

**COUNTY OF OTSEGO INDUSTRIAL DEVELOPMENT AGENCY**  
**February 24, 2022**

**MEETING MINUTES**

**CALL TO ORDER**

Vice Chair, D. Rowley, called to order the meeting of COIDA at 8:02am. M. Marino conducted roll call and determined there was a quorum. Voting members present included:

David Rowley	Jeffrey Lord (v)
Andrew Marietta (v)*	Tom Armao
Patricia Kennedy (v)	Craig Gelbsman
James Seward	

Absent Board Member(s): Jeffery Joyner, Cheryl Robinson

Also, in attendance:

**STAFF**

Jody Zakrevsky, **CEO**  
Meaghan Marino, **Dir. of Finance and Administration**  
Kurt Schulte, **Agency Counsel (v)**  
Joe Scott, **Bond Counsel (v)**

(v) – virtual

\* arrived after start of meeting.

**CHAIR'S REMARKS**

Vice Chair, D. Rowley, welcomed fellow board members and staff to the February board meeting. He also introduced everyone to the IDA and CRC's newest board member, James Seward.

**MEETING MINUTES**

D. Rowley presented the meeting minutes from the December 23, 2021 COIDA board meeting. Board members were given a copy of the minutes prior to the meeting for review. T. Armao made a motion to approve the meeting minutes. The motion was seconded by J. Lord and it was approved by the remaining members present.

D. Rowley also presented the meeting minutes from the February 1<sup>st</sup> Annual Meeting. Board members were given a copy of the minutes prior to the meeting for review. T. Armao made a motion to approve the meeting minutes. The motion was seconded by P. Kennedy and approved by the remaining members.

## **BILLS & COMMUNICATIONS**

M. Marino reviewed the bills for the agency since the February 1<sup>st</sup> Audit & Finance Committee meeting. She advised that they most are normal operating expenses for the agency. She did point out a charge for the public hearing notice for ZAED Properties, LLC. that ran in the Daily Star, and a membership fee for Southern Tier 8 that was \$6,000. She pointed out to the board that this was up \$1,000 from previous years. She also reviewed deposits, which were just rent payments for the agency.

## **COMMITTEE REPORTS**

- ❖ **Audit & Finance** – The Audit & Finance Committee meeting was held on February 1<sup>st</sup>, 2022. J. Lord, Chair of the Committee, was absent from the meeting. He referred board members to a draft copy of the minutes from that meeting as a review of the Audit & Finance Committee.
- ❖ **Governance Committee** – Governance Committee meetings are held quarterly. There was no Governance meeting in February. The next meeting will be in April, 2022.
- ❖ **Projects Committee** – The Projects Committee meeting was held on February 1<sup>st</sup>, 2022. T. Armao, Vice Chair of the Committee, referred board members to a draft copy of the minutes from that meeting as a review of the Projects Committee.

## **NEW BUSINESS / UNFINISHED BUSINESS**

- **ZAED Properties, LLC.** – J. Zakrevsky reminded members that the SEQR Resolution and Public Hearing Resolution for this project were approved by the board at the December board meeting. That public hearing was held on January 24<sup>th</sup>, 2022. He advised that there was one member of the public who attended that meeting, Village of Cooperstown Mayor, Ellen Tillapaugh, who voiced support for the IDA entering into a PILOT agreement for this project. He advised that today's discussion would center around the insurance requirements for the project. Joe Scott advised that regarding the insurance, typically, our projects require \$1,000,000 in the primary and \$5,000,000 in the excess. ZAED Properties, LLC. priced this and concluded that it would be a \$10,000 annual fee for the \$5,000,000 excess. They then did an analysis of the benefits being offered by the IDA (mortgage recording tax, real property tax, and sales tax) and balanced that with the increased costs of the insurance, required by the IDA, the transaction became very thin in terms of benefits. Currently, the company is holding insurance in a \$2,000,000 aggregate, so Joe Scott asked the company to price out a \$2,000,000 excess to see if that worked for them on a financial level. The \$2,000,000 excess would provide a total of \$4,000,000 in coverage for the IDA, who is named as an additional insured. This would be \$2,000,000 less than what the IDA typically requires for coverage, but, according to Joe Scott, is still a considerable amount of coverage. The company is comfortable with this amount, which is why it is now being brought to the board for consideration. J. Lord asked if our IDA has ever waived that requirement. J. Zakrevsky advised that it has not been waived in the time that he has been at the agency, but our IDA has also not done a housing project. T. Armao asked the board if they are comfortable with less protection for the agency on this project. D. Rowley asked the attorneys what the IDA's exposure level is on this project. Joe Scott advised that IDA's set different insurance requirements, but of his 20 IDA clients, only one has a \$3,000,000 limit, where the others all have \$5,000,000 for the excess liability requirement. He did note that smaller projects tend to note the increased costs incurred to them with the liability requirement. He stated that he didn't recall of any legal action being taken against projects in Otsego County, where the IDA was named as an additional insured. He advised of other IDA clients, who had been sued, that counsel's typical response is go back to the company, whose obligation it would be to defend the IDA and pay any fees

