

**MINUTES OF REGULAR MEETING OF
THE RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY
Monday, February 4, 2013**

Meeting was called to order by Chairman Tom Cruso at 5:06 p.m.

Present: Tom Cruso, Chairman
Elias (Lou) Kalogeras, Vice Chairman
Dawn Thomas, Asst. Treasurer/Secretary
Carl Gabrielsen, Secretary
Paul Thompson, Treasurer

Others in Attendance: Tracy James, Executive Director
Richard Ehlers, Agency Counsel

Absent:

Lou Kalogeras motioned to approve the agenda. Carl Gabrielsen seconded. The Agenda was approved.

Counsel delivered the Oath of Office for Dawn Thomas and Paul Thompson for their reappointment of 4 year terms on the board.

MINUTES: The Board moved to dispense with the reading of and voted on the January 7, 2013 meeting minutes.

#04-13 RESOLUTION APPROVES MINUTES OF REGULAR MEETING OF January 7, 2013

Carl Gabrielsen offered the following resolution, which was seconded by Lou Kalogeras.

RESOLVED, the minutes of the regular meeting of January 7, 2013 as prepared and e-mailed be and are hereby approved, and

BE IT FURTHER RESOLVED, that a copy of said minutes be maintained in the files of the Agency and become a part of the record of the Agency.

Vote: 5 Yes

The Chairman moved to take Old Business out of order to accommodate the schedules of those in attendance for resolutions.

OLD BUSINESS: Charles Cuddy came before the board on behalf of his client Main Road Holdings to address the change in the pilot agreement and to request a payment provision to allow for the pilot payments to be made in two installments consistent with the tax bills from the Town of Riverhead.

#08-13 RESOLUTION AUTHORIZES AMENDMENT TO PILOT AGREEMENT WITH MAIN ROAD HOLDINGS, LLC

Paul Thompson offered the following resolution, which was seconded by Dawn Thomas.

Whereas, through proceedings held, the Agency approved the application for financial assistance by Main Road Holdings, LLC for the Project located at 96 Main Road, Riverhead, NY 11901 known as SCTM # 600-85-1-5 which approval authorized the Agency to enter into a certain Payment In Lieu of Tax Agreement dated as of February 28, 2012 ("PILOT") which was duly executed by the Agency and Main Road Holdings, LLC and filed with the Riverhead Board of Assessors on February 29, 2012 along with Real Property Tax Law form 412-a, and

Whereas, at the time of Agency filing of the RPTL 412-a, the assessment was a partial assessment as the Facility was under construction based on a full assessment of \$841,200, and

Whereas the full assessment after completion of construction has been determined to be \$627,300 which includes a land assessment of \$212,000 for an assessed value of the improvements of \$415,300 which is different from previous assessment of \$629,200 for the improvements, and

Whereas, the Agency has determined to use its authority to correct a mistake of a material fact and conform and amend the PILOT agreement to utilize the actual assessed value of the improvements as determined by the assessors on an annual basis to calculate the PILOT payment owed to the respective taxing jurisdictions.

Whereas, Charles Cuddy, attorney for the Project has requested that the payment of the PILOT be made on the same date as real estate taxes in Suffolk County which would make the first half payable by January 10th and the second half by June 1st.

Now, Therefore, Be It Resolved, that Payment In Lieu of Tax Agreement dated as of February 28, 2012 by and between the Riverhead Industrial Development Agency and Main Road Holdings, LLC be and hereby is amended as follows: Section 2.02 (a) is amended to state that the amount of the stipulated and agreed assessed value for the improvements shall be the amount on the tax bill issued for tax year of the calculation for land at the assessed value of \$212,000 and for the improvements the "total assessment" stated on the bill minus \$212,000.

