

**COUNTIES OF WARREN AND WASHINGTON  
INDUSTRIAL DEVELOPMENT AGENCY**

5 Warren Street, Suite 210  
Glens Falls, New York 12801

Tel. (518) 792-1312  
website: [www.warren-washingtonida.com](http://www.warren-washingtonida.com)

TO: ALL BOARD MEMBERS  
COUNTIES OF WARREN AND WASHINGTON  
**INDUSTRIAL DEVELOPMENT AGENCY**

FROM: Bud Taylor, Chairman

DATE: July 13, 2016

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The Counties of Warren and Washington Industrial Development Agency will hold its regular monthly Board meeting as follows:

**Date:** Monday, **July 18, 2016** at 4 pm.

**Location:** **Washington County** Municipal Center, Fort Edward, NY

The purpose of the meeting will be to discuss new, unfinished and Park business.

Enclosed (or attached) please find:

- Meeting Agenda with supporting data
- Monthly Financial Statements

*Remember to call or email Debbie at the Agency Office at least 24 hours beforehand if possible if you are unable to attend the meeting.*

cc: Robert C. Morris, Esq. w/ all enclosures  
Amanda Allen, Warren Co. Board Clerk w/ agenda  
Debra Prehoda, Washington Co. Board Clerk w/agenda  
Scott Donnelly, The Post Star, with agenda

**COUNTIES OF WARREN AND WASHINGTON  
INDUSTRIAL DEVELOPMENT AGENCY**

5 Warren Street, Su 210, Glens Falls, NY 12801

Phone (518) 792-1312

**Board Meeting Agenda  
Monday, July 18, 2016**

1.0 Attendance taken - **Confirm Quorum**

1.1 Approval of Board Meeting Minutes of June 20, 2016

3.0 **Accounts Payable**

<b><u>P. Hoffman Realty</u></b>	\$	370.00
<i>Rent - July 2016</i>		
<b><u>The Archives</u></b>	\$	30.00
<i>Monthly File Storage</i>		
<b><u>Time Warner</u></b>	\$	123.79
<i>Monthly Phone &amp; Internet Service</i>		
<b><u>Jarrett Engineers</u></b>	\$	339.02
<i>Professional Services May 2016</i>		
** <b><u>Town of Kingsbury</u></b>	\$	450.00
<i>Water Taxes 2nd Qtr - 9 vacant lots due July 20</i>		
<b><u>The Post Star</u></b>	\$	167.40
<i>Renewal Digital Subscription 1 yr</i>		
** <b><u>EFTPS</u></b>	\$	562.04
<i>Federal/FICA/MCR Payroll Taxes June 2016</i>		
** <b><u>Promptax</u></b>	\$	71.80
<i>NYS Payroll Taxes June 2016</i>		
** <b><u>Deborah Mineconzo</u></b>	\$	<u>1,575.68</u>
<i>Net Payroll - June 2016</i>		
<b>Current Accts Payable</b>	<b>\$</b>	<b><u>3,689.73</u></b>
3.2 <b><u>PILOT Passthrough Project Payments</u></b>		
** <b><u>Town of Kingsbury Water Dept</u></b>	\$	50.00
<i>GF Labels Lot #11 - 16 Ferguson 2nd Qtr</i>		
** <b><u>Town of Kingsbury Water Dept</u></b>	\$	100.00
<i>RWS Manufacturing Inc.</i>		
** <b><u>Village of Cambridge</u></b>	\$	9,375.85
<i>ICC4 West Main - Village Taxes</i>		
** <b><u>Village of Lake George</u></b>	\$	10,276.52
<i>Kenny &amp; Dittrich Amherst LLC - Village Taxes</i>		
** <b><u>Village of Fort Edward</u></b>	\$	<u>90,723.51</u>
<i>Irving Consumer Products - Village Taxes</i>		
** <b>Already paid out</b>	<b>Total 3.2 PILOT Payments</b>	<b>\$ <u>110,525.88</u></b>

3.4 <b>Payments to be reimbursed from developer</b>	
<b>FitzGerald Morris Baker Firth PC</b>	\$ 975.00
Price Chopper Operating Co (FE)	
<b>Total 3.4 Payments</b>	<b>\$ 975.00</b>
<hr/>	
<b>Grand Total of All Payables:</b>	<b>\$ 115,190.61</b>

4. **Old/Unfinished Business**

- a. Big Bay Lodging Update
- b. 87 Stays, Inc. - Inducement Resolution
- c. TFC Enterprises (Tree Paad)

