

TOWN OF AMHERST DEVELOPMENT CORPORATION

Agenda – 158th Meeting

Friday, March 27, 2020 – 8:30 am

James J. Allen Boardroom

Corporation Offices, 4287 Main Street

1. Roll Call of Members
2. Reading and Approval of Minutes
3. Public Comment
Speakers limited to three (3) minutes
4. Committee Reports
 - I. Audit & Finance Committee
 - 2019 Audited Financial Statements
 - II. Governance Committee
 - 2019 Mission Statement & Measurement Report
5. New Business
 - I. Bond Modification Request
 - Beechwood Healthcare Center, Inc.
6. Adjournment

TOWN OF AMHERST DEVELOPMENT CORPORATION
Minutes of the 157th Meeting
January 17, 2020 – 9:27 am
James J. Allen Boardroom
Agency Offices, 4287 Main Street

PRESENT: Carlton N. Brock, Jr.
Steven Sanders
William W. Tuyn
Hon. Timothy J. Drury
Philip Meyer
Hadar Borden
Jacqueline Berger, Town Board Liaison
David S. Mingoia, Executive Director
Kevin J. Zanner, Hurwitz & Fine PC

EXCUSED: Anthony Agostino

GUESTS: AIDA Staff

Chairman Brock called the meeting to order and reminded everyone that the meeting was being live-streamed and video recorded.

MINUTES

The minutes of the December 2019 meeting were approved as presented.

PUBLIC COMMENT

There was no Public Comment at this meeting

COMMITTEE REPORTS

Hadar Borden of the 2020 Nominating Committee presented the following slate for ADC Officers and Committee Assignments for 2020:

ADC Officers:

Chairman – Carlton N. Brock, Jr.
Vice Chairman – Steven Sanders
Treasurer – Anthony Agostino
Secretary – Philip Meyer
Assistant Secretary – Kevin J. Zanner
Assistant Secretary – Joseph M. Reynolds

Audit and Finance Committee

Chairman – Anthony Agostino
Member – Hadar Borden
Member – Philip Meyer

Governance Committee

Chairman – Carlton N. Brock, Jr.

Member – William Tuyn

Member – Timothy Drury

Steven Sander made a motion to approve the slate of ADC Officers and Committee Assignments as presented by Hadar Borden of the 2020 Nominating Committee as presented. Philip Meyer seconded the motion. Votes of aye were cast by Brock, Sanders, Tuyn, Drury, Meyer and Borden. Motion to approve the 2020 ADC slate of Officers and Committee Assignments passed 6-0.

NEW BUSINESS

There was no New Business presented at this meeting.

9:30 am – meeting adjourned.

Authority Mission Statement and Performance Measurements - 2019

Name of Public Authority: Amherst Development Corporation (ADC)

Mission Statement: The mission of the Amherst Development Corporation is to promote economic diversity and to broaden the tax base, including capital development by not-for-profit entities, for the Town of Amherst in order to maintain and enhance a high-quality living environment.

Date Reaffirmed: March 27, 2020

List of Performance Goals

Goal #1: Promote private investment and enhanced community facilities

Measured by: (1) Value of new investment from low-interest financing provided to non-profit organizations.

	Date Issued	Bond Amount
Tax-Exempt Bond Issue		

No Issuances in 2019

Amherst State Park Boiler House - The ADC hired Flynn Battaglia to develop and submit a Section 14.09 Report to NYS Parks, Historic Preservation Office (SHPO), recommending demolition based on the existing deteriorating conditions of the property. SHPO denied our request, which required us to pivot to seek private redevelopment of the existing building. Flynn Battaglia developed two redevelopment scenarios to garner interest from the development community.

**RESOLUTION AUTHORIZING AMENDMENT OF BOND DOCUMENTS - 2020
BEECHWOOD HEALTH CARE CENTER, INC. PROJECT**

A regular meeting of Town of Amherst Development Corporation (the “Issuer”) was convened in public session at its offices at 4287 Main Street in the Town of Amherst, Erie County, New York on March 27, 2020, at 8:30 a.m. local time.

The meeting was called to order by the (Vice) Chair of the Corporation and, upon roll being called, the following directors of the Corporation were:

PRESENT:

Carlton N. Brock, Jr.	Chairman
Steven Sanders	Vice Chairman
Hadar Borden	Secretary
Anthony Agostino, CPA	Treasurer
William W. Tuyn, CGP	Member
Hon. Timothy Drury	Member
Philip S. Meyer, Esq.	Member

Each of the directors present participated in the meeting telephonically pursuant to Executive Order No. 202.1 issued by New York State Governor Andrew M. Cuomo, suspending provisions of Article 7 of the Public Officers Law that require public in-person access to public meetings and authorizing board members to participate in said meetings by conference call or similar service.