Exhibit C is amended to remove the assessed value of \$629,200 and insert the language of Section 2.02 as amended herein, and

Be It Further Resolved, that the annual PILOT payment shall be payable in two installments at the option of Main Road Holdings, LLC upon the payment of an annual fee of \$250 by separate check with the first installment to be paid no later than January 10th and the second installment to be paid no later than June 1st. Delinquent PILOT payments must be paid in full with all applicable penalty and fees, and

Be it Further Resolved, that PILOT statement attached to this Resolution as Exhibit A for the current tax year of 2012-2013 calculated in the manner provided by this resolution shall be paid by Main Road Holdings, LLC no later than February 19, 2013, at the election of Main Road Holdings, LLC the 2012-2013 PILOT may be made in two equal installments with the first installment and \$250 fee to be paid no later than February 19, 2013 and the second installment no later than June 1, 2013. The PILOT for 2013-2014 and thereafter may be paid in two installments by payment of an annual fee of \$250 with the first half no later than January 10th and the second half no later than June 1st, and

Be It Further Resolved that this resolution shall not take effect until it is countersigned as provided by Main Road Holdings, LLC as accepted and agreed. Thereafter a copy of this resolution shall be provided to the Riverhead Board of Assessors and the affected taxing jurisdictions.

Vote: 5 Yes

The Chairman moved to take New Business out of order and address resolution #07-13 to accommodate the applicant's schedule.

Ike Israel requested approval of his final tenant for 309 East Main Street. Ike will be leasing the 1st store front to Papa John's Pizzeria. Although a franchise, it is independently owned by two local gentlemen Sean LaValle and under the corporation name of A & S Restaurant Corp. The applicant could not be in attendance because they are in training out of state, but have completed the application. Their individual capital investment is projected to be and they project approximately 30 new employees. They currently do not have any other stores, as this is their first venture. They have a ten year lease with Mirah Max. Additionally, Mr. Israel requested an extension of his sales tax exemption. It was originally anticipated that the build out would be complete within a year, but it is now necessary to extend the exemption for the additional 12 months. Because the sales tax exemptions are typically provided for two years for the projects to complete construction, the Executive Director suggested that the board consider waiving the extension application fee.

RESOLUTION #09-13 APPROVES TENANT FOR MIRAH MAX PROJECT

Dawn Thomas offered the following resolution, which was seconded by Paul Thompson.

WHEREAS, Resolution #15-12, dated February 6, 2012 appointed Mirah Max, LLC Agent of the Town of Riverhead Industrial Development Agency and approved documents in connection with the provision of financial assistance by the Town of Riverhead Industrial Development Agency to Mirah Max, LLC, and

WHEREAS, It was determined that the Agency shall provide Mirah Max and the Related Parties with financial assistance with respect to the Project: (i) the provision of an exemption from Sales and Compensating Use Taxes on certain property, including tangible personal property by the appointment of Mirah Max as agent of the Agency with respect to the renovation and reconstruction of the building, purchase and installation of equipment in the building and the making of payments in respect of such purchases in the name of the Agency in accordance with the terms of this resolution, and (ii) an abatement of real property taxes by granting an abatement of real property taxes attributable to any increase in assessed value of the real property comprising the Project over the present assessed value of such real property (\$70,400.00) subject to the following: This agreement shall be for five years subject to a five year renewal in the event that more than 50% of floor area of the property is rented to Agency approved tenants and none of the premises are rented to unapproved tenants, and

WHEREAS, All tenants shall be subject to Agency approval upon 60 days written notice by Mirah Max to the Agency. Said written notice by Mirah Max to the Agency shall be made 60 days prior to occupancy by proposed tenant which notice shall include a copy of the proposed lease, complete Agency application completed by the proposed tenant and a written narrative describing the proposed use.

WHEREAS, the proposed tenant, A & S Restaurant Corp. (Papa John's) made an application and necessary documents have been provided to the Agency for approval, and

WHEREAS, it is now desired to approve A & S Restaurant Corp. (Papa John's) as a tenant and as a related party to the approved Agent, Mirah Max, LLC.