5. **New Business**

- a. New Project Application - Rocksport - Public Hearing Resolution
- b. Bylaws revisions - Resolution
- c. Recapture Policy and Agency Evaluation Guidelines
- d. Warren County Board Member

Adjournment

**COUNTIES OF WARREN AND WASHINGTON**  
**INDUSTRIAL DEVELOPMENT AGENCY**

5 Warren Street, Suite 210  
Glens Falls, New York 12801

Telephone: (518) 792-1312

At the Board Meeting of the Counties of Warren and Washington Industrial Development Agency held on **June 20, 2016** at the Warren County Municipal Center in Lake George, NY, the following members were:

***PRESENT:***

Bud Taylor	Chairman
Bruce Ferguson	Vice & Park Chairman/Contracting Officer
Joseph LaFiura	Secretary/Treasurer
Matt Simpson	At Large Member
Lou Tessier	
Jim Lindsay	
Dave O'Brien	
John W. Weber	

***ABSENT:***

Brian R. Campbell

***ALSO PRESENT:***

Robert Morris, Esquire	FitzGerald Morris Baker Firth PC
Jerry Nudi	87 Stays, LLC
Jeff Schwartz	Morris Products/Patti Co.
Deborah Mineconzo	Office Administrator

The minutes of the meeting were taken by the Office Administrator. The Chairman called the meeting to order at 4:01 pm. After attendance was taken the Chairman determined a quorum was present.

**Approval of minutes:**

Mr. O'Brien made a motion to approve the May 16, 2016 Board Meeting minutes. Mr. Lindsay seconded the motion and all voted in favor of the motion by voice vote.

**Accounts Payable:**

Mr. LaFiura moved to approve the accounts payables as presented with Mr. Simpson seconding. The motion was approved by roll call vote.

**Old/Unfinished Business:**

**Big Bay Lodging LLC:**

Mr. Morris reported a signed Preliminary Agreement and security deposit had not been received as yet on the Big Bay Lodging project. There has been no further communication from them.

**Kenny & Dittrich Amherst – Update:**

Mr. Morris reported the closing on the Kenny & Dittrich Amherst project was completed.

**Park Business:**

**Allen Forestry:**

Mr. Ferguson advised the members Jim Allen said the market is slow for logging right now. The decision was made by the Park Committee to wait a couple more months before making a decision on the maintenance.

Mr. Ferguson reported he received a call from Dan Galusha. They *may* be interested in purchasing land from our Agency near their parcel.

Mr. Ferguson reminded the members we are in year two of a three year engagement with The Garden Barn to brush cut the Park this summer.

**New Business:**

**87 Stays, Inc. New Project:**

Mr. Nudi, developer for the new 87 Stays, Inc. application received, gave an overview of his plans for the Holiday Inn Express of 90 rooms. His property basically surrounds the McDonald's at Exit 18. Mr. Nudi stated it will be a limited service hotel with a price tag of approximately \$10.8 million. He is asking the bank for an \$8 million loan. He reviewed the estimated job creation numbers for the members and talked about his latest market study. There will be other supporting business plans in the future near his hotel. He plans to start work this July on his project and is currently in the process of choosing his contractor. After answering several questions from the Board, Mr. Morris informed everyone the developer is seeking sales tax and mortgage tax abatement. The developer also may be seeking a 485b tax break from the Town and County but added the school would be paid at 100% as they opted out of the 485b. A cost benefit analysis has been done by Mrs. Mineconzo with and without the 485b. The draft resolution to schedule a Public Hearing for the project on July 18<sup>th</sup> was moved for approval by Mr. O'Brien and seconded by Mr. Lindsay. All voted in favor of the motion by voice vote.

**Resolution No. 16-09**

**RESOLUTION TO SCHEDULE A PUBLIC HEARING RELATING TO THE 87 STAYS INC. PROJECT**

**(Complete resolution annexed to this document)**

**FOIL Request – IDA Projects in PARIS:**

Mr. Taylor informed the members a FOIL request had been received for scanned copies of the IDA Projects input to PARIS for the last year end from an area resident. Mrs. Mineconzo added about fifty scanned pages were emailed to the resident accordingly.

**Morris Products/Patti Co. Resolution (added to agenda today):**

Mr. Schwartz of Morris Products/Patti Company gave an overview of a new development with his current company. There is a change in ownership with Morris Products, specifically, Mr. Schwartz has sold all of his stock to Morris US Holdings. He will continue to own the property holding company of Patti Company and will also continue to run the business for at least three years. He stated he has twenty-five employees at the current location. After a delayed start, the expansion construction is underway. The footings are all in and construction is expected to be completed by this September. The new owner will increase product and distribution around the country. Mr. Morris informed the Board Mr. Schwartz as owner of Patti Company will still be responsible for reporting to the Agency at year end on the employee

count and other information.

