Town of Montgomery Industrial Development Agency Meeting Minutes

Town Government Center

110 Bracken Road

Montgomery, NY 12549

June 8, 2021

1:00 PM

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**PRESENT: ABSENT:**

Jeff Crist - Chairman Edwin Williams - Member

Tom Jones - Second Vice Chairman Meghan Hurlburt - Secretary

Robert Santo – Member

Matt Stoddard – Treasurer

John Dickson – First Vice Chairman

Rick Golden – Attorney

Ashley Torres – Attorney with Burke, Miele, Golden & Naughton, LLP

Conor Eckert – Executive Director TOMIDA

Billy Ibberson – Livestream Services (Acquisitions Marketing)

NOTE: Conference Call Line – No Calls

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**AGENDA**

1. Call to Order and Declaration of Quorum
2. Approval of March 24, 2021 Minutes and Approval of April 14, 2021 Meeting Minutes
3. Public Comment on Items on the Agenda (Conference Call Line: 717-275-8940 Code: 993 2922#)
4. New Business – Discussion of new Application for IDA Financial Assistance – Presentation by Applicant
5. State Disaster Grant Program
6. Marketing and Outreach Update
7. Executive Director’s Report
8. Financial Report for May 2021
9. Other Business of the Board

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**Meeting**

1 - Chairman Jeff Crist began with the introduction of Board Members and other members in attendance.

2 - Meeting minutes from March 24, 2021 meeting were approved. John Dickson made motion and Matt Stoddard seconded for approval. All in favor, none opposed. Meeting Minutes from April 14, 2021 were approved. John Dickson made the motion and Bob Santos seconded that motion. All in favor, none opposed.

NOTE: May meeting was cancelled because there was nothing pressing on the Agenda.

3 - Public Comment of Items on the Agenda: NO PUBLIC COMMENT – NO REQUESTS TO SPEAK.

