

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**  
**Minutes of the 481<sup>st</sup> Meeting**  
**June 17, 2016 – 8:30 am**  
**Agency Offices, 4287 Main Street**

The meeting of the above captioned Agency was called to order by Chairman Carlton Brock.

PRESENT: Carlton N. Brock  
Michele F. Marconi  
Aaron Stanley  
E. Marshal Wood, Jr.  
Steven Sanders  
Edward F. Stachura  
Michael R. Szukala  
David S. Mingoia, Interim Executive Director  
Kevin J. Zanner, Hurwitz & Fine PC  
Diane K. Church, Hurwitz & Fine PC

GUESTS: AIDA Staff  
David Robiinson, Buffalo News  
Dave Tytka, Uniland Development Co.

Chairman Brock called the meeting to order and reminded everyone that the meeting was being audio recorded.

**MINUTES**

The minutes of the May meeting were approved as presented.

**BILLS & COMMUNICATIONS**

**1. Town of Amherst Annual Audit of PILOT Payments**

The Town of Amherst Comptroller’s Office recently completed its annual examination of AIDA PILOT payments. The report shows that AIDA PILOTs are correctly based on the contractual requirements and assessed value of record with the Town of Amherst. The report also says that all PILOTs due for 2016 have been paid in full. This year’s examination found two reportable findings. One property was billed using an incorrect assessed value and one property was not billed. These issues were promptly corrected and outstanding PILOT payments, late fees and interest have been collected and remitted.

Upon discovering the deficiencies, and working with the new Assessor, improved communication protocols are now in place in terms of assessment change notification and verification of properties coming in and out of AIDA title.

**2. Economic Consultant**

Delta Associates has been selected to update economic data of the Comprehensive Plan that dates to May 2001. An evaluation summary of the five (5) proposals is attached noting fee amounts and

evaluation figures from the four (4) member review committee. A second task to the consultant's work is an examination of the Town's Office Market and trends, scale, location and nature of office development over the next few decades. This task provides information on repurposing traditional office parks and dovetails into the Imagine Amherst Zoning initiative.

Total cost for this work is \$25,930. The AIDA Board already allocated \$6,160 for the update of the economic data, cost shared at 50% with the Town of Amherst. An additional \$6,805 is required from the AIDA to complete the Office Market task.

The Town Board approved the entering into a contract with Delta Associates on June 3, 2016 and has funds for their match of this task. The consultant expects to complete all work in 3-4 months.

### **3. New York State Legislative Bills**

Senate Bill 7861 (Martins)/Assembly Bill 10141 (Bronson) – Subjects all projects financed by public entities to public work rules. This would broaden public works projects to include all economic development projects provided incentives ranging from IDA tax credits, to grants and loans from Empire State Development, to tax credits provided by the Division of Housing and Community Renewal. The bill currently sits in the Assembly Codes Committee and awaits a scheduled vote before the Senate.

Senate Bill 7878 (Ranzenhoffer)/Assembly Bill 7744 (Brennan) – Authorizes the Authority Budget Office to suspend local authority board members or chief executive officers that fail to comply with the Public Authorities Law. The bill only applies to local authorities, and broadens the ABO's powers, which currently only allow for recommendations of compliance issues and a public censure letter. The bill is likely to be withdrawn and changed to include state authorities too.

## **TREASURER'S REPORT**

Chairman Brock gave the May 2016 Treasurer's Report, as Mr. Stanley was running late. The May 2016 Treasurer's Report was approved as presented.

Board Member Marshall Wood questioned when the legal fees line items recently agreed to would be added to the report. Mr. Wood was informed that the line items for litigation fees and general counsel fees had been added, but until the Agency receives invoices for those items, they would not appear on the reports.

## **EXECUTIVE DIRECTOR REPORT**

### **1. Annual NYS IDA Report**

The NYS Comptroller released the 2016 Annual Report on Industrial Development Agencies on June 8<sup>th</sup>. The report uses 2014 data. Across the state, there were 4,581 reported IDA projects that created 235,888 new jobs and retained 351,130 jobs. These projects generated more than \$83 Billion in new investment, with the median cost per job at \$1,882 and an average cost per job of \$4,234. The complete report can be downloaded at: [http://www.osc.state.ny.us/localgov/pubs/research/ida\\_reports/2016/idaperformance.pdf](http://www.osc.state.ny.us/localgov/pubs/research/ida_reports/2016/idaperformance.pdf)

The Amherst IDA's results are based on 104 reported projects totaling \$676,799,792 in investment. Net Tax Exemptions totaled \$4,847,946 million, which led to the creation of 9,473 jobs and the retention of

7,223 jobs. These represent the highest job totals of any town IDA in New York State. This works out to a \$474 net exemption per job.

