

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

**Minutes of the 384th Meeting
March 17, 2006 – 8:30 am
Agency Offices, 4287 Main Street**

The meeting of the above captioned Agency was called to order by Chairman Edward Stachura.

PRESENT: Edward F. Stachura
John DeLuca
Barbara J. Batchen
Fredrick A. Vilonen
Robert L. Miller
Ayesha Nariman
Nathan S. Neill, Esq.
James J. Allen, Executive Director

EXCUSED: Randall L. Clark

GUESTS: AIDA Staff
William M. Murray, Esq. (HodgsonRuss)
William A. O'Loughlin, Jr.
Jim Cullinan
David Tytko
Jonathan Epstein, Buffalo News

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

MINUTES

The Minutes of the February 2006 meeting were approved as presented.

BILLS & COMMUNICATIONS

There were no Bills & Communications at this meeting.

TREASURER'S REPORT

The Treasurer's Report for February 2006 was approved as presented.

PUBLIC COMMENT

James Cullinan made a request, citing Freedom of Information Act, requesting a copy of the tape recording from the February board of directors meeting. Mr. Cullinan noted that he had requested the tape previously but had never received it.

Agency staffer Joann Piasecki informed the board that she had sent Mr. Cullinan the taped copy the first week of March and that it had never been forwarded back to the Agency by the post office.

Mr. Cullinan acknowledged that he had a new temporary mail carrier and that there may have been some confusion with the delivery.

EXECUTIVE DIRECTOR'S REPORT

Executive Director Allen reported that the Agency has sent its response to the New York State Comptroller's office in regard to their draft audit that was recently conducted.

Mr. Allen noted that the Agency coordinated its response with the ECIDA, which was also audited and with very similar recommendations to that of the Agency's audit.

Mr. Allen informed the board that he had received no response from the Amherst Town Board in regard to the letter he had sent relative to the purchase of the new Youth Center in Eggertsville.

UNFINISHED BUSINESS

I. BOND RESOLUTION – Temple Shaarey Zedek

Company is requesting Agency consent for the refinancing of a 1999 \$3,100,000 tax exempt bond issue. Project was for the construction of a 3 story, 59 unit senior housing complex for low to moderate income senior housing complex located at 410 Hartford Rd.

The refinancing amount is \$2,340,000. The trustee will be Wells Fargo Bank NA and the bondholder(s) will be VanKampen/Global Investor Group and The GMS Group, LLC.

Upon a motion by Robert Miller, seconded by John DeLuca and unanimously carried, it was

RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY APPROVE THE REFINANCING OF A 1999 \$3,100,000 TAX EXEMPT BOND ISSUE AND REPLACE IT WITH A NEW TAX EXEMPT BOND ISSUE NOT TO EXCEED \$2,340,000.

NEW BUSINESS

I. APPLICANT

1955 Wehrle, LLC
1955 Wehrle Drive
Amherst, New York 14221
Thomas Kreuz, CEO, The Advantage Co.

REQUEST

Applicant is requesting authorization for a \$1,000,000 lease transaction for the construction of a 20,000 square foot addition to their distribution facility located at 1955 Wehrle Drive, within the Williamsville Central School District. The NAICS for this type of facility is 4236(wholesale trade), thus qualifying it for Agency assistance under the County-wide Eligibility Policy. The project will house the company's lifetime service center.

Applicant states that their current Lifetime Service business is located at 52 South Union in Williamsville. This facility was originally constructed in 1989. Their current growth in their national business necessitates their need to expand their facilities to accommodate the increased flow of goods. The expansion will make them more efficient and competitive, and will better allow them to supply the services necessary to retain and expand their customer base.

Applicant also states that they have received inquiries on the facility at 52 South Union. Applicant will either sell it or work on a plan to develop it for commercial rental.

Applicant states that AIDA participation is necessary in to better aide cost controls which will help keep the facility competitive. They also state that this consolidation and expansion project will allow for the company's growth and job creation and better enable them to compete with their national counterparts.

EMPLOYMENT

Project will retain 55 jobs in Amherst and create an additional 7.

