

Frank S. Venezia
Chairman
Joseph P. Richardson
Vice Chairman
Tim McCann
Secretary
Victoria Storrs
Assistant Secretary
Tim Maniccia
Member
David Kidera
Member
Richard Kotlow
Member

TOWN OF BETHLEHEM
Albany County - New York
INDUSTRIAL DEVELOPMENT AGENCY
445 DELAWARE AVENUE
DELMAR, NEW YORK 12054
Telephone: (518) 439-4955
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Thomas P. Connolly
*Executive Director,
Assistant Secretary and
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518-447-3303*
Allen F. Maikels
*Treasurer, Chief Financial Officer
and Contracting Officer
518-487-4679*
Elizabeth Staubach
*Economic Development
Coordinator
Ext. 1189*
Robin Nagengast
*Assistant to the Executive Director
and Clerk
Ext. 1164*

Regular Meeting Agenda
Friday, February 28, 2020
8:01 AM
Town Hall Auditorium

- I. Call to Order/Roll Call/Quorum Determination**
- II. Minutes Approval**
 1. Bethlehem Industrial Development Agency - Regular Meeting - Jan 24, 2020 8:00 AM
- III. Communications**
- IV. Reports of Committees**
 1. Report of Audit Committee
 2. Audit Committee Minutes 1/24/2020
- V. Old Business**
 1. Planning Board Update (Leslie)
 2. Report of ED Coordinator (Staubach)
- VI. New Business**
 1. Financial Statements 1/31/2020 (Maikels)
 2. Revise Uniform Tax Exemption Policy/Add Renewable Energy as Criterion/Resolution (Connolly)
 3. Audit Committee Meeting - Friday, March 13, 2020 8:00 a.m. Room 101
 4. Regular Meeting - Friday, March 27, 2020 8:00 a.m. Auditorium
- VII. Adjournment**

Adjourn

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Regular Meeting Minutes
Friday, January 24, 2020
8:00 AM
Town Hall Auditorium

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I. Call to Order/Roll Call/Quorum Determination

A Regular Meeting of the Bethlehem Industrial Development Agency of the Town of Bethlehem was held on the above date at the Town Hall Auditorium, 445 Delaware Avenue, Delmar, NY. The Meeting was called to order at 8:02 AM with the presence of a quorum noted.

Attendee Name	Title	Status	Arrived
Frank S. Venezia	Board Member/Chairman	Present	
Joseph P. Richardson	Board Member/Vice Chairman	Present	
Richard Kotlow	Board Member	Present	
Tim McCann	Board Member/Secretary	Present	
Victoria Storrs	Board Member/Assistant Secretary	Present	
David Kidera	Board Member	Present	
Tim Maniccia	Board Member	Absent	
Thomas P. Connolly	Executive Director/Agency Counsel	Present	
Joe Scott	Bond Counsel	Present	
Allen F. Maikels	CFO and Contracting Officer	Present	
Robin Nagengast	Assistant to the Executive Director	Present	
Elizabeth Staubach	Senior Planner/ED Coordinator	Present	
Robert Leslie	Director of Planning	Present	
David VanLuvén	Town Supervisor	Present	

II. Minutes Approval

1. Friday, October 25, 2019

RESULT: ACCEPTED [UNANIMOUS]
MOVER: Victoria Storrs, Board Member/Assistant Secretary
SECONDER: Joseph P. Richardson, Board Member/Vice Chairman
AYES: Venezia, Richardson, Kotlow, McCann, Storrs, Kidera

III. Reports of Committees

No committee meetings to report on. The audit committee meets today after the full board.

Minutes Acceptance: Minutes of Jan 24, 2020 8:00 AM (Minutes Approval)

IV. Communications

- **PRIVATE ACTIVITY BOND ALLOCATION FOR 2020 (CONNOLLY)**

The Agency received notice from the NYS Department of Economic Development of its initial private equity bond allocation for 2020.

V. Old Business

- **PLANNING BOARD UPDATE (LESLIE)**

Port of Albany concluding EIS supplemental submissions. Diversified Auto, West Yard Road, and Burt Crane are under review. Comp plan update consultant to facilitate industrial development conversations. Annual economic development event is on pause, focusing on strategy.

- **REPORT OF ED COORDINATOR (STAUBACH)**

Microenterprise grant applications under review. There is \$74,200 remaining for new businesses. Reapplying for the program this summer. A communications consultant has been hired to develop an outreach plan for businesses during road constructions projects.

- **COLUMBIA 15 PROJECT (CONNOLLY)**

There is no update. The financial assistance was granted 7-8 years ago. The agenda item will no longer be included.

- **PIONEER FORECLOSURE MONOLITH (CONNOLLY)**

Foreclosure is going slowly. The engagement with Hodgson Russ to monitor is no longer needed and will be terminated.

VI. New Business

- **APPLICATION CANNON DEVELOPMENT LLC (BURT CRANE & RIGGING) (DEBRA LAMBEK)**

Debra Lambek and Bridget Hubal presented the project, a 28,000 square foot warehouse on River Road, to be built on vacant land. The project calls for \$4.5million of private investment and five jobs will be added. Further development at the site is under consideration.

Motion To: Approve Resolution Authorizing Hearing

RESULT: APPROVED [UNANIMOUS]
MOVER: Joseph P. Richardson, Board Member/Vice Chairman
SECONDER: David Kidera, Board Member
AYES: Venezia, Richardson, Kotlow, McCann, Storrs, Kidera

Upon motion by Mr. Richardson, seconded by Mr. Kidera, unanimously approved by all members present, the Agency set the public hearing for Cannon Development LLP/Burt Crane for Wednesday, February 26 at 5pm in the Town Hall Auditorium.

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OF TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY TO HOLD A PUBLIC HEARING REGARDING A PROPOSED PROJECT TO BE UNDERTAKEN FOR THE BENEFIT OF SCHEIB CORPORATION D/B/A BURT CRANE & RIGGING.