with respect to that defense. In most of those cases, the IDA gets dismissed out of the action because the IDA has no real control over the project. He noted that in 40 years of practice he cannot think of an IDA client who has been held liable in these matters. That said, the insurance is for those one in a million cases where it could potentially happen, so the board needs to decide if they feel comfortable dropping the total IDA coverage from \$6,000,000 to \$4,000,000, of they want to go back and push the company to get the IDA's required amount of coverage. Kurt Schulte noted the St. James Manor project, in Otsego County, where a contractor got hurt on the site and the IDA was named in the action, but it was dismissed due to the indemnification language in the documents. After J. Zakrevsky advised that the project cost is \$3.25million, J. Lord asked what the total benefits are to the company. J. Zakrevsky advised an approximate savings of \$18,000 on the recording mortgage tax, approximate savings of \$110,000 in sales tax, and an approximate savings of \$240,000 in real property tax. P. Kennedy asked the difference in insurance costs between what the IDA normally requests vs. what they're willing to provide. J. Zakrevsky advised that, as of the meeting, the client had not yet gotten a quote for the \$2,000,000 excess policy. After a brief discussion, board members agreed to have Joe Scott go back to the clients insurance and see if there's any way they can bring up the aggregate amount, so that the IDA doesn't have to stray from general requirements. They'd also like to know the cost of the policy the client agreed to vs. the policy required by the IDA. Because there are two resolutions on this project, to be decided on today, Joe Scott recommended the board consider them with no deviation the IDA's policies. Assuming the board approves them, and the client agrees to stick to the IDA's insurance requirements, the resolutions would already be approved or denied.

- **NYS Comptroller's Audit** – The board was sent the final copy a couple weeks ago of the NYS Comptroller's audit of the Otsego County IDA, and it was recently released on the Comptroller's website. J. Zakrevsky advised that he received a call from the Daily Star for comment, so there will soon be an article to follow. He explained that he told the Daily Star he looked at the Comptroller's Audit as a positive thing for the agency. After two and a half years in our office, they didn't find any issues presently in our office, and only had remarks on the purchase of the Rail Yards several years ago. P. Kennedy remarked on J. Zakrevsky's response to the audit, which was included in the Comptroller's final report. She noted that his remarks were well-thought out and were a good representation of the efforts that were undertaken during the purchase of the Rail Yards, even though he was not an employee of the agency at that time. J. Lord added that the bottom line of the audit was that there was not enough documentation regarding the amount of time spent discussing the RailYards purchase. That can now be alleviated due to the order that IDA meetings have to be live-streamed, recorded, and posted for public-view.

## RESOLUTIONS

### **Commercial Findings Resolution – ZAED Properties, LLC.**

RESOLUTION (A) DETERMINING THAT THE PROPOSED ZAED PROPERTIES, LLC PROJECT IS A COMMERCIAL PROJECT AND (B) MAKING CERTAIN FINDINGS REQUIRED UNDER THE GENERAL MUNICIPAL LAW.