PILOT SCHEDULE

Project is eligible for the Agency's 15 year PILOT policy. During the abatement period, project will pay an estimated \$648,628 in property taxes; \$180,630 to the Town of Amherst, \$94,125 to Erie County and \$373,873 to the Williamsville Central School District.

Project Tax Savings

As a result of the Agency's participation in this transaction, the project applicant will realize an estimated \$31,500 in sales tax savings, \$203,243 in property tax savings and \$10,000 in mortgage recording tax savings.

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

RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZE 1955 WEHRLE LLC (THE “LESSEE”) TO CONSTRUCT AN APPROXIMATELY 20,000 SQUARE FOOT OFFICE/WAREHOUSE ADDITION TO AN EXISTING APPROXIMATELY 40,639 SQUARE FOOT BUILDING LOCATED AT 1955 WEHRLE DRIVE, AMHERST, NEW YORK AND TO ACQUIRE AND INSTALL MACHINERY AND EQUIPMENT REQUIRED IN CONNECTION THEREWITH, ALL FOR A SINGLE-TENANT OFFICE AND DISTRIBUTION FACILITY FOR SALE TO THE AGENCY AND SUBSEQUENT LEASE TO THE LESSEE FOR SUBLEASE TO LIFETIME SERVICE (THE “SUBLESSEE”) AND TO TAKE OTHER PRELIMINARY ACTION.

II. APPLICANT

DiCamillo Bakery
5329-5333 Main St.
Williamsville, NY 14221
Francis, P. DiCamillo, Treasurer

REQUEST

Applicant is requesting authorization for a \$275,000 Installment Sale Transaction for the renovation and equipping of a 150 year old building located at 5329 Main Street in Williamsville. The property is located in a Town Board designated Enhancement Area. Company will remain headquartered in Niagara Fall, NY.

Applicant states that they are a retail/wholesale bakery with 4 locations in a community that is shrinking, aging and becoming more impoverished at an alarming rate. They state that they need this new outlet in order to continue to be a viable WNY business and to remain strong enough to compete against the supermarkets and national chains.

Applicant states that this retail outlet will enable them to widen their geographic reach and give them access to new markets in Erie County. They state that the proximity to the airport and the I-290 exit will help draw travelers who are familiar with their company from the products they market nationally. They also state that this new location will allow them to increase production and more fully utilize their plant and equipment.

Applicant states that Agency participation is necessary because this 150 year old building is in dire need of extensive structural repair in addition to the adaptations and upgrades required for food service activity. In order to save the building and adapt it, they have already had to replace the roof, rebuild at least two of the brick corners, replace all the windows and doors, pour a new concrete floor, bring in new electrical service and totally re-plumb and re-wire the building. Further renovations will include masonry work, paving, landscaping.

EMPLOYMENT

Project will create 18 new jobs in Amherst.

PILOT SCHEDULE

Applicant is not requesting a PILOT from the Agency. They may see a 485-b exemption through the Town of Amherst.

Project Tax Savings

As a result of the Agency's participation in this transaction, the project applicant will realize an estimated \$14,000 in sales tax savings.

Upon a motion by Fredrick Vilonen, seconded by Barbara Batchen 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 DI CAMILLO BAKING CO., INC. AND OTHER INSTRUMENTS AND MATTERS IN CONNECTION THEREWITH.

II. ASSIGNMENT & ASSUMPTION OF LEASE/MORTGAGE RESOLUTION

Project Applicant

Image (NY) QRS 16-67, Inc.
WP Carey & Co, LLC
50 Rockefeller Plaza, 2nd Floor
New York, NY 10020

Project Address

IIMAK
310 Commerce Drive
Amherst, NY 14228
C. Anthony Rider, CFO

Request

Company is requesting Agency consent to an Assignment and Assumption of Lease from IIMAK (International Imaging Materials) for property located at 310 Commerce Drive and 185 John Glenn Drive to W.P. Carey & Co, LLC. IIMAK will remain in the entire facility as a sublessee.