Total expenses for the Amherst IDA were \$776,411 compared to the state average of \$874,004. This worked out to just \$76 of expenses per job compared to the state average of \$4,005. Total expenses per project came in at \$7,465 compared to the state average of \$38,031

## **2. Ineligible Project Inquiries**

Below is a tally of project inquiries for 2016 deemed ineligible under current IDA statute and the Countywide Eligibility Policy. These inquiries do not make it to the Board of Directors for a decision, but represent the policies they set forth for the type of economic development supported in the Town of Amherst.

<u>Type of Project</u>	<u>Number of Inquiries</u>
Accounting Firm	1
Hotel	1
Mixed Use	2
Residential	2
Restaurant	4
Retail	2
Student Housing	1

**8:45 am – Board member Aaron Stanley entered the meeting.**

### **COMMITTEE REPORTS – GOVERNANCE COMMITTEE**

The Governance Committee met on Friday, June 3<sup>rd</sup> to discuss the following items:

- a. AIDA Draft Recapture Policy
- b. Project Evaluation
- c. Changes to the Application for AIDA benefits
- d. AIDA By-Laws

The New York State Legislature enacted amendments to the provisions of Article 18-A of the General Municipal Law pursuant to Chapter 563 of the Laws of 2015, including the requirement that industrial development agencies:

1. Develop policies for the suspension or discontinuation, modification, and recapture of financial assistance
2. Obtain projected job numbers from applicants for financial assistance, including the number of residents from a labor market area designated by the IDA that would fill those jobs
3. Adopt uniform criteria for the evaluation and selection for each category of project for which financial assistance will be provided

The Governance Committee is recommending approval the following documents to comply with these requirements:

1. AIDA Recapture Policy
2. Resolution defining the labor market area and adherence to statutory required uniform criteria for the evaluation and selection of projects assisted by the AIDA.

The Governance Committee also reviewed the amendments to the AIDA By-Laws. Attached are the recommended By-Law amendments. The board is being asked to accept the document and allow for a 30-day review and comment period. The board will be asked to approve the amended By-Laws at the next regularly scheduled meeting.

Mr. Wood made a motion to approve the Recapture Policy. Mr. Stachura seconded the motion.

Mr. Szukala questioned if the Agency has had cause in the past five years to recapture benefits on a project.

Mr. Mingoia explained that the Agency in the past has terminated PILOTs due to changes in a facility tenancy, whereby new tenants were ineligible tenants. He noted that the Agency has not had to recapture benefits.

Mr. Wood questioned whether this policy was to be adopted on or before June 15<sup>th</sup>.

Mr. Mingoia noted that was the case only if the Agency were acting on a project after June 15<sup>th</sup>.

Mrs. Marconi asked where this leaves discussion on material terms.

Mr. Mingoia explained that the discussion on material terms was the next step.

Mrs. Marconi questioned if the statute set forth material terms required for projects.

Mr. Mingoia said that the statute requires material terms, but the board of each IDA determines what the terms will be for their economic development efforts.

Chairman Brock called the motion to approve the Recapture Policy to a vote. With aye votes from Brock, Marconi, Stanley, Wood, Sanders, Stachura and Szukala, the motion to approve passed 7-0.

Mr. Mingoia introduced the resolution defining the labor market area and adherence to statutory required uniform criteria for the evaluation and selection of projects assisted by the AIDA.

Mr. Mingoia reminded the board that it was determined by the Governance Committee that there remained several items relating to the determination of material terms to put forth the final criterion for adoption at this meeting. Upon advice of counsel, the board is being asked adopt the aforementioned resolution. Mr. Mingoia noted that adoption of evaluation criteria is addressed in the third paragraph of the resolution.

Mr. Sanders made a motion to adopt the resolution defining the labor market area and adherence to statutory required uniform criteria for the evaluation and selection of projects assisted by the AIDA. Michael Szukala seconded the motion.

After a brief discussion, Chairman Brock called the motion to approve the resolution to a vote. With aye votes from Brock, Marconi, Stanley, Wood, Sanders, Stachura and Szukala, the motion to approve passed 7-0.