Mr. Morris advised everyone the Agency’s consent is required for this amended and restated sublease and a draft resolution was distributed by Mrs. Mineconzo to the Board. Mr. Weber moved to approve the resolution with Mr. Simpson seconding. All voted in favor of the motion by roll call vote.

**Resolution No. 16-10**  
**RESOLUTION CONSENT TO THE SUBLEASE BY AND BETWEEN**  
**MORRIS PRODUCTS, INC. AND THE PATTI COMPANY, LLC PROJECT**  
**(Complete resolution annexed to this document)**

There being no further business to discuss, Mr. Taylor adjourned the meeting at 4:30 pm.

\_\_\_\_\_  
**Dated**

\_\_\_\_\_  
**Joseph LaFiura, Secretary**

DRAFT

# Counties of Warren and Washington Industrial Development Agency

## Resolution No. 16-09

Adopted June 20, 2016

Introduced by Dave O'Brien  
who moved its adoption.

Seconded by James Lindsay

### RESOLUTION TO SCHEDULE A PUBLIC HEARING RELATING TO THE 87 STAYS INC. PROJECT

WHEREAS, 87 Stay, Inc., a business corporation established pursuant to the laws of the State of New York, having an address of PO Box 503, Glens Falls, New York 12801 (the "Company") has requested that the Agency provide financial assistance in the form of a payment of lieu of taxes, mortgage tax exemption and sales tax abatements regarding a tourist destination retail construction project (the "Project") to consist of: (i) the acquisition of an interest in a certain commercial parcel or parcels of land located Corinth Road, Town of Queensbury, County of Warren, State of New York and referred to as Tax Map Parcel Number 309.13-1-73 (the "Land"); (ii) the construction and equipping of a 53,200+/- square foot 90 room hotel (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, Chapters 356 and 357 of the Laws of 1993 require that prior to granting financial assistance of more than \$100,000.00 to any project, an IDA must (a) adopt a resolution describing the project and the financial assistance contemplated by the IDA with respect thereto, and (b) hold a public hearing in the city, town or village where the project proposes to locate upon at least ten (10) days published notice and, at the same time, provide notice of such hearing to the Chief Executive Officer of each affected taxing jurisdiction within which the project is located; and

WHEREAS, the Agency is in the process of reviewing and considering the Company's Application requesting the Agency to provide financial assistance for the proposed Project, which may include a sales tax abatement during the construction of the Facility, a mortgage tax exemption and a payment in lieu of taxes, all of which shall be consistent with the uniform tax exemption policy of the Agency.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Agency hereby schedules a public hearing pursuant to Article 18-A of the New York State General Municipal Law (the "Law") to be held by the Agency on Monday, the 18th day of July, 2016, at 10:00 a.m., local time, at the Queensbury Town Office Building, Supervisor's Conference Room, located at 742 Bay Road, Town of Queensbury, County of Warren, New York, 12804, in connection with the Proposed Project.

2. The Agency hereby authorizes the publication of a Notice of Public Hearing for the Proposed Project and in accordance with the Law and the Agency's policies and procedures.

3. This resolution shall take effect immediately.

AYES: 8  
NAYS: 0  
ABSENT: 1  
ABSTAIN: 0

DRAFT



**Counties of Warren and Washington Industrial Development Agency**

**Resolution # 16-10**

Adopted: June 20, 2016

Introduced by John Weber  
who moved its adoption.

Seconded by Matt Simpson

**RESOLUTION CONSENT TO THE SUBLEASE BY AND BETWEEN  
MORRIS PRODUCTS, INC. AND THE PATTI COMPANY, LLC PROJECT**

WHEREAS, the Agency approved an application of Morris Products, Inc. (the "Corporation") and The Patti Company, LLC (the "LLC") to (i) construct a 30,150 ± square feet addition to its existing facility located at 53 Carey Road, Town of Queensbury, New York (the "Facility Addition"); (ii) acquire and install therein of certain equipment comprising fixtures (the "Equipment" and together with the Facility Addition, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iii) to lease the Project Facility to the LLC, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, the LLC is the owner of a leasehold interest in approximately 4.73 acres of land located at 53 Carey Road, Town of Queensbury, New York, legally described in Exhibit A attached hereto and incorporated herein, the approximately 32,542 square foot office/warehouse building located thereon. and the other improvements located thereon and all easements, rights, privileges and appurtenances thereunto belonging or in any way appertaining thereto, pursuant to that certain Lease Agreement dated December 28, 1999, as assigned by that certain Assignment of Lease dated October 19, 2004 and filed in the Office of the Warren County Clerk on August 26, 2005 in Liber 1463 of Deeds at Page 243, as amended by that certain First Amendment to the Lease Agreement, dated August 23, 2005, as amended by that certain Second Amendment to the Lease Agreement dated April 23, 2014 and filed in the Office of the Warren County Clerk on May 6, 2014 in Book 4976 at Page 243 as Instrument No. 2014-2653 (the "IDA Lease"), by and between the Counties of Warren and Washington Industrial Development Agency, a New York public benefit corporation, as lessor ("Agency"), and the LLC, as lessee;

