



6122 South Park Avenue
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**Hamburg Industrial Development Agency
Special - Board of Directors Meeting
February 16, 2021, 5:00pm
Blasdell Village Hall and Zoom Teleconferencing – due to the COVID 19 Pandemic**

Present

Cam Hall – in person
Tom Moses –in person
Janet Plarr –in person
Bob Hutchison - in person
Andy Palmer –in person
Davis Podkulski - Zoom
Wence Valentin- in person
Robert Reynolds – in person
Norma Rusert-Kelly - Zoom

Excused

Guests

Jennifer Strong, Neill & Strong - Zoom
Mary Doran, HIDA – in person
Jim Shaw – Hamburg Town Supervisor
Andy DeVincentis, Walden Develop – in person
Guy Agostinelli - in person
Rick Schechter- in person

Executive Director

Sean Doyle – in person

Additionally, (10-20) individuals from the public joined the meeting via Zoom.

-Pledge

-Roll Call

-Motion to open the board meeting at 5:00pm.

Moved: Wence Valentin **Seconded:** Norma Rusert-Kelly
Ayes: Hall, Moses, Hutchison, Palmer, Podkulski, Reynolds, Plarr, Valentin, Rusert-Kelly
Nays: none
Carried

-Motion to approve the January 22, 2020 board meeting minutes.

Moved: Wence Valentin **Seconded:** Bob Reynolds
Ayes: Hall, Moses, Hutchison, Palmer, Podkulski, Reynolds, Plarr, Valentin, Rusert-Kelly
Nays: none
Carried

Treasurer, Bob Reynolds, gave an update on the financials. Notable expenses in January included; conference \$150, membership dues \$6,105 (\$5,000 Invest Buffalo, \$850 NYSEDC & \$255 NYSCAR). Payroll and benefits continue to be the largest expense. January had a loss of (\$16,440.44) with total balance of \$633,820.85 in the accounts.

-**Motion** to approve the January 2021 Treasurer Report.

Moved: Andy Palmer

Seconded: Bob Hutchison

Ayes: Hall, Moses, Hutchison, Palmer, Podkulski, Reynolds, Plarr, Valentin, Rusert-Kelly

Nays: none

Carried

Executive Director Update:

Director Doyle read the following resolution:

RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING BAYVIEW ROAD ASSOCIATES, LLC (THE "LESSEE") TO CONSTRUCT A 181,500 SQUARE FOOT WAREHOUSE ON A 57.914 ACRE PARCEL OF LAND OWNED BY THE LESSEE LOCATED AT THE CORNER OF LAKESHORE AND BAYVIEW ROADS IN THE TOWN OF HAMBURG, AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE FOR SUB-SUBLEASE TO AMAZON.COM SERVICES LLC (THE "SUBLESSEE") WHO WILL BE THE SOLE OCCUPANT OF THE FACILITY ALL FOR A WAREHOUSING AND DISTRIBUTION FACILITY, AND TO TAKE OTHER PRELIMINARY ACTION.

WHEREAS, Bayview Road Associates, LLC (the "Lessee") has entered into negotiations with the officials of the Town of Hamburg Industrial Development Agency (the "Agency") with respect to the construction and equipping by the Agency through a lease with mortgage or lease only transaction of a commercial warehouse and distribution facility on a 57.914 acre parcel of land located the corner of Lakeshore and Bayview Roads already owned by the Lessee, in Hamburg, New York and the construction of an approximately 181,500 square foot building therein, by the Lessee, as Agent for the Agency, for lease by the Lessee to the Agency for leaseback by the Agency to the Lessee for sub-sublease to Amazon.com Services LLC, (the "Sublessee") who will be the sole occupant of the facility, all for the provision of a warehousing and distribution Facility (the "Project"); and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

*WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency to construct a building to allow for the expansion of the Sublessee which is necessary to support the growth of the Sublessee and the expansion of its operations into Hamburg, New York; that if the assistance is granted, the Sublessee anticipates hiring **50 FTE and 50 PT employees** at the Project location in the Town of Hamburg within two years following the completion of the Project; that the Project will result in substantial capital investment; that there will be no adverse disruption of existing employment at facilities of a similar nature in the Town of Hamburg; if Agency financing or other assistance is disapproved, the Lessee would have to scale back the Project negatively impacting future growth in New York; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee and the Sublessee to proceed with the Project in the Town of Hamburg; and*

