

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

Minutes of the 406th Meeting

January 18, 2008 – 8:30 am

Agency Offices, 4287 Main Street

The meeting of the above captioned Agency was called to order by Chairman Fredrick A. Vilonen.

PRESENT: Fredrick A. Vilonen
Robert L. Miller
Barbara Batchen
John P. DeLuca
Robert Ciesielski
James J. Allen, Executive Director
Nathan S. Neill, Esq.

EXCUSED: Randall Clark
Ayesha Nariman

GUESTS: AIDA Staff
Hon. Shelly Schratz
Jonathan Epstein, Buffalo News
Edward Stachura
George Cregg, Jr., Hodgson Russ
Terry Gilbride, Hodgson Russ
Eric Tudor, Caldwell Banker
Tom Fitzgerald, Tops
David Tytka, Uniland Develoment
Jim Fink, Business First
Doug Dimitroff, Phillips, Lytle

Chairman Vilonen reminded everyone that the meeting was being tape-recorded.

MINUTES

The minutes of the December 2007 meeting were approved as presented.

TREASURER'S REPORT

The Treasurer's Report for December 2007 was approved as presented.

BILLS & COMMUNICATIONS

Executive Director Allen informed the board that the Agency had received a letter from Amherst Town Supervisor Mohan. Dr. Mohan requested information from the Agency relating to vacancy rates in AIDA sponsored facilities. He also requested PILOT information.

PUBLIC COMMENT

There was no Public Comment at this meeting.

Chairman Vilonen next welcomed Councilmember Shelly Schratz as the Agency's new Town Board liaison.

Councilmember Schratz noted that she was looking forward to working with the Agency especially on matters related to redevelopment areas such as Main/Eggert and Harlem/Kensington.

EXECUTIVE DIRECTORS REPORT

Executive Director Allen informed the board that Agency staff continues to work with the Town Planning Department on the development overlay zoning issues.

Mr. Allen informed the board that he recently served on newly elected County Executive Collins' economic development transition team.

Mr. Allen also informed the board that the Agency was working with the SBA and the Amherst Chamber of Commerce in regarding sponsorship of a Small Business Seminar to be held in March.

UNFINISHED BUSINESS

Daemen College – Daemen College is seeking approval of the augmentation of the credit facility for their existing bond indebtedness through the issuance of a direct pay letter of credit by Wachovia Bank National Association. Board approval is needed because the existing bond documents do not permit such augmentation as a matter of right. The Agency closed on this project in June 2006.

Upon a motion by John DeLuca, seconded by Barbara Batchen and unanimously carried, it was

RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY (THE "ISSUER") AUTHORIZE THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION WITH THE PROVISION OF ALTERNATE AND/OR ADDITIONAL SECURITY FOR THE ISSUER'S OUTSTANDING REVENUE BONDS ISSUE IN CONNECTION WITH THE ISSUER'S DAEMEN COLLEGE PROJECT.

Citibank -the Company is requesting an amendment to their May 2007 Authorization resolution. Company has advised the Agency that due to their corporate structure, other affiliated or related entities will be making purchases in connection with the Project as agent for the Agency and the Company has requested that the Agency specifically authorize the purchases to be made by affiliated entities in addition to the Company with the total authorized amount to remain unchanged, to clarify that the term of the Installment Sale Agreement is to be for a 10 year period commencing upon the date of the issuance of the certificate of occupancy which will allow the Company to take possession of the building and to clarify that some of the items of the machinery, equipment, furniture and fixtures will be leased instead of purchased.

Upon a motion by Barbara Batchen, seconded by Robert Miller and unanimously carried, it was

**RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
AMENDING A PRIOR RESOLUTION ADOPTED ON MAY 25, 2007, AUTHORIZING AND
APPROVING THE EXECUTION AND DELIVERY OF AN INSTALLMENT SALE AGREEMENT
WITH CITICORP NORTH AMERICA, INC. AND OTHER INSTRUMENTS AND MATTERS IN
CONNECTION THEREWITH, TO CLARIFY THE DURATION OF TIME AND SPECIFYING
AFFILIATED OR RELATED ENTITIES THAT WILL BE MAKING PURCHASES PURSUANT TO
THE INSTALLMENT SALE RESOLUTION**

NEW BUSINESS

AUTHORIZATION RESOLUTION

APPLICANT

Tops Markets, LLC
6363 Main Street
Amherst, NY
Francis Curci, President/CEO

REQUEST

Applicant is requesting authorization for an Installment Sale Transaction in an amount not to exceed \$22,550,000 for the renovation and equipping of their proposed headquarter facility located at 6363 Main Street. The project is located within the Williamsville Central School District. The NAICS for this is 5611 (Business Services), thus qualifying it under the countywide eligibility policy. It should be noted that initial purchases are estimated at \$8,425,000 over a three year period.

The application states that the conversion of Tops Markets ownership from that of a wholly owned subsidiary of an international food company, Ahold, to a locally managed headquartered business will have substantial and measurable impact on the local economy.

The application also states that a large investment in infrastructure is required to create a headquarter operation and operate on a stand alone basis. The costs include new information technology purchases, office equipment and furnishings.

The project will retain the existing 145 division office positions and add 140 management and leadership positions to the new headquarters facility. The new positions are currently located out of state supporting the various sales, marketing, procurement, human resources, information technology and account positions for Tops' retail locations.

EMPLOYMENT

Project will retain 145 jobs and create 140 new jobs. The present payroll of \$9,250,000 will increase to an estimated \$16,950,000 upon completion of the project.