WHEREAS, County of Otsego 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 252 of the 1973 Laws of New York, as amended, constituting Section 910-a 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 manufacturing, warehousing, research, commercial and industrial 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, Zaed Properties, LLC, a New York State limited liability company (the “Company”), submitted 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 three parcels of land containing in the aggregate approximately 0.77 acres located at 10 Chestnut Street (tax map number 115.18-2-64.00) and Chestnut Street (tax map number 115.18-2-63.02) and 17 Pine Blvd. (tax map number 115.18-2-49.00) in the Town of Otsego, Village of Cooperstown, Otsego County, New York (collectively, the “Land”), together with the existing buildings located thereon (collectively, the “Existing Facility”), (2) the demolition of the Existing Facility, (3) the construction on the Land of an approximately 16,000 square foot, two (2) story building (the “Facility”) and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (the Land, the Existing Facility, the Facility, and the Equipment being collectively referred to as the “Project Facility”), all of the foregoing to constitute an approximately 13 unit residential multi-family apartment building to be owned and operated by the Company 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, by resolution adopted by the members of the Agency on December 23, 2021 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on January 11, 2022 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on January 5, 2022 on a bulletin board located at 197 Main Street, 2<sup>nd</sup> Floor in the Town of Otsego, Village of Cooperstown, Otsego County, New York and on January 10, 2022 on the Agency’s website, (C) caused notice of the Public Hearing to be published on January 12, 2022 in the Daily Star, a newspaper of general circulation available to the residents of the Town of Otsego, Village of Cooperstown, Otsego County, New York, (D) conducted the Public Hearing on January 24, 2022 at 10:00 o’clock a.m., local time in the Board Room of the County Office Building located at 197 Main Street in the Town of Otsego, Village of Cooperstown, Otsego County, New York, and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; 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 (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on December 23, 2021 (the “SEQR Resolution”), the Agency (A) concurred in the determination that the Village of Cooperstown Board of Trustees (the “Board of Trustees”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Board of Trustees dated May 24, 2021 (the “Negative Declaration”), in which the Board of Trustees determined the Project to be an “unlisted action” that will not have a “significant environmental impact on the environment” and accordingly, that an environmental impact statement is not required to be prepared with respect to the Project (as such quoted terms are defined in SEQRA); and

WHEREAS, by further resolution adopted by the members of the Agency on December 23, 2021 (the “2021 Mortgage/Sales Tax Approval Resolution”), the Agency determined, prior to the Public Hearing, (A) to grant a portion of the Financial Assistance consisting of the exemption from (1) mortgage recording tax and (2) sales tax, which exemption from sales tax and mortgage recording tax will be limited to an amount not to exceed \$100,000 and (B) to enter into a lease agreement dated as of January 1, 2022 (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, in Opinion of the State Comptroller Number 85-51, the State Comptroller indicated that the determination whether a project that consists of the construction of an apartment house is a commercial activity within the meaning of the Act is to be made by local officials based upon all of the facts relevant to the proposed project, and that any such determination should take into account the stated purpose of the Act, that is, the promotion of employment opportunities and the prevention of economic deterioration; and

WHEREAS, to aid the Agency in determining whether the Project qualifies for Financial Assistance as a commercial project within the meaning of the Act, the Agency has reviewed the following (collectively, the “Project Qualification Documents”): (A) the Application, including the attached Cost Benefit Analysis; and (B) the 2016 Village of Cooperstown Comprehensive Plan; and

WHEREAS, the Agency has given due consideration to the Project Qualification Documents, and to representations by the Company that although the Project constitutes a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost, the predominant purpose of the Project would be to make available services which would not, but for the Project be reasonably accessible to the residents of Otsego County because of lack of reasonably accessible trade facilities offering such services; and

WHEREAS, pursuant to Section 862(2)(b) of the Act, the Agency would be authorized to provide financial assistance in respect of the Project provided that the obligation of the Agency to proceed with the Project was subject to certain conditions, including (1) following compliance with the procedural requirements of Section 859-a of the Act, a finding by the Agency that the Project would preserve permanent, private sector jobs in the State of New York or increase the overall number of permanent, private sector jobs in the State of New York and (2) confirmation by the Chairman of the Board of Representatives of Otsego County of the proposed action by the Agency with respect to the Project; and

WHEREAS, having complied with the requirements of SEQRA and Section 859-a of the Act with respect to the Project, the Agency now desires, pursuant to Section 862(2)(c) of the Act, to make its final findings with respect to the Project and its final determination whether to proceed with the Project;