### **AIDA By-Laws**

The Governance Committee recommended approval of the amended By-Laws. The board was asked to accept the document and allow for a 30-day review and comment period. The board will be asked to approve the amended By-Laws at the next regularly scheduled meeting.

Mr. Sanders asked who is currently authorized to sign checks on behalf of the Agency.

Mr. Mingoia informed the board that current policy requires two signatures on checks issued by the Agency. Mr. Brock, Mr. Stanley, Mr. Stachura and Mr. Mingoia are authorized signatories. The board was informed that Mr. Stanley and Mr. Mingoia are the regular signers, with Mr. Brock and Mr. Stachura used in back-up situations. Checks are typically prepared twice monthly.

After a brief discussion, Mr. Wood made the motion to accept the amended by-laws with the additional amendment to 1) limit the number of Assistant Secretary(ies) to two; and 2) in Section 8 of the Chief Financial Officer position, include language that in case of “give such bond for the faithful performance of his/her duties as the Agency may determine”, make clear that the Agency will pay for such bond.

Mr. Szukala seconded the motion with the amendments.

Chairman Brock called the motion to accept the by-law amendments as presented with the suggested amendments of June 17, 2016 to a vote. With aye votes from Brock, Marconi, Stanley, Wood, Sanders, Stachura and Szukala, the motion to accept passed 7-0.

### **UNFINISHED BUSINESS**

#### **I. Draft of the UTEP (Uniform Tax Exempt Policy) Crib Sheet**

The board was asked to review the attached UTEP Crib Sheet as developed by Board Member Marconi. It is anticipated that this document will form the basis for amending the Agency’s UTEP to adhere to changes in State law.

A lengthy presentation and discussion took place. The discussion centered on certain inconsistencies contained within the current County-wide eligibility policy (UTEP) specifically related to the NAICs codes used to determine project eligibility and ineligibility.

Mrs. Marconi noted that the policy outdates the current law and is unintelligible to a reasonable person.

Mr. Stanley noted that the UTEP is muddy and felt that before commencing on the re-write of the policy, the Agency should first develop the evaluation criteria.

Mr. Stachura agreed that the UTEP may be outdated and suggested getting back together with the county IDAs to rework it.

Chairman Brock noted that he has met with representatives of the County and similar concerns are shared by them. He suggested that AIDA representatives meet with County representatives to begin work on updating the policy.

Mr. Wood felt that the AIDA should get a firm grasp on the policy and resolve Mrs. Marconi's concerns first before discussing with County officials.

Mr. Sanders suggested that the AIDA needed to first change the UTEP to comply with the law and to next take care of the inconsistencies.

The board ultimately agreed that any further UTEP discussion be moved to the Governance Committee for deliberation and any determinations be brought before the entire board for acceptance.

9:48 am – meeting adjourned.

**RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY IMPLEMENTING CERTAIN PROVISIONS OF CHAPTER 563 OF THE LAWS OF 2015 ENACTED TO AMEND CERTAIN PROVISIONS OF THE GENERAL MUNICIPAL LAW**

**WHEREAS**, the Town of Amherst Industrial Development Agency (the "Agency") is established under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the "Act"), for the purpose of advancing the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

**WHEREAS**, the New York State Legislature has enacted certain amendments to the provisions of Article 18-A of the General Municipal Law pursuant to Chapter 563 of the Laws of 2015 (the "2015 Act"), including the requirement that industrial development agencies (1) develop policies for the suspension or discontinuation, modification, and recapture of financial assistance, (2) obtain certain projected job numbers from applicants for financial assistance, including the number of residents from a labor market area designated by the industrial development agency (the "Labor Market Area") that would fill those jobs and (3) adopt uniform criteria for the evaluation and selection for each category of project for which financial assistance will be provided; and

**WHEREAS**, the 2015 Act requires that, in adopting evaluation criteria to be used in considering applications for financial assistance, an industrial development agency must assess all material information included in connection with the application as necessary to afford a reasonable basis for the decision by the agency to provide financial assistance and conduct a cost-benefit analysis that identifies the extent to which the project will create or retain permanent, private sector jobs, the estimated value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the project, the likelihood of accomplishing the proposed project in a timely fashion, the extent to which the proposed project will provide additional sources of revenue for municipalities and school districts and other public benefits that might occur as a result of the project (collectively, the "Required Criteria"); and

**WHEREAS**, the Agency's Governance Committee, at a meeting held on June 3, 2016, considered a proposed Policy for Recapture and/or Termination of Financial Assistance (the "Recapture Policy") and, subject to certain revisions as discussed at such meeting, adopted a resolution recommending referral of the Recapture Policy to the Agency's full Board for its consideration; and