PILOT SCHEDULE

Applicant is not requesting a PILOT from the Agency.

Project Tax Savings

As a result of the Agency's participation in this transaction, the project applicant will realize an estimated \$1,575,000 in sales tax savings.

Executive Director Allen requested that Tops Markets CFO, Tom Fitzgerald comment on the request for assistance.

Mr. Fitzgerald told the Agency that approval of this project will enable him to present to the board of directors of the new ownership group for Tops, an incentive package from New York State, which would include the IDA incentives. Should the board agree to the incentive package, Mr. Fitzgerald noted that Tops would be making a significant capital investment in Amherst and that would enable them to return 144 jobs back to Western New York.

Councilmember Schratz stated that she had little confidence in Tops job creation figures and staying power.

Upon a motion by Barbara Batchen, seconded by John DeLuca and unanimously carried, it was

RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZE AND APPROVE THE EXECUTION AND DELIVERY OF AN INSTALLMENT SALE AGREEMENT WITH TOPS MARKETS, LLC AND OTHER INSTRUMENTS AND MATTERS IN CONNECTION THEREWITH

I. Adoption of Agency Policies to reflect provisions within the Public Authorities Accountability Act

The Agency is required to adopt new policies in order to comply with governance provisions within the Public Authorities Accountability Act. Below is a list of those that need to be adopted. Drafts are attached.

- Audit Committee Charter

The purpose of the audit committee shall be to (1) assure that the authority's board fulfills its responsibilities for the authority's internal and external audit process, the financial reporting process and the system of risk assessment and internal controls over

financial reporting; and (2) provide an avenue of communication between management, the independent auditors, the internal auditors, and the board of directors.

- **Governance Committee Charter**

The purpose of the governance committee is to assist the Board by: Keeping the Board informed of current best practices in corporate governance; reviewing corporate governance trends for their applicability to the Agency; updating the Agency's corporate governance principles and governance practices; and advising those responsible for appointing directors to the Board on the skills, qualities and professional or educational experiences necessary to be effective Board members.

- **Procurement Policy**

Pursuant to Section 104-b of the GML, the primary objectives of this policy are to assure the prudent and economical use of public monies in the best interests of the taxpayers of a political subdivision or district, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption.

- **Uniform Tax Exemption and Deviation Policy**

The Town of Amherst Industrial Development Agency was required pursuant to §874 (4) (a) of the General Municipal Law to establish a uniform tax exemption policy. It established its own policy and its own policy was re-adopted of or before April 1, 1999. The Town of Amherst Industrial Development Agency thereafter approved the County Wide Eligibility Policy dated October 12, 2001 which was applicable to all the industrial development agencies in Erie County. It then signed a memorandum of understanding approving IDA Policy Task Force Statement of Clarifications and Proposed Procedures dated July 1, 2005. This October 12, 2001 Policy as amended and clarified by the July 1, 2005 clarification is the uniform tax exemption policy of the Town of Amherst Industrial Development Agency.

Pursuant to §874 (4) (c) of the General Municipal Law, the Town of Amherst Industrial Development Agency is required to have a policy for deviation from the uniform tax exemption policy.

- **Recapture Policy**

The Town of Amherst Industrial Development Agency has determined that it will have a policy that does not provide for recapture of benefits already provided to project applicants if the project applicant does not reach and maintain its employment projections. The Town of Amherst Industrial Development Agency does however expect that project applicants will undertake to do what they say they will do in their application. It is the policy of the Town of Amherst Industrial Development Agency to require that the applicant undertake the activities set forth in the application and keep the project occupied as an active project.

- **Employee Compensation Policy**

The compensation program includes employee base compensation, COLA, bonus, and related fringe benefit costs (collectively, the “Employee Compensation Program”).

- **Defense and Indemnification Policy**

The Town of Amherst Industrial Development Agency (the “Agency”) has determined that it is in the best interest of the Agency that its employees, as that term is defined in §18 of the Public Officers Law, be indemnified in accordance with the terms of §18 of the Public Officers Law.

- **Conflict of Interest Policy**

The Town of Amherst Industrial Development Agency (the “Agency”) has adopted a Code of Ethics that applies to all officers, members, employees and contractors that are intended to prevent conflicts of interest arising with respect to any such officer, member, employee or contractor.

- **Whistleblower Policy**

The objectives of the Town of Amherst Industrial Development Agency Whistleblower Policy are to establish policies and procedures for:

- The submission of concerns regarding questionable accounting or auditing matters by employees, board members, officers, and other stakeholders of the Town of Amherst Industrial Development Agency, on a confidential and anonymous basis.
- The receipt, retention, and treatment of complaints received by the Town of Amherst Industrial Development Agency regarding accounting, internal controls, or auditing matters.
- The protection of board members, volunteers and employees reporting concerns from retaliatory actions.

- **Financial Disclosure Policy**

The Town of Amherst Industrial Development Agency in compliance with the requirements of the Town of Amherst and the Public Authorities Accountability Act require that all members and employees with executive positions complete an annual disclosure form and that the disclosure form be filed with the Town of Amherst and the Board of Ethics for the County of Erie.

Upon a motion by Robert Miller, seconded by Barbara Batchen and unanimously carried, it was

RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
ADOPT POLICIES TO REFLECT PROVISIONS WITHIN THE PUBLIC AUTHORITIES
ACCOUNTABILITY ACT.

9:12 am – Meeting adjourned.