

**MINUTES OF THE MEETING OF THE
VILLAGE OF PORT CHESTER
INDUSTRIAL DEVELOPMENT AGENCY**

HELD: April 10, 2013

TIME AND PLACE: 6:30 P.M., Village Hall, Conference Room, 222 Grace Church Street, Port Chester, New York

A regular meeting of the Village of Port Chester Industrial Development Agency was convened on Wednesday April 10, 2013 at 6:30 p.m. at 222 Grace Church Street, Port Chester, New York. 10573.

Roll Call

The meeting was called to order by Chairman Neil Pagano with the following Board members being present: Vice Chairman Joseph Kenner, James Taylor, Richard Cuddy, Frank Ferrara, and Dennis Pilla.

Also in attendance were Board Counsel Justin Miller, Treasurer Leonie Douglas, Planning Director Christopher Gomez, Planner Jessica Youngblood and Acting Board Secretary Constance Phillips.

Bob Forman of RMF Abstract was also in attendance to provide the Board with an update on the G&S Title Search. Board of Trustee member Gene Ceccarelli was also in attendance.

Chairman's Remarks

Chairman Pagano stated that he would forego any remarks and proceeded with the Agenda items.

Minutes

On the motion of Board member Richard Cuddy, which was seconded by Vice Chairman Joseph Kenner the minutes for the January 9, 2013 meeting were approved.

Treasurers Report

Treasurer Leonie Douglas stated that the PCIDA Budget was filed in PARIS on March 29, 2013. The amount allocated for 2014 is \$67,360.00. This amount was reported to PARIS pending ratification by the

Board. (\$66.910 of the budget will be come from the Fund Balance Account). A copy of the budget with the line by line breakdown was given to the Board members in their packets. Ms. Douglas suggested that unless there were any changes to the budget that the Board ratify it as prepared because this was the amount submitted to PARIS. If there are any changes the budget can be amended at a later time.

On the motion of Board member James Taylor, seconded by Board member Richard Cuddy, the Board ratified the budget as prepared and sent in to PARIS.

Budget

Treasurer Leonie Douglas also summarized the current budget from December 31, 2012 to present. A summary is listed below and the line by line specifics were provided to Board members in their packets.

Port Chester Industrial Development Agency as of 12/31/2013

Cash on Hand & Net Asset @1/1/2013	\$297,338.29
Revenue Received During December	\$ 2,613.90
Expenses During December	\$ 700.00
Net Asset @ 3/31/2013	\$299,252.19
Reconciliation of Bank Accounts & Net Asset	\$146,250.68
Total Bank Balance @ 3/31/2013	\$290,252.19
Prepaid Expenses	\$ 9,000.00
Total Net Assets @ 3/31/2013	<u>\$299,252.19</u>

Didden vs. Bologna

Ms. Douglas indicated that she had received an e-mail from Watkins and Watkins stating that they would be meeting on the 14th and that a check to the Village would be forthcoming. Ms. Douglas said she has a document indicating how the payments should be allocated. The actual amount owed the Village is \$3,215,814.59 of which 1.2 million is interest.

Ms. Douglas also spent a few minutes reviewing the G&S Escrow Report.

On the motion of Board member Dennis Pilla, which was seconded by Board member Richard Cuddy the Treasurers Report was accepted.

Invoices

A brief review of the submitted invoices was held. There were two invoices submitted for payment:

- Treasurer Leonie Douglas \$1,500.00

- Secretary Constance Phillips \$200.00
- Harris Beach \$4,186.00
- RMF Abstract Corp \$6,200.00

On the motion of Board member James Taylor, which was seconded by Board member Richard Cuddy, the submitted invoices were approved.

Title Search Report – Bob Forman

Mr. Foreman indicated that he went back in time before the project started and took all of the acquisition maps and plotted them all out to make sure that the Village IDA actually acquired all the properties. Between the maps and the separate deeds it was determined that G&S had acquired some of the properties on their own which they in turn conveyed to IDA and ultimately all of the properties ended up with IDA. This was all done properly. The issues actually started with the financing. As the financing began the carving up and re-designation of parcels also began. The project morphed into more than what was initially planned, they put their financing on it and that's where the issues began. The financing was lease all financing, IDA was the owner of the fees on the property and G&S designated separate operating companies for the different units. They would assign the ground lease and then the new lessee/new operating company would then lease the property to a tenant, i.e. Costco, Bed Bath and Beyond, etc. With all of these different leases both G&S and IDA switched attorneys numerous times at various intervals and every time a new title got on, a new mortgage company got involved based on whoever was affiliated with that particular attorney or with G&S during that time. The IDA was not involved in any of the selections. The perimeter descriptions of the parcels that started getting put into the leases and sub leases and memorandum of leases were all pretty much butchered. The most notable being the Costco Lease. The description of the property cut across Unit 1. IDA did not sign off on these agreements, however there were a number of memorandum of agreements that were being submitted to the IDA at the time leases were being made. The lease would be with the sub tenant but IDA would basically sign acknowledgement of the Memorandum of Agreement. The problem was that no one bothered to check the descriptions that were included in those memorandums. (IDA would acknowledge that Costco is the tenant with certain rights, IDA collects the fees, but the parcel descriptions were not checked for accuracy). On the second round of financing, the second finance company indicated that mistakes were made on the parcel descriptions and proceeded to do amendments to the memorandum of lease agreements. Ultimately most were cleaned up with the exception of Costco.

