

Town of Colonie Industrial Development Agency

Board Minutes
August 14, 2017 Meeting

PUBLIC HEARING – Afrim Realty Company, LLC Project

Mr. Kearney opened the public hearing at 6:00 pm and it was closed at 6:30 pm.
(Transcription on file in Executive Director's Office)

Meeting called to order by John Kearney, Chairman, at 6:31 pm. The Agency meeting was conducted simultaneously with the Town of Colonie Local Development Corporation meeting due to the common actions necessary this evening.

Members in attendance:

John Kearney, Chairman	
Carmen Basile	Peter Gannon
Eric Phillips	Benjamin Syden

Members absent:

David DeLuca	Gary Rinaldi
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Other Persons in attendance:

Agency Counsel: Melissa Bennett and Jo-Ann Kilmer, Barclay Damon, LLP
Executive Director: Joseph LaCivita
Chief Fiscal Officer: Christopher Kelsey
Guests: Afrim Nejzaj, Afrim Realty Company, LLC, Member
Paul Sciocchetti, Esq., Sciocchetti & Abbott, PLLC
John King, New York State Small Business Development Center
Antonio Giordano, One Mustang Drive II, Chief Financial Officer
Steve Reilly, Whiteman Osterman & Hanna
William Ryan, South Colonie Central School District, Counsel

Approval of the Minutes

Mr. Kearney indicated the draft of the July 10, 2017 minutes were in the Board packets for review.

MOTION: To accept the July 10, 2017 minutes as provided. Motion offered by Benjamin Syden and seconded by Peter Gannon. Motion was unanimously approved by the members in attendance.

Committee Reports

Governance –Mr. Syden indicated the Committee had nothing to report this evening.

Finance – On behalf of Mr. DeLuca, Mr. Kelsey indicated there was no Committee report this evening. Mr. Kelsey distributed tentative 2018 budgets for the members to review. A Finance Committee Meeting will be held at 5:30 on October 16, 2017 for the Finance Committee to finalize the preliminary budget for recommendation to the full Board.

Audit – On behalf of Mr. DeLuca, Mr. Kelsey indicated there was no Committee report this evening.

Executive Director Report

1) Demolition of 272 Maxwell Road

Mr. LaCivita the demolition of 272 Maxwell Road went as scheduled July 20, 2017, and the site is now clear. Mr. Kelsey indicated the Town Department of Public Works has agreed to assist in grading the property. The Agency will pay for soil and other necessary supplies, and the Town will provide the equipment and labor. Hopefully grading will take place in September.

2) Camoin Associates Economic Assessment Study

Camoin Associates is working on the economic assessment study of various business sectors within the Town of Colonie and Mr. LaCivita is hopeful that a final report will be available for the October 2017 meeting.

3) One Mustang Drive II

Mr. LaCivita introduced the representatives of One Mustang Drive II and asked them to discuss the application before the Agency this evening. Mr. Giordano indicated One Mustang Drive II is the holding company for the Precision Valve & Automation's headquarters in Colonie. Mr. Reilly indicated in 2010 the Agency provided financial assistance originally through the issuance of taxable and tax exempt multi-modal revenue bonds. The taxable bonds have been paid in full. Now they would like to refund the \$5,500,000 of outstanding tax exempt bonds. This will provide reduced debt service costs over the remaining life of the bonds. They are also requesting an exemption from any associated mortgage recording taxes as well.

Ms. Bennett indicated there was a preliminary inducement resolution before the Agency this evening related to the project, and that Counsel is still researching whether a public hearing will be necessary for this project. Ms. Bennett also confirmed for Mr. Syden that the Agency fees for 2017 are still one half of one percent (0.50%).

Mr. Kearney thanked Mr. Reilly and Mr. Giordano for their presentation.

RESOLUTION 2017-007 – Resolution taking preliminary official toward this issuance of revenue bonds in an amount sufficient to refund certain outstanding bonds for One Mustang Drive II, LLC (the “Company”) and authorizing the execution and delivery of a preliminary agreement with the Company with respect to such transaction. Resolution offered by Eric Phillips and seconded by Carmen Basile. Resolution unanimously approved by members in attendance.