WHEREAS, Town of Bethlehem Industrial Development Agency (the Agency) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the Enabling Act) and Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the Act) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more projects (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Cannon Development, LLC, a State of Vermont limited liability company (the Applicant), on behalf of Scheib Corporation d/b/a Burt Crane & Rigging, a State of Vermont business corporation (the Company), has presented an application (the Application) to the Agency, a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the Project) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 26.83 acre parcel of land located on River Road in the Town of Bethlehem, Albany County, New York (tax map number 134-3-2) (the Land), (2) the construction on the Land of an approximately 28,000 square foot building and warehouse facility with related parking (the Facility) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the Equipment) (the Land, the Facility, and the Equipment being collectively hereinafter referred to as the Project Facility), all of the foregoing to constitute an industrial facility to be owned and operated by the Company as a crane and storage facility and any other directly and indirectly related activities; (B) the granting of certain financial assistance (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the Financial Assistance);

and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Company has requested that the Agency grant the Project an Enhanced Tax Abatement Program (beginning with a 100% abatement of the increase in the assessed valuation in Years 1 and 2 and thereafter declining at 10% per year over a twelve year period) for the Project Facility; and

WHEREAS, pursuant to Section 859-a of the Act, prior to the Agency providing any financial assistance (as defined in the Act) of more than \$100,000 to any project, the Agency, among other things, must hold a public hearing pursuant to Section 859-a of the Act with respect to said project; and

WHEREAS, the Agency desires to provide for compliance with the provisions of Section 859-a of the Act with respect to the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The Agency hereby authorizes the Executive Director of the Agency, after consultation with the members of the Agency and Agency Counsel, (A) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project (the Public Hearing); (B) to cause the Public Hearing to be held in a city, town or village where the Project Facility is or is to be located, and to cause notice of such Public Hearing to be given to the public by publishing a notice or notices of such Public Hearing in a newspaper of general circulation available to the residents of the governmental units where the Project Facility is or is to be located, such notice or notices to comply with the requirements of Section 859-a of the Act; (C) to cause notice of the Public Hearing to be given to the chief executive officer of the county and of each city, town, village and school district in which the Project Facility is or is to be located to comply with the requirements of Section 859-a of the Act; (D) to conduct such Public Hearing; (E) to cause a report of the Public Hearing fairly summarizing the views presented at such Public Hearing (the Report) to be prepared; and (F) to cause a copy of the Report to be made available to the members of the Agency.

Section 2. The Chairman, Vice Chairman and/or Executive Director of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 3. All action taken by the Executive Director of the Agency in connection with the Public Hearing with respect to the Project prior to the date of this Resolution is hereby ratified and confirmed.

Section 4. All commitments of the Agency hereunder are subject to the condition that the following events shall have occurred not later than one (1) year from the date hereof (or such other date as shall be mutually satisfactory to the Agency and the Company):

(A) The Agency and the Company shall have agreed on mutually acceptable terms and conditions of the agreements to be entered into with respect to the Project; and

(B) All necessary governmental approvals shall be obtained.

Section 5. If the events set forth in Section 4 hereof do not take place within the time set forth in said Section 4, or any extension thereof, or if the Company provides written notice of its intent to not proceed with the Project upon thirty (30) days prior written notice to the Agency, the Company agrees that it will promptly reimburse the Agency (and its officers, members, agents or employees) for all reasonable and necessary direct out-of-pocket expenses (including legal fees and expenses) which the Agency (and its officers, members, agents or employees) may incur with respect to the Project.

Section 6. This Resolution shall take effect immediately.

- **APPLICATION SALE: CPI BETHLEHEM SEF I LLC & CPI ... II LLC TO CNLV II SEFSLNY LLC/ASSIGNMENT AND ASSUMPTION AND REFINANCE WITH SANTANDER BANK (EVIN FELICIANO)**

Evin Feliciano presented the application to reassign the IDA PILOT of a current project to a new owner for the purpose of refinancing. There are 3 years remaining on the PILOT agreement. No new benefits will be granted. A fee of \$1,500 was proposed.

- **A. RESOLUTION (SCOTT)**

Upon motion by Mr. McCann, seconded by Ms. Storrs, and approved by all members present, the Agency accepted the following resolution:

RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO THE ASSIGNMENT AND ASSUMPTION OF THE FIRST COLUMBIA BETHLEHEM SEF LLC PROJECT.

WHEREAS, Town of Bethlehem Industrial Development Agency (the Agency) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the Enabling Act) and Chapter 582 of the 1973 Laws of New York, as amended, constituting Section 909-b of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the Act) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on May 9, 2012, (the Closing Date), the Agency entered into a lease agreement dated as of May 1, 2012 (the Lease Agreement) by and between the Agency and Columbia Bethlehem SEF LLC (the Original Company) for the purpose of undertaking a project (the Project) consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.0 acre parcel of land located at 12 Vista Boulevard in the Town of Bethlehem, Albany County, New York (the Land), (2) the construction on the Land of an approximately 2,500 square foot building (the Facility), (3) the further construction on the Land of related parking and other infrastructure improvements (collectively, the Improvements) and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property including without limitation tenant improvement and finish (collectively, the Equipment) (the Land, the Facility, the Improvements and the Equipment being collectively referred to as the Project Facility), all of the foregoing to be owned by the Original Company and leased to a tenant for use by the tenant as a financial branch center for banking services and other related uses; (B) the lease (with or without an option to purchase) or sale of the Project Facility to the Original Company and (C) the granting of certain financial assistance with respect to the foregoing, including exemptions from real estate transfer taxes, sales taxes and mortgage taxes (Financing Assistance); and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the Closing), (A) the Original Company executed and delivered to the Agency (1) a certain lease to Agency dated as of May 1, 2012 (the Lease to Agency) from the Original Company to the Agency, (2) a certain license agreement dated as of May 1, 2012 (the License to Agency) by and between the Original Company, as licensor, and the Agency, as licensee, pursuant to which the Original Company granted to the Agency (a) a license to enter upon the balance of the Land (the Licensed Premises) for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Original Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement, (3) a bill of sale dated as of May 1, 2012 (the Bill of Sale to Agency), which conveyed to the Agency all right, title and interest of the Original Company in the Equipment and (4) a payment in lieu of tax agreement dated as of May 1, 2012 (the Payment in Lieu of Tax Agreement) by and between the Agency and the Original Company, pursuant to which the Original Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility and (B) the Agency (1) mailed to the assessor and the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the Real Property Tax Exemption Form) relating to the Project Facility and the Payment in Lieu of Tax Agreement and (2) executed and delivered to the Original Company a sales tax exemption letter (the Sales Tax Exemption Letter) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance (collectively, with the Lease Agreement, the Basic Documents); and