WHEREAS, Agency and the LLC are also parties to that certain Payment in Lieu of Tax Agreement dated April 23, 2014 (the "PILOT Agreement" and together with the IDA Lease, the "IDA Documents"), pursuant to which the Property benefits from a 10-year tax abatement through December 31, 2025;

WHEREAS, the Lease terminates on the earliest to occur of (a) the date upon which the PILOT Agreement terminates pursuant to its terms, (b) the termination of the Lease in accordance with Section 11.1 thereof, or (c) January 1, 2026;

WHEREAS, pursuant to that certain Sublease, dated April 23, 2014 (the "Prior Sublease") by and between LLC and the Corporation, the Property has been used and occupied by the Corporation for the operation of the Corporation's electrical and lighting product distribution business and for related office purposes;

WHEREAS, MORRIS US HOLDINGS, INC., a Delaware corporation has agreed to purchase from JEFFREY SCHWARTZ, an individual all of the issued and outstanding stock of the Corporation pursuant to an Agreement for Purchase and Sale of Stock, by and among Morris US Holdings, INC., as purchaser, and Jeffrey Schwartz, as seller; and

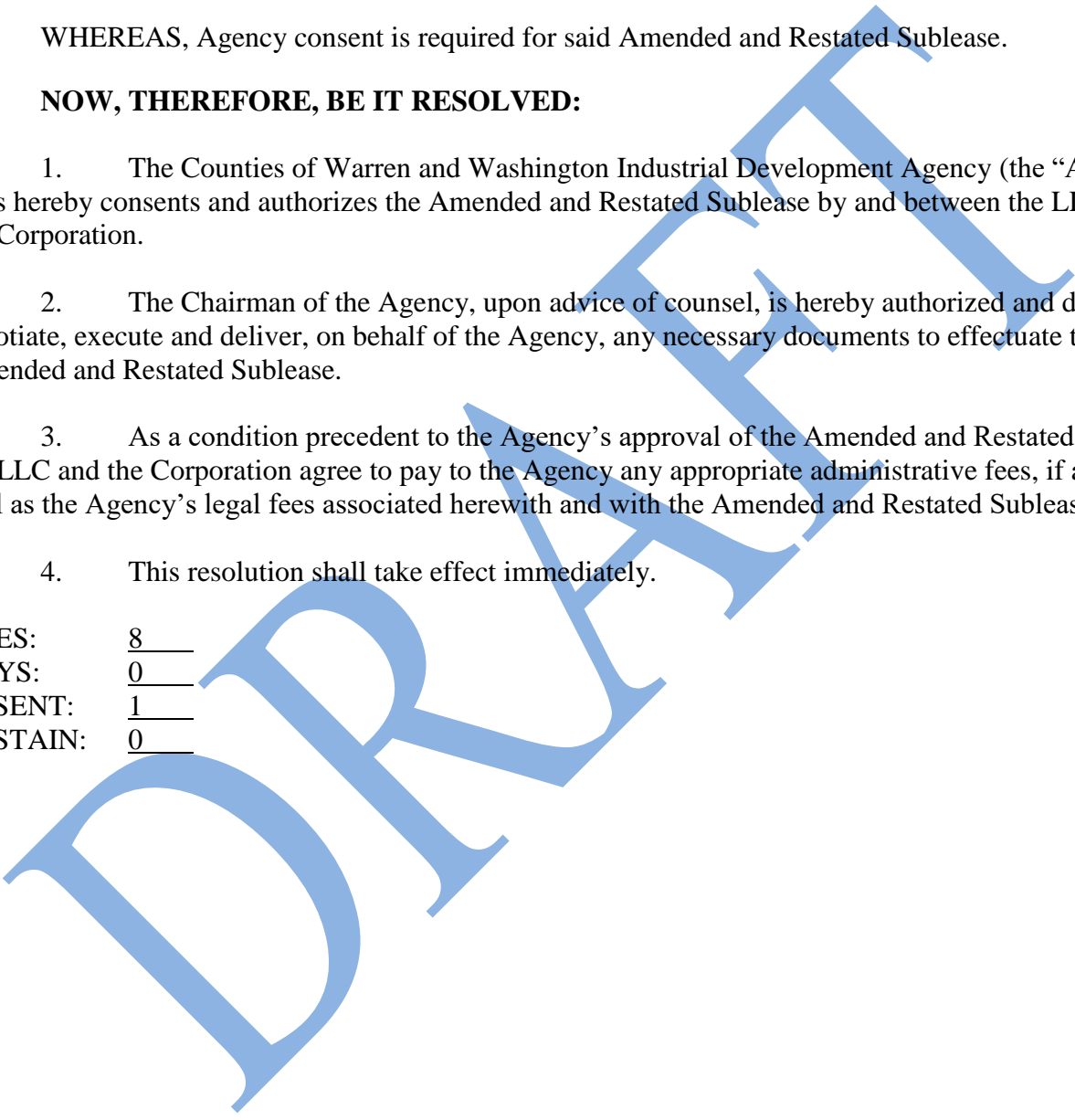
WHEREAS, the LLC and the Corporation have agreed to amend and restate the Prior Sublease, a copy of said Amended and Restated Sublease has been presented at this meeting; and