RESOLVED by the Members of the Town of Riverhead Industrial Development Agency, Suffolk County, New York, do hereby approve A & S Restaurant Corp. (Papa John's) as an eligible recipient to the financial assistance made available as a tenant to the directly appointed Agent, Mirah Max, LLC,

BE IT FURTHER RESOLVED: That this Resolution shall not take effect until Mirah Max and A & S Restaurant Corp. (Papa John's) enter into a written agreement with the Agency acknowledging their obligation to provide information pursuant to section 6.5 of the Lease as entered into between the Agency and Mirah Max LLC dated February 4, 2013

Vote: 5 Yes

#10-13 RESOLUTION APPROVING EXTENSION AND ISSUANCE OF SALES TAX EXEMPTION CERTIFICATE FOR MIRAH MAX, LLC.

Lou Kalogeras offered the following resolution, which was seconded by Carl Gabrielsen.

WHEREAS, Resolution #15-12 of the Riverhead Industrial Development Agency provided a provision of an exemption from Sales and Compensating Use Taxes, on certain property, including tangible personal property to Mirah Max, LLC, and

WHEREAS, the date of the project operator/agent status appointment for sales tax exemption was February 6, 2012 with a status end date of February 13, 2013 and

WHEREAS, written notification has been provided to the Agency that a request has been made for a one year extension of eligibility for the sales tax exemption to complete construction for previously approved facilities, and

WHEREAS, it is typical for the sales tax exemption to be granted for a period 2 years to complete construction, Mirah Max, LLC was only granted 1 year for sales tax exemption, and

WHEREAS, it is the desire of the board to waive the extension of sales tax fee, and

WHEREAS, it is now desired to approve the extension and issuance of the certificate for Sales and Compensating Use Tax with respect to the application for financial assistance and the Project and the proposed financial assistance provided to the Applicant and the Related Party with respect to the Project,

RESOLVED by the Members of the Town of Riverhead Industrial Development Agency, Suffolk County, New York, the authorization to extend for one (1) year and issue a certificate for Sales and Compensating Use Tax for Mirah Max, LLC and its Related Party.

Vote: 5 Yes

Upon the entrance of the Woolworth applicant, the Chairman moved the agenda back into Old Business to address the final resolution approving financial assistance for the Woolworth Revitalization Project. Reza Brahimi, Counsel for the applicant and Michael Butler, the applicant, came before the board to discuss benchmarks necessary for the pilot agreement.

The topic of discussion was the real property tax abatement and the imposed benchmarks necessary for the applicant to meet in order to benefit from the abatement. As the applicant reaches the goal of tenancy, he will access abatements as prepared in exhibit A of the resolution based on a percentage scale and level of completion of construction. The applicant and board agreed to the benchmarks, but the applicant requested a 30 day approval process for the tenants versus 60 days. The board agreed.

**#06-13 A RESOLUTION APPOINTING WOOLWORTH
REVITALIZATION, LLC AGENT OF THE TOWN OF RIVERHEAD
INDUSTRIAL DEVELOPMENT AGENCY AND APPROVING
DOCUMENTS IN CONNECTION WITH THE PROVISION OF
FINANCIAL ASSISTANCE BY THE TOWN OF RIVERHEAD
INDUSTRIAL AGENCY TO WOOLWORTH REVITALIZATION, LLC**

The following resolution was offered by Member Paul Thompson, who moved its adoption, seconded by Member Carl Gabrielsen, to-wit:

WHEREAS, the Town of Riverhead Industrial Development Agency was created by Chapter 624 of the Laws of 1980 and is a public benefit corporation and an industrial development agency of the State of New York (the "Agency") having those powers set forth in, and subject to the requirements of, Article 18-A of the General Municipal Law; and

WHEREAS, the Agency has received an application for financial assistance (the "Application") from Woolworth Revitalization, LLC, a New York business corporation qualified to do business in the State of New York (hereinafter referred to as "Woolworth"), on behalf of Woolworth and other related entities (collectively, the "Related Parties"), with respect to the renovation and reuse of a distressed building within a designated urban renewal area on a .636 acre parcel located at 126-138 East Main Street, Riverhead, New York (S.C.T.M. 0600-129.00-1-8.002) (the "Land") and an existing vacant retail building historically known and operated as the "Woolworth Building" (the "Building") for a re-purposed mixed commercial residential use as retail, commercial, restaurant and office space on the first floor with living accommodations on the second floor requiring the abatement of asbestos, new utility services, new roof, façade improvements all in compliance with existing zoning and master plan recommendations and incidental expenses in connection therewith and to furnish and equip the same (collectively, the "Equipment") (the Land, the Building and the Equipment collectively, the "Project"); and

