

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 **August 17, 2015** at the Warren County Municipal Center in Lake George, the following members were:

<i>PRESENT:</i>	Bud Taylor	Chairman
	Bruce Ferguson	Vice Chairman/Park Chairman
	Lou Tessier	
	Jim Lindsay	
	Dave O'Brien	
	John W. Weber	
	Matt Simpson	
<i>ABSENT:</i>	Joseph LaFiura	Secretary/Treasurer
	John Millett, Sr.	At Large Member
	John Kvocka	
<i>ALSO PRESENT:</i>	Robert C. Morris, Esq.	FitzGerald Morris Baker Firth PC
	Chris Coughlan	Black Dog Designs
	Michael O'Connor, Esq.	Counsel for 354 Broadway LLC & Price Chopper Project – Fort Edward
	Bruce Ginsburg	Member 354 Broadway LLC
	Tom Hayden	Price Chopper Representative
	Mary Ellen Stockwell, Esq.	Town Attorney - Fort Edward
	Deborah Mineconzo	Office Administrator

The minutes of the meeting were taken by the Office Administrator. The Chairman called the meeting to order at 4:00 pm.

Approval of the July 2015 Board Meeting Minutes: Mr. Tessier made a motion to approve the minutes of the July 20, 2015 Board Meeting. Mr. Simpson seconded the motion and the minutes were unanimously approved by voice vote.

Accounts Payable:

Mr. Ferguson moved to approve the accounts payables. Mr. Lindsay seconded the motion and all voted to approve the motion by roll call vote.

Old Business:

(John Weber arrives)

Website Presentation:

Mr. Taylor introduced Chris Coughlan of Black Dog Designs. Chris presented the new WWIDA website for the members review and possible changes. A few changes were requested by attendees. Chris

confirmed for the Chairman that Black Dog Designs would train the administrator on content management on the site at no additional charge above the proposal. Mr. Ferguson moved to authorize Bud Taylor and Mrs. Mineconzo to review and give the final “sign off” on the website after the changes are completed. Mr. Weber seconded the motion and all voted in favor of the motion by voice vote.

354 Broadway LLC/Price Chopper Fort Edward Inducement Resolution:

Mr. Morris gave an overview on the standard draft resolution handed out regarding 354 Broadway LLC & Price Chopper Operating Company (Fort Edward). Among other points, Mr. Morris advised the members the resolution states the Agency agrees to undertake the project and acknowledges the project is good for the economy. The resolution states the project would not be taking jobs from anywhere else and also would involve cleaning up a designated Brownfield site.

Mr. Morris said the Town met after this morning’s (IDA) Public Hearing and, after considering the School District’s concerns, approved an enhanced fifteen year PILOT. Specifically the PILOT will offer a 75% tax abatement the first five years, 50% abatement the next five years and 25% abatement during the final five years. The project is a retail facility but meets the allowed exceptions because it is located in a former Empire Zone that is considered a highly distressed area. Mr. Morris stated that by approving this project, the Agency will then enter into a Preliminary Agreement. The Board of Supervisor’s Chairman of each of the two counties will also need to give their approval under the law. Following this, the Agency can give the developer the sales tax exemption letter for purchases. Mr. Lindsay confirmed the County of Washington has the subject on its agenda this Friday and he’s heard no issues from anyone on the project.

Mr. Ferguson moved the resolution for discussion with Mr. Tessier seconding.

Mr. O’Connor stated he talked with Mr. Geraghty, (Chairman of the Warren Co. Board of Supervisors) who advised him he will sign the needed letter for his county. He added this project has been a great partnership between the Town and the developer. It is strongly supported by the community.

There being no further discussion or questions, Mr. Taylor asked for a roll call vote and all attendees voted in favor of the resolution.

Resolution No. 15 - 09
Adopted August 17, 2015

RESOLUTION TAKING PRELIMINARY ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING PRICE CHOPPER OPERATING CO., INC. AND 354 BROADWAY, LLC, AGENTS OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BY AND AMONG THE AGENCY, PRICE CHOPPER OPERATING CO., INC. AND 354 BROADWAY, LLC
(Full copy of resolution at end of this document)

Boats by George Update:

Mr. Morris informed the members he spoke with Mr. Pensel of Boats by George who hopes to close by the end of the month.