ABSENT:

THE FOLLOWING PERSONS WERE ALSO PRESENT:

David S. Mingoia	Executive Director/CEO/CFO
Laure A. Manuszewski	Director of Administrative Services
Kevin J. Zanner, Esq.	Issuer Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No. ____

RESOLUTION AUTHORIZING THE EXECUTION BY THE TOWN OF AMHERST DEVELOPMENT CORPORATION OF A CERTAIN MODIFICATION AGREEMENT, AMENDMENTS AND OTHER DOCUMENTS IN CONNECTION WITH THE BEECHWOOD HEALTH CARE CENTER, INC. PROJECT.

WHEREAS, Town of Amherst Development Corporation (the “Issuer”) was created pursuant to Section 1411 of the Not-For-Profit Corporation Law of the State of New York, as amended (the “Enabling Act”) or the “NFPCL”. Pursuant to the provisions of the Enabling Act and Revenue Ruling 57-187 and Private Letter Ruling 200936012, the Town Board of Town of Amherst, New York (the “Town”) adopted

a resolution on October 5, 2009 (the “Sponsor Resolution”) (A) authorizing the incorporation of the Issuer under the Enabling Act and (B) appointing the initial members of the board of directors of the Issuer. On February 3, 2010, a certificate of reincorporation was filed with the New York Secretary of State’s Office (the “Certificate of Reincorporation”) creating the Issuer as a public instrumentality of the Town; and

WHEREAS, the Issuer is authorized and empowered by the provisions of the Enabling Act to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities, and lessen the burdens of government and act in the public interest, and in carrying out the aforesaid purposes and in exercising the powers conferred in the Enabling Act, the Enabling Act declares that the Issuer will be performing essential governmental functions; and

WHEREAS, to accomplish its stated purposes, the Issuer is authorized and empowered under the Enabling Act to acquire real and personal property; to borrow money and issue negotiable bonds, notes and other obligations therefore; to lease, sell, mortgage or otherwise dispose of or encumber any of its real or personal property upon such terms as it may determine; and otherwise to carry out its corporate purposes in the territory in which the operations of the Issuer are principally to be conducted; and

WHEREAS, on September 14, 2017 (the “Closing Date”), the Issuer issued its (1) Tax-Exempt Revenue Bond (Beechwood Health Care Center, Inc. Project), Series 2017 in the original aggregate principal amount of \$9,675,000 (the “Series 2017 Bond”), under and pursuant to a bond resolution adopted by the Issuer on July 21, 2017 and a bond purchase and disbursing agreement dated as of September 1, 2017 (the “Bond Purchase Agreement”) by and among (1) the Issuer, (2) Beechwood Health Care Center, Inc., a New York not-for-profit corporation (the “Institution”), (3) M&T Bank, as holder of the Series 2017 Bond (the “Holder”) and (4) M&T Bank, as disbursing agent thereunder (the “Disbursing Agent”) in connection with a project (the “Project”) for the benefit of the Institution to be undertaken by the Issuer consisting of the following: A) (1) the financing of all or a portion of the costs of (a) the renovation and reconstruction of portions of the existing buildings constituting a 272-bed skilled nursing facility which provides both long term care programs and short term care sub-acute services and containing in the aggregate approximately 325,000 square feet of space (collectively, the “Facility”) located on a parcel of real estate containing approximately 16.346 acres and having an address of 2235 Millersport Highway in the Town of Amherst, Erie County, New York (the “Land”), and (b) the acquisition and installation therein and thereon of various machinery and equipment (the “Equipment”) (the Land, the Facility and the Equipment hereinafter collectively referred to as the “Project Facility”), and (2) the refunding, in whole or in part, of the Town of Amherst Industrial Development Agency’s Tax-Exempt Civic Facility Revenue Bonds (Beechwood Health Care Center, Inc. Project), Series 2006A in the original aggregate principal amount of \$14,860,000 (the “Prior Bonds”), which Prior Bonds were issued on January 18, 2007 to undertake the following project (the “Prior Project”): (a) the financing of prior capital projects relating to the Project Facility, including, but not limited, to the reconstruction and renovation of the Facility, the construction of additions to the Facility and the acquisition and installation of machinery and equipment, and (b) the refinancing of certain indebtedness incurred by the Institution in undertaking certain capital improvements at the Project Facility; (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Series 2017 Bond; (C) paying a portion of the costs incidental to the issuance of the Series 2017 Bond, including issuance costs of the Series 2017 Bond and any reserve funds as may be necessary to secure the Series 2017 Bond; and

WHEREAS, by e-mail dated February 5, 2020, from counsel to the Institution (the “Modification Request”), a copy of which was presented to the members of the Board of Directors of the Issuer at this meeting and attached hereto as Exhibit A and made a part hereof, counsel to the Institution informed the Issuer that the Institution and the Holder are proposing to amend the terms of the Series 2017 Bond and the Financing Documents (as defined in the Bond Purchase Agreement) so as to revise the amortization schedule for the repayment of the Series 2017 Bond (the “Modification”); and

