

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Minutes of the 471<sup>st</sup> Meeting**  
**August 28, 2015 – 8:30 am**  
**Agency Offices, 4287 Main Street**

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

PRESENT:	Edward F. Stachura Aaron Stanley E. Marshall Wood, Jr. Steven Sanders Michele Marconi James Allen, Executive Director Nathan Neill, Esq.
EXCUSED:	Fredrick A. Vilonen Carlton Brock
GUESTS:	AIDA Staff Dave Tytka, Uniland Development Matt Glynn, Buffalo News Matt Roland, Iskalo Development Terrance Gilbride, Esq., Hodgson Russ Margaret Kleinmann, Amberleigh Andrew Schoeppich, ECIDA

Vice Chairman Stachura called the meeting to order and reminded everyone that the meeting was being tape recorded.

**MINUTES**

Board Member Michele Marconi noted that there were two errors in the draft July minutes that had been previously sent for review. The first being that Vice Chairman Edward Stachura called the meeting to order rather than Chairman Fredrick Vilonen.

The second item was that Mrs. Marconi did not feel that the draft minutes accurately reflected her questions about the eligibility determination and employment figures for the 10 Curtwright Drive project. The minutes of the July 2015 meeting were approved with Mrs. Marconi's suggested amendments.

**BILLS & COMMUNICATIONS**

There were no Bills & Communications presented at this meeting.

**TREASURER'S REPORT**

The Treasurer's Report for July 2015 was approved as presented.

## **PUBLIC COMMENT**

There was no public comment at this meeting.

## **EXECUTIVE DIRECTOR'S REPORT**

Executive Director Allen reported that Agency staff has been working with the Town of Amherst Planning Departments on various initiatives, the first being an update of the Comprehensive Master Plan, specifically relating to census data. The Planning Dept. is expected to contract with CGR (Center for Government Research) to assist with the update. Mr. Allen noted that he would soon be becoming before the AIDA board for approval to contribute funds for the initiative.

The second initiative of which Mr. Allen spoke was that the AIDA and the TOA Planning Department are developing a course of action for the repurposing of the older industrial and office parks within the Town of Amherst. Mr. Allen noted that more information would be forthcoming as progress developed.

## **COMMITTEE REPORTS**

There were no Committee Reports at this meeting.

## **UNFINISHED BUSINESS**

There was no Unfinished Business at this meeting.

## **NEW BUSINESS**

**Senior Housing Market Rate Housing Policy** – Board Member Steven Sanders presented an overview of the most version of the Market Rate Senior Housing Policy as drafted by the Senior Housing Policy Evaluation Task Force (attached to these minutes).

There was a lengthy discussion regarding the proposed policy. Michele Marconi expressed concerns about IDAs ability to participate in senior housing projects citing the current Countywide Uniform Tax Exemption Policy (UTEP).

Steven Sanders stated that this proposed policy answers any concerns about eligibility for market rate senior housing in the Town of Amherst.

Executive Director Allen disagreed with Mrs. Marconi noting that that the current UTEP does not have clear criteria and that this policy does.

Upon a motion by Steven Sanders, seconded by Marshall Wood, a vote of no by Michele Marconi, it was

**RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY ADOPT THE SENIOR MARKET RATE HOUSING POLICY AS DEVELOPED BY THE SENIOR HOUSING POLICY EVALUATION TASK FORCE APPOINTED BY THE AMHERST TOWN BOARD.**

## **County-Wide IDA Eligibility Policy – Market Rate Senior Housing**

### **Policy Options Regarding For-Profit Market Rate Senior Housing**

**Purpose:** To establish and clarify the County-wide IDA policy regarding the provision of incentives for market rate for-profit senior housing projects.