Old Business

Afrim Realty Company, LLC – The Agency members discussed the comments from both the South Colonie Central School District and the Afrim’s Project representatives, and reaffirmed the positive intent toward the project. It was concluded the Agency was willing to approve a payment in lieu of tax agreement (PILOT) but as to what extent and term was the issue. It was determined that the taxing jurisdictions should not be forced to accept less than they have been getting over the last several years. Mr. LaCivita was tasked with contacting the project representatives with the following revised PILOT to see if it would work for their project. A 20 year term with fixed payments of \$25,000 for each of the first ten years and then phasing in to full taxable value over the second ten years.

It was noted that a meeting may be necessary earlier than October 2017 for the project to keep moving forward and meet its time constraints.

New Business

None

Meeting adjourned at 7:15 pm.

Next meeting will be October 16, 2017 at 6:00 pm, with a Finance Committee meeting at 5:30 pm, at 347 Old Niskayuna Road, Latham, NY 12110.

RESOLUTION 2017-007 - RESOLUTION TAKING PRELIMINARY OFFICIAL ACTION TOWARD THE ISSUANCE OF REVENUE BONDS IN AN AMOUNT SUFFICIENT TO REFUND CERTAIN OUTSTANDING BONDS FOR ONE MUSTANG DRIVE II, LLC (THE "COMPANY") AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PRELIMINARY AGREEMENT WITH THE COMPANY WITH RESPECT TO SUCH TRANSACTION

WHEREAS, the Town of Colonie Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 594 of the Laws of 1980 of New York, as amended, constituting Section 911-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, One Mustang Drive II, LLC (the "Company") has presented an application (the "Application") to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A) the refunding of the Agency's \$5,880,000 Multi-Modal Tax-Exempt Revenue Bond, Series 2010A (One Mustang Drive II, LLC Project) (the "Series 2010A Bonds"); (B) the issuance of tax-exempt and/or taxable revenue bonds of the Agency (the "Series 2017 Bonds") in one or more issues or series in an aggregate principal amount sufficient to finance (1) the refunding of the Series 2010A Bonds and (2) the costs incidental to the issuance of the Series 2017 Bonds, including costs of issuance and any reserve funds necessary to secure the Series 2017 Bonds, in an amount estimated to be approximately \$5,500,000; and (C) the granting of the mortgage recording tax exemption (except as limited by Section 874 of the Act) with respect to the recording of any mortgage with the County Clerk of the County of Albany; and

WHEREAS, the Series 2010A Bonds financed a portion of the costs of: (1) the acquisition of two adjacent parcels of land totaling approximately 11 acres located at 1 Mustang Drive in the Town of Colonie, Albany County, New York (the "Land") and the existing 115,000 square foot facility located thereon (the "Existing Facility"), (2) the rehabilitation and renovation of the Existing Facility (the "Facility") for use as a manufacturing facility and office space, and (3) the acquisition and installation therein and thereon of various machinery and equipment (the "Equipment", and together with the Land and the Facility, the "Project Facility"); and

WHEREAS, with respect to any portion of the Series 2017 Bonds intended to be issued as federally tax-exempt obligations, interest on such portion of the Series 2017 Bonds will not be excludable from gross income for federal income tax purposes unless all of the requirements of Sections 145 and 147 of the Internal Revenue Code of 1986, as amended (the “Code”) are satisfied; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of the Town of Colonie, New York by undertaking the Project in the Town of Colonie, New York; and

WHEREAS, pursuant to the Act, any approval of the Project contained herein is contingent upon a determination by the members of the Agency to proceed with the Project following satisfaction of the public hearing and notice requirements and other procedural requirements contained in Section 859-a of the Act that relate to the Project; and

WHEREAS, although the resolution authorizing the issuance of the Series 2017 Bonds and the undertaking of the Project has not yet been drafted for approval by the Agency, a preliminary agreement (the “Preliminary Agreement”) relative to the proposed issuance of the Series 2017 Bonds and the undertaking of the proposed Project by the Agency has been presented for approval by the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Agency must determine the potential environmental significance of the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. Based upon the criteria contained in 6 NYCRR § 617.7(c) and the Agency’s knowledge of the action and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations pursuant to SEQRA:

(i) The action consists of the components described above in the third WHEREAS clause of this resolution; and

(ii) The action constitutes a “Type II Action” (as said quoted term is defined in SEQRA) and therefore no further environmental review is required under SEQRA.

