

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

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At the Board Meeting of the Counties of Warren and Washington Industrial Development Agency held on **March 16, 2015** at the Washington County Municipal Center in Fort Edward, NY, the following members were:

PRESENT:	Bruce Ferguson Joseph LaFiura John Millett, Sr. Jim Lindsay Dave O'Brien John Kvocka	Vice Chairman/Park Chairman Secretary/Treasurer At Large Member
ABSENT:	Harold Taylor Lou Tessier John W. Weber	Chairman
ALSO PRESENT:	Kara Lais, Attorney Jonathan Lapper, Attorney Dave Kenny Deborah Mineconzo	FitzGerald Morris Baker Firth PC Counsel for Kenny-Dittrich Amherst LLC Developer – Kenny-Dittrich Amherst LLC Office Administrator

The minutes of the meeting were taken by Mrs. Mineconzo. The Vice Chairman called the meeting to order at 4:10 pm.

Approval of the Annual Meeting February 2015 Minutes: Mr. Lindsay made a motion to approve the minutes of the February 17, 2015 Annual Meeting. Mr. O'Brien seconded the motion and the minutes were unanimously approved by voice vote.

Accounts Payable: Mr. LaFiura introduced the payables into motion for approval with Mr. Kvocka seconding. All members approved the motion by roll call vote.

Old/Unfinished Business:

ICC4 West Main LLC Status:

Ms. Lais informed the members that the Security Deposit and signed Preliminary Agreement have been received from the developers for ICC4 West Main LLC. They had hoped to close at the end of this month. However, she added, they still have not provided the Agency with the rest of the requested documentation. The Town's formal approval of the PILOT and the negative declaration statement from the Planning Board are needed. Per their Attorney, Ron DeVito, the developers are currently talking with the Town about assessment modification of the property and possibly some revision to the PILOT. Ms. Lais recommends the Agency not consider a closing resolution with contingencies at this time without all the documentation. Mr. Ferguson voiced his agreement with the recommendation since the developer has been aware of our need of these documents for several months. Mr. Ferguson offered that the members consider tabling the matter until the documentation needed was received. Mr. Kvocka moved to tabling

any closing on the project at this time. Mr. Millett seconded the motion and all voted in favor of the motion by voice vote.

Kenny-Dittrich Amherst LLC Project – Closing Resolution:

Mr. Lapper stated the (Marriott Hotel) project is exciting for the Village. Mr. Kenny is planning to be “in the ground” in three to four weeks. Closing with the bank and IDA is planned for next week. Mr. Ferguson confirmed with Mrs. Mineconzo that there were no public comments during the recent Public Hearing. Mr. Lindsay moved to pass the presented Closing Resolution for the project with Mr. Millett seconding. All voted for the Closing Resolution by roll call vote.

Resolution No. 15-03
Adopted March 16, 2015

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY BY THE COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY OF A LEASE AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE KENNY & DITTRICH AMHERST, LLC PROJECT

(Complete copy of resolution annexed to this document)

Boats by George Project:

Ms. Lais reported she is scheduled to meet with Mr. Pensel of the Boats by George Project on Wednesday. He will be bringing his Security Deposit and signing the Preliminary Agreement at that time. She informed the members he received the needed APA approval. He’ll be given the sales tax documents needed on Wednesday so he can begin his project. She reminded everyone the Public Hearing was held and the Inducement Resolution was passed last year. However, Mr. Pensel wanted to await the formal approval from the APA before signing the Preliminary Agreement.

Park Committee Business:

Forestry Maintenance in Park:

Mr. Ferguson informed everyone the engaged forester should hopefully be reporting his findings to the Agency sometime next month.

ROW in Phase I near Galusha and Sons:

Mr. Ferguson reported he went up to the Galusha and Sons site in the Industrial Park last Tuesday intending to talk with Mr. Galusha. He was advised he should see the General Manager located at their main location. Mr. Ferguson has not yet talked with the Manager but he was advised he is aware of the ROW paving issues. Mr. Ferguson recommends we get the parties together and work the matter out. Ms. Lais stated the issue involves who will cover the expenses for the paving. She added Mr. Pontiff was forwarded the Ingress/Egress Agreement on record between the IDA and Galusha and Mr. Pontiff has been in communication with Galusha and Sons. The interpretation by our Attorney, Bob Morris, is the Agreement, though ending in 1993, stated that Galusha and Sons were responsible for the road paving being completed to Town specifications. Mr. Ferguson said he hoped to have some definite information for the Board by next month.