**Current Policy:** Current Policy regarding market rate for-profit senior housing is to consider these projects under the general commercial project interpretation that defines residential rentals as a commercial activity. By way of background, New York General Municipal Law (GML) Section 854 defines "project" to include "commercial" facilities. The term "commercial" is not defined, but has been interpreted to be limited to for-profit projects. In 1985, the Office of the New York State Comptroller ("OSC") was asked whether the construction of an apartment complex where apartment units would be rented and not sold as a condominium or co-op, constituted a "commercial" project within the meaning of the GML and thereby a proper project for IDA assistance (OSC Opinion 85-51). This opinion provides that, in order to qualify as a commercial activity, and therefore a permissible project, a project should be one that promotes employment opportunities and prevents economic deterioration in the area served by the IDA. The opinion further provides that the determination of whether the construction of an apartment complex qualifies as "commercial" in the context of the GML must be made by local officials (IDA board members) based upon all the relevant facts.

**State Law issues / requirements:** NYS state law formerly had a provision regarding Senior Housing that was specific to not-for-profit senior housing facilities and was contained in the Civic Facilities section of the state law, which has since expired. It permitted IDA support for senior not-for-profit housing projects but provided very little guidance as to the nature of the facilities, wealth of residents, or rental costs but only required that the residents be 60 years of age or older, and allowed for the tax exempt bond financing of projects. This legislation referenced negative fiscal effects of losing seniors to other states as a result of a lack of senior specific housing.

**Background:** It has long been accepted as good public policy, for social, community and economic reasons that senior citizens remain in their home communities rather than relocate in their retirement years to other locales. As a result, state and local policy in different ways over the years has attempted to incentivize retention of senior citizens.

For this reason the IDAs in Erie County have in the past considered and in some instances approved inducements for senior market rate rental housing as a commercial project under two distinct circumstances- Adaptive Reuse projects and Senior Housing Projects as defined under the old Civic Facility definition. Due to the sunset of Civic Facilities provisions, the policy and practice is in need of reconsideration.

As a result, in late 2011 the ECIDA and Amherst IDA commissioned the UB Regional Institute to study the market factors in Erie County relating to senior housing, in order to inform the agency's policy consideration. The study was completed in 2012<sup>1</sup>.

#### Study Findings:

- Market-rate rentals represent a small share of housing for seniors, about 1/3 of all senior apartments and about 3 percent of all senior households;
- 2/3 of market-rate senior units are located in Erie County's inner-ring suburbs;
- Subsidized senior housing units have significant waiting lists, while there are handful of market rate complexes reporting sizable waiting lists;
- Overall demand for senior housing is not anticipated to increase above current levels until after 2030;
- Only a small amount of seniors migrate out of Erie County annually, about 1 %, and an even smaller fraction indicate housing availability as a reason;
- Overall economic impact of retaining more seniors through the provision of more housing will likely be slight until after 2030, after which demand for this housing is anticipated to grow.

**Policy Discussion:** A major conclusion of the study was that the availability of market rate rental senior citizen housing in Erie County is not a major factor in the location or relocation decisions of seniors to leave the area. Thus, public subsidies to incentivize more market rate senior citizen rental housing would not have a significant positive impact on regional wealth or the economy.

Absent the regional economic justification for providing support for the retention of seniors in the area, members from all IDAs in Erie County are reconsidering the justification for incentives for market rate rental senior facilities. A number of important factors emerged as key policy considerations. These considerations include:

- The social and economic value to communities and to seniors if seniors are able to remain in or near their home community when they relocate to senior housing;
- The social policy of providing high quality living opportunities to seniors who are above the poverty level but have relatively modest income and wealth;
- The projected growth of the Erie County senior population will strain the existing supply of senior citizen housing particularly since many seniors plan to remain in Erie County,
- The role of rental senior housing in reviving abandoned or underutilized buildings in city, town and village centers through the adaptive reuse process where walkable communities can be created or strengthened through the introduction of senior housing;
- The willingness of the project to accept senior citizens of limited means, to accept senior citizens who receive forms of public assistance such as SSI and the willingness of the project sponsor to commit that residents will not be relocated out of the project when the senior citizen's personal resources are exhausted; and;

---

<sup>1</sup> Market Demand for Senior Rental Housing in Erie County, by the University of Buffalo Regional Institute and the Urban Design Project, School of Architecture and Planning, The State University of New York, September 2012.

