

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

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

Tel. (518) 792-1312

The May Board Meeting for Warren Washington Industrial Development Agency was held on Monday, May 17, 2021 via Zoom. The following were:

PRESENT:	Dave O'Brien	Chairman
	Ginny Sullivan	Member
	Dan Bruno	Member
	Nick Caimano	Member
	Michael Bittel	Sec/Treasurer
	Craig Leggett	Vice Chairman
	Mike Grasso	Member
	Brian Campbell	Park Chair

ABSENT:	Bruce Ferguson	Member
	Mike Wild	At-Large Member

The following were also present:

Kara Lais, Esq.	FitzGerald Morris Baker Firth, PC
Lester Losaw	CEO/CFO
Minutes were taken by:	Alie Weaver, Office Administrator

April Minutes: Mr. Bruno made a motion to accept the April meeting minutes and Mr. Grasso seconded. All voted in favor by voice vote.

Accounts Payable: Mr. O'Brien noted that the Hacker Boat invoice is reimbursable by Hacker Boat and the Weston & Sampson invoice is reimbursable through the National Grid and/or USDA grants. Mr. Bittel made a motion to accept the accounts payable and Mr. Caimano seconded. All voted in favor by roll call vote.

Park Business:

Mitigation Updates - Mr. O'Brien stated that a map was compiled and submitted showing the 1996 and the 2021 wetland delineation for the Army Corp of Engineers to compare and review. Mr. O'Brien also stated that lot appraisals are not yet complete and neither are the measurements of usable land. He also noted that private landowners in the Park will be receiving correspondence regarding permission for the Army Corps to review their property.

Old Business:

Executive Director - Mr. O'Brien stated that four resumes have been received so far for the Executive Director position and interviews will be scheduled in the near future.

Weston & Sampson Update - Mr. O'Brien stated that the most recent progress meeting consisted of potential use of the property. He also stated that Weston & Sampson are still on schedule for August completion.

TDI Update – Mr. O'Brien stated that TDI sent their 196-page application to all the members for review, although 70% had been redacted. He also stated that he will be meeting with an accountant to review the numbers that TDI provided to verify the calculations.

New Business:

Uniform Tax Abatement Policy – Mr. O'Brien stated that the IDA uniform tax abatement policy has been sent to the board members for review and would like suggestions for clarification/updates on areas that need it. He referenced two areas of concern: the definition of General Municipal Law 854 and the 485b definition. Mr. O'Brien stated that the fair housing policy should also be adopted.

Ms. Lais stated that the town's input on any changes to the UTAP should be taken into consideration by the IDA but the town's approval is not required for the IDA to make these changes.

Executive Session – Mr. Bruno made a motion to go into executive session to discuss contract negotiations that would impact or impair the price/purchase/terms of the transaction and Mr. Leggett seconded and all voted in favor by voice vote.

Mr. O'Brien stated that no action will be coming out of this executive session and will be adjourning out of the executive session.

SECTION X: UNIFORM TAX ABATEMENT POLICY

A. PAYMENTS IN LIEU OF TAXES:

MANUFACTURING/R &D/
OFFICE PROJECTS:
(minimum of 10 net new jobs)*

Eligible projects are limited to manufacturing, re-manufacturing, assembly processing, warehouse, wholesale/distribution, product research and development, and limited office functions**

BASE PILOT:

Continue to pay 100% of taxes on land and existing buildings.
Continue to pay 100% of water, sewer and special assessments.

PILOT ON NEW CONSTRUCTION:

100% exemption for a period of 5 years;
50% exemption for the next 5 years.
100% of taxes year 11.

OTHER PROJECTS:
(minimum of 25 net new jobs)*

Eligible projects permitted by General Municipal Law, including but not limited to professional offices, recreational facilities, railroad facilities and retail facilities.

BASE PILOT:

Continue to pay 100% of taxes on land and existing buildings.
Continue to pay 100% of water, sewer and special assessments.

PILOT ON NEW CONSTRUCTION:

50% exemption for 5 years; 25% exemption for the next 5 years. 100% taxes year 11.

* Minimum number of jobs is waived for projects to be located in buildings vacant for more than one year, and projects to be located in "highly distressed" areas. May be waived for other projects if Agency finds it is in the best interests of Warren and Washington Counties.

** Eligible office projects are limited to the following functions: communications, computer programming, data processing, financial services (not local insurance, financial planning, or stock broker agencies), or central administrative offices.