4 – New Business – New Application for Financial Assistance for Walden Construction Enterprise LLC. Executive Director, Conor Eckert opened up the discussion with a letter from New York State Senator James Skoufis (See letter attached). This project is a proposed Senior Housing Project located at 120 and 126 North Montgomery Street, Walden, New York 12586. This is approximately a $14.8 million-dollar project with 69 units proposing to create 4 full-time permanent jobs as well as 170 construction jobs. Discussion turned over to the Applicant, Michelle Kennedy, Esq., with the Law Firm: Whiteman, Osterman & Hanna, LLP. Chairman welcomes Michelle Kennedy. Michelle Kennedy is the acting Council for the Applicant, Walden Construction Enterprise LLC. She is joined by Moses Schwartz, Managing Member of Walden Construction Enterprise and Principal of Moka Builders and also present is Lawrence Marshall the Professional Engineer for the Project and President of the Firm, Mercurio, Norton, Tarolli and Marshall. Each Board Member should have received these materials and all materials were posted to the IDA’s website, a copy of the company’s application with exhibits A thru H including an Expert Report which is exhibit D, a Corresponding Cover Letter and Supplemental Memorandum dated June 3rd with the agencies Uniform Tax Exemption Policy and the National Association of Homebuilders Study regarding an economic impact of housing development attached as exhibits 1 and 2 to the memorandum. Additionally, we have submitted to the agency two sets of complete Engineering Plans unanimously approved by the Village of Walden and Planning Board. The application materials are submitted in support of the company’s request for IDA financial assistance in the form of sales and use tax exemption, mortgage recording tax exemption and a ten year pay in lieu of tax agreement. The proposed project involves the construction of 69 units for Senior Rental Housing in the Village of Walden to be located at 120 and 126 North Montgomery Street with amenities including a pedestrian connection to downtown, on-site walking paths, trails for gardens, a library, an exercise room, 24-hour security, elevator service, a care-takers dwelling, a management office, a game room, a recreation room and a community room or social hall. The proposed project facility addresses common concerns for seniors with isolation, security, on-site assistance, property maintenance, proximity to downtown and outdoor and indoor leisure space. The project will be situated on approximately 6.2 acres. Our community planning expert, Dr. Cynthia Falk included on page 4 of her report, attached as exhibit D to the application a rendering of the proposed facility. In terms of employment opportunities, 170 construction jobs are expected to be created over the anticipated 2-year construction period. The construction jobs will be offered in accordance with the Town of Montgomery Industrial Development Agency’s local labor policy if financial assistance is granted. Within the first year following completion of construction the project will create at least 7 ongoing positions, 4 of which will be employed positions and 3 independent contractor positions. The total project cost and investment in the community is estimated it to be approximately $4,788,000.00, $900,000.00 of which is represented by annual debt service. Attached is exhibit G to the application as an amortization schedule that gives you some approximation of the debt service over 30 years for the principal amount of approximately $12 million dollars. And you will see that the debt service is considerable. When you compare the amortization schedule and the return on investment, you will see that the first 7 to 8 years after taking into account the initial investment, in excess of the principal amount of the mortgage on the property, the $12 million dollars, the $2 million dollars that will be remaining approximately, after taking that investment into account you will see that this project is not likely to realize a return within the first 8 years. Even with the agency’s financial assistance, the return will be negative for at least the first 8 years. As this board well knows the cost of materials are up nearly 25-30%. This has been a significant factor for our client in approaching the board for financial assistance. It has a real impact on the project budget. In the construction budget as seen in the attached exhibits, lumber is noted as one of the most considerable costs for the project. The Town of Montgomery Uniform Tax Exemption Policy, section 8E, specifically recognizes Senior Housing and Workforce Housing Projects as eligible for a 10-year PILOT. In reliance upon the Town of Montgomery Uniform Tax Exemption Policy, our client has incurred considerable expense in presenting a thorough application to the board. What is the legal basis, if any, for the inclusion of Senior Housing and Workforce Housing as eligible projects for a 10-year PILOT in the Town of Montgomery Uniform Tax Exemption Policy? In order to answer this question, we turn to guidance from New York State both in terms of Regulatory Agency opinions and case precedent. The case precedent in this area and the guidance is extremely limited and given how limited the precedent is and the guidance from the Courts it can be explained very briefly and very crisply to the board. The New York State Office of the Comptroller in 1985, issued a formal opinion which stated that the determination as to whether an apartment complex project constitutes a commercial activity within the meaning of Article 18A of the General Municipal Law, the applicable law, must be made by Local Officials based upon all of the facts relevant to the proposed project. The Office of the State Comptroller in the same decision further states that certain criteria also must be met. These criteria are as follows: the project creates employment opportunities and the project prevents economic deterioration. Scores of rental housing projects have been granted financial assistance by IDA’s statewide over the last 50 years. Out of these, 2 Industrial Development decisions to grant assistance were challenged in Court. One in 1987, which was the same matter that was the subject of the 1985 Office of the State Comptroller opinion that said that the local boards decide based upon the facts whether an apartment complex project constitutes a commercial project within the meaning of Article 18A of the General Municipal Law and the second more recent was a 2016 case named Ryan vs. Town of Hempstead Industrial Development Agency. Those are the only cases, the only guidance that exist with respect to this area of the law under Article 18A of the General Municipal Law as to whether rental projects constitute commercial projects eligible for IDA financial assistance. Presumably, this is the same body of law, that the Town of Montgomery has relied upon in drafting its recently updated Uniform Tax Exemption Policy, updated as late as of December 2020, to specifically state in Section 8E, that Senior Housing Projects are eligible for 10-year PILOTS. The Ryan vs. Town of Hempstead decision, the lower court upheld the IDA ‘s award of financial assistance to a rental housing project based upon certain factors enumerated in the case. An appeal was filed in 2017 and later was withdrawn in February of 2020. This case also resolved in favor of the Town’s IDA, granting financial assistance to a rental housing project. We look to the expert report of Dr. Cynthia Falk and the Agencies eventual cost benefit analysis. Dr. Falk is a Professor with the State University of New York. She is a certified Women Business Enterprise. She is an expert in community planning and design, a Published Author and a Deputy Mayor. Her findings show that in the Village of Walden, roughly that, 25% of the Population is age 50 or above. Only 8% of the population is age 65 or above. Statistics suggest that the Senior Population is leaving the Village of Walden at a faster pace than surrounding communities. The availability of Senior Housing is scarce. There are less housing options available for Seniors. Dr. Falk’s findings are consistent with the Village of Walden’s Comprehensive Plan. It is our position that our project has met the baseline for a Commercial Project given the guidance of the New York State Comptroller and the two decisions we previously discussed but we also in recognition of Dr. Falk’s findings suggest that we meet with higher criteria for a qualified retail project. We have primarily one request before the board today and that is that you follow the instruction that was provided in the Office of the State Comptroller guidance, that you do your fact finding and then come to a decision. Built into the law is a process for that fact finding. It includes a Public Hearing, it includes the cost-benefit analysis. We ask you to take these steps that are a part of the procedure consistent with your own policy that specifically recognizes Senior Housing Projects as eligible for Financial Assistance and make a motion today to set a public hearing for your next meeting as you would with respect to any other project that is specifically recognized under your Uniform Tax Exemption Policy as eligible for Financial Assistance. Any deliberations and discussions should be had at the open meeting not as part of a closed-door session.

