

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

BOARD OF DIRECTORS

Public Hearing/Meeting Minutes August 12th, 2021

Public Hearing – Bison Bag Expansion: Eric Connor opened the public hearing at 8:01am to consider sales tax exemption for the @43,776 square foot expansion. Attorney Dan Seaman read the public notice that had run in local papers. Representing Bison Bag was COO Jim Streicher and their General Contractor William McMorris. While no members of the public attended and no correspondence was received, IDA Board members had a number of questions on the project and status of the business. The public hearing was closed at 8:14 am.

1.0 Roll Call

Present – Chairman Eric Connor, Secretary Jeanine Chatt, Treasurer Robert Runk, Board Member, Harry Anderson and Darlene DiCarlo. Legal Counsel – Dan Seaman, Tom Seaman and Administrative Director – Thomas Sy.

Absent/Excused: Todd Fragale, Daniel Antkowiak

2.0 CALL TO ORDER:

The regular August Board meeting was called to order at 8:15 am by Chairman Eric Connor.

3.0 SECRETARY'S REPORT:

On a motion by Mr. Runk, seconded by Mrs. DiCarlo the minutes of the July 8th Board Meeting were approved. Vote 5-yes, 0-no, unanimous.

4.0 TREASURER'S REPORT:

Treasurer Runk reviewed for the Board the July 31st financial statements. His review covered the Income Statement, Statement of Cash Transactions, and Balance Sheet. On the Income Statement, Mr. Runk noted the application fee received from Bison Bag, a general review of expenses and that the month to date deficit was \$6,667.07 and the YTD surplus was \$43,125.16. As concerns the Statement of Cash Transaction, Mr. Runk noted the revenue received from Bison Bag and the PILOT recapture from JNR Door, total receipts for the month and a general review of the previous month's disbursements that totaled \$15,774.92. Concerning the Balance Sheet, Mr. Runk highlighted account balances, total assets, the short- and long-term bond payable and the Due to Other Governments (Starpoint School and NY State) stemming from the JNR Door PILOT recapture. On a motion by Mrs. Chatt, seconded by Mr. Anderson the report was approved as presented. Vote 5-yes, 0-no, unanimous.

Mr. Runk reviewed the monthly bills for August 2021 and highlighted the IT, Copier, mileage and brush hogging expenses. Bills for the month totaled \$6649.33. On a motion by Mr. Runk, seconded by Mrs. Chatt, the Board of Directors approved payment of the bills.

5.0 ADMINISTRATIVE DIRECTOR'S REPORT:

Mr. Sy reviewed highlights of his submitted report for the month of July and early August.

Mr. Sy updated the Board on progress with the closing and Planning Board presentation for Concept Concrete. He noted a topographical survey was needed to finish the site plan and that has been completed. The closing has been postponed until the Planning Board approval.

Mr. Sy informed the Board that he has completed his first grant application using NY's Consolidated Funding Application (CFA). The grant was for Phase 2 of the Rail Trail and was submitted to the NYS Canal Corporation and Recreational Trails Program. If the Town is successful there is a 20% in-kind match.

Mr. Sy noted he is just about complete with the latest series of update meetings/phone calls with the supported businesses. Even more so than during the Pandemic, workforce has become the #1 challenge for these businesses. Serious deficits in targeted employment numbers exist at this point with little change in sight. To this end, Mr. Sy shared information on two Workforce Development funding opportunities with NY that he has shared with the businesses. One is a tax credit and the other a grant that would be filed through the CFA.

Mr. Sy reminded the Board that he will present a draft of the IDA's 2022 budget at the September Board meeting and that the Board will vote on adopting the budget at their October Board meeting to meet ABO requirements. Mr. Sy will annualize YTD July expenses as a start.

Lastly Mr. Sy alerted the Board to the work and engagement he has begun with the Lockport High School. It was refreshing to note that the Lockport School District has all 9th graders go through a half semester class called Careers and Financial Management. They have also developed two PATHWAYS programs that are a mix of classes and an internship the fall of senior year. The PATHWAYS are State Education Department approved and focus on Business Administration and Computer Technology. Mr. Sy noted how critical this career exploration is to help solve future workforce shortages and has encouraged IDA supported businesses to consider an intern.