Other Matters:

TRIBALS LLC:

Ms. Kais said a new matter came up regarding one of our projects, TRIBALS LLC. They are in the midst of final financing for their SBA loan. Since we have a lease with their property, execution of a Subordination Agreement is requested from the Attorney for TRIBALS LLC. Ms. Lais answered member

questions regarding these specific types of Agreements. Mr. O'Brien then moved to approve the signing today, by the Vice Chairman, of the Subordination Agreement. Mr. LaFiura seconded. The members approved the motion by roll call vote.

PRESS RELEASE:

Mr. Ferguson stated the Agency Press Release regarding our PILOT projects was printed in the Greenwich Journal and Eagle Newspaper recently as submitted. No one had seen the release in any of the other area papers.

There being no further business to discuss, Mr. Millett moved to adjourn the meeting. Mr. LaFiura seconded and the Vice Chairman adjourned the meeting at 4:40 pm.

Dated

Joseph LaFiura, Secretary

Resolution No. 15-03
Adopted March 16, 2015

Introduced by James Lindsay
who moved its adoption.
Seconded John Millett, Sr.

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY BY THE COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY OF A LEASE AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE KENNY & DITTRICH AMHERST, LLC PROJECT

(PROJECT NO. 5202-15-01A)

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Section 890-c of the General Municipal Law of the State of New York (collectively, the “Act”), the Counties of Warren and Washington Industrial Development Agency (the “Agency”) was created and granted the authority to enter into agreements for the purpose of acquiring, constructing and equipping certain industrial facilities; and

WHEREAS, to advance the public purposes for which it was created, the Agency, upon application of KENNY & DITTRICH AMHERST, LLC (the “Company”), has agreed to assist the Company by undertaking a project (the “Project”) consisting of the following: (i) the acquisition of an interest in a certain commercial parcel of land located at 365 Canada Street, Village of Lake George, Town of Lake George, County of Warren, State of New York (the “Land”); (ii) the construction and equipping of a 108,115+/- square foot 120 room hotel and additional retail space (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, the Agency, by resolution duly adopted on March 10, 2015 (the “Inducement Resolution”), took official action under the Act toward undertaking the Project; and

WHEREAS, said Inducement Resolution included a determination that the Project qualified as a “tourism destination” in accordance with Section 862 of the General Municipal Law; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the transactions contemplated by the lease of the Facility; and

WHEREAS, the Agency has determined that all of the requirements of the Act have been complied with and that the contemplated transaction will further the public purposes of the Act; and

WHEREAS, the Project constitutes a “Project” within the meaning of the Act; and

WHEREAS, a lease agreement (the “Lease Agreement”) with respect to the Project, along with certain financing documents, will be executed by and between the Company and the Agency; and

WHEREAS, the Project is located within the Adirondack Park and the Project is classified as a Class A Regional Project pursuant to the Adirondack Park Agency Act and therefore, pursuant to Title 6 of the New York Codes, Rules and Regulations Part 617.5(b)(36), the Project is exempt from review under the State Environmental Quality Review Act (SEQRA); and

WHEREAS, the Planning Board of the Village of Lake George approved a Special Use Permit for the Project on February 10, 2014 and identified the Project as a Class A Regional Project; and

WHEREAS, the Planning Board of the Village of Lake George approved the Site Plan Review for the Project on February 19, 2014 and identified the Project as a Class A Regional Project; and

WHEREAS, the Adirondack Park Agency approved a permit for the construction of the project on July 10, 2014; said permit was issued on July 15, 2014, as APA Project Permit No. 2014-33 and was recorded in the Warren County Clerk’s Office on August 1, 2014 as Instrument Number 2014-4652.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. FINDINGS. The Agency hereby finds that:

(A) The Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes of the Act and to exercise all powers granted to it under the Act;

(B) The Project constitutes a “project”, as that quoted term is defined in the Act;

(C) The acquisition, construction and installation of the Facility and the lease of the Facility to the Company (i) will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the State of New York and the Counties of Warren and Washington and improve their standard of living, and (ii) will not result in the removal of an industrial or manufacturing plant of the Company from one area of the State to another area of the State;

(D) The location of the site of the Project is acceptable to the Agency;

(E) The Facility is not known by the Agency to be in material violation of the local zoning laws and planning regulations of the Village of Lake George and all regional and local land use plans for the area in which the Facility shall be located; and

(F) The Facility and the operations of the Company are not known by the Agency to cause or result in the violation of the health, labor, environmental or other laws of the United States of America, the State of New York, the County of Warren or the Village of Lake George.

