

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY

Governance Committee Meeting

Agenda

November 15, 2019 8:30 am

Agency Offices, 4287 Main Street

1. Roll Call of Members
2. Approval of Minutes
3. New Business
 - a. AIDA Policy Review
 - b. Streaming of IDA Meetings
 - c. Project Updates
4. Adjournment

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Minutes of the Governance Committee Meeting
September 20, 2019 – 8:30 AM
Agency Office, 4287 Main Street

Governance Committee: Carlton N. Brock, Jr.
Timothy Drury
William W. Tuyn

Guests: Steven Sanders
Mike Szukala
David S. Mingoia, Executive Director

Mr. Brock opened the meeting at 8:30 AM and requested a motion to approve the minutes of the previous Governance Committee Meeting. Mr. Tuyn made the motion and it carried unanimously.

Mr. Mingoia reviewed the draft Project Evaluation Criteria that would provide a listing of reasons that Board Members can use when evaluating the eligibility of a project. The criteria expands upon earlier documentation and represents many of the variables discussed during project review currently. Mr. Brock suggested we concern ourselves with providing too much detail that increases liability. Mr. Sanders noted a few changes to Tourism and Retail categories. After further discussion it was determined that members would review the document and take up the matter at a future meeting.

Mr. Mingoia brought up the annual review of policies and suggested changes to the refinancing policy to allow for mortgage recording tax benefit on projects that provide economic value. The current policy puts the AIDA in a negative competitive position as it is the only IDA with such restrictions. After discussion, Mr. Tuyn made a motion, seconded by Mr. Drury, to revise the policy to allow for benefits on re-financings and second mortgages that provide economic value to the community. The motion carried unanimously and the policy will be revised and presented at a future Board Meeting.

Mr. Mingoia reviewed the new law requiring IDAs to stream their meetings and archive the files for 5-years. Mr. Szukala noted that ECIDA is developing a strategy to comply. Mr. Mingoia noted that he has been in contact with ECIDA and will see if there is a fit. Mr. Brock and Mr. Sanders brought up the possibility of using Town Hall. After discussion it was determined that AIDA staff will research and present options at a future meeting.

Mr. Mingoia presented a memo prepared by Harris Beach that indicated a couple future bills set for the Governor's signature that would require certified notification of taxing jurisdictions on projects and allowing the Comptroller to audit LDCs.

Mr. Mingoia ended the meeting with a quick project review, spending a few minutes on Citi's acquisition of their building from Uniland. This is an item that will appear on a future Board Meeting agenda.

At 9:34 AM, Mr. Drury made a motion to adjourn, seconded by Mr. Tun, and carried unanimously.

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY/
TOWN OF AMHERST DEVELOPMENT CORPORATION
FEE AND EXPENSE SCHEDULE**

The following sets forth the Administrative Fee and Expense Policy of the Town of Amherst Industrial Development Agency ("Agency") and the Town of Amherst Development Corporation ("ADC"), effective as of _____, 2019.

Application Fee: At the time of application for approval by the Agency or the ADC of any transaction there shall be a non-refundable application fee of Five Hundred Dollars (\$500.00).

For an extension of an inducement, each extension of six months shall require payment of one quarter of the Agency Administrative Fee.

Agency Administrative Fees:

1. New Projects

The Agency Administrative Fee for For-Profit Projects shall be the greater of: (a) one percent (1%) of the bond amount, if bonds are to be issued, (b) one percent (1%) of the mortgage amount, if a mortgage with note is utilized or (c) one percent (1%) of the project value. One quarter of the Agency Administrative Fee or .25% must be received by the Agency prior to the issuance of a Sales Tax Letter by the Agency except for installment sale transactions when the entire Agency Administrative Fee of 1% is due at time of the issuance of the Sale Tax Letter. The balance of the Agency Administrative Fee or .75% shall be due on the closing of the transaction.

2. Re-financings

The Agency Administrative Fee for For-Profit Re-financings shall be \$1,000 plus one half of one percent (.5%) of any new money being financed for projects that provide additional economic benefit to the community.