6.0 ATTORNEY'S REPORT:

7.0 OLD BUSINESS:

8.0 EXECUTIVE SESSION:

A motion was made by Mrs. DiCarlo, seconded by Mr. Anderson to enter into an Executive Session for purposes of consultation with attorney at 8:29 am.

A motion was made by Mr. Anderson and seconded by Mrs. Chatt to exit Executive Session at 8:50 am.

8.0 NEW BUSINESS:

Mr. Seaman reviewed for the Board an Inducement Resolution proposing to induce the Bison Bag Expansion for Sales Tax purposes during construction of their warehouse and compressor storage project totaling 43,776 square feet. The total investment is \$2,300,000 and will add 8-10 jobs.

RESOLUTION OF THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY (THE AGENCY) AUTHORIZING 5404 CROWN DRIVE, INC. OR A RELATED COMPANY (THE LESSEE) TO CONSTRUCT A 43,776 SQUARE FOOT BUILDING AND FACILITY THEREON LOCATED AT 5404 CROWN DRIVE, LOCKPORT, NEW YORK, AND TO UTILIZE SAID PREMISES FOR WAREHOUSING, AND ACQUIRE AND INSTALL MACHINERY, COMPRESSOR AND EQUIPMENT REQUIRED IN CONNECTION THEREWITH, AND AUTHORIZING STORAGE ROOM IN CONJUNCTION WITH AN EXISTING MANUFACTURING FACILITY ON THE SITE MANUFACTURING FLEXIBLE PACKAGING.

WHEREAS, 5404 Crown Drive, Inc. (Lessee) has entered into negotiations with the Town of Lockport Industrial Development Agency (the Agency) for assistance to construct an additional building adjacent to its existing facility located at 5404 Crown Drive, Lockport, New York. Lessee will utilize said premises to expand capabilities and space for warehousing, and for the acquisition and installation of machinery and equipment in connection therewith (the "Project") and the lease of the project to the Lessee; and

WHEREAS, the assistance requested is sales tax exemption for materials and machinery related to said construction and use; and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the “Eligibility Questionnaire”) to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency financing to construct the Project for warehousing and related purposes with resultant increase in employment in the Town of Lockport; the Lessee presently employs eighty eight full-time employees and two part-time employees and will employ approximately eight additional full-time and two additional part-time employees after the project is fully completed; that but for the availability of financing and/or other assistance by the Agency, the Lessee and any Sublessee would not locate the project and expand its business within the Town of Lockport, there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lockport, and the project will provide substantial increased employment and substantial capital investment; if Agency financing or other assistance is disapproved, the Lessee and the Sublessee would likely not proceed with the project; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee and the Sublessee to proceed with the project in the Town of Lockport; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the construction of the Project, if by so doing it is able to induce the Lessee, to proceed with the Project in the Town of Lockport; and

WHEREAS, the Agency has determined that the project be limited to the parcel depicted and known as 5404 Crown Drive, Town of Lockport, New York, including additional lands acquired and contiguous therewith,

NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby determines that the construction and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee as follows: (a) it would not have assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) but for the availability of Agency assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; and (d) the Project will provide substantial employment and substantial capital investment. The Agency further determines, on the basis of the Lessee’s Eligibility Questionnaire that (e) the Project as represented is reasonably necessary to provide the purposes of the Act, and (f) the Project is an integral part of the Lessee’s plan to proceed with the Project in the Town of Lockport.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized, in a Lease Agreement between the Agency and the Lessee each in substantially the same form approved by the Agency for prior transactions or in form approved by the Chairman, Treasurer, Administrative Director,

Secretary and any member or officer of the Agency are hereby authorized to execute, acknowledge and deliver each such Instrument and the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to affix the seal of the Agency on each such instrument, as applicable, and attest the same.

