

Hamburg Industrial Development Agency

Board of Directors Meeting

April 4, 2014

Robert Chesbro Conference Room

Present

Steve Walters
Jack Chiappone
Lou McDonald
Patricia Brunner-Collins
Tom Moses
Mike Quinn

Excused

Norma Rusert-Kelly
Patricia Paul
Mike Sendor

Guests

Nathan Neill
Craig Cwick
Morgan Jones

Executive Director

Michael J. Bartlett

- **Move** to open the Board of Directors meeting at 8:02 am.

- 70 Lakeview Avenue- Executive Director Bartlett gave the following update on the negotiations to purchase the house and property owned by Tim Rogers located adjacent to the Lake Erie Commerce Center (LECC):

- On March 25, 2014, Mr. Rogers' attorney contacted HIDA Bond Council Nathan Neill informing him Mr. Rogers is requesting a written offer from the Land Development Corporation for his house. He indicated that at this time he was not interested in obtaining an appraisal for his property.
- On March 25, 2014, a written offer of \$114,000 was sent to Mr. Rogers' attorney. The offer was based on the property having a fair market value of \$104,000 in the opinion of the Town Assessor.
- On March 26, 2014 an external appraisal was conducted by Allstate Appraisal, Inc. In the opinion of the appraiser, the market value of the property was \$125,000.
- On April 1, 2014, we were informed by Mr. Rogers' attorney that he was rejecting our offer of \$114,000, and is not prepared to make a counter-offer at this time.

- At this point, Bond council Nathan Neill discussed the process of eminent domain with the Board. The process is based on an attached letter from Morgan L. Jones, Jr., an attorney with Jones, Hogan & Brookes, LLP. Mr. Jones represented the Lockport IDA in its eminent domain case against General Motors.

There are four major components to completing a condemnation. They are:

1. SEQR
2. Determination of public use
3. Acquisition (investing of title)
4. Valuation

The two time lines to be most concerned with are the process of making a determination of public use, and subsequent acquisition of title.

*Determination of Public Use- A resolution from the Board to schedule a public hearing is needed. At the public hearing we will present our arguments why we absolutely need this particular piece of property and how its acquisition would serve a public use. Following the public hearing, the Board must make a determination within ninety (90) days by resolution at a subsequent meeting. Any person deeming himself aggrieved would have thirty (30) days in which to take an appeal directly to the Appellate Division challenging the Determination and Findings. It is expected to take 60-90 days (in the absence of an appeal).

Thereafter, if no appeal is taken by the condemnee, we would then have to make an offer to purchase based on our "highest approved appraisal". If that offer is not accepted, we would then file a verified petition with the court and obtain a return date 20 or 30 days after serving a Notice of Petition on the condemnee. If decided by the court on the return date an order vesting title could be obtained shortly thereafter; if the court reserves decision, several weeks could then go by

before obtaining an order. Then upon entry of the order and the filing of an acquisition map, title would immediately be vested in the IDA. This second step process would probably consume another 60 to 90 days, again assuming that there is no substantia delay with the court, nor appeal filed.

Thus, we would estimate that the time frm the resolution setting a date for a public hearing to vesting of title would run from 120 to 180 days.

The following reasons for making the determination that acquiring the property in question by eminent domain was justified were discussed:

The Town of Hamburg Industrial Development Agency is considering the need to acquire the five parcels of land containing approximately .38 acres more properly identified as SBL# 159.12-1-1, 159.12-1-2, 159.12-1-3, 159.12-1-4, and 159.12-1-5. The Hamburg Land Development Corporation currently has granted an option to a developer for the purchase of an approximately 50 acre portion of the Lake Erie Commerce Center. The proposed occupant is a warehouse distribution operation that would operate on a twenty-four hour a day basis, seven days a week year-round. The parcels of land that the Town of Hamburg Industrial Development Agency are proposing to acquire are in close proximity to the parcel of land under option. The developer that has acquired the option has expressed concern about the proximity of the residential property to the land to be developed to the residential property due to the anticipated noise levels of the proposed development and has raised concern that unless the residential property is acquired by the Town of Hamburg Industrial Development Agency or the Hamburg New York Land Development Corporation, the proposed occupant may not elect to go forward. This would result in the potential loss of between 300-600 jobs in the Town of Hamburg, The land acquired by the Town of Hamburg Industrial Development Agency will be developed as part of the Lake Erie Commerce Center and made available in connection therewith.

In addition to the proposed development of the 50 acre parcel, there is another preliminary proposal for development of approximately 25 acres which development would require the construction of a railroad siding to allow for rail service.. The railroad siding that would be required would have to proceed through the residential property that is proposed to be acquired through the HIDA. Even if this second development does not take place, the location of the five parcels that the HIDA is seeking to acquire is such that it interferes with the development of a substantial portion of the Lake Erie Commerce Center because without the acquisition, Lake View road would have to remain, and that creates a barrier to development of the Lake Erie Commerce Center.

The HIDA has contacted the owner of the property and offered to pay for an appraisal of the property, The owner has rejected the proposal and asked for an offer from the HIDA, The HIDA has made an offer for the property and the owner has rejected the offer and not made a counter-offer. For the reasons outlined above, it is recommended that the HIDA proceed with proceedings under the Eminent Domain Procedure Law to acquire the property in the name of the HIDA.