WHEREAS, the Issuer is willing to consent to the Modification Request and to execute and deliver any documents deemed necessary or desirable in connection with the Modification Request (collectively, the “Modification Documents”), subject to final approval by Bond Counsel and Issuer Counsel and the terms of this Resolution; and

WHEREAS, in connection with the Modification, the Institution has requested that the Issuer enter into any modification agreements (collectively, the “Modification Agreement”) necessary to provide for the Modification; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), it appears that the Modification constitutes a Type II action under SEQRA;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE BOARD OF DIRECTORS OF THE TOWN OF AMHERST DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Based upon an examination of the Modification Request, the Issuer hereby makes the following findings and determinations:

(A) The Modification Request constitutes a “Type II action” pursuant to 6 NYCRR 617.5(c)(23), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Issuer has no further responsibilities under SEQRA with respect to the Modification Request.

(B) Based on representations made by the Institution to the Issuer, (1) no new money will be advanced by the Holder with respect to the approval of the Modification Request and the entering into the Modification Documents, (2) the maturity date of the Series 2017 Bond will not be affected by the Modification, and (3) no other changes are proposed for (a) the description of the Project or (b) the Financing Documents.

(C) By virtue of the Certificate of Reincorporation and the Enabling Act, the Issuer has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Enabling Act and to exercise all powers granted to it under the Enabling Act.

(D) The approval of the Modification Request and the Modification Documents will relieve and reduce unemployment, promote and provide for additional and maximum employment and better maintain job opportunities, and thereby lessen the burdens of government.

(E) It is desirable and in the public interest for the Issuer to comply with the Modification Request and the execution and delivery of the Modification Documents, subject to Section 2 below.

Section 2. The Issuer hereby consents to the Modification Request and the execution and delivery of the Modification Documents; provided, however, that such consent is contingent upon (A) the consent of the Holder, (B) approval by Bond Counsel and Issuer Counsel of the form of the Modification Documents, (C) compliance with the terms and conditions contained in the Financing Documents, (D) compliance with applicable state and federal law, (E) the payment by the Institution of all fees and expenses of the Issuer in connection with the delivery of such consent, including, the administrative fee of the Issuer, if any, and the fees of Issuer Counsel and Bond Counsel, and (F) the following additional

conditions: _____.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chair (or Vice Chair) of the Issuer is hereby authorized to execute and deliver the Modification Documents to the Institution, and, where appropriate, the Secretary (or Assistant Secretary) of the Issuer is hereby authorized to affix the seal of the Issuer thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) shall approve, the execution thereof by the Chair (or Vice Chair) to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Issuer are hereby authorized and directed for and in the name and on behalf of the Issuer to do all acts and things required or provided for by the provisions of the Modification Agreement, and to execute and deliver all such additional certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing Resolution and to cause compliance by the Issuer with all of the terms, covenants and provisions of the Modification Agreement binding upon the Issuer.

Section 5. This Resolution shall take effect immediately.

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

Carlton N. Brock, Jr.	VOTING	_____
Steven Sanders	VOTING	_____
Hadar Borden	VOTING	_____
Anthony Agostino, CPA	VOTING	_____
William W. Tuyn, CGP	VOTING	_____
Hon. Timothy Drury	VOTING	_____
Philip S. Meyer, Esq.	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ERIE)

I, the undersigned (Assistant) Secretary of Town of Amherst Development Corporation (the “Corporation”), DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Corporation, including the resolution contained therein, held on March 27, 2020, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Corporation and of such resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Board of Directors of the Issuer had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”) except as modified by Executive Order 202.1, said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Board of Directors of the Issuer present, either in-person or appearing telephonically in accordance with Executive Order 202.1, throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed, or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Issuer this ____ day of _____, 2020.

(Assistant) Secretary

(SEAL)

EXHIBIT A
MODIFICATION REQUEST

From: Baynes, Katherine <KBaynes@nixonpeabody.com>
Sent: Wednesday, February 5, 2020 1:54 PM
To: Scott III, A. Joseph <Ascott@hodgsonruss.com>
Cc: Kristin Anderson <kanderson@beechwoodcare.org>; Anderson, Martha <MAnderson@nixonpeabody.com>
Subject: Town of Amherst Development Corporation/Beechwood Health Care Center
Importance: High

Joe:

Following up on the voicemail that I just left you, Beechwood and M&T are in discussions to revise amortization schedule for Beechwood's 2017 Town of Amherst Development Corporation bond. The current and proposed amortization schedule is attached. In connection with any such amendment to the amortization schedule, M&T would like an opinion of bond counsel to the effect that such change will not have an adverse effect on the tax exemption of the interest on the bonds. Can you please review the attached and advise if you can provide such an opinion? If the proposed new amortization would create tax concerns, can you advise if there is a way to structure a revised amortization schedule that would not create these concerns? If you need any additional information on this request or would like to discuss, please do not hesitate to reach out to me.

We appreciate your attention to this matter – thanks!



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