WHEREAS, on or about December 19, 2012, the Agency and the Original Company entered into an assignment and assumption agreement (the Assignment and Assumption Agreement), whereby the Original Company assigned the Project Facility (as defined in the Lease Agreement) and the interests of the Original Company in the Basic Documents to RSN Bethlehem LLC (the "Previous Company"); and

WHEREAS, on or about December 28, 2016, the Agency and the Previous Company entered into an assignment and assumption agreement dated as of December 1, 2016 (the Second

Assignment Agreement), whereby the Previous Company assigned the Project Facility and the interests of the Previous Company in the Basic Documents to CPI Bethlehem SEF I LLC and CPI Bethlehem SEF II LLC (collectively, the Current Company); and

WHEREAS, pursuant to an application (the Application) submitted to the Agency by CNLV II SEFSLNY LLC, a limited liability company organized and existing under the laws of the State of New York (the New Company), the Agency was notified that the Current Company desires to convey the Project Facility and its interests in the Basic Documents to the New Company and, in connection with such conveyance, provide for the assignment of the Basic Documents from the Current Company to the New Company, as described in the Application; and

WHEREAS, the Lease Agreement provides that the Current Company is prohibited from selling, leasing, transferring or otherwise conveying any part of the Project Facility without the prior written consent of the Agency; and

WHEREAS, in connection with the conveyance of the Project Facility, the Current Company and the New Company have requested (the Request) that the Agency execute documents providing for the following (the Conveyance and Assignment Documents): the consent by the Agency of the conveyance of the Project Facility and the assignment and assumption of the Basic Documents from the Current Company to the New Company; 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), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the execution and delivery of the Conveyance and Assignment Documents; and

WHEREAS, pursuant to SEQRA, the Agency has reviewed the Request in order to make a determination as to whether the execution and delivery of the Conveyance and Assignment Documents is subject to SEQRA, and it appears that the Request is not an Action under SEQRA;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) Pursuant to SEQRA, the approval of the Request is not an Action under SEQRA and therefore is not subject to SEQRA review by the Agency.

(B) The Agency will not be granting any mortgage recording tax exemption relating to the Request.

(C) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of financial assistance (as such quoted term is defined in the Act) to the Purchaser, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. The Agency hereby approves (A) the assignment to, and assumption by, the New Company of all of the Current Company's interest in the Project Facility, and the Basic Documents, including but not limited to the benefits of the Lease Agreement and the

Payment in Lieu of Tax Agreement, and (B) the assumption by the New Company of all obligations of the Current Company under the Basic Documents pursuant to an assignment and assumption agreement (the Third Assignment and Assumption Agreement); subject in each case, however to the following conditions: (1) receipt by Special Counsel to the Agency of the formation documents of the New Company and certified copies of the authority of the New Company to do business in New York State from the New York State Department of State; (2) receipt of confirmation that all real property taxes and payments in lieu of taxes required by the Project have been satisfied; (3) evidence of current certificates of insurance acceptable to the Agency; (4) receipt of confirmation from Agency counsel that no modifications shall result from the Request that result in any new tax relief for the Project (such as an extension of the term, increase in abatement or change in the Payment in Lieu of Tax Agreement); (5) receipt by Special Counsel of the written consent of any holder of any mortgage on the Project Facility OR evidence that there are no security documents filed relating to the Project; (6) compliance with the terms and conditions contained in the Third Assignment and Assumption Agreement and the Basic Documents; (7) approval by counsel to the Agency of the form of the documents to be executed by the Agency in connection with the assignment and assumption, including the Third Assignment and Assumption Agreement (collectively, the Assignment Documents); (8) receipt by the Agency of its administrative fee relating to the Assignment, as reviewed by the Chair and Agency Counsel, and all fees and expenses incurred by the Agency with respect to the Assignment, including the fees and expenses incurred by Agency counsel with respect thereto; and (9) the following additional conditions: _____.

Section 3. Subject to (A) satisfaction of the conditions contained in Section 2 hereof, including the condition that no modifications provide any new tax relief for the Project (such as an extension of the term, increase in abatement or change in the Payment in Lieu of Tax Agreement); and (B) the execution and delivery of the Assignment Documents by the other parties thereto, the Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Assignment Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the forms thereof approved by Counsel to the Agency, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Request, 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 Agency with all of the terms, covenants and provisions of the Request.

Section 5. This Resolution shall take effect immediately.

RESULT: APPROVED [UNANIMOUS]
MOVER: Tim McCann, Board Member/Secretary
SECONDER: Victoria Storrs, Board Member/Assistant Secretary
AYES: Venezia, Richardson, Kotlow, McCann, Storrs, Kidera

Motion To: Approve Administrative Fee of \$1,500

Minutes Acceptance: Minutes of Jan 24, 2020 8:00 AM (Minutes Approval)

RESULT: APPROVED [UNANIMOUS]
MOVER: Victoria Storrs, Board Member/Assistant Secretary
SECONDER: Tim McCann, Board Member/Secretary
AYES: Venezia, Richardson, Kotlow, McCann, Storrs, Kidera

- **FINANCIAL STATEMENTS 12/31/19 (MAIKELS)**

One of two CDs approved by the Finance Committee has been purchased.

- **2019 OPERATIONS AND ACCOMPLISHMENTS/RESOLUTION (CONNOLLY)**

Upon motion by Mr. Kotlow , seconded by Mr. Kidera, with all members in favor, the Agency approved the amended 2019 Operations and Accomplishments for inclusion in its annual reporting.

RESULT: APPROVED AS AMENDED [UNANIMOUS]
MOVER: Richard Kotlow, Board Member
SECONDER: David Kidera, Board Member
AYES: Venezia, Richardson, Kotlow, McCann, Storrs, Kidera

- **REPORT: ANNUAL PROJECT QUESTIONNAIRES (MAIKELS)**

Questionnaires were sent to projects in late 2019 and responses are coming in.