Section 2. The Agency has reviewed the Application and the representations made by the Company to the Agency in the Application and at this meeting and, based thereon, the Agency hereby makes the following findings and determinations with respect to the Project:

(A) The Project constitutes a “project” within the meaning of the Act; and

(B) The Project is the re-financing of the outstanding Series 2010A Bonds and, accordingly, the Project will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the

State of New York to another area of the State of New York or in the abandonment of a plant or facility of the Company or of any proposed occupant of the Project Facility located in the State of New York; and

(C) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost; and

(D) The granting of the financial assistance by the Agency in the form of the issuance of the Series 2017 Bonds and the granting of the mortgage recording tax exemption (except as limited by Section 874 of the Act) with respect to the recording of any mortgage with the County Clerk of the County of Albany (the “Financial Assistance”), promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the Town of Colonie, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act; and

(E) Upon compliance with the provisions of the Act and the Code, the Agency would then be authorized under the Act to undertake the Project in order to promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the Town of Colonie, New York and the State of New York and improve their standard of living; and

(F) It is desirable and in the public interest to issue the Series 2017 Bonds in a principal amount sufficient to (1) refund the Series 2010A Bonds and (2) pay the costs incidental to the issuance of the Series 2017 Bonds, including costs of issuance and any reserve funds necessary to secure the Series 2017 Bonds.

Section 3. If, following full compliance with the Act, the Agency adopts a future resolution (the “Future Resolution”) determining to proceed with the Project and to issue the Series 2017 Bonds and the Company complies with all conditions set forth in the Preliminary Agreement and the Future Resolution, then the Agency will (A) authorize the issuance of the Series 2017 Bonds in such principal amount and with such maturities, interest rate or rates, redemption terms and other terms and provisions as shall be determined by a further resolution of the Agency; (B) issue the Series 2017 Bonds; (C) lease (with the obligation to purchase) or sell the Project Facility to the Company pursuant to a lease agreement or an installment sale agreement (hereinafter, the “Repayment Agreement”) between the Agency and the Company whereby the Company will be obligated, among other things, (1) to make payments to the Agency in amounts and at times so that such payments will be adequate to pay the principal of, premium, if any, and interest on the Series 2017 Bonds and (2) to pay all costs incurred by the Agency with respect to the Project and/or the Project Facility, including all costs of operation and maintenance, all taxes and other governmental charges and all reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project and/or the Project Facility; and (D) secure the Series 2017 Bonds in such manner as the Agency, the Company and the purchaser or purchasers of the Series 2017 Bonds shall mutually deem appropriate.

Section 4. If the Agency adopts the Future Resolution, the issuance of the Series 2017 Bonds by the Agency, as contemplated by Section 3 of this Resolution shall be subject to: (A) execution and delivery by the Company of the Preliminary Agreement, which sets forth certain conditions for the issuance of the Series 2017 Bonds by the Agency, and satisfaction by the Company of all the terms and conditions of the Preliminary Agreement applicable to the Company; (B) agreement by the Agency, the Company and the purchaser or purchasers of the Series 2017 Bonds on mutually acceptable terms of the Series 2017 Bonds, the security for the payment thereof and for the sale and delivery thereof; (C) agreement between the Company and the Agency as to payment by the Company of the administrative fee of the Agency and the fees of counsel to the Agency with respect to the Project; (D) a determination by the members of the Agency to proceed with the granting of the Financial Assistance with respect to the Project following a determination by the members of the Agency that the public hearing and notice requirements and other procedural requirements contained in Section 859-a of the Act have been complied with; (E) if interest on any portion of the Series 2017 Bonds is to be treated as excludable from gross income for federal income tax purposes, a determination by the members of the Agency that all requirements of the Code that relate to the Project have been fulfilled, and (2) approval of the issuance of the Series 2017 Bonds by the Town Board of the Town of Colonie, New York, if, and to the extent, required by Section 147(f) of the Code; (F) execution and delivery by the Company of a project agreement that complies with the requirements of Section 859-a(6) of the Act; and (G) the following additional condition(s): None.