Note: Eligible projects not meeting the above criteria shall be eligible for 485-b tax

abatement. (Town approval not required).

It is the intent of the Warren and Washington IDA to encourage applicants to make every effort to use local suppliers, contractors and workers during the construction phase.

APPROVAL OF TOWN: Some Towns have elected to require Town Board approval of any real property tax abatement other than 485-b before implementation by the Agency. The Agency's Administrator should be contacted in this regard. Also see: Appendix "N".

B. SALES TAX:

1. Agency provides sales tax exemption during initial construction and equipping of facility only. The Agency does not provide on-going sales tax exemption for operating expenses.

2. Sales tax exemption agreement has an expiration date, based upon estimated completion date plus six months to allow for possible delays and equipping. Extension of expiration dates must be approved by the Agency.

3. Estimates and/or actual sales tax savings for Section 859 Reports are provided at year end to the Agency.

C. MORTGAGE RECORDING TAX:

1. All WWIDA projects are eligible for exemption from mortgage recording tax.

SECTION XI: CRITERIA FOR CONSIDERING ENHANCED REAL PROPERTY TAX ABATEMENTS FOR AGENCY PROJECTS

The Counties of Warren and Washington Industrial Development Agency will consider providing enhanced real property tax abatements for Agency applicants who are proposing projects of great economic impact.

Any enhanced abatement will be provided only on the increased assessed value attributable to the improvements resulting from the proposed project. Current property tax levels already in place will continue to be paid on land and existing buildings.

Proposed enhanced abatements will be considered on a case by case basis and may be up to 100% abatement on improvements for a period of up to fifteen (15) years.

The Counties of Warren and Washington IDA will use the following criteria for considering the provisions of enhanced real property tax abatements:

1. Number of jobs to be created.
2. Quality of jobs to be created (i.e. wages and benefits).
3. Capital investment by company.
4. Brownfield and/or dilapidated site.
5. Use of local workers, vendors and suppliers during the construction phase.

RECAPTURE BENEFITS POLICY: The recapture of the enhanced portion of real property tax abatements will be incorporated into all PILOT agreements.

APPROVAL OF TOWN NECESSARY: All enhanced real property tax abatements will be subject to the approval of the town (or city) within which the project is located. The town (or city) will be required to take into consideration the needs of the school district and/or village within which the project is located.

PLEASE NOTE: *The provision for enhanced real property tax abatement is a discretionary policy. The Counties of Warren and Washington IDA will consider providing the enhanced abatement based upon the above guidelines, in addition to the criteria set forth on pages 18-20 of this Policies and Procedures manual and sections 852 and 858 of the General Municipal Law. Each project will be reviewed on a case by case basis in determining whether such a project is eligible for the added incentive. Compliance with the foregoing criteria does not guarantee approval.*

SECTION XII: RECAPTURE OF BENEFITS POLICY
(Adopted July 18, 2016)

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:

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(Adopted July 18, 2016)

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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.

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- 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:

SECTION XIII: UNIFORM TAX ABATEMENT POLICY: Deviation Procedures

1. Deviation in Real Property Tax Abatement: The Agency may at any time and for any class of use determine that its uniform tax abatement policy should be deviated from to provide for an increase or decrease in the amount of payment in lieu of tax. The increases would be remitted to affected taxing jurisdictions in the same proportion as the real property tax levy. Any decrease must be approved by the town (or city) within which the project is located. The town (or city) will be required to take into consideration the needs of the school district and/or village within which the project is located.
2. Right of Reimbursement: The Agency reserves the right to use PILOT revenues to reimburse itself or any other governmental Agency or political subdivision of all or a portion of Agency and/or other public funds which were invested in the construction of infrastructure which was instrumental in the location decision of the company making the PILOT payments.
3. Hydroelectric Facilities: The Agency may consider extending the abatement period from 10 to 15 years for hydroelectric facilities if the project sponsor can demonstrate an extension is critical to the economic viability of the project.
4. Notice Requirement: All affected tax jurisdictions shall be notified of any proposed deviation of the Uniform Tax Abatement Policy and the reasons for such deviation. Affected tax jurisdictions shall have the opportunity to provide input regarding deviation of this policy prior to final action by the Agency.
5. Discretion to Deviate: Notwithstanding any of the foregoing provisions the Agency, at its discretion, reserves the right to deviate from its Uniform Tax Abatement Policy.

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 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.