- **REPORT: BILLING OF 2020 ANNUAL ADMINISTRATIVE FEES (MAIKELS)**

Invoices for fees were sent to projects in early January and checks are being received.

- **ANNUAL MEETING AND REGULAR MEETING – FRIDAY FEBRUARY 28, 2020 8:00 A.M. AUDITORIUM**

The annual and regular meetings are scheduled Friday, February 28 at 8am in the Auditorium.

- **LEGISLATIVE CHANGES**

Mr. Scott described some items in the Governor's budget and the potential affects on IDAs.

VII. Adjournment

Motion To: Adjourn

RESULT: ADJOURN [UNANIMOUS]
MOVER: David Kidera, Board Member
SECONDER: Richard Kotlow, Board Member
AYES: Venezia, Richardson, Kotlow, McCann, Storrs, Kidera

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Meeting Minutes
Friday, January 24, 2020
9:00 AM, Room 101A

A meeting of the Town of Bethlehem Industrial Development Agency Audit Committee was convened in public session in the Bethlehem Town Hall, 445 Delaware Ave., Delmar, NY at 9:37a.m., on Friday, January 24, 2020.

Attendance was recorded as follows:

<u>Committee Members Present</u>	<u>Committee Members Absent</u>	<u>Counsel Present</u>	<u>Town Staff Present</u>	<u>Auditors Present</u>
Frank Venezia			Tom Connolly	John Criscone
Joe Richardson			Al Maikels	
Tim McCann			Liz Staubach	

Chairman Venezia called the meeting to order at 9:37am noting the presence of a quorum.

Upon a motion by Chairman Venezia, seconded by Mr. Richardson, the minutes of the March 13, 2019 Audit Committee meeting were approved.

Scope of Audit

John Criscone from Cusack & Company, CPAs, P.C. discussed the engagement letter and scope of the audit. The only change from the 2018 audit is the fee.

Upon a motion by Mr. McCann, seconded by Mr. Richardson, the engagement letter and scope of the 2019 Agency audit was accepted.

Executive Session with Auditor

Upon motion by Mr. Richardson, seconded by Chairman Venezia, the Audit Committee went into executive session at 9:45am. Mr. Connolly, Mr. Maikels, Ms. Staubach, and Ms. Nagengast left the room and Mr. Criscone met with the Audit Committee.

Mr. Connolly, Mr. Maikels, Ms. Staubach, and Ms. Nagengast returned to the meeting at 9:52am.

The next audit committee meeting was scheduled for March 13 at 8:00am.

Motion to Adjourn

The meeting was adjourned on a motion by Mr. Richardson, seconded by Mr. McCann, at 9:58am.

Respectfully submitted,
 Robin Nagengast

Attachment: IDA Minutes 2020-01-24 Audit Committee Meeting (5998 : Audit Committee - Minutes)

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
STATEMENT OF NET ASSETS
January 31, 2020

ASSETS	<u>January 31, 2019</u>
Current Assets	
Checking/Savings	
200.04 Cash-M&T Bank Agency Account	269,346.73
200.05 Cash-Trustco CD	<u>200,000.00</u>
Total Checking/Savings	469,346.73
Other Current Assets	
380 Fee Receivable	9,850.00
480 Prepaid Expense	<u>3,070.84</u>
Total Other Current Assets	<u>12,920.84</u>
Total Current Assets	<u>482,267.57</u>
TOTAL ASSETS	<u><u>482,267.57</u></u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
601 Accrued Expenses	<u>9,121.42</u>
Total Current Liabilities	<u>9,121.42</u>
Total Liabilities	<u>9,121.42</u>
Equity	
924 Net Assets	
924.3 Net Assets-Unassigned	<u>473,146.15</u>
Total 924 Net Assets	<u>473,146.15</u>
TOTAL LIABILITIES & EQUITY	<u><u>482,267.57</u></u>

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
STATEMENT OF REVENUE AND EXPENSES
January 31, 2020

ORDINARY INCOME/EXPENSE

Income

2116 FEE INCOME	17,743.35
2116.1 PSEG ENERGY REIMB	<u>0.00</u>

Total Income 17,743.35

Expenses

6460.1 Salaries and Wages	4,047.34
6460.4 Contractual Expenses	5,506.92
6460.8 Employee Benefits	<u>907.42</u>

Total Expenses 10,461.68

NET ORDINARY INCOME 7,281.67

Other Income/Expense

Other Income

2401 Interest Income	14.00
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Total Other Income 14.00

NET INCOME 7,295.67

BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
 BUDGET VS ACTUAL
 January 31, 2020

Ordinary Income/Expense	Jan 31 2020	YTD Budget	Variance	Annual Budget
Income				
2116 Fee Income	17,743.35	4,395.33	13,348.02	52,744.00
2106.1 PSEG Energ Reimb	0.00	5,666.67	-5,666.67	68,000.00
Total Income	17,743.35	10,062.00	7,681.35	120,744.00
Expenses				
6460.1 Salaries and Wages	4,047.34	4,047.33	0.01	48,568.00
6460.4 Contractual Expenses	5,506.92	6,258.33	-751.41	75,100.00
6460.8 Employee Benefits	907.42	1,133.33	-225.91	13,600.00
Total Expenses	10,461.68	11,438.99	-977.31	137,268.00
Net Ordinary Income	7,281.67	-1,376.99	8,658.66	-16,524.00
Other Income/Expense				
Other Income				
2401 Interest Income	14.00	250.00	-236.00	3,000.00
Total Other Income	14.00	250.00	-236.00	3,000.00
Net Income	7,295.67	-1,126.99	8,422.66	-13,524.00

**TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
UNIFORM TAX EXEMPTION POLICY**

SECTION 1701. PURPOSE AND AUTHORITY. Pursuant to Section 874(4) (a) of Title One of Article 18-A of the general municipal Law (the “Act”), Town of Bethlehem Industrial Development Agency is required to establish a uniform tax exemption policy applicable to the provision of any financial assistance of more than one hundred thousand dollars to any project.

SECTION 1702. DEFINITIONS. All words and terms used herein and defined in the Act shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

(A) “Administrative fee” shall mean a charge imposed by the Agency to an applicant or project occupant for the administration of project.