WHEREAS, Agency consent is required for said Amended and Restated Sublease.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Counties of Warren and Washington Industrial Development Agency (the "Agency") does hereby consents and authorizes the Amended and Restated Sublease by and between the LLC and the Corporation.
2. The Chairman of the Agency, upon advice of counsel, is hereby authorized and directed to negotiate, execute and deliver, on behalf of the Agency, any necessary documents to effectuate the Amended and Restated Sublease.
3. As a condition precedent to the Agency's approval of the Amended and Restated Sublease, the LLC and the Corporation agree to pay to the Agency any appropriate administrative fees, if any, as well as the Agency's legal fees associated herewith and with the Amended and Restated Sublease.
4. This resolution shall take effect immediately.

AYES:       8  
 NAYS:       0  
 ABSENT:     1  
 ABSTAIN:   0



**Counties of Warren and Washington Industrial Development Agency**

Resolution # 16-11  
Adopted: July 18, 2016

Introduced by \_\_\_\_\_,  
who moved its adoption.

Seconded by \_\_\_\_\_

**RESOLUTION AMENDING THE BY-LAWS OF THE AGENCY**

WHEREAS, the law of the State of New York requires that any board or similar body charged with any public duty to be performed or exercised by them as a board, a majority of the whole number of such persons or officers shall constitute a quorum; and that a majority of the whole number shall be required for any action of the board; and

WHEREAS, the law of the State of New York states that the words “whole number” shall be construed to mean the total number of individuals which the board would have were there no vacancies; and

WHEREAS, the current By-Laws of the Agency do not comply with the foregoing it is hereby

RESOLVED, that Article IV Section 4 of the By-Laws shall read as follows:

“Section 4. Quorum. At all meetings of the Agency, six members of the Agency shall constitute a quorum for the purpose of transacting business; provided that a smaller number may meet and adjourn to some other time or until the quorum is obtained;” And it is further

RESOLVED, that Article IV Section 6 of the By-Laws shall read as follows:

“Section 6. Manner of Voting. The vote of six members of the Agency shall be sufficient to pass any matter before the Agency. The voting to amend these By-Laws and the voting on all matters requiring the expenditure of money, the issuance of bonds, the granting of tax breaks, affecting the rights of a person or affecting real property shall be by a roll call vote. In the case of appointments or election of officers, the vote may be by secret ballot at the discretion of the Chairman.”

This Resolution will take effect immediately.

[Insert Roll Call Vote]

# **COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY**

5 Warren Street, Suite 210  
Glens Falls, New York 12801

Tel. (518) 792-1312

The **Executive/Park/Governance Committee** meeting of the Counties of Warren and Washington Industrial Development Agency was held on **Tuesday, June 14, 2016** at the offices of FitzGerald Morris Baker Firth PC, 16 Pearl Street, Glens Falls, NY. The following were:

<b><i>Present:</i></b>	Bud Taylor	Chairman
	Bruce Ferguson	Vice and Park Chairman/Contracting Officer
	Joseph LaFiura	Secretary/Treasurer
	Matt Simpson	At Large Member

<b><i>Also Present:</i></b>	Robert C. Morris, Esquire	FitzGerald Morris Baker Firth, PC
	Tom Jarrett	Jarrett Engineers
	Jerry Nudi	87 Stays LLC Project
	Jon Lapper, Esquire	Counsel for 87 Stays LLC Project
	Deborah Mineconzo	Office Administrator

The minutes were taken by the Office Administrator.