**WHEREAS**, at its June 3, 2016 meeting the Governance Committee adopted a resolution recommending that the Agency adopt an area including the counties of Erie, Niagara, Genesee, Wyoming, Cattaraugus and Chautauqua as the Labor Market Area to be included in the Agency's application for financial assistance; and

**WHEREAS**, at its June 3, 2016 meeting the Governance Committee adopted a resolution

recommending that the Agency adopt the Required Criteria as the Agency's criteria for the evaluation and selection for each category of project for which financial assistance will be provided and further recommended that the Agency conduct further research and consideration regarding other criteria that the Agency may consider in evaluating requests for financial assistance; and

**WHEREAS**, the Agency's Board has reviewed the recommendations of the Governance Committee and the Recapture Policy, and wishes to adopt Recapture Policy (a copy of which is attached to this resolution), designate the Labor Market Area, and adopt the Required Criteria, as presented to the Board.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** For purposes of establishing certain required projected job information to be provided by applicants to the Agency, the Agency adopts a Labor Market Area that is an area including the counties of Erie, Niagara, Genesee, Wyoming, Cattaraugus and Chautauqua.

**Section 2.** The Agency adopts the Required Criteria as the criteria to be used to evaluate projects for which financial assistance will be provided and agrees that its consideration of projects will include an assessment and consideration of the Required Criteria. The Agency shall conduct such further research and deliberation as it feels is appropriate in order to determine any additional criteria that would be appropriate in evaluating each category of project for which financial assistance will be provided.

**Section 3.** The Agency adopts the Recapture Policy as presented to the Board.

**Section 4.** The members, officers, employees and agents of the Agency are each hereby authorized to implement such further procedures and undertake such further actions as may be necessary or desirable to affect the purposes of the foregoing resolutions and to cause compliance with the 2015 Act.

**Section 5.** This Resolution shall take effect immediately.

ADOPTED: June 17, 2016

**Town of Amherst Industrial Development Agency**  
**Policy for Recapture and/or Termination of Financial Assistance**  
**Adopted: June 17, 2016**

**Purpose:**

To establish and provide a fair procedure compliant with Sections 874 and 875 of the New York State General Municipal Law and Town of Amherst IDA (AIDA) policies establishing a policy for recapture and/or termination and/or modification of all or a portion of Agency Financial Assistance.

**Establishment of Material Factors:** For each project which is approved for Financial Assistance, the AIDA Board of Directors may establish material factors (each referred to herein as a “Material Factor”), which, along with other considerations, will be utilized in determining whether all or a portion of Agency Financial Assistance will be terminated, modified and/or recaptured. It is intended that a Material Factor will set forth an objective, measurable standard by which the AIDA Board of Directors can determine a company’s success in achieving the objectives of the project. Any Material Factors for a project will be included in AIDA’s inducement resolution and in the transaction documents.

**Annual Review:**

The AIDA will review annual reports it receives from companies to determine compliance with the Material Factors set forth in the inducement resolution. If a company is found to be in violation of a Material Factor, the project will be considered non-compliant and will enter full review. The Chairman of the AIDA will be notified of companies that are non-compliant prior to notification of the company.

**Non-Compliance Process:**

1. The AIDA shall notify the company in writing that in the Agency’s determination they are in violation of a Material Factor. The notification will include the Material Factor(s) violated and seek an explanation from the company that may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the company. The company shall be given an opportunity to remedy the violation and will have ten (10) business days to provide a written response or seek an extension of such response.
2. Upon receipt of the company’s response, AIDA staff will review with the Executive Committee. The company shall be provided the opportunity to present before the Executive Committee, any information as outlined in #1 above regarding why the Material Factor was not achieved. The Executive Committee may enter into executive session to discuss the company’s non-compliance with a Material Factor to the extent permitted by Section 105 of the Open Meetings Law.
3. Upon hearing the company’s position, the Executive Committee will suggest a course of action for consideration by the entire AIDA Board of Directors. The written record will clearly state the reason to, or not to, recapture and/or modify and/or reduce financial assistance

4. After a referral from the Executive Committee, the AIDA Board of Directors shall determine, in its discretion, whether, and to what degree, any Financial Assistance shall be modified, terminated and/or recaptured based on a failure to comply with a Material Factor. The decision of the AIDA Board of Directors shall be communicated by AIDA staff to the company.