Presentation from Engineer: Lawrence

Provide the Board with a visual – this site plan has received all the necessary approvals. Site is primarily vacant located on the Westerly side of North Montgomery Street, Route 52, Village of Walden. The only structures on the land are a small single-family residence and a garage which would be converted into an office and a storage shed. Access to the site would be maintained and improved to meet current New York State Department of Transportation standards. It’s a proposed three-story building, each story will contain twenty-three dwelling units, sixty-eight are for Seniors, one for the Caretaker. Parking is quieted. Storm water will be primarily infiltrated to the soils up above. The Village of Walden Planning Board had taken great care in potential impacts of this on surrounding residences and existing developments. There is an extensive landscaping plan that will follow, along with street trees along with evergreens. Existing larger trees will be maintained as well. It’s a fairly unique site, it is the location of an old mine which has extensive amount of gravel, there isn’t a large amount of vegetation. There will be no spillover of light onto any neighboring properties. It will be a low-lit facility that’s safe to access and that’s pretty much the developing part of it in a nutshell.

Chairman Crist: Any questions for Lawrence or Michelle?

Tom Jones: Just a couple of questions. First question: Does Dr. Falk and the study that was done, do you have year to year data that suggested there is actually a trend taking place that there’s Senior exodus within Walden?

Michelle: I would have to check her report but I think the most recent data is from 2019 and it’s based on the Census Data so it should be going back at least five years.

Tom Jones: Discussion of suggested price points throughout the report. Looking at $1,700.00 per month for rent and comparing it to a resource like seniorliving.org which reports that the average Senior Rental in New York is $1,119.00 per month and that’s a one bedroom. Two bedrooms go for roughly $1,329.00 per month.

Michelle: Dr. Falk stated in her report that a comparable site is directly across from the proposed site project. The rent there is roughly $1,495.00. The proposed units are intended to be two bedrooms. The initially stated rent figure was up near $1,700.00 however, the client is not committed to this number specifically.

Tom Jones: $1,700.00 is what was mentioned in the application and I think it’s important to recognize that Affordable Housing for Seniors is what’s necessary for the area. The last point I want to make is the fact finding and assessment. It’s also in tying it back for the consideration of the best interest of the residents and the community understanding.

Michelle: I think all of the points raised are beneficial and in terms of the requests to the board are simple requests. This is our first submission, our first presentation to the board, we would like to set this for a Public Hearing. If there are additional pieces of information, we have no objection in providing additional documentation. This is the first step and we just are asking that you don’t close the door on our application.

John Dickson: Have there been any other studies done or is it just the one?

Michelle: I referenced in the memorandum and there’s attached an economic impact housing development study that is often cited by experts. It looks at the derivative impact economically of housing development and specifically uses the model sample of one hundred apartments being developed. Our intention was to present a thorough application that met what we saw as the criteria of the board’s. We are open to giving and providing more information if necessary we are just asking for more time to do so in advance to the Public Hearing.

Matt Stoddard: Is this project in search of any other grants for savings?

Michelle: No

Matt Stoddard: If you were to receive some of the tax incentives, would the Seniors get any costs of those?

Michelle: In terms of the rent? Yes, if you look at the return you expect to receive within the first five years, if there are tax savings, that does offset that negative return that is being projected currently. It does allow for a more affordable potential.

Jeff Crist: Any other questions from the board? Conor? Michelle I would like a copy of those cases if you could leave them with us please? No other questions for further discussion at this time.

**Attorney/Client Recess:** We will suspend the meeting for a few minutes and be back shortly. Motion made by John Dickson.

**Meeting reconvened:**

Chairman Jeff Crist: I would like to thank the Applicant for Walden Construction Enterprise LLC., Michelle and Lawrence for a very detailed presentation and interesting project. Discussion with Counsel, we are concerned that the law is not clear on the residential aspect as far as being eligible for the benefits. We plan to seek guidance from the ABO, The Authorities Budget Office, and put consideration for the project on hold for the moment until we receive this guidance and therefore, we would take no action today on the project and we will not set a Public Hearing at this time. We will keep you posted and thank you again for being here today.

Michelle: Is there any other limit by which if a decision is not forth coming from the ABO, what if they do not give a legal opinion as to whether or not this would be an eligible project at that point would you make a final determination?

Chairman Jeff Crist: I think that we would have to but I’m not in a position to guess what that would be at this time.

TOM IDA Attorney Rick Golden: I think it’s a fair point and if in fact a decision is not forthcoming in a reasonable period of time, then I think the board will go ahead and decide as to what it plans on doing. The ABO is this body’s state oversight board and it exercises very clear and detailed oversight of IDA actions throughout the State and this board has decided to go ahead and seek their advice and then weigh that advice. I don’t know that it’s going to be a legal opinion so much but the board wants to have the advice of the ABO and we will weigh that and decide. Just say the ABO says they will consider it and give an opinion next year, I don’t think the board is going to wait until next year before it discusses this project further. The inquiry will be put in writing from the board to the ABO and a copy will be provided to the client. Within the next two weeks the inquiry will be done and sent.

