

TOWN OF CLARENCE, ERIE COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

MINUTES
May 19, 2022

Chairman Kempton called the meeting to order at 8:16 a.m.

Present were Lauren Fix, Robert Dixon, Elaine Wolfe, Mary, Powell, Clayt Ertel and Chris Kempton. Peter DiBiase was not able to attend. Also present were Steven Bengart, Jennifer Strong, Paul Leone, Peter DiCostanzo, Councilman/Liaison, and Cynthia Rosel.

Minutes of April 21, 2022 Meeting Minutes.

There was a motion to approve the minutes of the April 21, 2022 meeting by Mary Powell with a second by Lauren Fix. There was nothing on the question. The vote was as follows:

Vote: Ayes: Fix, Dixon, Wolf, Powell, Ertel, Kempton. Noes: None
Recuse: None. Absent: DiBiase. Motion carried.

Treasurer's Report.

Chairman Kempton presented the Treasurer's Report going over the Balance Sheet with the Board members. There were no fees received so far this year. Total expenses to date are in the amount of \$30,594.50. The Net Income for the period of January 1 through May 19, 2022 is -30,504.95.

There was discussion regarding the Bank that the CIDA is using for its accounts. There have been some difficulties with the Bank. This will be revisited when Ms. Ignatowski is available.

There was a motion to approve the Financial Report. Motion was made by Elaine Wolfe with a second by Robert Dixon. There was nothing on the question. Vote was as follows:

Vote: Ayes: Fix, Dixon, Wolf, Powell, Ertel, Kempton. Noes: None
Recuse: None. Absent: DiBiase. Motion carried.

Correspondence.

None.

New Business.

Mr. Leone has not heard anything from the Main Street Projects from Paul Stephen or the Campione County Road project. Pallet Services was talking about an expansion and MJ Peterson may do a project on Sheridan and Harris Hill. There are no new applications at this time.

The only project that is still outstanding is the Green Project. This project is waiting on the financing.

Burke Homes LLC.

Burke Homes has asked for an extension on the Sales Tax Exemption to August 30, 2022. Construction and equipping of the project have been delayed due to COVID. Ms. Strong prepared a resolution for the Board to consider extending the sales tax exemption benefit.

The Chairman moved to approve the resolution as presented to extend the sales tax period for Burke Homes LLC from May 19 to August 30, 2022. There was a second by Clayt Ertel. There was nothing further on the question.

Vote: Ayes: Fix, Dixon, Wolf, Powell, Ertel, Kempton. Noes: None
Recuse: None. Absent: DiBiase. Motion carried.

(Resolution Attachment “A”)

Niagara Produce Project:

Ms. Strong also prepared a resolution for the Board to consider the request for the Agency’s consent for an Assignment and Assumption of the Lease and the PILOT due to a name change. There are no additional benefits.

A motion was made by Chairman Kempton to approve the resolution as presented for the Assignment and Assumption of the Niagara Produce Project. There was a second by Robert Dixon. There was nothing on the question.

Vote: Ayes: Fix, Dixon, Wolf, Powell, Ertel, Kempton. Noes: None
Recuse: None. Absent: DiBiase. Motion carried.

(Resolution is Attachment “B”)

Old Business.

Mary Morris joined the meeting to speak about the invoicing of the CIDA billings. Mary invoices the invoices for the Town and County taxes per the PILOT schedules. Mary Morris also prepares a spread sheet for Kimberly Ignatowski as Ms. Ignatowski is the person who collects the payments.

There was also discussion regarding late payments. This is monitored by the office staff and the school district does notify usually Ms. Rosel if there is a late payment.

This was brought up several years ago with a project that the CIDA pulled that PILOT for non-payment. The office staff and the school district are in contact with each other relative to PILOTs. Whenever there is a new PILOT, the school district is one of the taxing jurisdictions as well as the county to receive the RP 412-a,

It was also brought up the Mary Morris has been asked by the Lancaster IDA billing person to help her with how to do the calculations for the billings. This is something that would have to be approved by the Clarence Town Board as Mary is a Town employee.

Also, there was a question about adding additional information of the spread sheet. Mr. Kempton asked Ms. Morris to do a brief analysis on a more recently expired project on how the tax base has increased for that project. Mr. Kempton thanked Ms. Morris for coming in.

RFP for Sheridan Drive Update.

Andrew Schaeffer gave an update on the RFP for the Sheridan Drive Economic Plan as the deadline is approaching for submissions. There has been some interest. This will be on the June agenda for discussion and review of any submissions that will be received at that meeting.