**Compliance Period:**

For projects that involve a PILOT, unless otherwise noted in the project's inducement resolution, each Material Factor will need to be maintained for the time period that a PILOT agreement is in effect. By way of illustration, if a project involves new construction, new equipment and the creation and retention of employment, once construction is complete, and the company has met its employment targets, it must maintain those Material Factors for the duration of the PILOT agreement.

For projects that do not involve a PILOT, unless otherwise note in the project's inducement resolution, each Material Factor will need to be maintained for three calendar years after employment goals are met. By way of illustration, projects where employment is a Material Factor are typically afforded two (2) years after project completion to hire new employees. The applicant would then have to maintain that employment for an additional three (3) years to maintain compliant with this policy.

**Distribution of Recaptured Financial Assistance:**

Any and all such returned/recaptured amounts of Agency Financial Assistance shall be redistributed to the appropriate tax jurisdiction unless agreed to otherwise by any local taxing jurisdiction.

**Other Grounds for Termination, Modification or Recapture of Financial Assistance:**

Notwithstanding the foregoing, the AIDA, acting through its staff, retains the right to terminate Agency benefits for reasons other than a violation of a Material Factor. Cause for such termination of Agency benefits may include, but are not limited to, failure to make PILOT payments, failure to make reports to the AIDA as detailed in the transaction documents, failure to maintain insurance requirements, or other uncured breaches of or defaults under AIDA transaction documents.

In addition, the AIDA Board of Directors may, in its discretion, require a recapture of all or a portion of the Financial Assistance provided to a company based upon any of the following:

1. A closure of the project or relocation by the company of its operations to a location outside of the Town of Amherst within the time period during which the company is receiving AIDA Financial Assistance.
2. A determination that the company knowingly and intentionally submitted false or intentionally misleading information in its application or in any report or certification submitted to AIDA for the purpose of obtaining or maintaining any Financial Assistance from AIDA.

**Statutory Requirements:**

Any recapture pursuant to this policy shall be in addition to, and not in lieu of, any recapture required pursuant to Article 18-A of the New York General Municipal Law or other statutory provisions, including Section 875 of the General Municipal Law.

**BYLAWS**

**6/17/16**

**OF**

**TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY**

**ARTICLE I**

**Section 1. Name.** The name of the Agency shall be "Town of Amherst Industrial Development Agency."

**Section 2. Seal of Agency.** The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization.

**Section 3. Office of the Agency.** The office of the Agency shall be at 4287 Main Street in the Town of Amherst, New York, but the Agency may have other offices at such other places as the Agency may from time to time designate by resolution. (Section 3 amended 1/06)

**ARTICLE II**

**Section 1. Officers.** The officers of the Agency shall be a Chairperson, a Vice Chairperson, a Secretary, a Treasurer, one or more Assistant Secretaries, an Executive Director and a Chief Financial Officer.

**Section 2. Chairperson.** The Chairperson shall be an "independent member" of the Agency within the meaning of Section 2825 of the New York Public Authorities Law and preside at all meetings of the Agency. The Chairperson shall sign all agreements, contracts, deeds and any other instruments on behalf of the Agency, except as otherwise authorized or directed by resolution of the Agency. The Chairperson shall submit his or

her recommendations and such information as he or she shall deem pertinent concerning the business, affairs and policies of the Agency, at each meeting.

**Section 3. Vice Chairperson.** The Vice Chairperson shall be a member of the Agency and perform the duties of the Chairperson in the absence or incapacity of the Chairperson. In the event of the resignation or death of the Chairperson, the Vice Chairperson shall become acting Chairperson and perform the duties of the Chairperson until such time as the Agency shall appoint a new Chairperson.

**Section 4. Secretary.** The Secretary shall be a member of the Agency. The Secretary shall keep all records of the Agency, shall act as secretary at the meetings of the Agency, and shall keep a record of all votes thereof. The Secretary shall record the proceedings of the Agency in a journal of proceedings to be kept for such purpose. The Secretary shall perform all duties incident to the office. The Secretary shall have custody of the seal of the Agency, and shall have the power to affix such seal to all contracts and other instruments authorized by the Agency to be executed.