- The difficulty in locating senior citizen facilities in many of Erie County's smaller communities due to their small population base and the absence of economies of scale in such senior citizen projects.

### **COUNTY-WIDE Policy Considerations:**

County IDA's support can be provided for market-rate rental senior housing projects because there is public benefit to providing incentives for these projects that is not focused solely or primarily on long-term permanent employment opportunities. However, it is not appropriate or the intention of the County IDAs to subsidize activities that the private market can bear, such as affluent senior housing, or projects where the likely return on investment will be sufficient to obtain the capital needed to construct and operate the project without an IDA inducement.

Consideration will be given to desirable projects that would not proceed without an inducement with special emphasis placed upon projects that:

- face development obstacles,
- have documented unique costs, or
- advance or address a larger community need.

### **Adaptive Reuse, Life Care Communities and Low Income Senior Citizen Housing**

The county IDAs support for projects that demonstrate Smart Growth principles continues to be an important policy consideration for the redevelopment of our city, town, village and neighborhood centers. The redevelopment of abandoned, blighted sites and structures through the current Uniform Tax Exemption Policy's Adaptive Reuse provisions should remain a priority and continue to allow for the eligibility of market rate senior rental housing projects. These projects, even if such project contain senior citizen rental components would continue to be eligible through the Adaptive Reuse eligibility provisions as a commercial activity under current agency practices. Adaptive Reuse projects will not be subject to the additional senior citizen rental project criteria as defined below.

Life Care Communities and Low Income Senior Citizen projects are not covered by this policy. Both of these types of projects are authorized by other sections of state law.

### **County-wide IDA Market Rate Rental Senior Citizen Housing Policy**

For purposes of eligibility, "Senior Rental Housing" is defined as a multi-family housing structure where at least 90% of the units are rented to and occupied by a person who is 60 years of age or older. No benefits will be provided for units that are not available for rent as a Senior Rental Housing.

Market rate senior housing projects approved by the County IDAs are eligible for a PILOT the equivalent of the 485(b) property tax incentive that includes all taxing jurisdictions, a sales tax exemption on equipment and construction materials, and a mortgage recording tax exemption. An enhanced or custom PILOT may be considered for certain small scale projects where a

particular need is being filled in a small village or town that does not contain alternative senior citizen housing and where the local taxing jurisdiction has requested the enhanced or custom PILOT and there is a showing of unmet demand for senior housing within the taxing jurisdiction and no prospect of this demand being satisfied through normal market forces.

The Amherst Industrial Development Agency (AIDA) will follow the County-Wide IDA Eligibility Policy – Market Rate Senior Housing. To standardize the evaluation process the AIDA has developed a scoring system for the nine criteria listed at the end of the County policy. Points have been allocated to each of the criteria along with an explanation of how a project would qualify for the points. A total of 100 points are available and a project would need 86 points to qualify for incentives.

1. If the project has received written support from the city, town or village government in which it is located;  
*Qualifies if project has written support from the host municipality. (1 point)*
2. The location of the project with particular emphasis on if the project is located within the town, village or city center or within a recognized hamlet.  
*Qualifies if project is located on the Qualifying Activity Center Locations Map (4 points)*
3. If the project is consistent with the applicable municipal master plan.  
*Qualifies if the project is deemed consistent with the applicable Town or Village Comprehensive Plan. (20 points)*
4. If the project advances efforts to create walkable neighborhoods and communities for seniors in proximity to important local amenities and services.  
*Qualifies if the project location meets a minimum definition of walk-ability such as a Walk Score rating of "Somewhat Walkable" or higher or a Transit Score rating of "Good Transit" or higher as defined by Walkscore.com or some comparable classification system. (20 points)*
5. If an independent market study shows a significant unmet need in the local community or specific neighborhood where seniors are unable to find appropriate housing opportunities.  
*Qualifies if project is located in an area where there is a need identified in an independent market study (such as the one sponsored by the Town of Amherst). (4 points)*
6. If the project is located in areas of the Community where there are significant local resident populations that are at or below the median income level as defined by a 1- 5 mile radius of the project site.  
*Qualifies if median income level within 1 – 5 mile radius of the project site is at or below median income level of host municipality. (1 point)*
7. If the project provides amenities that are attractive to seniors and differentiates the project from standard market rate housing apartments including but not limited to:
  - Community rooms, including social/recreational activities
  - In facility senior specific services and amenities