3. Second Mortgage

The Agency fee for a second mortgage is one half of one percent (.5%) for all projects requiring a second mortgage that provide additional economic benefit to the community. Second Mortgages that occur for strictly financial purposes are not eligible for a Mortgage Recording Tax Exemption. If the project involves additional PILOT or sales tax benefits, then the fee is one percent (1%) and calculated as explained previously under "New Projects"

4. Approval of Lease Assignment and Assumptions

The Agency Administrative Fee for approval of Lease Assignments and Assumptions shall one percent (1%) of the Project Cost except as otherwise agreed to by the Agency.

5. **Tax-Exempt Financing**

The Agency Administrative Fee for approval of all Tax-Exempt projects shall be one half of one percent (.5%) based on the issuance amount of the bond as agreed to by the Agency. This is the fee regardless of whether it is a refinancing of a previous AIDA or ADC bond or a new issuance for a new project. For those bond issuances where a PILOT is necessary, the project fee is one percent (1%) and calculated as previously detailed under "**New Projects**". The fee is due in full at closing.

Tax-exempt Bond Counsel fees for tax-exempt financing projects will be charged separately, based upon time expended with respect to such project. Agency Counsel fees will be charged in accordance with the Bond/Mortgage/Lease schedule below.

6. **Additional Fees**

Additional costs associated with meeting the Agency's current environmental policy are the responsibility of the Applicant.

If the Project Application is withdrawn at any time following submission, or the inducement or authorizing resolution of the Agency relating to the Project expires without extension, or the Project does not close for any reason, the Applicant is responsible for and shall pay costs, including without limitation Agency Counsel Fees, incurred by the Agency in connection with the Project.

Agency Counsel Fees

Agency Counsel fees will be paid by the Applicant in accordance with the following schedules:

Bond/Mortgage/Lease Transactions:

<u>Project Costs:</u>	<u>Legal Fee*:</u>
to \$750,000	\$5,000**
\$750,001 to \$1,500,000	\$9,000
\$1,500,001 to \$3,000,000	\$12,500
\$3,000,001 to \$5,000,000	\$15,000
\$5,000,001 to \$10,000,000	\$17,500
above \$10,000,000	\$22,500 minimum with additional legal fees payable based upon the circumstances and work involved

*The Legal Fee will be paid as follows: One-quarter of the Legal Fee will be due and payable prior to issuance of a Sales Tax Exemption Letter (if applicable). The balance of the Legal Fee will be due at closing or at such time it is determined by the Agency that the Project will not proceed to closing.

** With respect to legal fees for Bond/Mortgage/Lease Transactions up to \$750,000, this Legal Fee would include only two drafts of documents. In addition, if due to delays caused by the Applicant or the Lender, the closing is delayed beyond a sixty day period from the date of the first draft, additional time may also be billed by Agency Counsel in his or her discretion. If further drafts are required or the closing is unreasonably delayed, additional time shall be billed at the Agency Counsel's standard hourly rate then in effect.

Refinancing Transactions

Legal Fees for refinancings shall be based upon the dollar amount refinanced in accordance with the above schedule. In the case of minor amendments of the prior loan documents, Agency Counsel Fees shall be charged on a time basis at the Agency Counsel's standard hourly rate then in effect. Agency Counsel shall determine whether the amendment to the prior loan documents is a minor amendment in his or her sole but reasonable discretion.

Normal Installment Sale Transactions

<u>Project Cost:</u>	<u>Legal Fee:*</u>
to \$750,000	\$3,000**
\$750,001 to \$1,500,000	\$5,000
\$1,500,001 to \$3,000,000	\$7,500
over \$3,000,000	\$10,000 minimum with additional legal fees payable based upon the circumstances and work involved

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** With respect to legal fees for Normal Installment Sale Transactions up to \$750,000, this Legal Fee would include only two drafts of documents. In addition, if due to delays caused by the Lessee or the Lender, the closing is delayed beyond a sixty day period from the date of the first draft, additional time may also be billed by Agency Counsel in his or her discretion. If further drafts are required or the closing is unreasonably delayed, additional time shall be billed at the standard hourly rate of Agency Counsel then in effect.

Other Transactions:

Legal Fees for the following transactions will be billed on a time basis at Agency Counsel's current standard hourly rate:

- Lease Assignments and Assumptions
- Lease and PILOT Agreement amendments
- Sublease approvals and modifications
- Lease terminations
- Project reconveyances
- Other miscellaneous transactions

In addition to Agency Counsel fees, disbursements of up to \$1,000 will be added to each closing. If additional transcripts above the normal amount are required (5 for lease only and 7 for bond or mortgage transactions), they will be billed to reflect the additional copy cost and the additional binding costs and may exceed the \$1,000 total.