Problem areas

Unit 2B – Coney Lot currently has 2.78 million financing on it (Peoples Bank); Unit 3 – Has same parcel description and Lease as Unit 2B, and ultimately the memorandum of lease was terminated and 3 descriptions were then plugged into the agreement. From a title perspective, there is no lease to G&S on

Unit 2B and Unit 3 because of the termination. The Unit 3 description also includes the Townsend Street extension. IDA also signed a recognition agreement with Costco acknowledging they had a lease in the property that included the Townsend Street Extension. The mortgage on the property and the lease still include that property. In General, the Master Leases going out to G&S for all properties were for a twenty year term. G&S in turn made leases with their tenants for twenty five years, renewable up to forty nine years. Another issue is that in one location there are discrepancies with the tax map and the lot block descriptions. The result is a loss in taxes.

There is a modification of a lease that added into Costco's parking spaces. This gave Costco additional parking for their employees. An easement was given to Costco by virtue of a lease for an additional 100 parking spaces in the Marina Parking Lot.

Chairman Pagano and several Board members expressed an interest in knowing the mortgage amounts associated with each of the parcels. Mr. Forman said he would be able to do this because the data is now compiled in a data base. Mr. Forman stated he did not title search properties to streets. He does not know who owns Westchester Avenue State or Village or County) at this point. Some of the streets have been realigned and ownership was not searched at this time. Air rights were also not searched at this time.

Board member Richard Cuddy inquired of Mr. Forman what the cost would be to get all of the pertinent information including air rights, street ownership, mortgage amounts per parcel, etc. This is important information that is needed to make sure that leases have proper descriptions and that the documents that IDA will sign in the future will be accurate and correctly correspond to the correct parcels. Mr. Forman said it is difficult to give an exact price but he certainly would cap the price at \$2,500.

The G & S Escrow Account, Didden vs. Bologna Lawsuit and Westchester Avenue/intersections were also discussed as part of matters that need to be cleaned up.

On the motion of Board member Richard Cuddy, which was seconded by Vice Chairman Joseph Kenner and additional \$2,500 was authorized to further the Title Search endeavor.

Authorizing Resolution

A proposed authorizing resolution was presented by Mr. Miller that would authorize Chairman Pagano to execute 12 different agreements as outlined. They are basically 6 different mortgage agreements and 5 different modification of mortgages and a single spreader agreement which re-secures all of Peoples Bank debt among 4 separate units. The Board discussed 3 global issues on the project that must be met or confirmed before we provide the signature pages.

Escrow must be paid

Request for G&S to satisfy any unpaid judgments in the LADA

Request time frame /commitment regarding Westchester Avenue improvements

AUTHORIZING RESOLUTION

*G&S Port Chester, LLC Modified Marina Redevelopment Project-
G&S Port Chester Unit 2A, LLC, G&S Port Chester Unit 2B, LLC,
G&S Port Chester Unit 2C, LLC and G&S Port Chester Unit 4A, LLC
Mortgage Refinance Modification Agreements*

A regular meeting of the Village of Port Chester Industrial Development Agency was convened on Wednesday April 10, 2013, at 6:30 p.m. at 222 Grace Church Street, Port Chester, New York, 10573.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Vice Chairman Joseph Kenner, James Taylor, Richard Cuddy, Frank Ferrara, and Dennis Pilla.

ABSENT: John Hiensch

THE FOLLOWING PERSONS WERE ALSO PRESENT: Board Counsel Justin Miller, Treasurer Leonie Douglas, Planning Director Christopher Gomez, Planner Jesica Youngblood and Acting Board Secretary Constance Phillips

On motion duly made by Board member James Taylor and seconded by Vice Chairman Joseph Kenner, the following resolution was placed before the members of the Village of Port Chester Industrial Development Agency:

Resolution No. 2013 -

RESOLUTION OF THE VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN MORTGAGE MODIFICATION AGREEMENTS IN CONNECTION WITH PROJECTS PREVIOUSLY UNDERTAKEN BY THE AGENCY FOR THE BENEFIT OF G&S PORT CHESTER UNIT 2A, LLC, G&S PORT CHESTER UNIT 2B, LLC AND G&S PORT CHESTER UNIT 2C, LLC AND G&S PORT CHESTER UNIT 4A, LLC

