final authorization of VEGI incentives of up to \$696,332 with an estimated incentive of \$619,766, based on application data, for activity commencing in calendar year 2016, as approved by the Board in January 2016, when the Board determined that the applicant met the But For, met or exceeded program guidelines, and generates an estimated net revenue return of \$398,821. Tim Briglin seconded the motion. Chair Stephan Morse requested a vote, all voted in favor and the motion passed. 11-0-0.
- ◆ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, Kevin Mullin, and Tim Briglin
  - ◆ Nay: None
  - ◆ Abstain: None
- ❖ At 10:55 a.m. Michael Keane moved to approve the Final application from **LTK Consulting Services, Inc.** of White River Junction, giving final authorization of VEGI incentives of up to \$184,683 with an estimated incentive of \$169,292, based on application data, for activity commencing in calendar year 2016, as approved by the Board in January 2016, when the Board determined that the applicant met the But For, met or exceeded program guidelines, and generates an estimated net revenue return of \$76,325. Warren Kitzmiller seconded the motion. Chair Stephan Morse requested a vote, all voted in favor and the motion passed. 11-0-0.

- ♦ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, Kevin Mullin, and Tim Briglin
- ♦ Nay: None
- ♦ Abstain: None

The Board took a break at 10:55 – 11:05.

**11:06 a.m. Act 157**

**Peter Murray, Vermont Environmental Consortium (#1)**

**Tom Rugg, Hickok Boardman HR Intel (#8)**

**Tom Moody, DRM (#2 and general discussion on acquisitions)**

Fred Kenney stated that a draft report will be provided to the Board before the November 17<sup>th</sup> meeting with a final report for vote at the December 8<sup>th</sup> meeting.

At 11:06 a.m. Fred Kenney introduced Peter Murray, a Regional Sales Manager for Geotech Environmental Equipment and a membership coordinator for the Vermont Environmental Consortium, a volunteer-run non-profit to promote growth and support economic development in Vermont's environmental business sector through networking, information sharing and special projects. Peter Murray will be discussing Issue #1, whether the enhanced incentives available under the program are appropriate and necessary.

Peter Murray reviewed his current employment and experience, noting his presence for this meeting is as an official Board member of the Vermont Environmental Consortium (VEC). VEC is a member based organization consisting of environmental consulting and engineering firms, colleges and universities, and government agencies. VEC has become an advocacy and networking organization.

Peter Murry continued stating the problems are in a standard definition of the environmental industry/green economy; the industry sector is very diverse and the demand for goods and services provided by this industry is still low.

The VEGI "green Economy" definition includes four categories: waste management, natural resource protection, energy efficiency of conservation and clean energy. The U.S. Department of Commerce "Environmental Technologies Goods and Services provides seven different categories to define this sector. Clean energy is not included in the U.S. Department of Commerce list of definitions for this industry. Clean energy is in a separate category. Tim Briglin noted that the U.S. Department of Commerce has a very define category of Clean Energy Technology Goods and Services, which is very precise. Whereas, the VEGI category is Green Economy which is very broad.

Peter Murray continued stating this industry struggles and there is a lot of competition from out-of-state and international companies.

The U.S. Department of Commerce report published in 2015, states the US market for environmental goods and services, which excludes clean energy, is \$303 billion, employing 1.6 million people with revenues of \$320 billion. Vermont's sector is significant but it is still a struggle to return a profit and this is due to competition from out-of-state and international firms. Canada has a lot of technology firms that compete very strongly in the United States and suspect that their labor costs are lower.

Peter Murray stated in 2009 the VEC conducted a survey of industry members with 250 firms participating. The majority of these firms had 4 or fewer employees and 40% reporting revenues exceeding \$250,000 per year. The survey showed the major impediment to growth, in the 2009 survey, was attracting and retaining qualified employees, this was the #1 impediment. The second impediment was the lack of in-state training opportunities. Fred Kenney asked if that meant that Vermont colleges and universities did not offer the programs. Peter Murray stated yes and the lack of after college training. Betsy Gentile inquired if most of the people who work in the section are college graduates, what types of jobs. Peter Murray responded yes, most people are college graduates, with four year degrees and STEM (Science, Technology, Engineering and Mathematics) discipline. Patricia Horn inquired as to the type of jobs in this sector. Peter Murray stated geologists, hydrologists and ecologists.

John Davis stated based upon your understanding of the green economy, it is extremely broad, is there a way to focus on industries that fit into that category? Peter Murray responded that it appears that the question is to remove or reduce the VEGI incentive for this industry and if the identified four sectors in the VEGI program are enough, they are doing well. Patricia Horn inquired as to the sectors that are doing well. Peter Murray responded, based upon personal observations, it does seem like the clean energy sector is doing well. There are still a lot of problems to be solved. This support can potentially help companies to get closer to solutions that are needed to solve these issues.