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

Section 1. Based upon an examination of the Project Qualification Documents and based further upon the Agency's knowledge of the area surrounding the Project and such further investigation of the Project and its economic effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations with respect to the Project:

- A. The Project is located in an area having a mixture of residential, not-for-profit, commercial, retail, and service uses.
- B. The Project Qualification Documents makes the following comments/findings regarding housing in Otsego County:
  - There is a need for affordable year-round housing
  - There is a lack of long-term leases
  - There is a need for senior housing, universal design or aging in place housing
  - The Village is walkable, safe and a good place to raise a family
  - There is a need for diversity of residents of differing ages, economic situations, social needs and different stages of life
  - There is a need for a variety of housing options that includes price ranges, rental options and accessibility
  - The need to update the Village zoning to allow for a variety of housing options
- C. That undertaking the Project is consistent with the Project Qualification Documents and will assist and maintain current and future residential and commercial development and expansion in the neighborhood area.
- D. The Company has informed representatives of the Agency that the Project is expected to preserved full-time permanent, private sector jobs.
- E. The Company has informed representatives of the Agency that the Company is not aware of any adverse employment impact caused by the undertaking of the Project.

Section 2. Based upon the foregoing review of the Project Qualification Documents and based further upon the Agency's knowledge of the area surrounding the Project Facility and such further investigation of the Project and its economic effects as the Agency has deemed appropriate, the Agency makes the following determinations with respect to the Project:

- A. That although the Project does constitute a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost, the predominant purpose of the Project would be to make available services which would not, but for the Project be reasonably accessible to the residents of Otsego County because of lack of reasonably accessible trade facilities offering such services.
- B. That (1) the completion of the Project Facility will have an impact upon the creation, retention and expansion of employment opportunities in Otsego County and in the State of New York and (2) the completion of the Project will assist in promoting employment opportunities and assist in preventing economic deterioration in Otsego County and in the State of New York
- C. That the acquisition, reconstruction, renovation and installation of the Project Facility is essential to the retention of existing employment and the creation of new employment opportunities and is essential to the prevention of economic deterioration of businesses and neighborhoods located in Otsego County.
- D. That the Project constitutes a "commercial" project, within the meaning of the Act.

E. That the undertaking of the Project will serve the public purposes of the Act by preserving private sector jobs in the State of New York.

Section 3. Having reviewed the Hearing Report, and having considered fully all comments contained therein, and based upon the findings contained in Section 1 above, the Agency hereby determines to proceed with the Project and the granting of the financial assistance described in the notice of the Public Hearing; provided, however, that no financial assistance shall be provided to the Project by the Agency unless and until the Chairman of the Board of Representatives of Otsego County, New York, as chief executive officer of the Otsego County, New York, shall, pursuant to Section 862(2)(c) of the Act, confirm the proposed action of the Agency with respect to the Project.

Section 4. This Resolution shall take effect immediately.

The board was presented with the Commercial Findings Resolution for the ZAED Properties, LLC. housing project.

A. Marietta made a motion to approve the Commercial Findings Resolution for ZAED Properties, LLC. J. Seward seconded the motion, and it was approved by remaining members through a roll call vote.

### **Approving Resolution – ZAED Properties, LLC.**

RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR ZAED PROPERTIES, LLC (THE "COMPANY").