Repayment Provisions

Project documents for projects receiving real property tax exemptions pursuant to this Policy shall contain benefit recapture provisions including but not limited to the following: If the minimum number of new jobs is not created by the end of three (3) year period or is not continuously maintained during the balance of term of the PILOT Agreements, the exemption schedule for the following year will revert automatically to the schedule provided in Section 485-B of the New York Real Property Tax Law (the "485-B Schedule"). In addition, repayment will be required in any year for which job creation requirements are not met (the "Disqualifying Year"), as an additional payment in lieu of taxes. The repayment amount is equal to the difference between benefits received in years on through the Disqualifying Year and the tax benefits which would have been received in your one through the Disqualifying Year in Section 485-B of the New York Real Property Tax Law. Under extenuating circumstances, the Agency may waive the above penalties after reviewing a written request of the waiver of penalties.

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

**CERTIFICATIONS AND ACKNOWLEDGMENTS
OF THE APPLICANT**

(i) Does the Project propose the creation of housing?

YES _____ NO _____

If YES, how many units? _____

If YES, the Applicant hereby certifies that:

(a) the Applicant has adopted a Fair Housing/Equal Housing Opportunity Policy substantially in the form of Appendix A to this Certification;

(b) the Project complies with applicable fair housing laws and that eligibility criteria for housing in any part of the Project will not include any residency requirements or preferences, including durational ones, age restrictions (unless for senior housing permitted by law), or other discriminatory criteria;

(c) the Applicant (1) has posted its Fair Housing/Equal Housing Opportunity Policy publicly; and (2) will display fair housing law posters for consumers in its rental or sales office(s), in a form substantially similar to the model fair housing posters attached to this Application as Appendix B (the Agency will provide applicants with fair housing law posters for display upon request by an applicant); and

(d) key employees of the Applicant in charge of marketing and rental of the Project have completed (or will complete within one year of closing) four (4) hours of fair housing training provided by Long Island Housing Services ("LIHS") at a reasonably acceptable time and locations and at no additional cost to the Applicant. In the event LIHS declines to provide or make available reasonably acceptable no-cost fair housing training, the provisions of this Certification shall cease to be of any force and effect.

(ii) The Applicant hereby certifies that the Applicant (1) has adopted a non-discriminatory affirmative marketing plan that meets the criteria set forth in Appendix C to this Certification; and (2) has submitted such marketing plan to the Agency in writing

(a) What portion of the Project would consist of Affordable Housing (e.g., number of units)?

(b) What are the eligibility requirements for the Affordable Housing?

(c) Cite the specific source of such eligibility requirements (e.g., federal, state or local law).

Name of Applicant: _____

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

Fair Housing/Equal Housing Opportunity Policy to be adopted by Agency Applicants for Housing Projects

As part of our continuing effort to ensure compliance with federal, state, and local anti-discrimination laws, we would like to take this opportunity to remind you of our policies regarding equal housing opportunity. It is important for all employees to review his or her own actions in light of these requirements and for everyone to keep in mind the importance of treating all persons equally.

It is the policy and practice of this company not to engage in or assist the efforts of others to engage in housing discrimination. Consistent with that policy, we remind you that the antidiscrimination laws of the United States, New York State, and local laws are quite specific in the area of housing, and in conformance with those laws, you must not engage in any of the following conduct during the course of your work for this company:

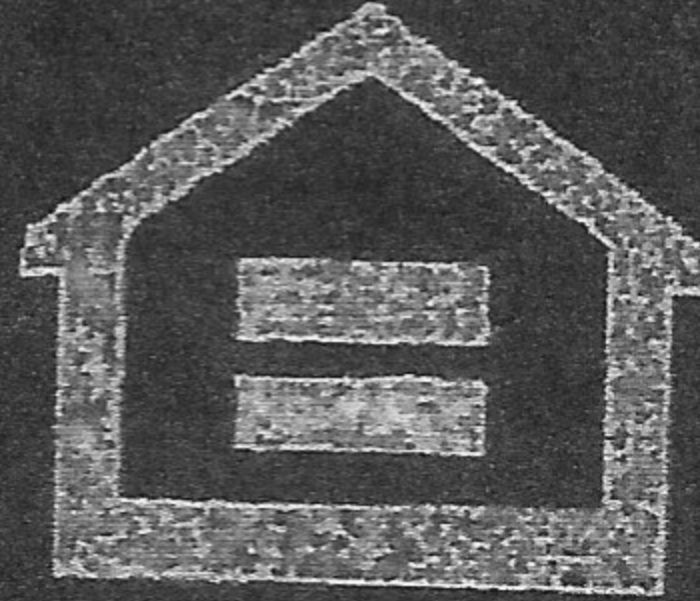
1. Refuse to show, rent, sell, negotiate for the rental or sale of, or otherwise make unavailable or deny, housing to any person because of race, color, religion, creed, sex/gender, familial status (having or expecting a child under 18), national origin, ethnicity, disability, marital status, age, sexual orientation, military status, source of income or status as survivor of domestic violence (each a "prohibited basis");
2. Discriminate against any person in the terms, conditions or privileges of a rental or sale or in the provision of services or facilities in connection therewith because of a prohibited basis;
3. Make any verbal or written statement with respect to the rental or sale of housing that indicates any preference, limitation or discrimination concerning a prohibited basis, or any statement indicating an intention to make any such preference, limitation or discrimination;
4. Represent to any person because of a prohibited basis that any housing or unit is not available for inspection, rental or sale when such apartment is in fact so available;
5. Steer persons into or away from certain areas of a building, development or neighborhood because of a prohibited basis;
6. Refuse to provide a reasonable accommodation in rules, policies, practices or services for tenants, buyers, or applicants with disabilities; and
7. Refuse to allow a reasonable modification to individual units or common areas for tenants, buyers, or applicants with disabilities.

We are firmly committed to the goal of fair housing. You should understand that any violation of this Fair Housing/Equal Housing Opportunity Policy will lead to discipline, up to and including discharge.

APPENDIX B

Sample Fair Housing Posters

U. S. Department of Housing and Urban Development



EQUAL HOUSING
OPPORTUNITY

We Do Business in Accordance With the Federal Fair
Housing Law

(The Fair Housing Amendments Act of 1988)

**It is illegal to Discriminate Against Any Person
Because of Race, Color, Religion, Sex,
Handicap, Familial Status, or National Origin**

- ☐ In the sale or rental of housing or residential lots
- ☐ In the provision of real estate brokerage services
- ☐ In advertising the sale or rental of housing
- ☐ In the appraisal of housing
- ☐ In the financing of housing
- ☐ Blockbusting is also illegal

Anyone who feels he or she has been
discriminated against may file a complaint of
housing discrimination.

1-800-669-2777 (Toll Free)

1-800-927-9275 (TTY)

www.hud.gov/fairhousing

U.S. Department of Housing and
Urban Development
Assistant Secretary for Fair Housing and
Equal Opportunity
Washington, D.C. 20410

Posters are available for free.

Form HUD-925.1 (Rev. 10/11)

HOUSING
DISCRIMINATION IS
SOMETIMES **BLATANT**,
SOMETIMES
BUT ALWAYS UNLAWFUL.



APPENDIX C

Requirements for Affirmative Marketing Plans for Housing Projects

Affirmative marketing plans submitted by the Applicant shall be required only for affordable or "workforce" units and shall contain the following information:

1. Street address, village, town, zip code, and census tract number for the Project;
2. Number of affordable units to be marketed and whether they will be available for rent or purchase;
3. The number, if any, and location of market rate units included in the Project;
4. Whether the housing will be "housing for older persons", defined as at least 80% occupancy of units with at least one person 55 or older or 100% occupancy of persons age 62 or older;
5. A description of how units will be advertised for sale or rental prior to first occupancy, including whether Applicant will utilize its own website, commercial websites, print media outlets, social media outlets such as Facebook, a sign at the project site, mailings, leaflets/flyers, brochures, and other forms of advertising;
6. A statement that the Applicant will use fair housing logo or phrase "Equal Housing Opportunity" on all advertising described above;
7. A statement that the Applicant will distribute written information regarding the availability of affordable units at the project to a list of organizations provided to the Applicant by the Agency, which list may be updated annually;
8. Whether the Applicant will conduct the marketing and initial rent-up or sales itself or contract with a third-party;
9. A statement that an initial application period with a specific start and end date will be utilized for accepting applications for consideration for the initial rental of the units and that the period will last for at least thirty (30) days after the marketing described in this plan is commenced. In addition, a statement that following the initial application period, all the applications submitted during the initial application period will be considered through the use of a lottery and not on a first-come first-served basis, unless the number of applications received during the initial application period is less than the total number of units available for rental.
10. A statement that the Applicant will maintain records of the activities it undertakes to implement its marketing plan.