All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and contained in the mortgage financing and UCC-1 Financing Statements, if any, and the Lease Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, mortgage financing and the UCC-1 Financing Statements, if any, and the Lease Agreement, as the case may be, shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation or agreement herein contained or contained in mortgage financing and the UCC-1 Financing Statements, if any, and the Lease Agreement or any other agreement or instrument executed and delivered by the Agency in furtherance of this resolution shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agency or employee of the Agency in his individual capacity and neither the members of the Agency or any officer executing the mortgage financing and the UCC-1 Financing Statements, if any, and the Lease Agreement shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

The Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all agreements, papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the execution and delivery of the mortgage financing and the UCC-1 Financing Statements, if any, and the Lease Agreement.

Section 3. The provisions of Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 4. The Agency will undertake, as soon as it is furnished with sufficient information as to the particular amount, interest rate, maturities, redemption and other terms to permit mortgage financing, to use its best efforts to proceed, subject to agreement among the Agency, the Lessee and mortgage financing, if any as to terms in all agreements to be entered in to with respect to the Project, mortgage financing to finance the Project, if mortgage financing is utilized, or in the alternative undertake as soon as particular terms and conditions of a Lease Agreement are determined enter into a lease only transaction.

Section 5. The Chairman, Administrative Director, Treasurer of the Agency and other appropriate officials or Board Members of the Agency and its agents and employees are hereby authorized and directed to

take whatever steps may be necessary to cooperate with the Lessee to assist in acquisition and construction of the Project.

Section 6. The Lessee is authorized to construct the addition to the building located at 5404 Crown Drive, as needed and acquisition and installation of machinery and equipment required in connection therewith and to advance such funds as may be necessary to accomplish such purposes, subject to reimbursement for all qualifying expenditures out of the proceeds of the mortgage financing. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, or Administrative Director may deem necessary in order to accomplish the above.

Section 7. Any such action heretofore taken by the Lessee in construction of the Project is hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 9. There will be no payment in lieu of taxes (PILOT) agreement in connection with this project.

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall continue to be effective (except with respect to matters contained in Section 7 hereof) if prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. This resolution is also subject to (a) the construction of space suitable for the purpose authorized herein (b) approval by the Agency of the Sublease including any information that the Agency deems necessary to verify compliance with the New York State Industrial Development Agency Act and (c) provision in any Sublease for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 12. The execution and delivery of a lease or an amendment to the existing lease between the Agency and the Lessee, being substantially in the form approved by the Chairman, Administrative Director or any member of the Board of Directors is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant adverse effect on the environment.

Section 14. The mortgage financing, if any, to be issued shall not be exempt from Federal Income Taxation. Therefore, this resolution is not subject to compliance with the provisions of Section 103 of the

Internal Revenue Code of 1954 as amended (the “Code”) or to an appropriate allocation under the State law pursuant to the Deficit Reduction Act of 1984.

Section 15. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee’s purposes or needs or the extent to which proceeds derived from mortgage financing, if any, will be sufficient to pay the cost of the construction, renovation and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for lessee’s purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused and the Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. This resolution authorizes only sales tax exemption for the Project, and shall not authorize mortgage tax exemption or a payment in lieu of taxes.

Section 18. This resolution shall take effect immediately.

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

A motion was made by Mr. Runk to adopt the above resolution. The motion was seconded by Mrs. DiCarlo. Roll Call vote:

Darlene DiCarlo X
Robert Runk X
Jeanine Chat X
Eric Connor X
Harry Anderson X

Vote 5-yes, 0-no, The Resolution was thereupon declared duly adopted.

10.0 NEXT MEETING:

The next meeting of the IDA Board will be **Thursday, September 16th** at this point which is a week later due to a number of personal conflicts a number of Board members had with the September 9th date. The Board Room will be arranged for proper social distancing and call-in will be available.

11.0 ADJOURNMENT:

On a motion by Mr. Anderson, seconded by Mrs. Chatt, the Board voted to adjourn at 9:00 am.
Vote 5-yes, 0-no, unanimous.

Respectfully submitted,
Jeanine Chatt
Board Secretary