- Senior oriented fixtures and safety amenities (hand-rails, ramps, elevators, safety devices etc.)
- Security, call systems
- On site medical services.

*Qualifies if project follows the goals of "Universal Design" during design and construction. (20 points)*

8. Impediments to the ability to conventionally finance the project and the project's rate of return.

*Qualifies if project is impeded by physical or environmental site conditions or rent caps dictated by the target residents. (12 points)*

9. The project is targeted at and will be at least 50% occupied by senior citizens whose income is at or below 60 to 80% of the median income for Erie County.

*Qualifies if project will be at least 50% occupied by senior citizens whose income is at or below 80% of the median income of the host municipality. (18 points)*

## **II. AUTHORIZATION RESOLUTION – 8600 Transit, LLC – Refinancing Transaction**

The company is requesting Agency consent to refinance the existing mortgage on its property located at 8600 Transit Road, East Amherst, New York. The original 2004 project involved the construction and equipping of an 18,000 square foot office facility. In December 2013, Iskalo 8600 Transit, LLC acquired the leasehold interest of 8600 Transit, LLC and the Agency approved the purchase and financing in the principal amount of \$2,070,000.

The total amount of the proposed refinancing transaction would not exceed \$2,800,000.

The applicant states that the purpose of this transaction is to refinance the existing debt with additional proceeds being used for building and tenant improvements.

The project is located within the Williamsville Central School District. The PILOT agreement expires in 2022 and will not be affected by this request. Applicant is not requesting sales tax exemption on this project. The project is eligible for an estimated \$28,000 mortgage tax exemption.

First Niagara Bank, N.A. will provide the financing for this transaction.

Upon a motion by Aaron Stanley, seconded by Marshall Wood, abstained by Michele Marconi, it was

**RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZE THE EXECUTION AND DELIVERY OF A MORTGAGE, A CLOSING AGREEMENT AND A SECOND AMENDED AND RESTATED LEASE AGREEMENT IN CONNECTION WITH THE REFINANCING OF THE 2013 8600 TRANSIT ROAD PROJECT, AND FURTHER AUTHORIZE AND APPROVE THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH.**

### III. AUTHORIZATION RESOLUTION

#### **Project Applicant**

Ventas Amberleigh, LLC  
Capital Senior Management 2, Inc.  
14160 Dallas Pkwy  
Suite 300  
Dallas, TX 75254  
Gary Vasquez, Regional Manager  
[gvasquez@capitalsenior.com](mailto:gvasquez@capitalsenior.com)

#### **Project Address**

2330 Maple Road  
Amherst, NY 14221

#### **Project Eligibility**

- The purposes of an industrial development agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities per Section 858 of General Municipal Law.
- The project is eligible under the Countywide Eligibility Policy – NAICS 623 - Assisted living facilities for elderly.
- The project complies with the Town of Amherst Comprehensive Plan as it maintains and grows the tax base through a high quality development that includes job creation.

#### **Project Summary**

The applicant is requesting authorization for a lease transaction in an amount not to exceed \$6,247,000 for the conversion and equipping of one of its three-story residential wings consisting of approximately 70 units, into licensed assisted living and memory care services. The project will also include the renovation and equipping of the existing kitchen and common areas of the facility. The project is located at 2330 Maple Road, within the Williamsville Central School District.

The Amberleigh Community is currently an independent senior housing community with 272 independent living units and approximately 200 residents. The residents receive quality senior living services including meals, activities, transportation and home health services as needed.