**Call to Order:** Bud Taylor called the meeting to order at 8:25 am.

**Minutes of prior Meeting:** Upon motion by Mr. Simpson, seconded by Mr. Ferguson, the minutes of the May 10, 2016 Executive/Park/Governance Committee Meeting were unanimously approved by the Committee.

## **Park Committee:**

### **Allen Forestry:**

Mr. Jarrett reported Jim Allen advised him the logging market has not turned around yet. He added a decision by the Agency will need to be made no later than September.

### **Other Matters:**

Mr. Ferguson reminded the Committee the 3 year Phase II park mowing engagement with The Green Barn is in its second year. Mrs. Mineconzo has emailed Joe Riggi to confirm we are on his schedule for this summer. She reminded everyone Mr. Riggi usually cuts the Park late summer after his busy season.

Mrs. Mineconzo informed the Committee that Brian Granger's business was in the deed transfers in the Post Star recently confirming the purchase of the former Northern Home Designs parcel in Phase I at 100 Park Road.

Mr. Ferguson voiced concerns over the number of vacant lots in Phase I that are owned by others and the possibility of purchasing them in the future. Mr. Taylor commented the Agency is not able to sell what it already has in Phase II.

## **Move to Executive Committee:**

### **87 Stays, LLC – New Project Application:**

Developer for 87 Stays LLC, Jerry Nudi, presented full maps of their project to the Committee and gave a summary of his new project and his future goals at the location. Mr. Lapper, his attorney, confirmed the project has the necessary town approvals and are looking for assistance with sales tax and mortgage tax exemptions but not a PILOT. However, they probably would be submitting an application to the Town of Queensbury for a 485b tax exemption. Mr. LaFiura asked about any studies supporting the area's need for three new hotels at Exit 18 at this time. Mr. Nudi responded that latest market studies, which he'll forward to the Agency, are favorable for his type of Holiday Inn Express project which is not an extended stay hotel. He added the Exit 18 area is part of a tourism destination between Saratoga and Lake George and includes the newly developed West Mountain Ski Area. Also his hotel would contribute to the business accommodations of Glens Falls and Queensbury. He plans to be the first of the three intended hotels "up and running". Mr. Morris advised Mr. Nudi that the Board will first consider a resolution at their upcoming June 20th meeting to first schedule a Public Hearing on the project. The hearing would probably be scheduled for the morning of the next Board Meeting of July 18th.

### **Big Bay Lodging, LLC**

Mr. Morris stated there is no further news to report on the Big Bay Lodging project. The Preliminary Agreement and Security Deposit have not been returned as requested as of this date.

Mr. LaFiura brought up the subject of our application fee. Since the \$500 doesn't cover the start of application review by our attorney, the thought of increasing the amount requested up front was mentioned. Mr. Ferguson concurred with Mr. LaFiura's views however Mr. Morris stated developers probably would not agree to pay the full Security Deposit amount up front. It was requested that Mrs. Mineconzo call several area IDAs to see what their procedure and fees are with their applications. The Committee will then continue their discussion on the subject at a future meeting.

### **ICC4 West Main Update:**

Mr. Morris said there's no news to report with the ICC4 West Main project. Their financing appears to be on hold at this time.

### **Kenny and Dittrich Amherst LLC:**

Mr. Morris reported the closing for the Kenny and Dittrich Amherst LLC project (Marriott LG) is set for tomorrow.

### **Bylaws Wording Revisions on Quorum & Majority Vote:**

Mr. Morris reported Mr. Ferguson was right about a quorum. Even though we currently have only nine Board members due to one remaining vacancy, the normal Board consists of ten members. Consequently, a quorum is obtained when six or more members are present at a meeting.

Accordingly, six "yes" votes are needed for a majority vote even when a quorum consisting of only six members (or more) are present at a meeting. Mr. Morris will revise the Bylaws wording for approval at next month's meeting.

Discussion ensued over possible replacements for the Warren County Board Member vacancy. No one had any recommendations. Mr. Taylor advised the Committee specifically of three women he has contacted but all are too busy at the present time to join the Board.

**IDA Application Forms and Cost Benefit Software revisions:**

Mrs. Mineconzo advised the Committee there are new state regulations regarding IDAs that commence tomorrow June 15<sup>th</sup>. Suggested criteria for the Board and more involvement of the Board with projects is recommended. While job counts are followed on an annual basis now by the Audit and Finance Committee, she recommended the Executive Committee take over review of the job spreadsheet annually with follow up by the Board. Mr. Morris informed the group the state has offered a more generic application that covers many of the new rules and recommended information for our Agency's consideration. It was decided Mrs. Mineconzo would meet with Mr. Morris and Ms. Lais to review the new application.