WHEREAS, the Project will be located in an area which was designated an empire zone and urban renewal area pursuant to Section 854 of the General Municipal Law, Subsection 18(c), being part of Article 18-A of the General Municipal Law; and

WHEREAS, the Town, in accordance with the provisions of the State Environmental Quality Review Act ("SEQRA"), has issued a "negative declaration" with respect to the Project and determined that the Project, as proposed, will not result in any significant environmental impacts; and

WHEREAS, by resolution duly adopted by the Members of the Agency on January 7, 2013 (the "Resolution"), the Agency ratified the calling of a public hearing with respect to the application for financial assistance by the Agency to Woolworth and the Related Parties for the

Project (the "Public Hearing"), the Public Hearing being noticed as required by law and having been held on January 7, 2013 at 5:00 PM, Prevailing Time, at the Town Hall, 200 Howell Avenue, in Riverhead New York; and

WHEREAS, the Agency provided notice of the Public Hearing to the chief executive officer of each affected tax jurisdiction within which the Project is located; and

WHEREAS, at the Public Hearing all interested parties were provided with reasonable opportunity, both orally and in writing, to present their views with respect to the Project and the providing of financial assistance therefor, as set forth in the notice of the Public Hearing; and

WHEREAS, there have been presented to this meeting documents, consisting of a Ground Lease (the "Ground Lease"), a Lease Agreement (the "Lease Agreement"), a Guaranty (the "Guaranty"), and a Payment in Lieu of Tax Agreement (the "PILOT Agreement") in connection with such financial assistance.

NOW, THEREFORE, BE IT

RESOLVED, by the Members of the Town of Riverhead Industrial Development Agency, Suffolk County, New York, as follows:

Section 1. It is hereby determined that the Agency shall provide Woolworth and the Related Parties with the following financial assistance with respect to the Project: (i) the provision of an exemption from Sales and Compensating Use Taxes on certain property, including tangible personal property by the appointment of Woolworth as agent of the Agency with respect to the renovation and reconstruction of the building, purchase and installation of equipment in the building and the making of payments in respect of such purchases in the name of the Agency in accordance with the terms of this resolution, and (ii) an abatement of real

property taxes as set forth in the attached Exhibit A. All tenants shall be subject to Agency approval upon 30 days written notice by Woolworth to the Agency. Said written notice by Woolworth to the Agency shall be made 30 days prior to occupancy by proposed tenant which notice shall include a copy of the proposed lease, complete Agency application completed by the proposed tenant and a written narrative describing the proposed use. The Agency may require an appearance at an Agency meeting by Woolworth and the proposed tenant. The Agency shall make its determination no later than 30 days from receipt of a complete application. In the event the Agency does not act within such 30 day period, the tenant shall be deemed approved. Woolworth hereby agrees that it will lease the Project for uses which promote the development of downtown Riverhead in conformance with the goals of urban renewal and revitalization. Therefore, no use shall be permitted for tattoo parlor, massage parlor, check cashing center, calling center, taxi stand, tobacconist or other uses associated with urban blight. All approved tenants shall be eligible for sales tax inducement as an indirect agent of the Agency. An Agency fee will be charged for completion of the sales tax certificate.

Section 2. The Chairperson, Vice Chairperson or Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Ground Lease, Lease Agreement and PILOT Agreement and accept the Guaranty, each in substantially the form presented to this meeting with such changes in terms and form as the Chairperson, Vice Chairperson or Executive Director shall approve. The execution of the Ground Lease, Lease Agreement, PILOT Agreement and necessary recording documents and acceptance of the Guaranty by the Chairperson, Vice Chairperson or Executive Director shall constitute evidence of such approval.