SECTION 2. DETERMINATIONS. The Agency hereby determines to:

(A) enter into the Underlying Lease from the Company to the Agency and the Lease Agreement with the Company; and

(B) execute and deliver all other certificates and documents, including but not limited to a mortgage for Project Facility, subject to the review and approval of counsel to the Agency.

SECTION 3. AUTHORIZATION. The Agency is hereby authorized to acquire, construct and install the Facility. All previous acts taken by the Agency with respect to the acquisition, construction and installation of the Facility are hereby approved, ratified and confirmed.

SECTION 4. APPOINTMENT OF COMPANY AS AGENT. (A) The appointment of the Company as agent of the Agency to acquire, construct and install the Facility is hereby ratified and confirmed. (B) The Agency does hereby consent to provide the Company with the authority to appoint third party agents to undertake the Project and thereby make available to such third party agents an exemption from New York State sales and use taxes in connection with undertaking the Project. Such authority shall be further defined and verified in an Agent Agreement to be entered into between the Agency and the Company.

SECTION 5. APPROVAL OF AGREEMENT FOR PAYMENTS IN LIEU OF TAXES. The substance and form of the Agreement for Payments in Lieu of Taxes, as presented to this meeting and attached hereto, is hereby approved, subject to approval as to content by the Chairman and the Agency's counsel.

SECTION 6. APPROVAL OF COMPANY'S FINANCING DOCUMENTS. The substance and form of the Underlying Lease, the Lease Agreement, the Agreement for Payments in Lieu of Taxes, and all other certificates or documents to be delivered or executed and delivered by the Agency (hereinafter collectively referred to as the "Closing Documents") are hereby approved, subject to approval as to content by the Chairman and the Agency's counsel.

SECTION 7. AUTHORIZED REPRESENTATIVES. (A) The Chairman or the Vice Chairman is hereby authorized to execute and deliver the Closing Documents. If required, the signature of the Chairman or Vice Chairman shall be attested by the Secretary or Treasurer of the Agency (or Agency Counsel, in the absence of a Secretary/Treasurer) who, if required, shall affix a facsimile of the Agency's seal to documents required to be under seal. (B) On the advice of Counsel to the Agency, the Chairman or Vice Chairman shall make such reasonable changes to the Closing Documents as shall be required to promote and protect the Agency's interests with respect to the Project. All such changes shall be made prior to the closing.

SECTION 8. FURTHER ASSURANCE. The officers, employees and agents of the Agency are hereby authorized and directed to do all acts required by the provisions of the Closing Documents, and to execute and deliver all additional certificates, instruments and documents and to pay all fees, charges and expenses and do all other acts that may be necessary or proper to effectuate the purposes of this resolution. None of the members, officers, directors, employees or agents (except the Company) of the Agency, shall be personally liable under the other Closing Documents.

SECTION 9. FILING OF DOCUMENTS. Originals of all Closing Documents for the Project shall be filed and maintained in the office of the Agency.

SECTION 10. PUBLIC INSPECTION. A copy of this resolution and the Closing Documents shall be placed on file in the office of the Agency, where they shall be available for public inspection during business hours.

SECTION 11. EFFECTIVE DATE. This resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote by roll call, which resulted as follows:

VOTING:	AYES	NAYS	ABSTAIN	ABSENT
Harold G. Taylor				1
Bruce A. Ferguson	1			
Joseph P. LaFiura	1			
Louis Tessier				1
John Millett, Sr.	1			
James T. Lindsay	1			
Dave O'Brien	1			
John W. Weber				1
John S. Kvocka	1			
TOTALS	6	0	0	3

The foregoing resolution was thereupon declared duly adopted.