5 – Army Corp. of Engineer Declaration of Restrictive Covenants for Project Sailfish, the Board has a copy of that and Conor will give a brief description:

Conor: Essentially, it’s the project not being able to touch a certain area of land around 1.7 acres that’s restricted wetlands. Is that correct Michelle?

Michelle: Yes, there are restricted areas and we have been provided with Preliminary Exhibit B which the Army Corp. of Engineers it is subject to final approval. The Covenants are pretty straight forward:

Maintain trees and vegetation, preserve waters and wetlands, no structures or utilities, no dropping of trash, waste, garbage. There should be no construction of roads in unprotected areas, no application of pesticides, etc. Fairly simple.

Chairman Crist: Rick, Ashley, would you have a thought on this?

Rick: Sure, these types of restrictive covenants by the Army Corp. Of Engineers are pretty standard. We have dealt with them on many other projects. I think that it would be appropriate for this board to go ahead to approve this subject to final review by Counsel and we will do that no later than next week.

Chairman Jeff Crist: Would anyone like to make a motion of approval: John Dickson made the motion and Bob Santos seconded this motion. All in favor, none opposed.

6 – Marketing and Outreach Update – Conor Eckert: Thursday, June 10th at 10 AM there will be a Community Outreach Event in the Village of Montgomery at Java Blue. We are continuing to push out our digital comp plan.

7 – Executive Director’s Report – May 2021 – Conor Eckert: Summary of key actions, matters to take note of and key accomplishments. Discussions on local project leads, site search for world-wide known craft beverage company, showed multiple properties to developers, presentation with members of Orange County Legislature. Received and reviewed new project application from Walden Construction Enterprise, LLC. Conducted meetings with SBA and Woman’s Business Enterprise Institute. Participated in NYSEDC focus group with roughly six other IDA Director’s from across NYS. Developed and promoted video with other content planned, worked on potential bond financial project through TMCRC, and conducted an interview with Small Business Magazine – Economic Development spotlight on Montgomery to be finished and posted in July 2021. Please note the Industrial Moratorium will be extended by two months to allow the Town Board to update the zoning. Conor is attending the NYSEDC in late June and Conor is graduating from Leadership Orange on June 15, 2021.

8 – Financial Reports for April and May 2021 – Matt Stoddard – Monthly Statement for April 2021: Acquisitions Marketing, March Marketing Campaign $6,850.00. NYEDC IDA Academy Registration, $360.00. Conor Eckert Reimbursement, $199.45. Burke March Invoice, $7,620.00. Sue Hadden Clerical, $1,600.00. Leaving the Checking Account Balance of: $377,374.38. The Sailfish Escrow Account: Beginning Balance of $17,275.00. Loewke Brill Consulting Group, March fees for Sailfish, $1,185.00. Leaving the Checking Account Balance at $16,090.00. Orange Bank & Trust $377,374.38. Orange Bank & Trust Sailfish Escrow Account $16,090.00. Orange Bank & Trust Money Market $455,885.99, bringing the grand total to $849,350.37.

Monthly Statement for May 2021 – Checkbook beginning balance: $377,374.38. Town of Montgomery 2021 Expense, Conor Eckert: $19,264.91. Checks for the meeting: $19,264.91 leaving the Checking Account Balance at $358,109.47. Checkbook for Sailfish Escrow Account: $16,090.00. Check for Loewke Brill Consulting Group: $1,185.00 leaving the Checking Account Balance at $14,905.00. The Orange Bank and Trust $358,109.47. Orange Bank & Trust Sailfish Escrow Account: $14,905.00 and the Orange Bank & Trust Money Market: $455,905.35 leaving a Grand Total of: $828,919.82.

Chairman Jeff Crist: Any questions for Matt? I would entertain a motion to approve both financial reports for April and May. Motion made by Bob Santos and seconded by Tom Jones. No further discussion. All in favor, none opposed, motion carried.

Other Business: Update on New York State Senate Bills – Conor Eckert

These bills are concerning the IDA’s. One being Interstate Piracy which essentially is you can’t provide financial assistance to projects that are in New York and looking to re-locate to another part of New York. Conor referenced the pending NYS Legislative Reforms such as Anti-Piracy, no Elected Officials should be on IDA Boards, reforms relating to the Acquisition Property and Conor discussed the status of these Bills. Matt Stoddard asked if these laws discussed were actual laws or if they had to go through the Senate, Assembly or do they have to go on the Governor’s desk for signature? Conor replied that they have to go for the Governor’s signature. Chairman Crist asked when the Board would know if the Governor signed these bills? Conor is able to track these bills online to see if he signed them.

No further business of the Board – Next meeting is July 13, 2021 at 1 PM. Motion to adjourn made by John Dickson, seconded by Matt Stoddard. All in favor, none opposed. End of meeting.

Meeting minutes were typed and submitted by Meghan Hurlburt.