Section 3. A copy of this resolution, together with the documents attached hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection.

Section 4. This resolution shall take effect immediately.

Attachment # 1

Pilot Program Targets for Woolworth Property Revitalization

Tax Reduction Levels:

- I. 25% reduction in the building value as Pilot Payment when the following conditions are met:**
 - A. Certificate for completion of Asbestos Removal is presented
 - B. Asbestos Removal and Demolition completed for the entire building (Certificate provided)
 - C. Contracts are signed for demolition as per Preliminary Scope of Work (Attachment 2A) and Construction Plans (Attachment 2C)
- II. 50% reduction in the building value as Pilot Payment when the following conditions are met:**
 - A. Permits and Approvals are obtained and contracts are signed for the following:
 - 1) Renovation of either (i) Model 2000 sq. ft. Neighborhood Retail space (as described in Attachment 4 to the Application) or (ii) in the event the aforesaid space becomes a part of a different layout of the ground floor of the property, renovation of 2,000 sq. ft. or more of the space on the East side of the ground floor of the property;
 - 2) Renovation of the Façade on East Main Street, with permits and site plan approval if necessary;
- III. 75% reduction in building value as Pilot Payment when the following conditions are met:**
 - A. Substantial completion of renovations to all retail spaces on the ground floor of property so that it is ready for marketing to potential tenants;
 - B. Substantial completion of renovations means the spaces are clean and painted with electrical service, lighting, flooring and ready for tenant specific improvements.
- IV. 100% reduction in building value as Pilot payment when the following conditions are met:**
 - A. All Site Plan and Building Department approvals are obtained for 2nd floor Housing Development & construction commenced

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- B. Financing approved for the development of the housing component of the project;
and
 - C. Written leases have been IDA approved and executed for at least 50% of the ground floor of the property.

Vote: 5 Yes

Chairman Cruso returned to the order of agenda.

PRESENTATIONS: None

CORRESPONDENCE: ESD sent notification of the 2013 Bond Allocation of \$532,315. NYS Department of Ag & Markets sent official notice that the CFA application on behalf of Corwin Duck Farm did not receive an award.

TREASURER'S REPORT: The Treasurer reported that the Agency

Cash Balance as of January 31, 2013	\$77,833.80
Revenue for January (Closing fees Hampton Jitney and Compliance fees)	\$88,665.76
Profit and Loss (January)	\$67,297.04
Total Year	\$67,297.04
Accounts Receivable (BID and PILOTS)	\$208,890.51
Total Bills Paid for December	\$24,661.73

**# 05-13 RESOLUTION ACCEPTS REPORT OF EXPENSES AND AUTHORIZES
PAYMENT OF BILLS AS OF JANUARY 31, 2013**

WHEREAS, Denise Cooper, CPA and Tracy Stark-James, Executive Director, submitted a monthly financial report, including a report of expenses, to the Riverhead Industrial Development Agency for the period of January 1 to January 31, 2013 **as attached,**

NOW, THEREFORE, BE IT RESOLVED, that said monthly financial report dated January 31, 2013 covering the month of December, be and are hereby accepted and expenses as listed are authorized for payment.

Lou Kalogeras made a motion to accept Treasurer's Report, which was seconded by Dawn Thomas. **Motion approved.**

Vote: 5 Yes

COMMITTEE REPORTS: No reports. ED to set committee meeting dates.

OLD BUSINESS:

#07-13 RESOLUTION RATIFYING ATTENDANCE TO NYSEDC CONFERENCE

Lou Kalogeras offered the following resolution, Dawn Thomas seconded.

WHEREAS, the New York State Economic Development Council hosted its annual IDA Section Conference, and

WHEREAS, the Board of Directors found it necessary and appropriate for a representative to attend this informational conference; and

WHEREAS, a two day conference was scheduled in Albany for January 23rd and 24th, thereby requiring an overnight stay at the Marriott Hotel on January 23, at \$129 per night, plus the cost of transportation, food and registration to be reimbursed upon submission of receipts not to exceed \$1000.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors ratifies the approval of expenditures for lodging at the Marriot Hotel and reimbursement of transportation for the Chairman of the Board of Directors to attend the NYSEDC IDA Section Conference in Albany, NY from January 23rd – 24th, 2013.