The applicant states that Amberleigh need to add these services to offer continuum of care to their residents so they can age-in-place when they require specialized services including enhanced assisted living and memory care/dementia services. The renovated wing will undergo extensive alterations to bring it into compliance with the New York State Building Code and the requirements governing licensed assisted living in New York. After construction is complete, Amberleigh will be able to accommodate 76 additional residents who need assisted living or memory services.

The project construction costs coupled with additional wage expense provide a low rate of return on this necessary investment in an area of growing need in the community. In order to start the construction work, Amberleigh has had to discontinue admissions to empty out the wing, creating lost revenue over the last nine months of approximately \$50,000/month which will continue until construction is complete.

### **Employment**

Current employment is 27 full time and 96 part-time. Two years after completion of the project it is anticipated that there will be 30 additional full time positions and an additional 15 part-time positions with an increase to payroll amounting to \$875,000 annually.

### **PILOT Schedule**

The property currently pays an estimated \$395,324 in annual Town, County and School taxes. This will generate \$2,767,265 during the abatement period.

The renovation/conversion project is eligible for the Agency's 7 year PILOT schedule on the value added. During the abatement period, project will pay an estimated \$136,510 in additional property taxes; \$64,120 to the Town of Amherst, \$15,480 to Erie County and \$56,910 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 up to an estimated \$265,694 in sales tax savings, and estimated \$311,633 in property tax savings and an estimated \$62,470 in mortgage recording tax savings.

Michele Marconi questioned whether the project applicant was Ventas Amberleigh, LLC or Capital Senior Management 2, Inc.

Terrance Gilbride, attorney for Capital Senior Management 2, Inc., along with AIDA counsel, Nathan Neill, both agreed that the applicant was Capital Senior Management 2, Inc. and that Ventas Amberleigh, LLC was its subsidiary.

There were then questions from Steven Sanders and Michele Marconi regarding the job creation estimates and their rates of pay. Margaret Kleinmann, a representative from Amberleigh provided an overview of the types of jobs being created along with their rates of pay.

Mrs. Marconi then questioned whether construction on the project had begun. She was told by Mr. Gilbride that there had been some demolition within the facility but that no construction had begun.

Mrs. Marconi then noted that she did not question the market for this type of project, but questioned whether it was prudent and necessary for the public to pay for it.

Vice Chairman Edward Stachura stated that he felt that the project provided public benefit by the providing services for the elderly and infirm, creation of jobs, an increase of the tax base and the increase in new taxes.

Upon a motion by Steven Sanders, seconded by Marshall Wood and a vote of no by Michele Marconi, it was

**RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AMEND THE DRAFT RESOLUTION FOR THE VENTAS AMBERLEIGH, LLC PROJECT TO REFLECT THAT ALL REFERENCES TO VENTAS AMBERLEIGH, LLC BE REPLACED BY CAPITAL SENIOR MANAGEMENT 2, INC.**

Upon a motion by Aaron Stanley, seconded by Marshall Wood and a vote of no by Michele Marconi, it was

**RESOLVED, THAT THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZE CAPITAL SENIOR MANAGEMENT 2, INC. (THE "LESSEE") TO RENOVATE AN EXISTING APPROXIMATELY 59,600 SQUARE FOOT RESIDENTIAL BUILDING LOCATED AT 2330 MAPLE ROAD, AMHERST INTO A LICENSED ASSISTED LIVING AND MEMORY CARE SERVICES FACILITY AND ACQUIRE AND INSTALL MACHINERY, EQUIPMENT, FURNISHINGS AND FIXTURES REQUIRED IN CONNECTION THEREWITH, FOR SUBLEASE TO THE AGENCY AND SUB-SUBLEASE BACK TO THE LESSEE FOR SUB-SUB-SUBLEASE TO THE LICENSEE PROVIDING ASSISTED LIVING AND/OR MEMORY CARE SERVICES.**

9:18 am – meeting adjourned.