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 632 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring,

constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, in furtherance of a certain in Modified Marina Redevelopment Project (the "Project") undertaken by G&S Port Chester, LLC ("G&S"), the Agency, along with the Village of Port Chester (the "Village") entered into a Land Acquisition and Disposition Agreement, dated as of July 14, 1999, and amendments thereto (collectively, the "LADA"), wherein the parties thereto memorialized their respective rights and obligations in connection with the Project; and

WHEREAS, in furtherance of the project and applicable provisions of the LADA, the Agency, by and through the Village, acquired certain parcels of real estate within the Village to be incorporated into the Project, including: (i) those certain parcels of realty within the Village commonly referred to as **Unit 2A** and leased by the Agency to G&S Port Chester Unit 2A, LLC pursuant to a certain Unit Lease Agreement, dated as of December 11, 2003; (ii) those certain parcels of realty within the Village commonly referred to as **Unit 2B/Retail D** and leased by the Agency to G&S Port Chester Unit 2B, LLC pursuant to a certain Unit Lease Agreement, dated as of December 30, 2003; (iii) those certain parcels of realty within the Village referred to as **Unit 2C/Retail E** and leased by the Agency to G&S Port Chester Unit 2C, LLC pursuant to a certain Unit Lease Agreement, dated as of December 30, 2003 and (iv) those certain parcels of realty within the Village commonly referred to as **Unit 4A** and leased by the Agency to G&S Port Chester Unit 4A, LLC pursuant to a certain Unit Lease Agreement, dated as of January 15, 2008; and;

WHEREAS, G&S, on behalf of G&S Port Chester Unit 2A, LLC, G&S Port Chester Unit 2B, LLC, G&S Port Chester Unit 2C, LLC, and G&S Port Chester Unit 4A, LLC (collectively hereinafter, the "Company"), has requested the Agency's approval of and participation in connection with the Company's refinance of the mortgage debt associated with the above-described Units (collectively, the "Refinancing"), pursuant to certain proposed Collateral Mortgage, Assignment of Rents, Security Agreement and Fixture Filings, Modified Mortgage, Mortgage, Assignment of Rents, Security Agreement and Fixture Filings, and related Spreader Agreements, copies of which are attached hereto as **Exhibit A** (herein, the "Agreements"); and

WHEREAS, the Agency desires to approve the Refinancing and authorize the execution and delivery of the Agreements and related documents subject to the terms and conditions contained herein.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE VILLAGE OF PORT CHESTER INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby approves and authorizes the undertaking of the Refinancing and authorizes the Agency Chairman, Vice Chairman and/or Administrative Director to execute and deliver the Agreements, and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agreements and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman and of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman or the Administrative Director of the Agency to constitute conclusive evidence of such approval; provided, in all events, recourse against the Agency is limited to the Agency's interest in the Project.

Section 2. The foregoing authorization to execute and deliver the Agreements is hereby conditioned as follows: (a) upon the Company's payment of all outstanding amounts under the Escrow Agreement associated with the LADA, (b) request for Company's payment of all unsatisfied judgment amounts due and payable under the LADA, and (c) request for the Company's written confirmation to timely proceed with remaining public amenity improvements associated with the LADA (Westchester Ave Traffic Improvements).

Section 3. The members, 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 and to execute and deliver all such 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. These Resolutions shall take effect immediately upon adoption.

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

	<i>YEA</i>	<i>NEA</i>	<i>ABSTAIN</i>	<i>ABSENT</i>
Hon. Neil Pagano	[X]	[]	[]	[]
Dennis Pilla	[X]	[]	[]	[]
Hon. Joseph Kenner	[X]	[]	[]	[]
James Taylor	[X]	[]	[]	[]
John Hiensch	[]	[]	[]	[X]
Frank Ferrara	[X]	[]	[]	[]
Richard Cuddy	[X]	[]	[]	[]

The Resolution was thereupon duly adopted.

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS:

I, the undersigned Secretary of the Village of Port Chester Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Village of Port Chester Industrial Development Agency (the "Agency"), including the resolution contained therein, held on April 10, 2013, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this ___ day of _____, 2013.

Secretary

[SEAL]

Treasurer Leonie Douglas reminded everyone that the audits will be coming up soon and that letters need to be prepared with regard to PARIS reporting.

Code of Ethics documents were provided to all members for signature. Chairman Pagano distributed the materials to the members to review and return with signature at the next meeting.

Adjourn

On the motion of Board member James Taylor which was seconded by Board member Richard Cuddy, the meeting was adjourned at 7:50 pm.

Respectfully Submitted,
Constance R. Phillips