The above Administrative Fee and Expense Policy have been reviewed and agreed to by the Applicant.

Initial

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2. Re-financings

The Agency Administrative Fee for For-Profit Re-financings shall be \$1,000 plus one half of one percent (.5%), whichever is greater of any new money being financed for projects that provide additional economic benefit to the community.-

~~By way of illustration, if the Agency authorized a Project with a Project Cost of \$1,200,000, the initial Agency Administrative Fee payable would have been a total of \$12,000 with .25% or \$3,000 due at the time of the sales tax letter and \$9,000 payable at the closing. For purpose of illustration, we will assume that the Project was financed through bonds or a note and mortgage in the principal amount of \$1,000,000. At the end of five years, the Lessee comes to the Agency for assistance in refinancing the Project with a new borrowing of \$1,300,000. The Lessee will have to advise the Agency of the outstanding principal balance remaining on the bond or note. For purpose of illustration, we will assume that the principal balance has been reduced by \$100,000 leaving a remaining principal balance of \$900,000. The Lessee would have to pay an Agency Administrative Fee of 1% on the amount over the original \$1,200,000 authorized and for which the Agency Administrative Fee was paid or 1% of \$100,000 (\$1,000) plus an administrative fee of 1% on the difference between the \$1,000,000 originally borrowed and the remaining principal balance or 1% of \$100,000 (\$1,000) because that amount would also constitute new money. This would be~~

~~Agency Administrative Fee for For-Profit Re-financings shall be \$1,000 if there is no new money and/or additional economic benefit. For Re-financings that involve new money and economic benefit, Agency Administrative Fee shall be \$1,000 or 1% of the new money, whichever is greater.~~

3. **Second Mortgage**

The Agency fee for a second mortgage is one half of one percent (.5%) for all projects requiring a second mortgage ~~that provide additional economic benefit to the community. Second Mortgages that occur for strictly financial purposes are not eligible for a Mortgage Recording Tax Exemption.~~
If the project involves additional PILOT or sales tax benefits, then the fee is one percent (1%) and calculated as explained previously under **"New Projects"**

4. **Sublease Approvals**

~~The Agency fee for approval of a new sublease for the entire Project shall be \$500.~~

5. **Approval of Lease Assignment and Assumptions**

The Agency Administrative Fee for approval of Lease Assignments and Assumptions shall one percent (1%) of the Project Cost except as otherwise agreed to by the Agency. ~~Factors taken into account include remaining term of the lease, amount of benefits, and tenant(s).~~

6. **Tax-Exempt Financing**

The Agency Administrative Fee for approval of all Tax-Exempt projects shall be one half of one percent (.5%) based on the issuance amount of the bond as agreed to by the Agency. This is the fee regardless of whether it is a refinancing of a previous AIDA or ADC bond or a new issuance for a new project. For those bond issuances where a PILOT is necessary, the project fee is one percent (1%) and calculated as previously detailed under **"New Projects"**. The fee is due in full at closing.

~~Tax-exempt Bond Counsel fees for tax-exempt financing projects will be charged separately, based upon time expended with respect to such project. Agency Counsel fees will be charged in accordance with the Bond/Mortgage/Lease schedule below.~~

7. **Additional Fees**

Additional costs associated with meeting the Agency's current environmental policy are the responsibility of the Applicant.

If the Project Application is withdrawn ~~at any time following submission, or the inducement or authorizing resolution of the Agency relating to the Project expires without extension, or the Project does not close for any reason~~, the Applicant is responsible for ~~and shall pay~~ costs, including ~~without limitation~~ Agency Counsel Fees, incurred by the Agency ~~in connection with~~ the Project.

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Agency Counsel shall determine whether the amendment to the prior loan documents is a minor amendment in his or her sole but reasonable discretion.

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- Lease terminations
- Project reconveyances
- Other miscellaneous transactions

Assignment and Assumptions shall be on a time basis.

8. ~~Enhancement/Neighborhood Redevelopment Projects~~

The above Administrative Fees and Expenses Policies/Policy have been reviewed and accepted/agreed to by the Applicant.

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