(B) “Agency fee” shall mean the normal charges imposed by the Agency on an applicant or a project occupant to compensate the Agency for the Agency’s participation in a project. The term “Agency fee” shall include not only the Agency’s normal administrative fee, but also may include (1) reimbursement of the Agency’s expenses, (2) rent imposed by the Agency for use of the property of the Agency, and (3) other similar charges imposed by the Agency.

(C) “Applicant” shall mean an applicant for financial assistance.

(D) “City shall mean any city located in the county.

(E) “County” shall mean the county of Albany.

(F) “PILOT” or “Payment in Lieu of Tax” shall mean any payment made to the Agency or an affected tax jurisdiction equal to all or a portion of the real property taxes or other taxes which would have been levied by or on behalf of an affected tax jurisdiction with respect to a project but for tax exemption obtained by reason of the involvement of the Agency in such project, but such term shall not include Agency fees.

(G) “School District” shall mean any school district located in the county.

(H) “Tax Exemption” shall mean any financial assistance granted to a project, which is based upon all or a portion of the taxes, which would otherwise be levied and assessed against a project but for the involvement of the Agency.

(I) “Town” shall mean any town located in the County.

(J) “Village” shall mean any village located in the county.

SECTION 1703. GENERAL PROVISIONS. (A) General Policy. The general policy of the Agency is to grant tax exemption as hereinafter set forth to any project which has been or will be financed by the issuance by the Agency of bonds, notes or other evidence of indebtedness with respect thereto.

In determining whether an applicant is eligible for financial assistance, the Agency considers the following general factors:

1. The nature of the proposed project (e.g., manufacturing, commercial)
2. The nature of the property before the project begins (e.g., vacant land, vacant buildings)
3. The economic condition of the area at the time of the application
4. The extent to which a project will create or retain permanent, private sector jobs
5. The estimated value of tax exemptions to be provided
6. The impact of the project and the proposed tax exemptions on affected tax jurisdictions
7. The impact of the proposed project on existing and proposed businesses and economic development projects in the Town of Bethlehem
8. The amount of private sector investment generated or likely to be generated by the proposed project
9. The likelihood of accomplishing the proposed project in a timely fashion
10. The effect of the proposed project upon the environment
11. The extent to which the proposed project will provide additional sources of revenue for the municipalities and school districts in which the project is located
12. The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the Town of Bethlehem
13. Whether affected tax jurisdictions shall be reimbursed by the project occupant if a project does not fulfill the purposes for which an exemption was provided
14. The demonstrated public support for the proposed project
15. The extent to which the proposed project will require the provision of additional services, including but not limited to additional education, transportation, police, emergency medical or fire services
16. Whether financial assistance is necessary in order for the applicant to undertake the project
17. The extent to which the project will utilize, to the fullest extent practicable and feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures.

(B) Exceptions. The Agency reserves the right to deviate from such policy in special circumstances. In determining whether special circumstances exist to justify such a deviation, the Agency may consider factors which make the project unusual, which factors might include but not be limited to the following factors: (1) the magnitude and/or importance of any permanent private sector job creation and/or retention related to project; (2) whether the affected tax jurisdictions will be reimbursed by the project occupancy if the project does not fulfill the purposes for which tax exemption was granted; (3) the impact of the project on existing and proposed businesses and/or economic development projects; (4) the amount of private sector investment generated or likely to be generated by the project; (5) demonstrated public support for the project; (6) the estimated value of the tax exemptions requested; and (7) the extent to which the proposed project will provide needed services and/or revenues to the affected tax jurisdictions. In addition, the Agency may consider the other factors outlined in Section 874 (4) (a) of the Act.

(C) Application. No request for a tax exemption shall be considered by the Agency unless an application and environmental assessment form are filed with the Agency on the forms prescribed by the Agency pursuant to the rules and regulations of the Agency. Such application shall contain the information requested by the Agency, including a description of the proposed project and of each tax exemption sought with respect to the project, the estimated value of each tax exemption sought with respect to the project, the proposed financial assistance being sought with respect to the project, the

estimated date of completion of the project, and whether such financial assistance is consistent with this part.

(D) Removal or Abandonment. If the proposed project involves the removal or abandonment of a facility or plant within the state, the Agency will notify the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located.

SECTION 1704. SALES AND USE TAX EXEMPTION. (A) General. State law provides that purchases of tangible personal property by the Agency or by an agent of the Agency, and purchase of tangible personal property by a contractor for incorporation into or improving, maintaining, servicing or repairing real property of the Agency, are exempt from sales and use taxes imposed pursuant to Article 28 or the Tax Law. The Agency has a general policy of abating sales taxes applicable only to the initial acquisition, construction, reconstruction and/or equipping of each project with respect to which the Agency grants financial assistance. The Agency has no requirement for imposing a payment in lieu of tax arising from the exemption of a project from sales and/or use taxes applicable to the initial acquisition, construction reconstruction and/or equipping of such project, except (1) as described in subsection (E) below or (2) in the circumstance where (a) a project is offered sales tax exemption on the condition that a certain event (such as the issuance of bonds by the Agency with respect to the project) occur by a certain date and (b) such event does not occur, in which case the Agency may require that the applicant make payments in lieu of sales tax to the New York State Department of Taxation and Finance.

(B) Period of Exemption. Except as set forth in subsection (A) above, the period of time for which a sales tax exemption shall be effective (the “tax exemption period”) shall be determined as follows:

(1) General. Unless otherwise determined by the Agency, the tax exemption for sales and use taxes shall be for the tax exemption period commencing with the issuance by the Agency of bonds, notes or other evidences of indebtedness with respect to the project and ending on the date of completion of the project.

(2) Early Commencement. The tax exemption period may, at the discretion of the Agency, commence earlier than the date of issuance by the Agency, of the Agency’s debt relating to the project, provided that (a) the Agency has complied with the requirements of Section 859-a of the Act, (b) the Agency thereafter adopts a resolution determining to commence such period earlier, said resolution to be substantially in the form of Appendix 17A attached hereto, (c) the applicant agrees to the conditions of such resolution and supplies to the Agency the materials required to be supplied to the Agency thereunder, and (d) the (Chairman) (Executive Director) (General Counsel) of the Agency acknowledges satisfaction of all conditions to the granting of such tax exemption set forth in such resolution.

