

Town of Colonie Industrial Development Agency

Board Minutes December 18, 2017 Meeting

Meeting called to order by John Kearney, Chairman, at 6:00 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	
Carmino Basile (Exited at 7:00)	Peter Gannon
Eric Phillips (Exited at 6:45)	Gary Rinaldi
Benjamin Syden	

Members absent:

David DeLuca

Other Persons in attendance:

Agency Counsel: M. Cornelia Cahill and Melissa Bennett, Barclay Damon, LLP
Chief Executive Officer: Joseph LaCivita
Chief Fiscal Officer: Christopher Kelsey
Guest: Christopher Heller, British American, potential future applicant

Approval of the Minutes

Mr. Kearney indicated the draft of the October 16, 2017 minutes were in the Board packets for review.

MOTION: To accept the October 16, 2017 minutes as provided. Motion offered by Peter Gannon and seconded by Carmino Basile. Motion was unanimously approved by the members in attendance.

Committee Reports

Governance – Mr. Syden indicated the Governance Committee met at 5:30 this evening for its second meeting of the year. During the meeting they discussed several logistical improvements in addition to the necessary board member annual evaluation forms. Additionally, with the continued absence of Mr. DeLuca there is a potential vacancy on the board. The Committee will be recommending to the Town Supervisor a replacement with someone with a strong financial services background.

MOTION: To require 1) all agenda items be received by the Chief Executive Officer no later than two weeks before a scheduled meeting; 2) a comprehensive meeting agenda be prepared one week before a scheduled meeting; and 3) the agenda and pertinent materials be published on the website one week before a scheduled meeting. Motion offered by Benjamin Syden and seconded by Carmino Basile. Motion was unanimously approved by the members in attendance.

Audit – Mr. Basile indicated the Audit Committee met at 5:30 this evening to discuss independent external auditors for the year ending December 31, 2017. The auditors that have been retained for the past several years have indicated they would like to continue providing services and will maintain the same fee as for the year ended December 31, 2016. The Committee is recommending retaining BST & Co, CPAs, LLP for the audit of the year ending December 31, 2017, but a request for proposal should be issued for December 31, 2018 through December 31, 2020.

MOTION: To authorize the Chairman to enter into an arrangement with BST & Co. CPAs, LLP for independent audit services for the year ending December 31, 2017. Motion offered by Carmino Basile and seconded by Benjamin Syden. Motion was unanimously approved by the members in attendance.

Finance – Mr. Basile indicated the Finance Committee met at 5:30 this evening to discuss the results of operation as we approach year end 2017. Mr. Kelsey distributed for review the internal financial statements for the period as of and for the eleven and one half months ended December 15, 2017. During the review it was noted that the demolition costs for 272 Maxwell Road were capitalized as a land improvement. Discussion then turned to the sale of the property, and that the William K. Sanford Town Library had expressed interest in purchasing the property. Ms. Cahill indicated an appraisal for the vacant land will be required by Authority Budget Office Guidelines.

MOTION: To authorize the Purchasing Officer to solicit and Chief Executive Officer to enter into agreement for the appraisal of the vacant land located at 272 Old Maxwell Road. Motion offered by Benjamin Syden and seconded by Eric Phillips. Motion was unanimously approved by the members in attendance.

Mr. Basile then reviewed the Management Agreement between the Town of Colonie and the Agency. This is two year agreement for 2017 and 2018 retroactive to January 1, 2017. This provides for the Agency's administrative support staff from the Town's planning and Economic Development, Comptroller, and Purchasing Departments. The Committee is recommending adoption of this agreement this evening.

MOTION: To authorize the Chairman to enter into a management agreement between the Town of Colonie and Town of Colonie Industrial Development Agency for the two year period beginning January 1, 2017 and ending December 31, 2018. Motion Offered by Benjamin Syden and seconded by Gary Rinaldi. Motion was unanimously approved by the members in attendance.

Chief Executive Officer Report

1) 2018 Meeting Calendar:

Mr. LaCivita indicated the first item for discussion this evening for the Agency is the meeting calendar for 2018. Mr. LaCivita distributed proposed meeting dates of January 22, March 19, May 21, August 20, October 15, and December 17, 2018.

Mr. Basile indicated it was difficult to meet in the summer months due to vacations and couldn't we move the May meeting into June and the August meeting into September to eliminate the August meeting. It was agreed the May 21st meeting would be moved to June 18th and the August meeting would be moved to September 10th.

MOTION: To adopt the 2018 meeting calendar for the Town of Colonie Local Development Corporation as follows, with all meetings scheduled to begin at 6:00 pm, and the ability to schedule additional meetings as necessary:

January 22, 2018	March 19, 2018
June 18, 2018	September 10, 2018
October 15, 2018	December 17, 2018

Motion offered by Peter Gannon and seconded by Eric Phillips. Motion was unanimously approved by the members in attendance.

2) Camoin Associates Draft Economic Impact Study:

Mr. LaCivita indicated a copy of Camoin's draft economic impact study was previously e-mailed to the board, but one was also in the board packets this evening. Michael D'Nolo from Camoin Associates is here this evening to provide a brief review of the economic impact study for retail and hospitality sectors and to inquire of the board about the other business sectors it had requested be reviewed.

Mr. D'Nolo provided a brief review of the retail and hospitality sectors report and highlighted the national and local trends in those sectors. Traditional retail is shrinking but retail is also shifting to an "experience" driven model, where customers are looking no longer at just the product but more the shopping experience. Discussion then turned to the relative stagnant growth in the hospitality sector over the last ten year as far as revenues, but various "Flag Chains" are still looking to locate within the Town.

Mr. Syden highlighted the other areas the Agency would like Camoin to investigate, specifically the technology, bio-technology, warehouse and distribution markets. Mr. D’Nolo aided in refining the studies to target the real estate market and to provide case studies of municipalities that have had success in revitalization efforts.