Items Not on the Agenda.

There was discussion on the current PILOTS and the employment records. This was the 2020 spread sheet. There will be further discussion on this at a future meeting. The spread sheet is little confusing. Mr. Kempton will contact the auditor for an explanation to clarify the columns. There should be 2021 spread sheet. Mr. Kempton added that the CIDA should be looking at this and monitor the employment that is reported yearly.

Mary Powell talked about live streaming the CIDA meetings. Ms. Powell asked if this is something that needs to be done. Ms. Strong said that it would be to the extent practicable. The CIDA would need to have the capability to do this. Right now, the CIDA does not. There was further discussion regarding this and Mr. Kempton added that at this point the CIDA does not have the capability to do so. We will continue to monitor this and when it becomes necessary to do so, this will be addressed at that time.

Public Comments.

None.

Friendly motion to adjourn made by Clayt Ertel with a second by Elaine Wolfe.

Adjournment 9:14 a.m.

Respectfully submitted:
Cynthia Rosel

Attachment "A"

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY")
EXTENDING THE INDUCEMENT RESOLUTION AND SALES TAX PERIOD FOR BURKE HOMES LLC (THE "LESSEE")
UNTIL AUGUST 30, 2022

WHEREAS, BURKE HOMES LLC (the "Lessee") has entered into negotiations with the officials of the Town of Clarence, Erie County, Industrial Development Agency (the "Agency") with respect to the construction and equipping of two 9,000 square foot mixed use buildings on approximately 2.0 acres owned by the Lessee located at 6855 Transit Road, Clarence, as agent for the agency for lease to the agency and subsequent leaseback to the Lessee (the "Project"); and

WHEREAS, there has been delay in constructing and equipping of the Project due to the Co-Vid 19 Pandemic; and

NOW, THEREFORE, BE IT RESOLVED BY THE AGENCY AS FOLLOWS:

1. The Agency does hereby extend the sales tax period for the Lessee from May 19, 2022 to August 30, 2022.
2. This resolution shall take effect immediately.

ADOPTED: May 19, 2022
ACCEPTED:

BURKE HOMES LLC
By: _____
(name):
(title):

Attachment "B"

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY,
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ASSIGNMENT TO AND ASSUMPTION BY DORR
CHESKO REAL ESTATE LLC OF THE LEASEHOLD INTEREST OF JODY CHESKO AND RICHARD J. DORR
("LESSEE") IN THE 2013 8555 TRANSIT ROAD PROJECT AND THE EXECUTION AND DELIVERY BY THE
AGENCY OF A CONSENT TO A LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT, AN AMENDED AND
RESTATED LEASE TO AGENCY AND AN AMENDED AND RESTATED LEASEBACK AGREEMENT AND
CONSENT TO MORTGAGE THE REAL PROPERTY

WHEREAS, the Town of Clarence, Erie County, Industrial Development Agency (the "Agency") by resolution adopted on July 19, 2012 and amended on June 20, 2013 (the "Inducement Resolution") in connection with the demolition of an existing produce market and greenhouse and the construction of an approximately 37,641 square foot produce market, an approximately 36,450 square foot greenhouse and an approximately 12,600 square foot warehouse/storage building on parcels of land located at 8555-8595 Transit Road in the Town of Clarence, New York, by the Lessee as agent for the Agency and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection by NIAGARA COUNTY PRODUCE INC. (the "Sublessee") as agent for the Agency with the Lessee to lease the real property and buildings to the Agency for subsequent sublease to the Lessee and for the sub-sublease by the Lessee to the Sublessee and with the Sublessee to acquire and install the machinery and equipment as agent for the Agency for lease by the Agency to the Sublessee or sale by the Agency to the Sublessee pursuant to an installment sale agreement, all for retail and wholesale and produce and flower sales market, (the "Project"); and (the "Project"); and

WHEREAS, pursuant to such Inducement Resolution, the Agency acquired a leasehold interest in the Facility pursuant to a certain Lease to Agency, dated as of June 1, 2013, between Jody Chesko and Richard J. Dorr, as lessor, and the Agency, as lessee, (the "Lease to Agency") and leased the Facility back to Jody Chesko and Richard J. Dorr, pursuant to a certain Leaseback Agreement, dated as of June 1, 2013, between the Agency, as lessor, and Jody Chesko and Richard J. Dorr, as lessee, (the "Leaseback Agreement"); and