WHEREAS, the Agency has held two public hearings on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee and the Sublessee with respect to the acquisition and renovation of the Project, if by so doing it is able to induce the Lessee and the Sublessee to proceed with the Project in the Town of Hamburg; and

WHEREAS, the Project should not be delayed by the requirement of determining the details of a lease with mortgage if financing is utilized, which cannot be immediately accomplished, and the Lessee and the Sublessee have agreed to extend its own funds with respect to the Project, subject to reimbursement from the proceeds of the notes, if applicable;

NOW, THEREFORE, THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and installation of the Project and the

financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project; (b) that Agency financing and/or other assistance is reasonably necessary to promote economic development and to induce the Lessee and the Sublessee to proceed with the Project; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will allow the Sublessee to expand into the Town of Hamburg; (e) the Project will create additional employment and provide substantial capital investment; The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the into a lease with mortgage or lease only transaction and (g) the Project is an integral part of the Lessee's and Sublessee's plan to proceed with the Project in the Town of Hamburg.

Section 2. The Agency hereby authorizes the Lessee and the Sublessee to proceed with the Project as herein authorized, which Project will be financed through a lease with mortgage or without financing with a lease only transaction.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information as to the details of a mortgage enter into a lease with mortgage or if it is determined that financing is not necessary a lease only transaction.

Section 4. The Chairman, Vice Chairman, Executive Director, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee is authorized to on the already owned 57.914 +/- acre parcel of land located at the corner of Lake shore and Bayview Roads the construction of an approximately 181,500 square foot building thereon and authorize the Lessee to proceed with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith at combined cost not to exceed **\$47,200,000.00**, subject to the obtaining of all required approvals from the Town of Hamburg and other involved governmental agencies, and to advance such funds as may be necessary to accomplish such purposes. The Agency is hereby authorized to enter into such agreements with the Lessee, as the Chairman, Vice Chairman, Executive Director or other officer may deem necessary in order to accomplish the above.

Section 6. The Lessee is authorized to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in a combined amount up to **\$15,200,000.00** which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$1,330,000.00**. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 7. Any such action heretofore taken by the Lessee in initiating the construction of the Project is hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 9. This resolution is subject to the standard ten year payment in lieu of taxes for municipal services policy of the Agency on the building and thereafter make a full payment in lieu of taxes. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 6 hereof) unless prior to the expiration of such one year (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Agency shall enter into a lease with mortgage or lease only transaction with the Lessee.

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency enters into a lease with mortgage or lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. The execution and delivery of a Project Agreement, Lease to Agency and a Leaseback Agreement between the Agency and the Lessee, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 12. The execution and delivery of a mortgage from the Agency and the Lessee to a lender selected by the Lessee and approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary in an amount not to exceed \$33,760,000 and other ancillary documents, if required, which mortgage and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 14. The provisions of the new Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 15. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from such challenge, including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. The provisions of the Town of Hamburg Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance adopted by the Agency on June 15, 2016 shall be applicable to this Project.

Section 18. This resolution shall take effect immediately.

-Motion to approve the Bayview Road Associates & Amazon resolution as written above.

Doyle, gave every board member an opportunity to speak on the project, beginning with the Chairman and following with the board members in alphabetical order.

