

MINUTES OF THE
COUNTY OF CLINTON
INDUSTRIAL DEVELOPMENT AGENCY
MONDAY, JUNE 8, 2020

Due to COVID-19, the meeting of the Clinton County Industrial Development Agency held on Monday, June 8, 2020 was through teleconference.

The meeting was called to order by Trent Trahan, Chairperson, at 12:00 p.m., via GoToMeeting.

MEMBERS PRESENT: Trent Trahan, Chairperson
Keith Defayette, Treasurer and Chief Financial Officer
Michael Zurlo, Secretary
Kim Murray, Assistant Secretary
Mark Leta, Member
John VanNatten, Member

EXCUSED: David Hoover, Vice Chairperson

STAFF PRESENT: Renee McFarlin, Executive Director
George Cregg, Jr., Esq., Agency Counsel
Christopher Canada, Esq., Agency Counsel

T. Trahan stated there was a *quorum* present.

T. Trahan waived the reading of the notice of the meeting published in the *Press Republican* on December 22, 2018.

Approval of the Draft Minutes

There are no draft minutes slated for approval; they will be considered at the July 13, 2020 meeting.

Reports

Treasurer's Report

There is no Treasurer's Report for approval; it will be considered at the July 13, 2020 meeting.

Old Business

Other Business as Required

New Business

Trustworthy, LLC – Request for Authorization to Secure Additional Financing

R. McFarlin reported Trustworthy, LLC, the Days Inn on Route 3, that is being renovated and expanded as well as transition to a Holiday Inn Express, has sought an additional loan for the Project. The Agency received a request to authorize them to secure the additional financing and execute documents to accomplish same. She noted this places the IDA in the fourth position in terms of creditors. R. McFarlin asked Agency counsel about the IDA's remedy and responsibility for executing the claw back of benefits

the IDA approved for the Project. G. Cregg stated the remedy for the claw back presumably, would be termination of the PILOT if they don't pay the claw back. He noted the three possible risks on a project are a claw back risk, an unpaid PILOT risk and judgement against the IDA (by an individual injured on the property.)

At this time, K. Murray joined the meeting. R. McFarlin updated her on the Trustworthy, Inc. discussion.

M. Zurlo stated he wanted to clarify that the IDA is not benefitting the Project any more than previously approved, and the IDA's interest in the resolution being considered is due to the fact that the Company is seeking additional funds. As such, because the IDA previously benefitted the Project, the IDA would need to approve the Company's current request.

C. Canada confirmed M. Zurlo's remark.

R. McFarlin stated the Company is not requesting mortgage tax abatement from the IDA in this request, and that fact is clearly stated in the resolution. She stated, if the Company is receiving additional mortgage tax abatement, it is not from the IDA.

C. Canada confirmed R. McFarlin's statement.

Resolution #06-20-01 Authorizing Execution by County of Clinton Industrial Development Agency of Certain Documents in Connection with Additional Financing Relating to the Trustworthy LLC Project

The following resolution was offered by M. Zurlo, seconded by K. Murray to wit:

Resolution No. 06-20-01

RESOLUTION AUTHORIZING THE EXECUTION BY COUNTY OF CLINTON INDUSTRIAL DEVELOPMENT AGENCY OF CERTAIN DOCUMENTS IN CONNECTION WITH ADDITIONAL FINANCING RELATING TO THE TRUSTWORTHY LLC PROJECT.

WHEREAS, County of Clinton Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 225 of the 1971 Laws of New York, as amended, constituting Section 895-f of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of distribution facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on November 18, 2019 (the “Closing”), the Agency granted certain “financial assistance” within the meaning of the Act (the “Financial Assistance”) in connection with a project (the “Project”) undertaken by the Agency for the benefit of Trustworthy LLC (the “Company”) consisting of the following: (A) (1) the acquisition of an interest in an approximately 3.8 acre parcel of land located at 8 Everleth Drive in the Town of Plattsburgh, Clinton County, New York (tax map number 206.4-4-8) (the “Land”), together with an approximately 48,500 square foot building located thereon (the “Existing Facility”), (2) the renovation of the Existing Facility and the construction of an approximately 2,320 square foot addition to the Existing Facility (the “Addition”) (the Addition and the Existing Facility hereinafter collectively referred to as the “Facility”) and (3) the acquisition and installation therein and thereon of related furniture, fixtures and equipment (collectively, the “Equipment”) (the Land, the Facility and the Equipment hereinafter collectively referred to as the “Project Facility”), all of the foregoing to constitute a hotel and other directly and indirectly related activities; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the “Financial Assistance”); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of November 1, 2019 (the “Lease Agreement”) by and between the Company and the Agency, pursuant to which the Company agreed (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (D) the Agency leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) December 31, 2030 or (2) the date on which the Lease Agreement is terminated pursuant to the optional termination provisions thereof. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, pursuant to the Closing, the Agency acquired an interest in the Land, pursuant to a license to Agency dated as of November 1, 2019 (the “License to Agency”) from the Company, to the Agency and a certain lease dated as of November 1, 2019 (the “Underlying Lease”) between the Agency and the Company; and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained (A) a loan in the principal sum of up to \$6,695,754 (the “Loan”) from Champlain National Bank (the “Lender”), which Loan was secured by (i) a CEMA dated as of the date of the closing on the Loan (the “Mortgage”) from the Agency and the Company to the Lender and of which the amount of new money advanced is \$1,989,52.79 secured by a mortgage from the Agency and the Company to the Lender and (ii) an assignment of leases and rents dated as of the date of the closing on the Loan (the “Assignment of Rents”) from the Agency and the Company to the Lender and (B) a loan in the principal sum of up to \$3,263,000 (the “Second Loan”) from the Lender, which Second Loan was secured by a mortgage dated as of the closing on the Loan (the “Second Mortgage”) from the Company to NYBDC.; and