WHEREAS, the Agency has now received a request for the Agency's consent to (i) the assignment of Jody Chesko and Richard J. Dorr's leasehold interest in the Facility Realty as defined in the Leaseback Agreement, to DORR CHESKO REAL ESTATE LLC (the "New Lessee"); (ii) the assumption by DORR CHESKO REAL ESTATE LLC of the obligations of Jody Chesko and Richard J. Dorr under the Leaseback Agreement; (iii) the Consent to the New Lessee's incurring of additional indebtedness to M&T Bank and the grant by the New Lessee of a mortgage to M&T Bank in connection therewith; (iv) the transfer, by deed, of the real property by Lessee to New Lessee; and (v) the Consent to execute a new lease or an amended restated lease between New Lessee and Sublessee; and

WHEREAS, the facility will remain a retail and wholesale and produce and flower sales market with Niagara County Produce Inc. as the occupant; accordingly, there will be no change in the Payment in Lieu of Taxes ("PILOT") Provisions attached as Exhibit C to the Leaseback Agreement; and

WHEREAS, DORR CHESKO REAL ESTATE LLC is not seeking any mortgage tax abatements on the refinance.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

Section 1. The Agency hereby consents and authorizes the execution and delivery of a Lease Assignment and Assumption Agreement between Jody Chesko and Richard J. Dorr and DORR CHESKO REAL ESTATE LLC with respect to the Leaseback Agreement.

Section 2. The Agency approves the execution and delivery of an Amended and Restated Lease to Agency between DORR CHESKO REAL ESTATE LLC and the Agency and an Amended and Restated Leaseback Agreement, between the Agency and DORR CHESKO REAL ESTATE LLC.

Section 3. The Agency approves the execution and delivery of a Mortgage between the Agency, DORR CHESKO REAL ESTATE LLC and M&T Bank on 8555 Transit Road, with no mortgage tax abatements.

Section 4. The Agency approves the execution and delivery of a Deed between the Lessee and DORR CHESKO REAL ESTATE LLC on 8555 Transit Road.

Section 5. The Agency approves the execution and delivery of a new Lease or an Amended Restated Lease between the Sublessee and DORR CHESKO REAL ESTATE LLC, on 8555 Transit Road.

Section 6. The Agency determines that the PILOT provisions shall remain unchanged as there is no change in use or in the occupancy of the Facility.

Section 7. The Agency agrees to release Jody Chesko and Richard J. Dorr with respect to obligations arising under the Leaseback Agreement arising after the date of the assignment and assumption by DORR CHESKO REAL ESTATE LLC, provided that Jody Chesko and Richard J. Dorr shall remain obligated with respect to obligations arising during the time period it was the lessee under the Leaseback Agreement.

Section 8. The Chairman, Vice Chairman, Treasurer, Secretary, Assistant Secretary or other officer of the Agency are hereby authorized to execute and deliver the Lease Assignment and Assumption Agreement, an Amended and Restated Lease to Agency, an Amended and Restated Leaseback Agreement, Mortgage, and such other agreements as may be desirable or required in connection with the assignment to and assumption by DORR CHESKO REAL ESTATE LLC of the leasehold interest of Jody Chesko and Richard J. Dorr in the Facility Realty and the financing of such transaction and the Chairman, Vice Chairman, Treasurer, Secretary, Assistant Secretary are hereby authorized to affix the seal of the Agency on each such agreement, as applicable, and attest to the same. The execution and delivery of each such agreement by said officer shall be conclusive evidence of due authorization and approval.

Section 9. The Chairman, Vice Chairman, Treasurer, Secretary, Assistant Secretary or other officer of the Agency are hereby designated the authorized representative of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits or other documents to do and cause to be done any and all acts and things necessary or proper for the carrying out of this resolution.

Section 10. The Agency hereby determines, based upon information furnished to the Agency by DORR CHESKO REAL ESTATE LLC and such other information as the Agency has deemed necessary to make this determination, that the Project constitutes a Type II action under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, and the contemplated actions will not have a significant effect on the environment.

Section 11. DORR CHESKO REAL ESTATE LLC agrees that it will pay all Agency Administrative Fees and reimburse the Agency for all its expenses in connection with this transaction, including reasonable legal fees, and by accepting this resolution it agrees to such fees and consent to the transaction.

Section 12. This resolution shall take effect immediately.

Adopted: May 19, 2022
Accepted On May ____, 2022

DORR CHESKO REAL ESTATE LLC
By: _____
Name:
Title:

Jody Chesko

Richard J. Dorr

NIAGARA COUNTY PRODUCE, INC.
By _____
Richard J. Dorr,
President