Park Committee Business:

Brushcutting Proposal Approval:

Mr. Ferguson informed the members the Agency received one proposal from our low bidder from past years for the annual Park brush cutting. The bid is for the same price as last year which was \$1,150.00. The bidder stated the price would be held at \$1,150.00 for the next three years if awarded to him. Mr. Lindsay moved to approve the three year bid with Mr. Simpson seconding. All voted in favor of the motion by roll call vote.

RWS Manufacturing – New Tree Planting:

Mr. Ferguson reported Mr. Morris sent a letter to RWS Manufacturing in July regarding ongoing issues with the plant site. Mr. Morris advised the members he received a response that Mr. Student will take care of the issues. Mr. Ferguson stated the plant manager denies any company involvement with the “extra” road exit in question. Mr. Ferguson voiced continued concerns with the (northern site) ditch and site surface drainage due to lack of proper filtration. He advised everyone new trees have been planted (in the northern buffer) as requested.

Mr. Lindsay reported the Town is flushing the hydrants near the plant twice a year.

New Business:

FOIL Request and Reply:

Mrs. Mineconzo reported the Agency received a FOIL request from Travis Whitehead. He requested scanned copies of all our active PILOT project agreements plus one from a former project. All requested information was scanned and emailed to Mr. Whitehead and confirmation of all of the attachments was received. She added the FOIL request is closed.

There being no further business to discuss, Mr. Simpson moved to adjourn the meeting with Mr. O’Brien seconding. The Chairman adjourned the IDA meeting at 4:38 pm.

Dated

Joseph LaFiura, Secretary

Resolution No. 15 - 09
Adopted August 17, 2015

Introduced by Bruce Ferguson
who moved its adoption.

Seconded by Lou Tessier

RESOLUTION TAKING PRELIMINARY ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING PRICE CHOPPER OPERATING CO., INC. AND 354 BROADWAY, LLC, AGENTS OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BY AND AMONG THE AGENCY, PRICE CHOPPER OPERATING CO., INC. AND 354 BROADWAY, LLC

WHEREAS, the Counties of Warren and Washington Industrial Development Agency (the "Agency") is a body corporate and politic duly organized and existing under Sections 856 and 890-c of the General Municipal Law ("GML") of the State of New York (the "State"), with its principal place of business at 5 Warren Street, Glens Falls, New York; and

WHEREAS, 354 BROADWAY, LLC, (the "Developer"), having a current address at 170 West 74th Street, New York, New York 10023 is a limited liability company created pursuant to the Laws of the State of New York; and

WHEREAS, PRICE CHOPPER OPERATING CO., INC. (the "Company"), having a current address at 461 Nott Street, Schenectady, New York 12308, is a corporation created pursuant to the Laws of the State of New York; and

WHEREAS, the Developer, in conjunction with the Company, has submitted an Application for Assistance ("Application") requesting that the Agency undertake an industrial development project (the "Project I") consisting of (i) the acquisition of an interest in a certain commercial parcel of land located at 354 Broadway in the Town of Fort Edward, County of Washington, State of New York (the "Land"); (ii) the construction and equipping of a 40,315 +/- square foot supermarket located on the Land (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 Developer, 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 Company, in conjunction with the Developer, has submitted an Application for Assistance requesting that the Agency undertake an industrial development project (the "Project II") to consist of: (i) the construction and equipping of a 40,315 +/- square foot supermarket located at 354 Broadway in the Town of Fort Edward, County of Washington, State of New York (the "Facility"); (ii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" and together with the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iii) the entering into of an agency agreement with 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, Project I and Project II shall be collectively referred to as the “Market 32 Project”;
and

WHEREAS, under Article 18-A of the General Municipal Law (the “Act”), the Legislature of the State of New York has granted the Agency the power and authority to undertake the Market 32 Project;
and

WHEREAS, the Market 32 Project will require the Agency and the Developer to enter into an agreement whereby the Developer will acquire, by deed or by lease, and construct the Project Facility and the Agency will lease or sell the Project Facility to the Developer with an option to buy; and

WHEREAS, the Market 32 Project will also require the Agency and the Company to enter into an agreement whereby the Company will acquire and install the Project Equipment and the Agency will lease the Project Equipment to the Company; and

WHEREAS, the Agency is a state agency under Section 8-0105 of the Environmental Conservation Law of the State of New York and the Project is an action under Article 8 of said law (Article 8 hereinafter being referred to as the “State Environmental Quality Review Act” or “SEQRA”) and under 6 NYCRR Part 617, §§ 617.2(b) and 617.3(g); and