Vote: 4 Yes

1 Abstained (Tom Cruso)

NEW BUSINESS: Chairman Cruso briefed the board on the NYSEDC conference and the break-out sessions that he attended on behalf of the Agency. One topic of interest was the importance of relaying the ROI of IDA's to the public. The board requested a summary sheet on some of the success stories of the IDA identifying the ROI to the community. He also discussed the legislative issue within Governor Cuomo's Executive Budget regarding the impact of on the IDA's and the Gov's recommendation to make the sales tax benefit a refund, have ESD approve sales tax exemptions, that appointments would only be allowed for those industries that qualify for the Excelsior Program and recapture exemptions that have already been approved. ED to attend LIA coalition meeting tomorrow regarding action to oppose this bill. ED to contact Senator LaValle and companies to write letters in opposition.

EXECUTIVE DIRECTOR'S REPORT:

- ED provided updates on current projects such as Concordia, Hampton Jitney, etc. Hampton Jitney closed. Town Board discussing the possibility of sending the Concordia project back to the Planning Commission.
- Alro deal is off due to increase in selling price and Peconic Land Trust tax.
- ED reported that she will be attending the LIA Coalition meeting on 2-5 and a lenders forum on 2-15.
- ED reported update on Empire Zone and Business Annual Reporting.
- ED reported that there are still pilot payments outstanding for Cal 81(aka Island International) and Country Limo. In addition, Country Limousine is in arrears on taxes for the second half of last year. Late Payment fees have been calculated and invoices will go out to both companies. It was further discussed that letters be sent advising the companies that a resolution will be presented to the board to approve Notices of Default during the next meeting if payments are not remedied by Feb 28th. Counsel will draft the letters to go with the invoices.

#11-13 RESOLUTION AUTHORIZING NOTICE OF DEFAULT TO COMPANIES WITH LATE PILOTS

Dawn Thomas offered the following resolution, Lou Kalogeras seconded.

WHEREAS, it is the obligation of the Agency to collect the payment in lieu of taxes on behalf of the affected taxing jurisdictions and impose late penalty fees and interest if the payment is delinquent beyond the first month, and

WHEREAS, it is the policy of the Agency to impose its own penalties and fees on payments delinquent beyond 5 days of the stated due date, and

WHEREAS, there are companies in default of their obligations under their Payment In Lieu of Tax Agreement for 2012/13 pilot payments, and

WHEREAS, it is the desire of the board to send a notice of delinquency to those companies in default notifying them that they must remedy the default by the March 4th board meeting; and

WHEREAS, the board will exercise its right under the Payment in Lieu of Tax Agreement, the Sale Agreement and Guaranty including the revocation of the Real Property Tax Abatement.

NOW THEREFORE BE IT RESOLVED, the board authorizes the notification of delinquency to those companies in default of their pilot payment by certified mail.

Vote: 5 Yes

- Office has heat
- ED described the Governors proposed executive budget and its impact to IDA's in more detail and the lobbying efforts of the NYSEDC toward its opposition. NYSEDC has

requested a voluntary dues assessment of \$1000. The board approved a \$500 contribution if that is an accepted level.


- ED relayed that the business cards were in, but inadvertently sent to a recycling facility. Efforts of recovery were futile, but ED was hoping they would come back in the mail. Board directed ED to order new cards.
- ED informed the board that she was interviewing an intern. Remuneration was not discussed, but in the event it is necessary the board approved minimum wage for 120 hours of work (approximately \$1160) upon as long as it did not become a NYS retirement issue. ED to research if employee could be considered casual or seasonal labor.

Date for the next meeting is the annual meeting March 4th, 2013

Lou Kalogeras motioned to adjourn the meeting, Dawn Thomas seconded.
There being no further business, the meeting was adjourned at 6:39pm

02-04-13

Date



Secretary