Mrs. Mineconzo advised the Committee the Cost Benefit Software the Agency purchased is currently being revised to offer more clarity regarding cost benefits to the area with projects and to meet with the needed information required under the new June 15<sup>th</sup> state rulings. The software is in the beta phase right now with the final being released in the near future.

There being no further business, the Chairman adjourned the meeting at 9:32 am.

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DATE

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Joseph LaFiura, Secretary/Treasurer

## SECTION VII: CRITERIA FOR CONSIDERING APPLICATIONS

### A. **AGENCY EVALUATION GUIDELINES**

#### 1. **Project Feasibility**

The applicant must provide information which demonstrates that the proposed project is feasible. The term "Project" means the activity or group of integrally related activities which are to be carried out by the applicant and all public and private participating parties.

Project feasibility includes but is not limited to (1) evidence that costs, both capital and operating, are reasonable; (2) that a reasonable, well thought out business plan exists; (3) that appropriate management and financial accounting capabilities are in place; (4) that there is a market for the proposed service, activity or product(s) and that a reasonable marketing plan is in place; (5) that revenue estimates are reasonable and that all sources of project funds, including Industrial Development Bond buyers, are firmly committed or can reasonably be expected to be firmly committed prior to closing.

In determining Project feasibility, the Agency shall examine the information and documentation it deems necessary to make an informed judgment which shall include, but not be limited to, the following:

- Company's Financial Statement
- Personal Financial Statements (partners and 5% owners of corporations)
- Project Capital Cost Estimate and Equipment Quotes
- Working Capital Needs
- Projection of Income Operating Expenses
- Cash Flow and Net Profit
- Business Plan
- Job Projections - retained and created
- Evidence of Equity and Other Firm Financial Commitments

Project feasibility issues that are not resolved to the satisfaction of the Agency are an appropriate reason for refusal. The Agency shall provide reasonable advice and assistance to the applicant.

## **2. Impact on Local Economy**

The Counties of Warren and Washington Industrial Development Agency will use the following criteria for reviewing Agency applications:

All applications for Agency financing and straight lease transactions will be reviewed by the Agency in order to determine whether or not they would have a significant beneficial impact upon the Counties' economy. Measures of significance would include, but not be limited to, the following:

1. Jobs:
  - a. Number and type of local jobs retained and used during the construction phase of the project.
  - b. Number and type of jobs retained and created by project upon commencement of operation of the facility.
2. Tax Abatements: The tax abatements available to and requested by the applicant will be considered by the Agency.
3. Cost: Total Cost of project, including the amount of private sector investment.
4. Cost Benefit: Agency inducement results in a project that provides additional revenues to the county, city, town, village, and school district in which the project is located.
5. Timely Completion: Developers ability to complete the project in a timely fashion.
6. Tenant Characteristics: Manufacturing facilities and back office operations; corporate headquarters; moderate priced rental space for start-up and small businesses; incubator space for research and development; tourist destination facilities; research and development activities; energy generation; etc.
7. Uniqueness: Business serves previously under-served segment of market; upgrades a distressed area; project provides amenities for the public; project is supported by the community; project involves redevelopment of an old structure for new purpose; location on a Brownfield site; etc.
8. Existing Business: The effect the project will have on existing businesses will be considered by the Agency.



NOTE: The above significant indicators are not all inclusive and are not in priority order. They are simply meant as examples of measurements to be used when reviewing each application on its merits.

## **B. MATERIAL TERMS**

At the time of project approval the Agency shall identify “Material Terms” which will be used to determine if a project applicant has met the obligations required for the incentives received by the applicant. These “Material Terms” will be described in the inducement resolution approving the project, as well as the preliminary agreement between the parties.

These “Material Terms” as defined for the particular project will be utilized by the Agency in setting and monitoring project benchmarks during the term of the incentives for the purposes of administering the Agency’s recapture policy.

For certain numerical “Material Terms” such as job creation/retention or investment amount an achievement factor of 80% will constitute compliance. For non-numeric “Material Terms” such as redevelopment of an old structure for a new purpose or location on a Brown Field site, a determination of compliance will be made upon completion of the project.

It is understood that these “Material Terms” may vary depending on project type and project specifics, and may be selected from the criteria set forth in the foregoing Section A, 2 Impact on Local Economy.