Fred Kenney stated that one of the recommendations that came out of the survey, the 250 firms with 4 or fewer employees and this may be one indicator why a lot of those firms are not utilizing the VEGI program. Do firms in your sector know about State programs such as VEGI, the training program and you also mentioned difficulty securing Federal contracts, do they know about PTAC? Peter Murray responded stating that he believes that a lot of companies are largely unaware of what programs are available. Additionally, the programs are complicated. With respect to the Federal program, most of the contracts are won by the huge multi-national corporations that are not based in the State of Vermont and don't have branch offices in Vermont. Or if there is a branch office, it is a very small office or even a branch of a branch office. The large corporations have the resources to take advantage of these programs.

John Davis inquired as to how would this program measure the growth of this industry in the State of Vermont. Does VEC have any data as to where this industry was 10 years ago? Peter Murray, no. To perform an estimative to of the size and state of this industry would require time and funding.

Chair Stephan Morse inquired as to any further question, hearing none, thanked Peter Murray for his time and input into this discussion. Fred Kenney stated for the Council members evaluating this item, that Ken Jones has researched data and information that supports Peter Murray's discussion. And that the renewable energy sector, solar and wind, is growing fast but the other sectors are not seeing that kind of growth. The environmental, soil or water protection sectors are not growing as fast as the renewable energy sector.

Peter Murray stated everyone wants to buy electricity and these companies are generating electricity. But when you ask people to fund phosphorus reduction or fund studies on solving global warming, that's a harder sell.

Fred Kenney asked if the VEC recommends maintaining the "Green VEGI" enhancement for incentives. Peter stated that they do.

Fred Kenney stated that written comments have been received from Linda Rossi, Vermont Small Business Development Center; Darcy Carter, U.S. Small Business Administration; David Bradbury, Vermont Center for Emerging Technologies; Betsy Bishop, Vermont Chamber of Commerce; and Ellen Kahler, Vermont Sustainable Jobs Fund.

At 11:40 a.m. Fred Kenney introduced Tom Rugg, a Senior Vice President, Hickok & Boardman HR Intelligence, who is responsible for medium and large size clients in the firm, consulting with them on benefit strategy, design, and implementation and expertise with alternative funding arrangements, financial analysis, and plan design modeling. Tom Rugg will be discussing Issue #8, quantifiable standards for the type, quality, and value of employee benefits that an applicant must offer in order for a new job to count as a "qualifying job" for purposes of the VEGI Program.

Tom Rugg reviewed his presentation stating Hickok & Boardman provides brokerage and consulting services in the benefits arena servicing approximately 400 clients in Vermont.

Tom Rugg continued stating what employees want for benefits is really expensive. Researched the Employee Benefits Research Institute, very creditable and performs employee surveys every year. The Affordable Care Act (ACA) impacted the health care industry in 2014 when it passed.

Tom Rugg stated in 2004 and in 2012 the number one benefit employees wanted was health insurance. Despite employers' willingness to provide health insurance, they are dealing with: medical plan sticker shock; 4 generations of employees with different benefit needs; increasing legal compliance burdens; plan complexity; public exchanges; and increased cost sharing combined with weaker plan designs.

Fred Kenney stated currently VEGI applicants must meet a wage threshold for the jobs being created but must also offer benefits from a list. Would it be possible to include in the VEGI

program a minimum value for benefits? Since the list of benefits could be the lowest level benefit in that category and not meeting the intent of the expectation.

Tom Rugg responded stating this comes back to the defined contribution option. Hickok & Boardman has done a survey of employers conducted annually since 2004. On the average receive 175 responses from Vermont-based employers with 5-8,000 employees. Survey questions included medical and dental plan offerings, life and disability offerings, wellness, and popular discussion topics such as health care reform. Employers are moving towards providing a subsidy to their employee leaving the family, spouse and children on their own. If the employee includes them on the plan, the employee has to pay the additional costs, making the coverage unaffordable.

Tom Rugg continued stating it is difficult to quantify the value of a benefit that employers are moving to a defined contribution. Give each employee a set dollar amount and let the employee purchase the benefit(s) that they want. You can quantify the individual benefit and the total benefits. For those employers currently offer benefits, you total the amount it costs and divide it by the number of employees and that is the amount you give each employee. Employers are providing the same amount regardless of pay or years of service.

John Davis inquired of the data collected is it possible to determine what percentage of compensation goes towards benefits. Tom Rugg, no, the survey does not collect payroll data. We can glean what an employer is spending on a gross basis on benefits. John Davis continued the subcommittee is attempting to determine what percentage of an employee's compensation is in the form of a fringe benefit. The hurdle is determining the value of a benefit when they are valued differently across companies.

Chair Stephan Morse inquired as to any further question, hearing none, thanked Tom Rugg for his time and presentation on this topic.

At 12:05 p.m. Kevin Mullin departed the meeting.

At 12:05 p.m. Fred Kenney introduced Tom Moody, Director at Downs Rachlin & Martin (DR&M) specializing in mergers and acquisitions. Asked Tom Moody to provide the Council with a better understanding of acquisitions and to provide comments on whether incentives should be viewed as a State investment in a company and should the company be purchased if the incentives should be paid back.

Tom Moody stated that he has been at DR&M for 26 years working in private equity transactions and merger and acquisition transactions. Additionally, Chair the Business Association Section of Vermont Bar Association for approximately 10 years and have been involved with revisions to the corporate statutes.