Section 5. The form, terms and substance of the Preliminary Agreement (in substantially the form presented to this meeting and attached hereto) are in all respects approved, and the Chairman (or Vice Chairman) of the Agency is hereby authorized, empowered and directed to execute and deliver said Preliminary Agreement in the name and on behalf of the Agency, said Preliminary Agreement to be substantially in the form presented to this meeting, with such changes therein as shall be approved by the officer executing same on behalf of the Agency, the execution thereof by such officer to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form now before this meeting.

Section 6. From and after the execution and delivery of the Preliminary Agreement, the officers, agents and employees of the Agency are hereby authorized, empowered and directed to proceed with the undertakings provided for therein on the part of the Agency and are further authorized to do all such acts and things and to execute all such documents as may be necessary or convenient to carry out and comply with the terms and provisions of the Preliminary Agreement as executed.

Section 7. The officers, agents and employees of the Agency are hereby directed to proceed to do such things or perform such acts as may allow the Agency to proceed to its final consideration of the Project. This Resolution shall not be deemed to constitute a commitment by the Agency to issue the Series 2017 Bonds, except upon satisfaction of the requirements set forth in Section 4 hereof and in the Preliminary Agreement.

Section 8. It is intended that this Resolution shall constitute the official intent of the Agency toward the issuance of the Series 2017 Bonds within the meaning of Section 1.150-2 of the Treasury Regulations.

Section 9. The Agency hereby authorizes the Chairman (or Vice Chairman) of the Agency, prior to authorizing the issuance of the Series 2017 Bonds, after consultation with counsel to the Agency, (A) to establish a time, date and place for a public hearing of the Agency, if, and to the extent, required pursuant to Section 147(f) of the Code, to hear all persons interested in the location and nature of the Project Facility and the proposed issuance of Series 2017 Bonds being contemplated by the Agency with respect to the Project, said public hearing to be held in the city, town or village where the Project Facility will be located (the “TEFRA Hearing”); (B) to establish a time, date and place for a public hearing of the Agency pursuant to Section 859-a of the Act (the “GML Public Hearing” and, collectively with the TEFRA Hearing, the “Public Hearing”); (C) to cause notice of such Public Hearing to be given to the public by publishing a notice of such Public Hearing in a newspaper of general circulation available to residents of the governmental units where the Project Facility is located, such notice and publication to comply with the requirements of Section 147(f) of the Code and Section 859-a of the Act; (D) to cause notice of the GML Public Hearing to be given to the chief executive officer of the county and each city, town, village and school district in which the Project Facility is located; (E) to conduct such Public Hearing; and (F) to cause a report of said Public Hearing fairly summarizing the views presented at the Public Hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency.

Section 10. The Preliminary Agreement shall be deemed the obligations of the Agency, and not of any member, officer, agent or employee of the Agency in his/her individual capacity, and the members, officers, agents and employees of the Agency shall not be personally liable thereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby. The Preliminary Agreement shall constitute or give rise to an obligation of the State of New York or the Town of Colonie, New York and neither the State of New York nor the Town of Colonie, New York shall be liable thereon, and further, such agreement shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency.

Section 11. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 12. Barclay Damon LLP, of Albany, New York, is hereby appointed Counsel to the Agency with respect to all matters in connection with the Project. Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, Counsel to Company, and others to prepare, for submission to the Agency, all documents necessary to effect the authorization, of the transactions contemplated by this Resolution.

Section 13. This Resolution shall take effect immediately.