(3) Normal Termination. The tax exemption period will normally end upon the completion of the project. On construction projects, the parties shall agree on the estimated date of completion of the project, and the tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date, which is six (6) months after the estimated date of such project. On non-construction projects, the parties shall agree on the estimated date of completion of the project, and the tax exemption shall cease on the earlier of (a) the actual date of completion of the project or (b) the date, which is three (3) months after the estimated date of completion of the project. If the Agency and the applicant shall fail to agree on a date for completion of the project, the Agency shall on notice to the applicant make the determination on the basis of available evidence.

(4) Later Termination. The Agency, for good cause shown, may adopt a resolution extending the period for completion of the project and/or extending the tax exemption period.

(C) Items Exempted. The sales and use tax exemption granted by the agency shall normally extend only to the following items acquired during the tax exemption period described in subsection (B) above:

- (1) items incorporated into the real property;
- (2) tangible personal property including furniture, furnishings and equipment used to initially equip the project or otherwise forming part of the project, if purchased as agent of the Agency;
- (3) the rental of tools and other items necessary for the construction, reconstruction and/or equipping of the project, if rented as agent of the Agency; and
- (4) office supplies, fuel and similar items consumed in the process of acquiring, constructing, reconstruction and/or equipping the project, if purchased as agent of the Agency.

(D) Items Not Exempted. A sales and use tax exemption shall not be granted for the following:

- (1) purchases occurring beyond the tax exemption period described in subsection (B) above
- (2) repairs, replacements or renovations of the project, unless such repairs, replacements or renovations constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act; or
- (3) operating expenses, unless such operating expenses constitute major capital-type expenses approved by the Agency as a separate project in the manner contemplated by the Act.

(E) Percentage of Exemption. Unless otherwise determined by resolution of the Agency, the sales and use tax exemption shall be equal to one hundred percent (100%) of the sales and/or use taxes that would have been levied if the project were not exempt by reason of the Agency's involvement in the project. If an exemption of less than one hundred percent (100%) is determined by the Agency, then the applicant shall be required to pay a PILOT to the Agency equal to the applicable percentage of sales and/or use tax liability not being abated. The Agency shall remit such PILOT within thirty (30) days of receipt by the Agency to the affected tax jurisdictions in accordance with Section 874 (3) of the Act.

(F) Confirmation Letter. The final act of granting a sales and/or use tax exemption by the Agency shall be confirmed by the execution by an authorized officer of the Agency of a confirmation letter by the Agency. Such confirmation letter shall be in the form of either Appendix 17B (where the exemption is permanent, because the Agency is satisfied that any conditions precedent to such tax exemption, such as the issuance of bonds by the Agency, have been satisfied) or Appendix 17C (where such exemption is tentative, because there remain conditions precedent to such tax exemption which have not been satisfied). Each such confirmation letter shall describe the scope and term of the sales and use tax exemption being granted.

(G) Required Filings. The New York State Department of Taxation and Finance requires that proper forms and supporting materials be filed with a vendor to establish a purchaser's entitlement to a sales tax exemption. For example, TSB-M-87(7) outlines the materials that must be filed to establish entitlement to sales tax exemption as "agent" of the Agency. It is the responsibility of the applicant and/or project occupant to ensure that the proper documentation is filed with each vendor to obtain any sales tax exemptions authorized by the Agency.

(H) Required Reports and Records. Pursuant to section 874(8), the applicant and/or project occupant is required to annually file with the New York State Department of Taxation and Finance a statement of the value of all sales and use tax exemptions claimed under the Act by the applicant and/or the project occupant and/or all agents, subcontractors and consultants thereof. The project documents shall require that (1) a copy of such statement will also be filed with the Agency and (2) that the project occupant shall

maintain, for a period ending seven (7) years after the last purchase made under the sales and use tax exemption, and make available to the Agency at the request of the Agency, detailed records which shall show the method of calculating the sales and use tax exemption benefit granted by the Agency.

SECTION 1704. MORTGAGE RECORDING TAX EXEMPTION. (A) General. State law provides that mortgages recorded by the Agency are exempt from mortgage recording taxes imposed pursuant to Article II of the Tax Law. The Agency has a general policy of abating mortgage-recording taxes for the initial financing obtained from the Agency with respect to each project with respect to which the Agency issues debt, which will be secured by a mortgage upon real property. In instances where the initial financing commitment provides for a construction financing of the Agency to be replaced by a permanent financing of the Agency immediately upon the completion of the project, the Agency's general policy is to abate the mortgage recording tax on both the construction financing and the permanent financing.

(B) Refinancing. In the event that the Agency retains title to a project, it is the general policy of the Agency to abate mortgage recording taxes on any debt issued by the Agency for the purpose of refinancing prior debt issued by the Agency, and on any modifications, extensions and renewal thereof, so long as the Agency fees relating to same have been paid.

(C) Non-Agency Projects. In the event that the Agency does not hold title to a project, it is the policy of the Agency not to join in a mortgage relating to that project and not to abate any mortgage recording taxes relating to that project.

(D) Non-Agency Financing. Occasionally, a situation will arise where the Agency holds title to a project, the project occupant needs to borrow money for its own purposes (working capital, for example), and the lender will not make the loan to the project occupant without obtaining a fee mortgage as security. In such instances, the policy of the Agency is to consent to the granting of such mortgage and to join in such mortgage, so long as the following conditions are met:

- (1) the documents relating to such proposed mortgage make it clear that the Agency is not liable on the debt, and that any liability of the Agency on the mortgage is limited to the Agency's interest in the project;
- (2) the granting of the mortgage is permitted under any existing documents relating to the project, and any necessary consents relating thereto have been obtained by the project occupant; and
- (3) the payment of the Agency fee relating to same.

(E) Exemption Affidavit. The act of granting a mortgage recording tax exemption by the Agency is confirmed by the execution by an authorized officer of the Agency of an exemption affidavit relating thereto.