WHEREAS, by correspondence dated May 29, 2020 (the “DANC Request”), which DANC Request is attached hereto as Exhibit A, the Company has requested that the Agency enter into a mortgage and other financing documents relating to the DANC Request (collectively, the “Additional Financing Documents”) to secure a loan in the maximum principal sum of \$250,000 from the Development Authority of the North Country (“DANC”) to the Company (the “Additional Loan”); and

WHEREAS, on June 1, 2020, the Agency was informed that the Second Loan will be assigned to the U.S Small Business Administration (“SBA”) and the Agency has been requested (the “SBA Request”), which SBA Request is attached hereto as Exhibit B, to enter into a subordination agreement in connection with the assignment (the “Subordination Agreement”) and collectively with the Additional Financing Documents, the “Financing Documents”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the DANC Request and the SBA Request, collectively, the "Request"; and

WHEREAS, in connection with the execution and delivery of the Financing Documents, the Agency will not be providing any benefits to the Company via exemption from the mortgage recording tax; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and it appears that the Request constitutes a Type II action under SEQRA;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF COUNTY OF CLINTON INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Based upon an examination of the Request for the Project, the Agency hereby makes the following determinations:

(A) That the actions described in the Request (collectively, the "Action") constitute a "Type II action" pursuant to 6 NYCRR 617.5(c)(29), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request for the Project.

(B) The Agency will not be granting any mortgage recording tax exemption relating to the Request.

(C) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of "financial assistance" (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Action.

Section 2. Subject to (A) approval by Agency Counsel to the form of the Financing Documents, (B) compliance with the terms and conditions contained in the Financing Documents, (C) evidence satisfactory to the Agency that all payments in lieu of taxes and other local fees and assessments relating to the Project Facility, if any, have been paid by the Company and (D) the payment by the Company of the administrative fee of the Agency, if any, and all other fees and expenses of the Agency in connection with the delivery of the Financing Documents, including the fees of Agency Counsel, the Agency hereby authorizes the execution by the Agency of the Financing Documents.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairperson (or Vice Chairperson) of the Agency is hereby authorized to execute and deliver the Financing Documents to the Company, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairperson (or Vice Chairperson) shall approve, the execution thereof by the Chairperson (or Vice Chairperson) to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Financing Documents, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Financing Documents binding upon the Agency.

Section 5. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Trent Trahan	VOTING	YES
David Hoover	VOTING	ABSENT
Michael E. Zurlo	VOTING	YES
Keith Defayette	VOTING	YES
Kim Murray	VOTING	YES
Mark Leta	VOTING	YES
John VanNatten	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

EXHIBIT A

DANC REQUEST

- SEE ATTACHED -

From: Kadan M. Sample <KSample@lemerygreisler.com>
Sent: Friday, May 29, 2020 4:28 PM
To: Zeigler, Nadene <NZeigler@hodgsonruss.com>
Cc: Charles B. Dumas <CDumas@lemerygreisler.com>; Bhavik Jariwala <bjariwala@oakfieldhospitality.com>
Subject: Trustworthy LLC - Plattsburgh

External Email Use Caution

Nadene,

Back in March we worked on the Champlain National Bank loan closing for Trustworthy LLC for its hotel renovation. The LLC has secured an additional \$250,000 from Development Authority of the North Country. Attached is the commitment letter and the draft mortgage and assignment of leases and rents we received from DANC's counsel which include the IDA standard provisions as were included in the Champlain National Bank documents. They anticipate the IDA signing both of these documents so please let me know if you have any comments. The DANC mortgage is exempt from mortgage recording tax pursuant to Section 2719 of the Public Authorities Law.

Thank you & have a nice weekend.

Kadan

Please know that Lemery Greisler LLC remains available to assist our clients during these extraordinary times. Our firm's technology enables us to safely and securely provide continued service.

Kadan M. Sample

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EXHIBIT B

SBA REQUEST

- SEE ATTACHED -



From: Mathew P. Barry <mbarry@HarrisBeach.com>
Sent: Monday, June 1, 2020 1:25 PM
To: Zeigler, Nadene <NZeigler@hodgsonruss.com>
Cc: Kadan M. Sample <KSample@lemerygreisler.com>; Charles B. Dumas <CDumas@lemerygreisler.com>; Edward P Finnerty <E.Finnerty@champlainbank.com>
Subject: Clinton Co. IDA - Lease subordination agreement - TRUSTWORTHY LLC

External Email - Use Caution

Hi Nadene,

I am handling the SBA loan to Trustworthy LLC which obtained a PILOT through the CCIDA a few months ago.

Attached please find a draft IDA lease subordination agreement which form was copied from my most recent IDA/SBA transaction with your office. Please let know if you have any questions/comments.

I have copied borrower's counsel, as well as, counsel for Champlain National Bank. Ed, please let us know if you have any questions/comments as well.

Regards.

Matt

Mathew P. Barry
Partner



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C. Canada reported the Executive Order from Governor Andrew Cuomo which authorized meetings to be held remotely has been extended through July 7, 2020.

There being no further business to report, M. Zurlo motioned to adjourn the meeting at 12:14 p.m., seconded by J. VanNatten.

A handwritten signature in blue ink, appearing to read 'Trent Trahan', written over a horizontal line.

Trent Trahan, Chairperson