**Section 5. Assistant Secretary(ies).** The Assistant Secretary (or Assistant Secretaries if there are more than one) shall be legal counsel for the Agency, and may not be a member of the Agency. In the absence or incapacity of the Secretary, the Assistant Secretary, or if there are more than one, the Assistant Secretary designated by the Chairperson, shall perform the duties of the Secretary. In case of the resignation or death of the Secretary, the Assistant Secretary, or if there are more than one, the Assistant Secretary designated by the Chairperson, shall perform the duties of the

Secretary until such time as the Agency shall appoint a new Secretary. (Section 5 Amended 11/16/90)

**Section 6. Treasurer.** The Treasurer shall be an “independent member” of the Agency and shall exercise supervision and control over the Chief Financial Officer of the Agency. The Treasurer shall review financial reports prepared by the Chief Financial Officer and shall report to the Board on such measures.

**Section 7. Executive Director.** The Executive Director shall not be a member of the Agency. The Executive Director shall be the Chief Executive Officer (CEO) of the Agency. The Executive Director shall be appointed by a majority of the members of the Agency for such term of employment as the Agency determines proper and shall exercise supervision and control of all administrative functions of the Agency. The Executive Director shall be responsible for the implementation of all resolutions, orders, programs or projects of the Agency. The Executive Director shall have the power to sign and execute, on behalf of the Agency, all contracts, agreements, deeds, notes, bonds, or other evidence of indebtedness and to affix and attest to the seal of the Agency as authorized by the Agency. The Executive Director shall attend all meetings of the Agency and shall make recommendations to the Agency from time to time. The Executive Director shall have all necessary and incidental powers to perform and exercise any of the duties and functions as specified or lawfully delegated to him or her.

**Section 8. Chief Financial Officer.** The Chief Financial Officer (CFO) may not be a member of the Agency and shall be appointed by a majority of the members of the Agency for such term of employment as the Agency determines proper. The Chief

Financial Officer shall have the care and custody of all funds of the Agency and shall have all such funds deposited in the name of the Agency in such banks as the Agency may designate. Except as otherwise provided by resolution of the Agency, the Chief Financial Officer shall sign all instruments of indebtedness, orders and checks for the payment of money by the Agency pursuant to the direction of the Agency. Except as otherwise authorized by resolution of the Agency, all such instruments of indebtedness, orders and checks, shall be countersigned by the Chairperson. The Chief Financial Officer shall have regular books of account kept on an accrual basis, showing all receipts and expenditures. The Chief Financial Officer shall report to the Treasurer of the Agency who shall exercise care and supervision of him. The Chief Financial Officer shall provide the information required by the Treasurer to allow the Treasurer to render to the Agency at each regular meeting an account of the financial transactions and current financial condition of the Agency. The Chief Financial Officer shall give such bond for the faithful performance of his or her duties as the Agency may determine.

**Section 9. Additional Duties.** The Officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency, by its bylaws, or by its rules and regulations.

**Section 10. Appointment of Officers.** The Chairperson, Vice Chairperson, Secretary, and Treasurer of the Agency shall be appointed at the annual meeting of the Agency from among the members of the Agency and shall hold office for one year or until their successors are appointed. If the term of an Agency member should terminate, his or her term of office as an officer shall also terminate. The Assistant

Secretary(ies) shall be appointed at the annual meeting, but need not be a member of the Agency. The CEO and CFO may not be members of the Agency.

**Section 11. Vacancies.** Should any office become vacant, the Agency shall convene the Nominating Committee to solicit interest from interested members and recommend a successor at the next regular meeting. The appointment shall be for the unexpired term of said office.

**Section 12. Members of the Agency.** The term of office of each member of the Agency shall be established by the Town Board of Amherst and each member shall continue to hold office until his or her successor is appointed. A majority of the members of the Agency must be “independent members” of the Agency within the meaning of Section 2825 of the Public Authorities Law.

### ARTICLE III

#### COMMITTEES

**Section 1. Executive Committee.** There shall be an Executive Committee which shall consist of the Chairperson, Vice Chairperson and Treasurer. The Executive Director and Chief Financial Officer shall each be non-voting members of the Executive Committee. The Executive Committee shall function as a steering committee and shall advise and make recommendations to the membership of the Agency.

**Section 2. Governance Committee.** There shall be a Governance Committee appointed by the Chairperson with the consent of the entire membership of the Agency. The Governance Committee shall consist of the Chairperson and two other members of

the Agency and must be “independent members” of the Agency within the meaning of Section 2825 of the New York Public Authorities Law. The Governance Committee shall keep the Board informed of current best governance practices, review corporate governance trends, suggest updates to the Agency’s corporate governance principles and shall advise those responsible for appointing members to the Board of the skills and experience required of potential Board members. The Governance Committee shall also have such other duties and responsibilities as set forth in the Governance Committee Charter, as the same may from time to time be amended.