IIMAK currently occupies an approximately 200,000 square foot office/manufacturing facility. Company manufactures and distributes thermal ink transfer ribbons. They have been at the Commerce Drive location since 1984. The Agency has participated in several projects with the company. Current employment at this facility is 435.

Applicant is also requesting a mortgage resolution not to exceed \$18,000,000 with W.P. Carry & Co of New York City providing the financing.

As a result of the Agency's authorization to this request there will be no additional property tax savings with this transaction. The current PILOT agreements will not be affected by this transaction.

There will be an estimated mortgage tax savings not to exceed \$180,000.

Upon a motion by Robert Miller, seconded by Fredrick Vilonen and unanimously carried, it was

RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ASSIGNMENT AND ASSUMPTION OF THE LEASEHOLD INTEREST OF INTERNATIONAL IMAGING MATERIALS, INC. (IIMAK) IN THE PROPERTY LOCATED AT 310 COMMERCE DRIVE AND 185 JOHN GLENN DRIVE BY IMAGE (NY) QRS 16-67, INC. (AN ENTITY AFFILIATED WITH AND/OR MANAGED BY W.P. CAREY AND CO., LLC, OR ITS AFFILIATE(S), THE EXECUTION AND DELIVERY OF A MORTGAGE IN AN AMOUNT NOT TO EXCEED \$18,000,000, AND THE SUBLEASE TO IIMAK

The applicant also requested that the Amherst IDA board provide relief from the full fee and charge \$52,000, which is 10% of the estimated \$370,000 left on our property tax abatement and the estimated \$150,000 mortgage recorded tax savings.

Upon a motion by Fredrick Vilonen, seconded by Robert Miller and unanimously carried, it was

RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY APPROVE THE REQUEST TO REDUCE THE AGENCY'S FEE FROM 1% OF THE PROJECT VALUE TO 10% OF THE ESTIMATED \$370,000 REMAINING ON THE PROPERTY TAX ABATEMENT AND 1% ON THE ESTIMATED \$150,000 MORTGAGE RECORDING TAX SAVINGS FOR A FEE TOTALING APPROXIMATELY \$52,000.

III. AMENDMENT TO AIDA LEGAL FEE POLICY

Agency staff is recommending approval of the attached legal fee schedule. This schedule mirrors those of the five other IDAs in Erie County. Copy attached.

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

RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY APPROVE THE ATTACHED LEGAL FEE SCHEDULE.

9:27 am – meeting adjourned.

RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) ADOPTING A COMBINED FEE SCHEDULE FOR THE AGENCY

WHEREAS, the Agency has previously adopted fee schedules for various Agency activities; and

WHEREAS, the Agency has determined that it would be in the best interest of the Agency to have all Agency Fees set forth on a single fee schedule.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The Agency does hereby adopt the attached fee schedule as the combined fee schedule of the Agency.
2. This resolution shall take effect immediately.

Adopted: March 17, 2006

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY FEE SCHEDULE

Application Fee: At the time of application for approval by the Agency of any transaction there shall be a non-refundable application fee of Five Hundred Dollars (\$500.00).

For an extension of an inducement, each extension of six months shall require payment of one quarter of the Agency Administrative Fee.

Agency Administrative Fees:

1. New Projects

The Agency Administrative Fee for Projects shall be the greater of: (a) one percent (1%) of the bond amount, if bonds are to be issued, (b) one percent (1%) of the mortgage amount, if a mortgage with note is utilized or (c) one percent (1%) of the project value. One quarter of the Agency Administrative Fee or .25% must be received by the Agency prior to the issuance of a Sales Tax Letter by the Agency except for installment sale transactions when the entire Agency Administrative Fee of 1% is due at time of the issuance of the Sale Tax Letter. The balance of the Agency Administrative Fee or .75% shall be due on the closing of the transaction.

2. Refinacings

The Agency Administrative Fee for refinacings shall be \$1000 plus one percent (1%) of any new money being financed.