Mr. Phillips had to excuse himself at 6:45 due to prior work commitments.

Mr. Gannon emphasized that these reports are vital to providing Mr. LaCivita as the Town’s Planning and Economic Development Director the tools to meet with the real estate and development communities to highlight the trends in successful long lasting development. At the same time this information needed to be shared with municipal leaders at the Town and County leadership and planning levels to highlight how past practices in development may no longer provide sustainable development in the future.

Mr. D’Nolo thanked the Agency Board for their time this evening and looks forward to working with the Agency on the next phase of the economic impact study.

Mr. Basile had to excuse himself at 7:00 due to prior family commitments.

Old Business

Afrim Realty Company, LLC:

Ms. Cahill indicated she had received a call from the attorney for the project this afternoon indicating they would be ready to close on the project in mid-January 2018, she confirmed this with a conversation with the projects bank shortly thereafter. In the meantime the applicant has requested a temporary sales tax exemption to allow them to begin certain components of the project. Ms. Cahill indicated that typically most agency’s request half of their administrative fee up front in return for the temporary exemption. She indicated it can be placed for a certain period of time and renewed. After discussion as to when the exemption would start and end it was determined the board was in favor of granting the temporary exemption with half of the administrative fee paid at that time.

RESOLUTION 2017-2012 – Resolution of the Town of Colonie Industrial Development Agency approving the execution and delivery of a preliminary project agreement with regard to the acquisition, construction and equipping of a certain facility for Afrim Realty Company, LLC. Resolution offered by Peter Gannon and seconded by Gary Rinaldi. Resolution was unanimously approved by members Gannon, Kearney, Rinaldi and Syden. Members Basile, DeLuca, and Phillips were absent at the time of the vote. (See attached)

New Business

None

Meeting adjourned at 7:15 pm.

Next meeting will be January 22, 2018 at 6:00 pm at 347 Old Niskayuna Road, Latham, NY 12110.

RESOLUTION 2017-012 - RESOLUTION OF THE TOWN OF COLONIE INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE EXECUTION AND DELIVERY OF A PRELIMINARY PROJECT AGREEMENT WITH REGARD TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A CERTAIN FACILITY FOR AFRIM REALTY COMPANY, LLC

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, by a resolution adopted by the members of the Agency on October 16, 2017 (the “Approving Resolution”), the Agency approved a project (the “Project”) on behalf of Afrim Realty Company, LLC, on behalf of itself and entities formed or to be formed on behalf of the foregoing, including Afrim’s Sports, Inc. (the “Company”) consisting of the following: (A)(1) the acquisition of an interest in approximately 28.6 acres of land located at 969 Watervliet Shaker Road (Tax Map # 30.-2-2.21) in the Town of Colonie, Albany County, New York (the “Land”), (2) the construction of an approximately 86,400 square foot air supported dome, an approximately 12,000 square foot building and an approximately 900 square foot building (collectively, the “Facility”), and (3) the acquisition and installation therein and thereon of various machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”), such Project Facility to constitute a recreation project providing facilities for sporting events, including, but not limited to, soccer and lacrosse games and tournaments; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from mortgage recording taxes (except as limited by Section 874 of the Act), real estate transfer taxes, sales and uses taxes and real property taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in order to begin the construction of the Project Facility and the acquisition of Equipment prior to the execution and delivery of final documents and agreements in connection with the Project, the Company has requested the appointment of the Company as agent of the Agency for sales and use tax purposes; and

WHEREAS, in connection with the appointment of the Company as agent of the Agency for sales and use tax purposes, the Agency and the Company will enter into a preliminary project agreement and certain related documents (the "Interim Documents") with respect to the Project; and

WHEREAS, simultaneously with the execution of the Interim Documents, the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Sublessee or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Form"); and

WHEREAS, for purposes of exemption from New York State (the "State") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight;

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

Section 1. For purposes of providing the terms and conditions for which the Company will receive the benefit of certain State and local sales and use tax exemptions in connection with the Project, the Interim Documents in such form as the Chairman (or Vice Chairman) of the Agency shall (with the advice of Agency counsel) deem advisable, be, and the same are, hereby approved; and the Chairman and Vice Chairman of the Agency are each hereby authorized and directed to execute, acknowledge and deliver the Interim Documents in the name of the Agency. The state and local sales and use tax abatements granted under the Interim Documents shall not exceed \$280,000.00 in the aggregate and, in the event a straight lease transaction is not consummated by the Company by January 31, 2018, the Agency shall recapture all State and local sales and use tax benefits granted under the Interim Documents. The execution and delivery of the Interim Documents shall be conclusive evidence of due authorization and approval of the Interim Documents in their respective final form.

Section 2. The Agency hereby delegates to the Company, as agent of the Agency, the authority to designate (following the execution and delivery of the Agency Documents), agents and sub-agents of the Agency (each, a "Sub-Agent") for purposes of utilizing the Agency sales and use tax exemption with respect to the acquisition, reconstruction and installation of the Facility; provided that any such sub-agency designation shall become effective only upon submission to the Agency within fifteen (15) days of such agency and sub-agency designation: (1) an executed sub-agent appointment agreement (in a form approved by the Agency) and (2) a completed Form ST-60 of the New York State Department of Taxation and Finance (IDA Appointment of Project Sublessee or Agent for Sales Tax Purposes). Such agents and sub-agents may include contractors and subcontractors involved in the acquisition, reconstruction and installation of the Facility.

Section 3. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Owner and the Operator shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits.

Section 4. The Interim Documents 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 Interim Documents shall not 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 5. The Authorized Representatives 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 7. This Resolution shall take effect immediately.