WHEREAS, the Developer and the Company have submitted to the Agency, and the Agency has reviewed information needed to determine whether or not the Market 32 Project will have a significant impact on the environment; and

WHEREAS, the Developer and the Company have submitted to the Agency, and the Agency has reviewed, information needed to determine whether or not the Market 32 Project will have a significant impact on the environment; and

WHEREAS, the acquisition, construction and installation of the Project Facility has not been commenced, and the Agency has not yet authorized the Market 32 Project; and

WHEREAS, the Agency is required to conduct a public hearing pursuant to Article 18-A of the New York State General Municipal Law (the “Law”) before taking official action relating to the Project; which public hearing took place on August 17, 2015 at 10:00 am in the Town of Fort Edward, New York after due notice was provided and published.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. Findings. The Agency has reviewed the Applications together with the environmental assessment form to determine compliance with the requirements of the Act and based on the representations of the Developer and the Company to the Agency in said Applications and elsewhere, the Agency hereby makes the following findings and determinations with respect to the Project:

(A) The Market 32 Project is a permitted project under the Act; and

(B) Undertaking the Market 32 Project will advance the Agency’s corporate purposes by leading to the creation of job opportunities for the inhabitants of the Counties of Warren and Washington, New York and the State of New York. The Market 32 Project will also promote the health,

prosperity, and economic welfare of the inhabitants of the Counties of Warren and Washington and the State of New York and improve their standards of living; and

(C) (i) The Market 32 Project is an “Unlisted Action” under SEQRA for which the Town of Fort Edward Planning Board (the “Planning Board”) has acted as lead agency. On or about February 25, 2015 the Planning Board reviewed the Project Site Plan Application submitted on behalf of the Developer and the Company and approved said Site Plans, and issued its Negative Declaration that the Market 32 Project will not have a significant impact on the environment; and (ii) the Agency has thoroughly reviewed the environmental assessment form, negative declaration and related supporting information presented to the Agency within the Developer’s and Company’s Application for Assistance in order to determine whether the Market 32 Project might have any potential significant adverse impacts upon the environment. After conducting this review, the Agency has determined that the acquisition, construction and equipping of the Project Facility are consistent with social, economic and other essential considerations and will not result in any significant adverse impacts on the environment. The Agency hereby ratifies the findings and Negative Declaration of the Town of Fort Edward Planning Board. In doing so, the Agency satisfies the requirements of Part 617 of Title 6 of the New York Code of Rules and Regulations and no further SEQRA review is required for the Project; and

(D) It is in the public interest for the Agency to undertake the Project on behalf of the Developer and the Company; and

(E) The completion of the Market 32 Project will not result in the removal of a commercial, industrial or manufacturing plant of the Developer or Company from one area of the State of New York to another area of the State of New York. Further, the completion of the Market 32 Project will not result in any loss of jobs and all existing jobs will be retained nor will the completion of the Market 32 Project result in the abandonment of one or more plants or facilities of the Developer or the Company, or any other proposed occupant of the Facility located within the State of New York.

SECTION 2. Preliminary Agreement. The proposed preliminary project agreement by and between the Agency, the Developer and the Company (the “Preliminary Agreement”), as presented to this meeting, is hereby approved as to substance and form. The proposed agreement outlines the Agency’s, the Developer’s and the Company’s rights and duties with respect to the undertaking of the Market 32 Project. Subject to such changes as the Chairman of the Agency, upon advice of counsel, may reasonably deem necessary, the Chairman is authorized to execute the Preliminary Agreement, and the Secretary of the Agency is authorized to affix a facsimile of the corporate seal thereto and to attest to the same. Execution and attestation shall be conclusive evidence that the Agency has approved the Preliminary Agreement.

SECTION 3. Description of Project. Subject to the conditions set forth herein and in Section 4.02 of the Preliminary Agreement, the Agency shall:

- (1) acquire an interest in, construct and install the Project Facility; and
- (2) lease or sell the Project Facility to the Developer pursuant to an agreement or agreements whereby the Developer will obligate itself, among other things, to undertake the Market 32 Project on behalf of the Agency; and
- (3) lease the Project Equipment to the Company pursuant to an agreement whereby the Company will obligate itself, among other things, to undertake the Market 32 Project on behalf of the Agency.

SECTION 4. Developer and Company Appointed Agents of Agency.

