



6122 South Park Avenue
Hamburg, New York 14075
716.648.4145
www.HamburgIDA.com

**Hamburg Industrial Development Agency
Board of Directors Meeting
August 18, 2021, 7:30am
Blasdell Village Hall**

Present

Cam Hall
Tom Moses
Janet Plarr
Bob Hutchison
Wence Valentin
Davis Podkulski
Robert Reynolds

Excused

Norma Rusert-Kelly
Andy Palmer

Guests

Francesca Bond, Hamburg Sun - Zoom
Mary Doran, HIDA
Jennifer Strong, Neill & Strong

Executive Director

Sean Doyle

-Pledge

-Roll Call

-Motion to open the board meeting at 7:35am.

Moved: Tom Moses

Seconded: Janet Plarr

Ayes: Moses, Hutchison, Podkulski, Reynolds, Valentin, Hall, Plarr

Nays: none

Carried

-Motion to approve the July 2021 board meeting minutes.

Moved: Wence Valentin

Seconded: Bob Reynolds

Ayes: Moses, Hutchison, Podkulski, Reynolds, Valentin, Hall, Plarr

Nays: none

Carried

Treasurer, Bob Reynolds, gave an update on the financials. HIDA received \$117.29 in income from interest on deposits, incurred expenses of \$9,540.29 for payroll and paid for public hearings along with a sponsorship in July. The balance on the accounts as of July 31st is \$984,106.49.

-Motion to approve the July 2021 Treasurer Report.

Moved: Bob Reynolds

Seconded: Davis Podkulski

Ayes: Moses, Hutchison, Podkulski, Reynolds, Plarr, Valentin, Hall

Nays: none

Carried

Executive Director Update:

-Doyle updated the board on the following projects:

- K&H received revised application
- Carbon Activated, modified application, resolution later in meeting
- E-One, close in December

-Through the Town of Hamburg Doyle will be submitting an application for CARES Funds (has to be approved by the Town Board on August 23rd). The funds would be used as grants to small businesses that were negatively affected by COVID. If approved and granted the funds would be administrated through the HDC. The HDC would establish a policy and procedure along with tracking the job growth associated with the grant.

-Doyle will also be reaching out to the Supervisor requesting funds for Pitch Hamburg. The Town is due to receive monies from ARPA (American Recovery Plan Act). Pitch Hamburg fits the narrative of economic development for which the funds are provided to promote.

-The September meeting will be an evening meeting/retreat at Ilios.

-HDC just approved a 10 year 100k term loan to a business that will be creating 20 jobs.

Unfinished Business-

-Local Labor Waiver, continuing to work on with attorney, Strong, and Executive Committee.

Privilege of the Floor -

-Doyle opened the floor up for public comment – none.

New Business -

Doyle read portions of the following resolution for Carbon Activated Project:

AMENDED RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING THE REDUCTION OF AGENCY BENEFITS, AMENDING THE LESSEE AND ADDING A SUBLESSEE.

WHEREAS, CARBON ACTIVATED CORPORATION previously entered into negotiations with the officials of the Town of Hamburg Industrial Development Agency (the "Agency") with respect to the purchase and renovation of an approximately 74,000 square foot existing building located at 3830 Jeffrey Boulevard, Hamburg, New York, by Carbon Activated Corporation, as Agent for the Agency, for lease to the Agency and subsequent Leaseback to Carbon Activated.

WHEREAS, an amended Application has been submitted seeking a reduction in Agency benefits by not taking the sales tax exemption and thereby reducing the Project amount; changing the name of the lessee from Carbon Activated Corporation to the PERERA FAMILY TRUST (the "Lessee") who will sublease the Facility to Carbon Activated Corporation (the "Sublessee") who will be the sole occupant of the Facility all for the provision of a back office and warehouse Facility (the "Project"); and

WHEREAS, the assistance contemplated by the Agency will include mortgage tax abatement and real property tax abatement in accordance with existing Agency Uniform Tax Exemption Policy and Guidelines; and

WHEREAS, the Lessee and Sublessee have submitted an Eligibility Questionnaire and an amended 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 Agency has, after giving all required notices, held a public hearing on the Project pursuant to Section

859-A of the General Municipal Law; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee and Sublessee, including the following: that the Lessee desires Agency assistance to renovate an existing building on a 10+/- acre parcel of land for sublease to the Sublessee to allow for the continued growth of the Sublessee, the Sublessee needs a larger facility which is necessary to support the growth and the expansion of its operations; that at the time of the application the Sublessee has 10 FTE employees and 5 PT employee, if the assistance is granted, **the Sublessee will retain its existing employees and anticipates hiring another 12 FTE and 7 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 assistance is disapproved, the Sublessee would have to scale back the Project negatively impacting future growth in New York; and that, therefore, Agency assistance is necessary to encourage the Sublessee to proceed with the Project in the Town of Hamburg; and

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

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

Section 1. The Agency hereby determines that the acquisition, construction, equipping 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 Questionnaires and supplemental information furnished by the Lessee and Sublessee, 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 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 its business in the Town of Hamburg; (e) the Project will retain existing employment, create additional employment and provide substantial capital investment; The Agency further determines, on the basis of the Lessee's/Sublessee's Eligibility Questionnaires 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 plan to proceed with the Project in the Town of Hamburg.