WHEREAS, County of Otsego 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 252 of the 1973 Laws of New York, as amended, constituting Section 910-a 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 manufacturing, warehousing, research, commercial and industrial 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, Zaed Properties, LLC, a New York State limited liability company (the "Company"), submitted 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 three parcels of land containing in the aggregate approximately 0.77 acres located at 10 Chestnut Street (tax map number 115.18-2-64.00) and Chestnut Street (tax map number 115.18-2-63.02) and 17 Pine Blvd. (tax map number 115.18-2-49.00) in the Town of Otsego, Village of Cooperstown, Otsego County, New York (collectively, the "Land"), together with the existing buildings located thereon (collectively, the "Existing Facility"), (2) the demolition of the Existing Facility, (3) the construction on the Land of an approximately 16,000 square foot, two (2) story building (the "Facility") and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment") (the Land, the Existing Facility, the Facility, and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to constitute an approximately 13 unit residential multi-family apartment building to be owned and operated by the Company 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, by resolution adopted by the members of the Agency on December 23, 2021 (the "Public Hearing Resolution"), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on January 11, 2022 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on January 5, 2022 on a bulletin board located at 197 Main Street, 2<sup>nd</sup> Floor in the Town of Otsego, Village of Cooperstown, Otsego County, New York and on January 10, 2022 on the Agency's website, (C) caused notice of the Public Hearing to be published on January 12, 2022 in the Daily Star, a newspaper of general circulation available to the residents of the Town of Otsego, Village of Cooperstown, Otsego County, New York, (D) conducted the Public Hearing on January 24, 2022 at 10:00 o'clock a.m., local time in the Board Room of the County Office Building

located at 197 Main Street in the Town of Otsego, Village of Cooperstown, Otsego County, New York, and (E) prepared a report of the Public Hearing (the "Hearing Report") fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; 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 (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on December 23, 2021 (the "SEQR Resolution"), the Agency (A) concurred in the determination that the Village of Cooperstown Board of Trustees (the "Board of Trustees") is the "lead agency" with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Board of Trustees dated May 24, 2021 (the "Negative Declaration"), in which the Board of Trustees determined the Project to be an "unlisted action" that will not have a "significant environmental impact on the environment" and accordingly, that an environmental impact statement is not required to be prepared with respect to the Project (as such quoted terms are defined in SEQRA); and

WHEREAS, by further resolution adopted by the members of the Agency on December 23, 2021 (the "2021 Mortgage/Sales Tax Approval Resolution"), the Agency determined, prior to the Public Hearing, (A) to grant a portion of the Financial Assistance consisting of the exemption from (1) mortgage recording tax and (2) sales tax, which exemption from sales tax and mortgage recording tax will be limited to an amount not to exceed \$100,000 and (B) to enter into a lease agreement dated as of January 1, 2022 (the "Lease Agreement") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, by further resolution adopted by the members of the Agency on February 24, 2022 (the "Commercial/Retail Finding Resolution"), the Agency (A) determined that the Project constituted a "commercial project" within the meaning of the Act, (B) found that although the Project Facility appears to constitute a project where facilities or properties that are primarily used in making the retail sales of goods or services to customers who personally visit such facilities may constitute more than one-third of the costs of the Project, the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act because the predominant purpose of the Project would be to make available goods or services which would not, but for the Project, be reasonably accessible to residents of Otsego County, New York, because of a lack of reasonably accessible retail trade facilities offering such goods or services, (C) determined, following a review of the Hearing Report, that the Project would serve the public purposes of the Act by preserving permanent private sector jobs in the State of New York, and (D) determined that the Agency would proceed with the Project and the granting of the Financial Assistance; provided however, that no financial assistance would be provided to the Project by the Agency unless and until the Board of Representatives of Otsego County, as the applicable elected body of Otsego County, New York, pursuant to Section 862(2)(c) of the Act, confirmed the proposed action of the Agency with respect to the Project; and

WHEREAS, pursuant to Section 862(2) of the Act, prior to providing the Financial Assistance to the Project, the Chairman of the Board of Representatives of Otsego County, New York, must confirm the proposed action of the Agency; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Otsego County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Otsego County, New York by undertaking the Project in Otsego County, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) a certain lease to agency (the "Lease to Agency" or the "Underlying Lease") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (B) a certain license agreement (the "License to Agency" or the "License Agreement") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (1) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (2) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement (as hereinafter defined); (C) a lease agreement (and a memorandum thereof) (the "Lease Agreement") by and between the Agency and the Company, pursuant to which, among other things, the Company agrees to undertake the Project as agent of the Agency and the Company further agrees to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (D) a payment in lieu of tax agreement (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (E) a uniform agency project agreement (the "Uniform Agency Project Agreement") by and between the Agency and the Company regarding the granting of the financial assistance and the potential recapture of such assistance; (F) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (G) 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; (H) a New York State Department of Taxation and Finance form entitled "IDA Appointment of Project Operator or Agency for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and any additional

report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the "Additional Thirty-Day Project Report"); (I) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the "Mortgage") from the Agency and the Company to the Company's lender with respect to the Project ("the "Lender"), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the "Loan"); (J) if the Company intends to request the Agency to appoint (1) the Company, as agent of the Agency and (2) a contractor or contractors, as agent(s) of the Agency prior to closing on the Project and the Lease Agreement, agency and indemnification agreements, interim Section 875 GML recapture agreements, interim sales tax exemption letters and interim thirty-day sales tax reports (collectively, the "Interim Documents"); and (K) various certificates relating to the Project (the "Closing Documents");