A discussion followed regarding retaining outside council (Jones, Hogan & Brookes, LLP) as special council for proceedings in eminent domain. The scope of their services will include coordination of the necessary documents, exhibits, and testimony required for presentment at a public hearing, assistance in preparing proper resolutions and a Determination of Findings, assistance in completing SEQRA Review, and publication of requisite notices. They would also coordinate with the IDA's counsel in obtaining an appropriate appraisal of the property, and preparing a Petition to the court and Order vesting title. Furthermore, should an original proceeding be taken by any allegedly aggrieved party directly to the Appellate Division, they would represent the IDA in such a proceeding, including briefing and oral argument. Their representation would continue until title was vested in the IDA, or a final Decision was rendered by the Appellate Division. We will be billed at the rate of \$175.00 per hour for any partner working on this matter, and \$125.00 per hour for any associate. The firm will invoice the Agency on a monthly basis. Any significant anticipated expenses will be cleared with the Agency prior to incurring them.

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY
AUTHORIZING THE COMMENCEMENT OF EMINENT DOMAIN PROCEEDINGS FOR
THE ACQUISITION OF LAND ON LAKE VIEW AVENUE AND AUTHORIZING THE
RETAINER OF OUTSIDE COUNSEL

Moved: Steve Walters

Seconded: Lou McDonald

Ayes: Moses, Brunner-Collins, Quinn, Walters, McDonald

Nays: Chiappone

Carried

- Worldwide Protective Products has requested a one-year extension of its inducement resolution due to delays in renovation caused by the delay in closing on the former Walmart building.

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY
GRANTING A ONE YEAR EXTENSION TO EMK HOLDINGS LLC IN CONNECTION
WITH THE 2013 EMK HOLDINGS LLC PROJECT

Moved: Steve Walters **Seconded:** Jack Chiappone
Ayes: Quinn, Brunner-Collins, Moses, McDonald, Walters, Chiappone
Nays: None
Carried

- **Motion** to approve the minutes from the February 14, 2014 Directors meeting.

Moved: Jack Chiappone **Seconded:** Steve Walters
Ayes: Moses, McDonald, Brunner-Collins, Chiappone, Walters
Nays: None
Carried

-An email from Chuck Backus was reviewed. Chuck has a building located at 202 Main Street under contract. The building has been vacant for over three years. There is water damage in the interior of the 2nd floor from water pipes bursting. Chuck will be remodeling both the interior and exterior including a new roof, windows, 2nd floor staircase, floors, etc. He was inquiring about HIDA assistance through our Adaptive Reuse Project. It was felt that the project qualified for the mortgage tax exemption and sales tax exemption. A PILOT would be predicted on the tenants in the building. If a PILOT was not given, it was suggested the HIDA fee be reduced to ½ of the 1% instead of the normal 1%. Mr. Backus will be contacted to see if he wishes to begin the application process.

- The draft of the 2013 HIDA Audit was received and sent to the Finance and Audit committees to review. No problems were found by the Auditors, and copies of the final Audit will be sent to the Board when received.

-The 2013 HIDA Paris Report was completed and submitted on time.

- **Motion** to approve minutes from the March 7, 2014 Board Meeting.

Moved: Jack Chiappone **Seconded:** Tom Moses
Ayes: Walters, Quinn, McDonald, Brunner-Collins, Chiappone, Moses
Nays: None
Carried

- **Motion** to approve the February 2014 Treasurer's Reports.

Moved: Steve Walters **Seconded:** Patricia Brunner-Collins
Ayes: Quinn, Chiappone, McDonald, Moses, Walters, Brunner-Collins
Nays: None
Carried

-Executive Director Bartlett informed the Board that two HIDA projects have not paid their 2014 Town PILOT bills. Great Lakes Concrete and K-Technologies. He handed out copies of letters sent to both companies outlining the consequences of not paying the bills within the next two weeks. K-Technologies called on April 3, 2014 and said the bill would be paid in the next week. Still waiting on Great Lakes Concrete.

- A letter from Jeff Russo concerning his HIDA project at 4233 Lake Avenue was discussed. The project was approved on November 9, 2012 as an Enhancement Area Project. At the time it was understood that the facility (former Jubilee store) would be used as a food processing and distribution facility. This plan did not happen due to the loss of a major customer, and Jeff now intends to lease space in the building for retail and warehouse uses. It was agreed that the project was approved under the Enhancement Area Program, which at the time it was approved allowed for multi-tenant buildings, which included retail and office uses.

- **Motion** to grant a one-year extension to Pine Hills Fresh Foods, Inc. in connection with their 2012 project.

Moved: Tom Moses **Seconded:** Patricia Brunner-Collins
Ayes: Walters, Quinn, Chiappone, McDonald, Moses, Brunner-Collins
Nays: None
Carried

- **Motion** to adjourn at 8:52am.

Moved: Steve Walters

Seconded: Tom Moses

Ayes: Quinn, Brunner-Collins, McDonald, Walters, Moses, Chiappone

Nays: None

Carried

Sincerely,

Michael J. Bartlett
Executive Director