(A) The Developer and Company are hereby appointed the true and lawful agents of the Agency to:

- (1) construct and install the Project Facility;
- (2) make, execute, acknowledge, and deliver all contracts, orders, receipts, instructions, and writings needed to complete the Market 32 Project; and
- (3) do all other things requisite and proper for the completion of the Market 32 Project.

(B) The Developer and the Company are authorized to proceed with the acquisition, construction and installation of the Project Facility, subject to receiving appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish these goals.

(C) The Developer and the Company are also authorized to appoint third party agents to undertake the Market 32 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 Market 32 Project. This provision is subject to the Developer and/or the Company entering into an Agent Agreement with the Agency.

SECTION 5. §144 Election. Not Applicable.

SECTION 6. Bond Counsel. Not Applicable.

SECTION 7. Document Preparation. Counsel to the Agency is hereby authorized and directed to cooperate with counsel to the Company, as well as all other necessary parties, in order to prepare the documents needed to undertake the Market 32 Project.

SECTION 8. Payment in Lieu of Tax (PILOT) Agreement. Except as otherwise set forth herein, the Agency's approval is subject to the Developer entering into an enhanced PILOT Agreement with the Agency whereby the Developer agrees to make payments in lieu of taxes in an amount pursuant to the Agency's Uniform Tax Abatement Policy for a term of 15 years, as it may be enhanced, in any given year as if the Developer were the owner of the Project and not the Agency. The following enhanced schedule of payments is approved: 75% tax exemption on improvements for years 1 through 5; a 50% tax exemption on improvements for years 6 through 10; and a 25% tax exemption on improvements for years 11 through 15. The Agency's approval is also subject to the approval of the Town of Forward, said approval was granted by the Town Board of the Town of Fort Edward on August 17, 2015, and to the Developer agreeing to the terms of the Agency's Recapture Policy.

SECTION 9. Public Inspection. A copy of this resolution and a copy of the Developer's and Company's Applications for Assistance, together with all other application materials not protected under applicable Freedom of Information Laws, shall be placed on file in the office of the Agency. Such documents shall be available for public inspection during normal business hours.

SECTION 10. Distribution of Resolution. The Chairman of the Agency is hereby authorized to distribute copies of this resolution to the Developer and to the Company and all other persons requesting it.

SECTION 11. Public Hearing.

(A) The Agency, after duly published notice, conducted a joint public hearing pursuant to Article 18-A of the New York State General Municipal Law (the “Law”) on the 17th day of August, 2015, at 10:00 a.m., local time, at the Town Hall of the Town of Fort Edward located at 118 Broadway, Fort Edward, New York 12828, in connection with the Market 32 Project.

(B) In accordance with Section 859-a of Article 18-A of the General Municipal Law, the financial assistance contemplated hereunder by the Agency is hereby ratified.

SECTION 12. Retail Facility. At least one third of the total project costs for the Market 32 Project will be used for the development of a retail facility. Pursuant to Section 862 of the General Municipal Law, financial assistance from the Agency is prohibited for retail projects unless one of the following exceptions applies: (A) a tourism destination project; (B) a project located in a highly distressed area; and/or (C) a project that provides a product or service to the area that otherwise would not be available. In accordance with *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*, NYS Department of Taxation and Finance, dated February 7, 2017 (TSB-M-14(1)(S)), the Market 32 Project meets (B), herein, since it is considered a highly distressed area since the Project Facility is located in an area that was previously designated as an Empire Zone under Article 18-B of the General Municipal Law.

SECTION 13. Contingency. This resolution is contingent upon the approval of the Chief Executive Officers of the Counties of Warren and Washington pursuant to Section 862(2)(c) of the General Municipal Law.

SECTION 14. Further Action. The Chairman of the Agency is authorized to take such further action as shall be necessary to give effect to and implement this resolution.

SECTION 15. Effective Date. This resolution shall not take effect until the Developer and the Company and the Center jointly deliver to the Agency of a fully executed Preliminary Agreement, as defined herein, together with a \$25,000.00 security deposit.

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
Matthew Simpson	1			
TOTALS	7	0	0	3

The foregoing resolution was thereupon declared duly adopted.

Confirmed by:

Kevin Geraghty, Chairman of the
Warren County Board of Supervisors
Date: _____

James Lindsay, Chairman of the
Washington County Board of Supervisors
Date: _____