1. Andy Palmer, Chairman, thanked all of the board members for their hard work. He stated it is a volunteer board that requires time and commitment. The board is run by good people with character and resolve and they did a great job. He thanked the public for their input along with the New York State Senator Ryan and Assemblymember Jon Rivera for their opinions as well as the lawyers, citizens and small business owners. Palmer is thankful for the opportunity to serve his community. Additionally he thanked Walden Development for purchasing the property. He said there is no perfect project especially in the age of COVID. He said the Amazon project is the right project at the right time and place in the Town of Hamburg. **supports**
2. Cam Hall, Secretary, thanked everyone for coming out. He appreciates both sides of the argument. Senator Ryan's issues - due to their size and profitability Amazon can afford to come to Hamburg without incentives, at the same time the opportunity being offered to Hamburg is based on the cost incentives being offered. The jobs are not career but they offer an influx of opportunities. The building is an ideal fit for the land. We are staying true to our word to further business presence and provide benefit to surrounding businesses. It's a vote no one took lightly- **supports**
3. Bob Hutchison, Vice Chairman, agrees with Cam Hall and Andy Palmer. He stated the board takes a look at every facet of the project. "We have to divorce ourselves from the company". He said Supervisor Shaw made a good presentation to the board and why jobs like these are important. The construction jobs will support the trade unions as well as their apprentice program. The spin off jobs in the delivery sector are numerous, we saw this in Tonawanda. The economic activity of this project is very positive and what we need in Western New York, hope and opportunity. **supports**
4. Janet Plarr, Board Member, echoed all the comments made above by her fellow board members. She stated the hope is to bring jobs, investing in the community. Some of the more recent projects the IDA was involved with that brought or are bringing jobs to Hamburg; Betlem, Metalico, Race Storage Sheds, Gateway, Battista Construction and Jameson. **supports**
5. Tom Moses, Board Member, also agrees with all the comments made by his fellow board members. He said we have to look long term and take into consideration what we are going thru with COVID and where we have been. He stated the IDA has assisted Ford for many years. He also stated the local school districts start teachers at \$33k to \$34k with a 24 step program to grow on. He said you can afford to live on this salary in Hamburg with two family members working. The development of the land will have positive effect for years to come if we allow it to keep going. **supports**
6. Davis Podkulski, Board Member, said he supports the project although he doesn't get a warm a fuzzy feeling about it. We live in the current reality, take what we can. It's a balance during uncertain times. He gave his appreciation to all who spoke out on the project and as well has his fellow IDA board members. **supports**
7. Bob Reynolds, Treasurer, stated he has been on the school board, a union leader and has lived in Hamburg for 66 years. It's a tough decision; he sees the split in the community. With how things are going right now it's hard to get projects done. He cannot fathom an organization that sends a message to the unions that they are not welcome. A union is legal representation in the workforce. UPS is surviving with a union and good paying jobs. They "Amazon" need to become part of the country and community offering better pay and better benefits to their workforce. **opposes**

8. Norma Rusert-Kelly, Board Member, said it is a tough decision, agrees with Bob Reynolds. There is a lot of unemployment especially in the McKinley Mall. She stated Amazon contributed to that, putting people out of work. She is in favor of the project but without the incentives. She said she owes that to her neighbor and friends who struggle to pay their taxes, she cannot approve Amazon only paying 10%. **opposes**
9. Wence Valentin, Board Member, stated he cannot in good faith support this project. It is not a living wage for people in Hamburg. It makes him sick to his stomach what they are doing to their employees in Alabama. They have no respect for their people, treat them like robots. He concurs with Jeff Brylski's, who spoke against the project at the public hearing. He cannot support. **opposes**

Matt Kent, New York Foundation for Fair Contracting, attending the meeting via Zoom asked the board about the legality of the application. He stated Amazon did not sign the HIDA application, he believes that makes the application incomplete and ineligible.

Doyle referred the question to IDA attorney, Jennifer Strong.

Strong stated the resolution speaks to everything and the application was reviewed and is in full legal compliance.

Doyle stated they did obtain Amazon's signature on the application.

The board returned to the motion on the floor and did a roll call vote on the Bayview Road Associates, LLC Resolution.

-Motion to move the resolution

Moved: Wence Valentin

Seconded: Bob Hutchison

Janet Plarr – aye

Tom Moses – aye

Bob Reynolds – nay

Cam Hall – aye

Wence Valentin – nay

Andy Palmer – aye

Bob Hutchison – aye

Davis Podkulski – aye

Norma Rusert-Kelly – nay

Ayes – 6, Nays 3

Carried

-Motion to adjourn at 5:36pm

Moved: Wence Valentin

Seconded: Davis Podkulski

Ayes: Hall, Moses, Hutchison, Palmer, Podkulski, Rusert-Kelly, Reynolds, Plarr, Valentin

Nays: none

Carried

Sincerely,

A handwritten signature in blue ink, appearing to be 'SD', with a long horizontal stroke extending to the right.

Sean Doyle, Executive Director

Next meeting March 17, 2021, 7:30am via Zoom only