**Section 3. Finance & Audit Committee.** There shall be a Finance & Audit Committee consisting of the Treasurer and two additional “independent members” appointed by the Chairperson, with the consent of the entire membership of the Agency, which members shall, to the extent practicable, be familiar with corporate financial and accounting practices. The Finance & Audit Committee shall provide assistance to the members of the Agency in fulfilling their fiduciary responsibilities relating to accounting, reporting and regulatory compliance practices. The Finance & Audit Committee shall approve the budget for submission to the Board for approval, review and approve transfers of moneys under the budget and make recommendations to the Board as to other financial matters. The Finance & Audit Committee shall recommend the hiring of a certified independent accounting firm and shall provide direct oversight over the performance of the independent audit performed by the accounting firm hired for such purposes and receive and review reports from such accounting firm. The Finance & Audit Committee shall also ensure that the proper

submissions are made to the governmental authorities having audit authority and fiscal oversight of the Agency.

The Finance & Audit Committee shall periodically report to the members of the Agency, at least annually, the findings of the independent accountants and auditors. Such reports shall highlight any weaknesses in the manner in which the Agency is operating and suggest actions that should be taken to correct such weaknesses. The Finance & Audit Committee shall also have such other duties and responsibilities as set forth in the Finance & Audit Committee Charter, as the same may from time to time be amended.

**Section 4. Nominating Committee.** There shall be a Nominating Committee appointed by the Chairperson with the consent of the entire membership of the Agency annually in October. The Nominating Committee shall consist of three members of the Agency whose terms are not expiring, and must be “independent members” of the Agency within the meaning of Section 2825 of the New York Public Authorities Law.

The Nominating Committee shall solicit interest for officer and committee positions for the following calendar year and present the slate of candidates to the members of the Agency at the Annual Meeting.

## **ARTICLE IV**

### **MEETINGS**

**Section 1. Annual Meeting.** The annual meeting of the Agency shall be held on the third Friday of January, at 8:30 a.m. at the regular meeting place of the Agency, or at such place and time as the Agency shall designate. (Section 1 Amended 11/16/90)

**Section 2. Regular Meetings.** Regular meetings of the Agency may be held at such times and places as from time to time may be determined by the Agency.

**Section 3. Special Meetings.** The Chairperson of the Agency may when he or she deems it desirable, and shall, upon written request of two members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each member of the Agency or may be delivered personally to each member, or by regular or electronic mail to the business, home, or electronic mail address of each member of the Agency at least two (2) days prior to the date of such special meeting. Waivers of Notice may be signed by any member failing to receive a proper notice. At such special meeting no business shall be considered other than as designated in the call, but if all members of the Agency are present at a special meeting, with or without notice thereof, and are all agreeable thereto, any and all business may be transacted at such special meeting.

**Section 4. Executive Session.** Upon majority vote of the members, the Agency may enter into executive session and exclude non-members from such session in accordance with Section 105 of the Open Meetings Law.

**Section 5. Quorum.** At all meetings of the Agency, a majority of the members of the Agency shall constitute a quorum for the purpose of transacting business; provided that a smaller number may meet and adjourn to some other time or until a quorum is obtained.

**Section 6. Order of Business.** At the regular meetings of the Agency, the following shall be the order of business:

1. Roll Call
2. Reading and approval of the minutes of the previous meeting
3. Bills and communications
4. Treasurer's Report
5. Public Comment
6. Executive Director's Report
7. Committee Reports
8. Unfinished Business
9. New Business
10. Adjournment

All resolutions shall be in writing and shall be recorded in the journal of the proceedings of the Agency. At its discretion, the members may change the order of business at any meeting by majority vote.

**Section 7. Manner of Voting.** The voting on all questions coming before the Agency shall be by roll call or by acclamation, but in either case the yeas and nays shall be entered on the minutes of such meeting, except in the case of appointments when the vote may be by ballot. Any action of the Agency shall be binding, upon determination by a majority of the members of the Agency.

#### **ARTICLE IV**

#### **AMENDMENTS**

**Section 1. Amendments to Bylaws.** The bylaws of the Agency may be amended by affirmative vote of a majority of the members of the Agency at a regular meeting or at a special meeting called for that purpose; but no such amendment shall be adopted unless at least thirty days' written notice thereof has been previously given to all members of the Agency.

## ARTICLE V

### POLICIES & PROCEDURES

**Section 1. Projects to be considered by this Agency.** It is the policy of the Agency that any project shall be considered by it which shall conform to the letter and spirit of the Laws of New York State.