By way of illustration, if the Agency authorized a Project with a Project Cost of \$1,200,000, the initial Agency Administrative Fee payable would have been a total of \$12,000 with .25% or \$3,000 due at the time of the sales tax letter and \$9,000 payable at the closing. For purpose of illustration, we will assume that the Project was financed through bonds or a note and mortgage in the principal amount of \$1,000,000. At the end of five years, the Lessee comes to the Agency for assistance in refinancing the Project with a new borrowing of \$1,300,000. The Lessee will have to advise the Agency of the outstanding principal balance remaining on the bond or note. For purpose of illustration, we will assume that the principal balance has been reduced by \$100,000 leaving a remaining principal balance of \$900,000. The Lessee would have to pay an Agency Administrative Fee of 1% on the amount over the original \$1,200,000 authorized and for which the Agency Administrative Fee was paid or 1% of \$100,000 (\$1,000) plus an administrative fee of 1% on the difference between the \$1,000,000 originally borrowed and the remaining principal balance or 1% of \$100,000 (\$1,000) because that amount would also constitute new money. This would be in addition to the \$1000 refinancing fee for a total Agency Administrative Fee of \$3,000.

3. Sublease Approvals

The Agency fee for approval of a new sublease for the entire Project shall be \$500.

4. Approval of Lease Assignment and Assumptions

The Agency Administrative Fee for approval of Lease Assignments and Assumptions shall be one percent (1%) of the Project Cost except as otherwise agreed to by the Agency

Additional Fees

Additional costs associated with meeting the Agency's current environmental policy are the responsibility of the Applicant.

If the Project Application is withdrawn or does not close, the Applicant is responsible for any costs, including Agency Counsel Fees, incurred by the Agency on behalf of the Project.

Agency Counsel Fees

<u>Bond/Mortgage/Lease Project Cost</u>	<u>Legal Fee</u>
to \$750,000	\$5,000*
\$750,001 to \$1,500,000	\$7,500
\$1,500,001 to \$3,000,000	\$10,000
\$3,000,001 to \$5,000,000	\$12,500
\$5,000,001 to \$10,000,000	\$15,000
above \$10,000,000	\$20,000 minimum with additional legal fees payable based upon the circumstances and work involved

* With respect to legal fees for Projects up to \$750,000, this Legal Fee would include only two drafts of documents. In addition, if due to delays caused by the Lessee or the Lender, the closing is delayed beyond a sixty day period from the date of the first draft, additional time may also be billed by Agency Counsel in his or her discretion. If further drafts are required or the closing is unreasonably delayed, additional time shall be billed at the hourly rate then in effect of Agency Counsel for the additional time only.

Legal Fees for refinancings shall be based upon the dollar amount refinanced in accordance with the above schedule. In the case of minor amendments of the prior loan documents, Agency Counsel Fees shall be charged on a time basis at the hourly rate then in effect for Agency Counsel. Agency Counsel shall determine whether the amendment to the prior loan documents is a minor amendment in his or her sole reasonable discretion.

<u>Normal Installment Sale Transactions</u>	<u>Legal Fee</u>
to \$750,000	\$3,000*
\$750,001 to \$1,500,000	\$5,000
\$1,500,001 to \$3,000,000	\$7,500
over \$3,000,000	\$10,000 minimum with additional legal fees payable based upon the circumstances and work involved

* With respect to legal fees for Projects up to \$750,000, this Legal Fee would include only two drafts of documents. In addition, if due to delays caused by the Lessee or the Lender, the closing is delayed beyond a sixty day period from the date of the first draft, additional time may also be billed by Agency Counsel in his or her discretion. If further drafts are required or the closing is unreasonably delayed, additional time shall be billed at the hourly rate then in effect of Agency Counsel for the additional time only.

Enhancement Area Installment Sale Transactions	Legal Fee
Up to \$750,000	\$250
Above \$750,000	\$500

Legal Fees for Assignment and Assumptions shall be on a time basis.

In addition to counsel fees, disbursement of up to \$1,000 will be added to each closing. If additional transcripts above the normal amount are required (5 for lease only and 7 for bond or mortgage transactions), they will be billed to reflect the additional copy cost and the additional binding costs and may exceed the \$1,000 total.