## **C. FINANCING DECISIONS**

Before making its final decision, the Agency will perform and put in writing a cost benefit analysis that identifies the extent to which the project will create or retain permanent, private sector jobs; the estimated value of any tax exemption to be provided; the amount of private sector investment generated or likely to be generated by the proposed project; the likelihood of accomplishing the proposed project in a timely fashion; and the extent to which the proposed project will provide additional source of revenue for municipalities and school districts; and any other public benefits that might occur as the result of the project.

Loan applicants will be informed in writing of the action of the Agency and the Agency shall document its decisions which shall include a statement or explanation of the public purpose served by the decision.

Following approval, the Agency shall forward a Preliminary Agreement to the

applicant for signature. Such agreement shall set forth the complete terms and conditions of the IDA financing or lease.

#### SECTION VIII: HELD IN RESERVE

**COUNTIES OF WARREN AND WASHINGTON  
INDUSTRIAL DEVELOPMENT AGENCY**

**RECAPTURE POLICY**

Section 1. Reasons for the recapture of benefits (Financial Assistance) include the following:

- a. Sale or closure of the facility and departure of the company from the Counties of Warren or Washington (Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance).
- b. Significant change in the use of the facility and/or the business activities of the company.
- c. Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions.
- d. Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency.
- e. Failure to meet or comply with the Material Terms, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the Inducement Resolution, Preliminary Agreement.

These “Material Terms” as defined for the particular project will be utilized by the Agency in setting and monitoring project benchmarks during the term of the incentives for the purposes of administering the Agency’s recapture policy.

For certain numerical “Material Terms” such as job creation/retention or investment amount an achievement factor of 80% will constitute compliance. For non-numeric “Material Terms” such as redevelopment of an old structure for a new purpose or location on a Brown Field site, a determination of compliance will be made upon completion of the project.

It is understood that these “Material Terms” may vary depending on project type and project specifics, and may be selected from the criteria set forth in the foregoing Section A, 2 Impact on Local Economy in the Policy Manual of the Agency.

- f. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

Section 2. For companies receiving real property tax abatements the recapture of benefits schedule (applicable to the real property tax abatements) is as follows:

Years 1-5      100% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 6-7      75% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 8-9      50% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Year 10        25% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 11+      0% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions.

The time period above is from the effective date of the PILOT Agreement.

In the case of real property taxes, any amounts recovered, recaptured, received or otherwise obtained shall be payable to the appropriate taxing jurisdictions, unless otherwise agreed to in writing by the taxing jurisdiction.

Section 3. In addition to the above reasons for recapture, the Agency shall recover, recapture, receive or otherwise obtain from the company, or its subagents, sales tax benefits that were taken or purported to be taken which are:

- a. In excess of the amounts authorized; or
- b. For property or services not authorized; or
- c. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

For purposes of this Recapture Policy, the Company and its subagents shall cooperate with the Agency in its efforts to recover, recapture, receive or otherwise obtain such State sales and use benefit exemptions and shall promptly pay over such amount to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of Taxation and Finance to assess and determine State sales and use taxes due from the Company under Article 28 of the New York State Tax Law, together with any penalties and interest due on such amounts.

In the event that the Agency recovers, recaptures, receives or otherwise obtains any amount of State sales and use tax exemption benefits from the Company or its agents, the Agency shall, within thirty (30) days of coming into possession of such amount, remit it to the Commissioner of Taxation and Finance, together with such other information and report that the Commissioner deems necessary to administer payment over such amount.

#### Section 4.

In the event that the Agency determines that there exists a basis for recapture as set forth in Section 1 herein, the Agency shall notify the company, in writing, that the Agency has determined that a basis for recapture exists. The company shall be given a reasonable timeframe within which to remedy the violation, such timeframe being commensurate to the violation, and the company shall provide additional information and/or an explanation as to why the violation has occurred or the Material Term has not been achieved, as the case may be. If requested by the Agency, the company shall make a presentation to the Agency concerning this default.

Thereafter the Agency may determination pursuant to this Recapture Policy. Imposition of any recapture is at the sole discretion of the Agency and is reviewed/considered on a case by case basis. In lieu of imposing the above recapture penalties and for good cause shown by the company, the Agency, at its sole discretion, may make a determination to discontinue the Financial Assistance in its entirety, per the provisions set forth the in the Lease Agreement; or suspend the Financial Assistance for a specific stated period of time in order for the company to correct or comply with the Material Term being breached; or, in the case of real property taxes exemptions, modify the PILOT Agreement to decrease the exemption and increase the payments due for the remaining term of the PILOT Agreement.