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

Section 1. All action taken by the Chief Executive Officer of the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The law firm of Hodgson Russ LLP is hereby appointed Special Agency Counsel to the Agency with respect to all matters in connection with the Project. Special Agency Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company, counsel to the Agency and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution. Special Agency Counsel has prepared and submitted an initial draft of the Agency Documents to staff of the Agency.

Section 3. The Agency hereby finds and determines that:

- (A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;
- (B) The Project constitutes a "project," as such term is defined in the Act;
- (C) The Project site is located entirely within the boundaries of Otsego County, New York;
- (D) It is estimated at the present time that the costs of the planning, development, acquisition, construction, reconstruction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$3,296,990;
- (E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;
- (F) Although the Project constitutes a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost, the Company has represented to the Agency that (1) the predominant purpose of the Project would be to make available goods or services which would not, but for the Project, be reasonably accessible to residents of Otsego County, New York, because of a lack of reasonably accessible facilities offering such goods or services, and (2) completion of the Project will serve the public purposes of the Act by preserving the overall number of permanent, private sector jobs in the State of New York;
- (G) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Otsego County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;
- (H) The Agency has reviewed the Hearing Report and has fully considered all comments contained therein;
- (I) The Project should receive the Financial Assistance in the form of exemptions from sales tax, mortgage recording tax and real property tax based on the description of expected public benefits to occur as a result of this Project, as described on Exhibit A attached hereto and failure by the Company to meet the expected public benefits will result in a recapture event; and
- (J) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License Agreement; (B) lease the Project Facility to the Company pursuant to the Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, installed and constructed; (D) enter into the Payment in Lieu of Tax Agreement; (E) enter into the Uniform Agency Project Agreement; (F) enter into the Section 875 GML Recapture Agreement; (G) secure the Loan by entering into the Mortgage; and (H) grant the Financial Assistance with respect to the Project; provided, however, that no financial assistance shall be provided to the Project by the Agency unless and until the Chairman of the Board of Representatives of Otsego County, New York, as the applicable elected body of Otsego County, New York, shall, pursuant to Section 862(2)(c) of the Act, confirm the proposed action of the Agency with respect to the Project.

Section 5. Subject to the provisions of Section 4 hereof, the Agency is hereby authorized (A) to acquire a license in the Licensed Premises pursuant to the License Agreement, (B) to acquire a leasehold interest in the Leased Premises pursuant to the Underlying Lease, (C) to acquire title to the Equipment pursuant to a bill of sale (the "Bill of Sale to Agency") from the Company to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.



Section 6. Subject to the provisions of Section 4 hereof, the Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 7. The Chairman (or Vice Chairman) of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 8. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency 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 the forms thereof as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 9. 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 Agency Documents, 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 Agency Documents binding upon the Agency.

Section 10. This Resolution shall take effect immediately.

The board was presented with the Approving Resolution for the ZAED Properties, LLC. housing project.

A. Marietta made a motion to approve the Public Hearing Resolution for ZAED Properties, LLC. J. Lord seconded the motion, and it was approved by remaining members through a roll call vote.

## **PUBLIC COMMENT**

There was no public in attendance.

## **ADJOURNMENT**

T. Armao made a motion to adjourn the meeting of the IDA board at 8:34am.

## **UPCOMING MEETING SCHEDULE**

- COIDA/OCCRC Audit & Finance Committee Meeting / Projects Committee Meeting – March 10, 2022
- COIDA/OCCRC Board Meeting – March 24, 2022

**\*All meetings are held at the Otsego Now offices at 189 Main Street, Oneonta. NY. 13820, unless otherwise specified.**