Section 2. 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, construction and equipping of the Project.

Section 3. The Lessee is authorized to initiate the purchase and renovation of an approximately 74,000 square foot existing building located at 3830 Jeffrey Boulevard, Hamburg, New York, by the Lessee, as Agent for the Agency, for lease to the Agency and subsequent Leaseback to the Lessee for sublease to the Sublessee, who will be the sole occupant, all for the provision of a back office, and warehouse facility at a total Project Cost not to exceed a reduced project amount of **\$5,050,000**, 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.

Section 4. The Agency is hereby authorized to enter into such agreements with the Lessee and Sublessee, as the Chairman, Vice Chairman, Executive Director or other officer may deem necessary in order to accomplish the above.

Section 5. The Lessee and Sublessee are not seeking any New York State and local sales and use tax exemptions.

Section 6. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project is hereby ratified, confirmed and approved.

Section 7. 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 8. The Agency hereby authorizes and approves real property tax abatement benefits structured through a **ten year payment in lieu of taxes agreement** ("PILOT Agreement") estimated to provide **\$604,314.50 in real property tax abatement benefits**, and resulting in estimated total payments in lieu of taxes of \$160,640.56 over the term of the PILOT

Agreement.

Section 9. The Agency hereby authorizes and approves that the value of the mortgage to be placed upon the facility shall not exceed \$3,900,000.00 and that the recording tax exemption benefit shall not exceed \$29,250.00.

Section 10. The execution and delivery of a Project and Agent Agreement, Closing Agreement, Lease to Agency, and 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 11. The execution and delivery of a mortgage or mortgages 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 a total amount not to exceed \$3,900,000 and other ancillary documents, if required, which mortgages 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 12. 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 or Sublessee's purposes or needs. The Lessee and Sublessee are satisfied that the Project is suitable and fit for their 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 and Sublessee hereby indemnify and hold the Agency harmless from any such loss, damage or expense.

Section 13. The provisions of Section 875 of the General Municipal Law 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 and Sublessee, their 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 14. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee and Sublessee 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 or Sublessee hereunder or otherwise.

Section 15. This resolution is subject to compliance with all local building and zoning requirements.

Section 16. The Agency hereby determines, based upon information furnished to the Agency by the Applicant and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law ("SEQR"), as the contemplated actions are Type II actions that have been determined by SEQR not to have a significant adverse effect on the environment.

Section 17. The provisions of the Town of Hamburg Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance and Local Labor Policy shall be applicable to this Project.

Section 18. This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Lessee pursuant to Sections 12, 13, 14 and 17 of this Resolution which shall

survive any expiration or termination) or (b) allow the Lessee additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Lessee to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Lessee an extension fee in accordance with the Agency's fee schedule.

-Motion to approve the above resolution for Carbon Activated:

Moved: Janet Plarr **Seconded:** Bob Hutchison
Ayes: Moses, Hutchison, Podkulski, Reynolds, Plarr, Valentin, Hall
Nays: none
Carried

-Doyle read the resolution below regarding a utility easement for Bayview Road Associates:

**RESOLUTION OF THE TOWN OF HAMBURG INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY")
GRANTING CONSENT TO BAYVIEW ROAD ASSOCIATES, LLC (THE "LESSEE") TO ENTER INTO
VARIOUS UTILITY EASEMENTS AND RIGHTS OF WAY IN CONNECTION WITH THE CONSTRUCTION OF
AN 181,500 SQUARE FOOT WAREHOUSE AT 3920 BAYVIEW ROAD IN THE TOWN OF HAMBURG.**

WHEREAS, the Lessee has commenced construction of the Project and in connection therewith must make provision for utility services to the Facility; and

WHEREAS, The Lessee pursuant to section 6.4. of the Leaseback Agreement between the Agency and the Lessee; the Lessee has requested that the Agency consent to the Lessee entering into various easements and rights of way with various utility companies to provide utility service to the Facility in furtherance of the Project.

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

Section 1. The Agency hereby determines that giving consent to the Lessee to enter into various utility easements and rights of way for the installation and connection of utility services to the Facility is in the best interest of the Project;

Section 2. Pursuant to section 6.4 of the Leaseback Agreement, the Agency hereby consents to the Lessee signing various easements and rights of way for the provision of utility services to the Facility;

Section 3. 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 provision of various utility easements to the Facility in furtherance of the Project and are authorized to execute any easements and rights of way in connection therewith;

Section 4. Any such action heretofore taken by the Lessee in initiating the provision of utility services to the Facility is hereby ratified, confirmed and approved.

Section 5. This resolution shall take effect immediately.

-Motion to approve the above resolution for Bayview Road Associates:

Moved: Cam Hall **Seconded:** Bob Reynolds
Ayes: Moses, Hutchison, Podkulski, Reynolds, Plarr, Valentin, Hall
Nays: none
Carried

-**Motion** to adjourn at 7:52am

Moved: Tom Moses


Seconded: Davis Podkulski

Ayes: Moses, Hutchison, Podkulski, Reynolds, Plarr, Valentin, Hall

Nays: none

Carried

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean Doyle', written in a cursive style.

Sean Doyle, Executive Director

Next meeting September 22, 2021 4:30pm, Ilio DiPaolos Restaurant