**Section 2. Site of Agency Projects.**

1. The Agency shall not approve any project to be located on a site or within an area, which does not conform to or has not been granted a variance from the zoning laws of the Town of Amherst.

2. The Agency shall not approve any project, which shall be in violation of the anti-pollution laws of the Federal, State, County or Town government. (Section 2, #2 Added 11/16/90)

3. The Agency shall not approve any project, which shall be in violation of the health, labor or other laws of the State of New York or the United States, or the local laws of the County of Erie or local laws and ordinances of the Town of Amherst.

**Section 3. Payment in Lieu of Taxes.** The Agency shall provide to the Town Board any changes in its payment in lieu of tax policy prior to their adoption.

#### **Section 4. Audit of Records and Accounts**

1. The Agency shall annually file a copy of the audit prepared by the certified independent accounting firm retained by the Board upon the recommendation of the Finance & Audit Committee with the Town Board of Amherst within ninety days after the close of the Agency's fiscal year for its proceedings and its activities during the preceding fiscal year. (Section 4, #1 Amended 11/16/90)

2. The Agency may require any other operating statements, which it shall determine are required for daily operation.

**Section 5. Conveyance of Property.** The Agency may insert in a contract for a project that upon the payment in full of all notes, bonds and indebtedness incurred in connection with a project that the Agency will convey the lands, buildings and equipment involved in said project and so paid for to the tenant or operator of the same upon terms set forth in such contract that the additional consideration for such conveyance may be nominal.

**Section 6.** The Agency by resolution may adopt such rules, regulations, policies and procedures as it may deem necessary and appropriate to the operation so long as the same shall not be contrary to these bylaws as they may be amended from time to time.

**Section 7.** Any sale or disposal of property of the Agency must be in compliance with the provisions of Title 5-A of the Public Authorities Law.

**I Eligible**

- A Manufacturing – NAICS 11, 21, 22, 31-33 Agriculture, mining, utilities manufacturing
- B Distribution –NAICS 42, 48-49, 51 Wholesale trade, transportation/warehousing, information
- C Business Services NAICS 52, 53 54,55,56,61 81 92 Finance &Insurance, Real estate rental/leasing.PST services, Management, Adm support, Education, other, public admin
- D Arts entertainment NAICS 71 arenas museums historic sites golf courses etc.aka tourism

**E Exceptions by project type, building type, tenure type and location**

- Retail - if multi-tenant - no more than 1/3 TPC plus statutory findings. See retail note\* as law defines retail more broadly than NAICS
- Long term care (53) DOH certificate of need
- Civic- NFP
- Hotels (72)– See separate policy eff 9/12 subject to retail prohibitions unless tourism destination  
As of 3/13 change in statute
- Medical (62) must be back office, leading edge technology, unique services
- Adaptive reuse – exception by building type. *Need definition.(s)*
- Neighborhood enhancement – exception by location. Effective 10/2011. Note conflict with area Characteristics in 2005 UTEP MOU
- Senior housing – exception by tenure type see restrictions in separate policy

**II Ineligible**

- A Construction – All 23
- B Retail – All 44 and 45 But has exceptions. See retail note
- C Transportation/warehousing – 485, 487, 491-2 sightseeing/ground transportation etc
- D Information 512– movie theatres
- E Finance and Insurance –521-522, 523, 5242 bank branches, broker offices
- F Real estate rental and leasing 531-533 real estate rental offices, self storage units
- G Administrative and support – 561-562 placement agencies, garbage collection
- H Education All 61 for profit companies
- I Arts entertainment All 71 (tourism) see eligibility above non tourism??what is this?
- J other
- K Public administration – All 92 for profit companies

**III Neither eligible nor ineligible**

- A Finance/Insurance -Some insurance activities 52429-524298
- B Real estate rental and leasing – multifamily housing 53111-531110
- C Professional scientific and technical- all 56

**\*RETAIL exceptions** under the law are more expansive than the NAICS 44-45. And include prohibitions for:

- 522 Banks
- 54 Lawyer offices, CPAs, architect, computer services
- 56 Collection agencies, travel, security, etc back office funtions eligible
- 62 Medical offices and hospitals
- 72 Hotels/motels, restaurants
- 81 Car repair, laundry, salons, religious

MUST be tourism destination or if in distressed CT or unique goods/services not offered in the marketplace then Requires Town signoff and findings for job creation.