(F) PILOT Payments. If the Agency is a party to a mortgage that is not to be granted a mortgage recording tax exemption by the Agency (a "non-exempt mortgage"), then the applicant and/or project occupant or other person recording same shall pay the same mortgage recording taxes with respect to same as would have been payable had the Agency not been a party to said mortgage (the "normal mortgage tax"). Such mortgage recording taxes are payable to the County Clerk of the county, who shall in turn distribute same in accordance with law. If for any reason a non-exempt mortgage is to be recorded and the Agency is aware that such non-exempt mortgage may for any reasons be recorded without the payments of the normal mortgage tax, then the Agency shall prior to executing such non-exempt mortgage collect a PILOT equal to the normal mortgage tax and remit same within thirty (30) days of receipt by the Agency to the affected tax jurisdiction in accordance with Section 874 (3) of the Act.

SECTION 1706. REAL ESTATE TRANSFER TAXES. (A) Real Estate Transfer Tax. Article 31 of the Tax Law provided for the imposition of a tax upon certain real estate transfers. Section 1405 (b) (2) of the Tax Law provided that transfers into the Agency are exempt from such tax, and the New York State Department of Taxation and Finance has ruled that transfers of property by the Agency back to the same entity which transferred such property to the Agency are exempt from such tax. The general policy of the Agency is to impose no payment in lieu of tax upon any real estate transfers to or from the Agency.

(B) Real Property Transfer Gains Tax. Article 31-B of the Tax Law provides for the imposition of a tax upon gains derived from the transfer of certain real estate in New York State. Certain transfers are exempt from such tax. It is the policy of the Agency to comply with the law, and to file the appropriate documentation with the New York State Department of Taxation and Finance to obtain pre-clearance by that department for any documents transferring real property to or from the Agency.

(C) Required Filings. It shall be the responsibility of the applicant and/or project occupant to ensure that all documentation necessary relative to the real estate transfer tax and the real estate transfer gains tax are timely filed with the appropriate officials.

SECTION 1707. REAL PROPERTY TAX ABATEMENT (PILOT) Projects eligible for New York State Empire Zone benefits must first utilize the real property tax benefits associated with the Zone program before seeking real property tax abatement from the Agency.

In NYS, property owners pay a real property tax based upon the assessed value of improvements to a site. For IDA eligible projects, the property becomes 100% exempt from ad valorem real property taxes. In consideration of the local taxing jurisdictions, the IDA enters into a **Payment In Lieu of Taxes (PILOT)** agreement with the applicant.

(A) General. Pursuant to section 874 of the act and Section 412-a of the Real Property Tax Law, property owned by or under the jurisdiction or supervision or control of the Agency is exempt from general real estate taxes (but not exempt from special assessments and special ad valorem levies). However, it is the general policy of the Agency that, notwithstanding the foregoing, every non-governmental project will be required to enter into a payment in lieu of tax agreement (a “PILOT Agreement”), either separately or as part of the project documents. Such PILOT Agreement shall require payment of PILOT payments in accordance with the provision set forth below.

(B) PILOT Requirement. Unless the applicant and/or project occupant and the Agency shall have entered into a pilot Agreement acceptable to the Agency, the project documents shall provide that the applicant and/or the project occupant shall be required to make PILOT payments in such amounts as would result from taxes being levied on the project by the taxing jurisdictions if the project were not owned by or under the jurisdiction or supervision or control of the Agency. The project documents shall provide that, if the Agency and the applicant and/or project occupant have entered into a PILOT Agreement, the terms of the PILOT Agreement shall control the amount of PILOT payments until the expiration or sooner termination of such agreement.

(C) PILOT Agreement. Unless otherwise determined by resolution of the Agency, all PILOT Agreements shall satisfy the following general conditions:

(1) Amount of Abatement. The general policy of the Agency is not to provide the applicant and/or project occupant with any abatement other than (a) a Standard Abatement or (b) an Enhanced Abatement:

(a) **Standard Abatement**. This is the standard abatement program that the majority of applicants will be entitled to. The Standard Abatement commences at 50% of the increase in assessed

valuation resulting from a project and then declines by 5% per year for a ten year period. This abatement is designed for projects that are eligible for IDA assistance and meet a standard level of economic impact including job creation, business development and tax generation. This abatement program provides abatement against the Town, County and School District taxes throughout the Town. The abatement schedule is as follows:

<u>Year</u>	<u>% Abatement</u>
1	50%
2	45%
3	40%
4	35%
5	30%
6	25%
7	20%
8	15%
9	10%
10	5%
11	0%

(b) Enhanced Abatement. This abatement is designed to enhance the regional competitive position of the Town in attracting high quality business development that meets very specific economic benefit criteria. The Enhanced Abatement schedule has been structured to fall in the middle of the continuum of abatement programs offered by competing regional communities and facilities (business parks). The proposed abatement schedule is as follows:

<u>Year</u>	<u>% Abatement</u>
1	100%
2	100%
3	90%
4	80%
5	70%
6	60%
7	50%
8	40%
9	30%
10	20%
11	10%
12	0%

As with all Agency PILOT programs, the abatement is against the increase in assessed valuation resulting from the completion of the project. It also assumes that the abatement program begins after the completion of construction and a Certificate of Occupancy (CO) has been issued for the project.

A separate application will be used for the Enhanced Abatement program. To be eligible for the Enhanced abatement, an applicant must demonstrate the project’s ability to substantially meet the following criteria:

1. Extraordinary new job creation or capital investment

2. Net new business investment in the Capital Region
3. Reuse or redevelopment of abandoned or underutilized real estate
4. Consistency with the Town's comprehensive plan recommendations
5. Market penetration; potential for catalytic effect for subsequent projects
6. Consistency with regional target industries
7. Business development that promotes economic diversification

In addition, applicants will be required to submit an economic impact analysis in a form that is acceptable to the Agency that demonstrates the project's economic benefits based on the Enhanced Abatement schedule. In addition, the application should include information that demonstrates the applicant's relevant experience in undertaking similar projects, as well as their credit worthiness and financial strength. Also, applicants will be required to indicate that in the absence of the Enhanced Abatement incentive, the project will not proceed.

(2) Special District Taxes. As indicated above, the Agency is not exempt from special assessments and special ad valorem levies, and accordingly these amounts are not subject to abatement by reason of ownership of the Project by the Agency. The PILOT Agreement shall make this clear and shall require that all such amounts be directly paid by the applicant and/or project occupant.