Tom Moody stated that the first topic he wanted to cover is the types of sales transactions that can occur. Once difficulty with the policy review question and the legislation it came from is that



a “sale” is not defined. Fred Kenney stated that is also a concern the Council had since there are so many different types, for different reasons and with differing results. There was a bill introduced that stated if a company is sold the incentives have to be paid back but did not provide a definition for “sale.”

Tom Moody continued stating the most common transaction is a sale of assets. If there is going to be a transfer of business from one owner to another. Typically, the buyer wants to buy assets and the new owner then can choose the liabilities and not assuming pre-closing liabilities from the seller.

The second most common is a stock sale. Where one or more owners of the equity interest in the business sell their stock to somebody else. The buyer of the stock sale assumes all pre-closing liabilities.

Next is a merger. Merger really has the same effect as a sale of equity. With a merger you can have one or more entities merging into one or more entities.

During the last Legislative session as part of the Economic Development Bill, we amended the corporate merger statute to allow for conversions and domestications.

Conversion is a conversion of an entity type from one type to another. This is not a sale because it is not a change of ownership. You could have a change of ownership as part of a conversion. A conversion would be changing to an LLC.

Domestication is the same as a conversion except you would be changing the domestication from one state to another. Also not a sale.

The other item that comes up under the “Sale” heading, is sometimes an exclusive license. Where a company has an item with an exclusive license, if they sell that item to a third party, there essentially nothing left of the company.

Tom Moody continued when writing a contract and trying to define the term “sale” and what does that mean, it usually doesn’t talk about management control. It almost always is a change in ownership. The prototypically description is a sale of all the substantial assets of a company or a sale of equity or a merger or conversion or similar transaction in which the equity of the owners of voting control immediately before the transaction own less than the majority after the transaction.

Fred Kenney noted that there have been two, high profile, acquisitions that came before this Council for companies that have received incentives and there are three more coming. Most of which were the first type mention – sale of assets.

Fred Kenney inquired if during negotiations are items such as State incentives discussed? Are the incentives considered an asset or a commitment the company has made? Tom Moody

responded stating the time that incentives are discussed is when the buyer is inquiring about obligations and these would be considered post-closing ongoing obligations. This would also arise if the incentives would have to be paid back and is also considered a post-closing obligation.

Fred Kenney inquired if there were any comments regarding the policy issues. Tom Moody stated what if you had a transfer of an outside investor and when does that constitute a sale. If you try to construct a definition stay within what has been described. Almost every corporate transaction, when it talks about a change of ownership, what is a sale, we revert to that definition.

Fred Kenney inquired about what would happen if this change were enacted – a sale causing recapture of incentives? VEPC had approved a VEGI incentive, the company was successful, did everything they needed to do, earned and was paid the incentive. They are successful, now a target for acquisition, are acquired and the State requires a claw-back of the incentives. How would the acquiring company view that requirement? Tom Moody responded that this program is here as an economic incentive, to create jobs. This helps not just the owners, but the employees and the surrounding community. Business growth is fueled by acquisitions. Acquisitions can be very beneficial as they bring in outside capital and helps maintain and grow the company, especially when the owner is aging or it has grown to the point where the original owners are no longer competent to grow the company. So if you want to create more jobs in Vermont, an acquisition becomes very beneficial as it brings in new capital. Anything that is done to counter that transaction or create a burden on the transaction would be counter to goals of this program.

John Davis inquired if any other state has requested an owner interest in a company? And how burdensome would this be on a company? Tom Moody responded for smaller companies it would not be that burdensome. The difficulties would be in valuing the equity interest. Would it be stock or membership interest? These are not publicly traded, so you would need to figure out the value. It would create some administrative difficulty and wouldn't be part of a financing. It would require legal works at a time when you are trying to support a company you are creating a legal bill associated with this equity interest. It is doable but adds complexity and cost to the company.

Patricia Horn inquired if this Council has seen jobs move from Vermont after an acquisition or just a change in ownership. Chair Stephan Morse responded, just a change in ownership.

Chair Stephan Morse inquired as to any further question, hearing none, thanked Tom Moody for his time and comments on this topic.

Chair Stephan Morse noted that the next meeting is scheduled for November 17, 2016.

Chair Stephan Morse inquired as any other business, there being none requested a motion to adjourn.

- ❖ At 12:25 p.m Betsy Gentile moved to adjourn the meeting. Rachel Smith seconded the motion. Chair Stephan Morse requested a roll call for the vote, all voted in favor and the motion passed. 10-0-0.
  - ◆ Aye: Chair Stephan Morse, Michael Keane, John Davis, Warren Kitzmiller, Thad Richardson, Patricia Horn, Betsy Gentile, Rachel Smith, Emma Marvin, and Tim Briglin
  - ◆ Nay: None
  - ◆ Abstain: None

*Minutes taken by Kimberly Baker: November 9, 2016*

*Revised by Fred Kenney: November 9, 2016*

*Approved by the Council: November 17, 2016*