(3) Payee. Unless otherwise determined by resolution of the Agency, all PILOT payments payable to an affected tax jurisdiction shall be assessed, billed and collected directly by the same officials which assess, bill and collect normal taxes levied by such affected tax jurisdiction. Pursuant to section 874(3) of the Act, such PILOT payments shall be remitted to each affected tax jurisdiction within thirty (30) days of receipt.

(4) Enforcement. An affected tax jurisdiction which has not received a PILOT payment due to it under a PILOT Agreement may exercise its remedies under Section 874(6) of the Act. In addition, such affected tax jurisdiction may petition the Agency to exercise whatever remedies that the Agency may have under project documents to enforce payment and, if such affected tax jurisdiction indemnifies the Agency and agrees to pay the Agency's costs incurred in connection therewith, the Agency may take action to enforce the PILOT Agreement,

(5) Recapture of Tax Exemptions. If the Agency's approval of a project is predicated upon achievement by the project of certain minimum goals such as minimum employment levels, the documents will provide that the tax exemptions granted to the project will be reduced, eliminated or re-captured if, in the sole judgment of the Agency, the project fails to achieve such minimum goals. The events which will trigger a recapture of the tax exemptions are as follows:

- (i) failure to complete the acquisition, construction and installation of the Project Facility;
- (ii) failure by the Company to meet at least eighty percent (80%) of the Employment Level requirements required by the documents;
- (iii) liquidation of substantially all of the Company's operating assets and/or cessation of substantially all of the Company's operations;
- (iv) relocation of all or substantially all of Company's operations at the Project Facility to another site, or the sale, lease or other disposition of all or substantially all of the Project Facility;
- (v) transfer of jobs equal to at least fifteen percent (15%) of the Company's Employment Level out of the Town of Bethlehem, New York;
- (vi) failure by the Company to comply with the annual reporting requirements or to provide the Agency with requested information;
- (vii) sublease of all or part of the Project Facility in violation of the Basic Documents;
- (viii) a change in the use of the Project Facility, other than the use proposed in the application for financial assistance and other directly and indirectly related uses;
- (ix) failure by the Company to make an actual

investment in the Project by the Project's construction completion date equal to or exceeding 80% of the Total Project Costs as set forth in the Company's application for Financial Assistance.

If a recapture event occurs during construction of the Project or in the first year of the real property tax abatement, the amount of tax exemptions to be recaptured shall be 100% of the actual tax exemptions received by the Company. If the recapture event occurs after the first year of the real property tax abatement, the amount of the tax exemptions to be recaptured shall decline by 10% each year.

If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have fourteen (14) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (v) no action.

(D) Required Filings. As indicated in subsection (B) above, pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, no real estate tax exemption with respect to a particular project shall be effective until an exemption form is filed with the assessor of each county, city, town, village and school district in which project is located (each, a "Taxing Jurisdiction"). Once an exemption form with respect to a particular project is filed with a particular Taxing Jurisdiction, the real property tax exemption for such project does not take effect until (1) a tax status date for such Taxing Jurisdiction occurs subsequent to such filing, (2) an assessment roll for such Taxing Jurisdiction is finalized subsequent to such tax status date, (3) such assessment roll becomes the basis for the preparation of a tax roll for such Taxing Jurisdiction, and (4) the tax year to which such tax roll relates commences.

(E) Real Property Appraisals. Since the policy of the Agency stated in subsection (C) (1) is to base the value of a project for payment in lieu of tax purposes on a valuation of such project performed by the Assessor of the applicable Taxing Jurisdiction, normally a separate real property appraisal is not required. However, the Agency may require the submission of a real property appraisal if (1) the assessor of any particular Taxing Jurisdiction requires one or (2) if the valuation of the project for payment in lieu of tax purposes is based on a value determined by the applicant or by someone acting on behalf of the applicant, rather than by an assessor for a Taxing Jurisdiction or by the Agency. If the Agency requires the submission of a real property appraisal, such appraisal shall be prepared by an independent MAI certified appraiser acceptable to the Agency.

SECTION 1708. PROCEDURES FOR DEVIATION. (A) General. In the case where the Agency shall determine that any policy of the Agency as herein established is inappropriate or unfair, the Agency may determine:

(1) the amount of the tax exemption, the amount and nature of the PILOT, the duration of the exemption of the PILOT and whether or not an exemption of any kind shall be granted and shall impose such terms and conditions as shall be just and proper; and

(2) the Agency shall give written notice of the proposed deviation from the policy set forth herein to each affected Taxing Jurisdiction setting forth the terms and conditions of the deviation and the reasons therefore. *(After receipt of notice of the proposed deviation, and prior to a final vote on such deviation each affected tax jurisdiction will be given ten (10) days in which to file written comments in the Office of the Agency).

(B) Troubled Projects. Where a project is owned and operated by the Agency or has been acquired by the Agency for its own account after a failure of a project occupant, the project shall at the option of the Agency be exempt from all taxes in accordance with law.

(C) Unusual Projects. Where a project is unusual in nature and requires special considerations related to its successful operations as demonstrated by appropriate evidence presented to the Agency, the Agency shall consider the granting of a deviation from the established exemption policy in accordance with the procedures provided in the title. The Agency may authorize a minimum PILOT or such other arrangement as may be appropriate.

SECTION 1709. ANNUAL REVIEW OF POLICIES. (A) General. At least annually, the Agency shall review its tax exemption policies to determine relevance, compliance with law, effectiveness, and shall adopt any modifications or changes that it shall deem appropriate. Unless otherwise provided by resolution, such annual review shall take place at a regular meeting of the Agency, notice for comments on such policies shall be circulated as provided by law for input from affected Tax Jurisdictions, and adoption of any changes shall take not less than 10 days thereafter. The (Executive Director/Chairman) shall be responsible for conducting an annual review of the tax exemption policy and for an evaluation of the internal control structure established to ensure compliance with the tax exemption policy which shall be submitted to the Agency for approval. The thirty (30) day comment period shall not apply to the adoption of the original policies of the Agency, which said policies shall become effective as herein provided.